SEC. 546. ADDITIONAL REQUIREMENTS FOR ACCOUNTING FOR MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES LISTED AS MISSING.

(a) FAMILY BRIEFINGS.—Paragraph (1) of section 1501(a) of title 10, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) coordination of periodic briefing of families of missing persons about the efforts of the Department of Defense to account for those persons.".

(b) GIFT ACCEPTANCE.—Paragraph (6) of such section is amended by adding at the end the following new subparagraph:

"(D) To facilitate accounting for missing persons, the Secretary of Defense may accept voluntary or gratuitous services provided by persons or entities outside of the United States Government that further the purposes of this chapter.".

Section-by-Section Analysis

This proposal would codify a core mission of the Department of Defense (DoD) to reach out regularly to families of those missing from past conflicts and provide them general and specific information about DoD's efforts to account for their loved ones. This proposal also would allow the Secretary of Defense to accept gratuitous and voluntary services from outside organizations and individuals to help account for those missing.

Based in part on a recommendation from the 1991-1992 Senate Select Committee on POW/MIA Affairs, the Defense Prisoner of War/Missing Personnel Office (DPMO) leads DoD's current outreach program to families of our missing servicemen. Since 1995, representatives from DPMO, the Joint POW/MIA Accounting Command, the Armed Forces DNA Identification Laboratory, the Air Forces Life Sciences Equipment Laboratory, and the military departments have met with more than 12,000 family members of missing personnel to provide them with information about DoD's efforts to account for missing personnel. Currently, DPMO organizes

approximately ten of these briefings each year throughout the United States and these briefings are recognized as an important forum for both the families and DoD to communicate with respect to the resolution of these missing persons cases.

The briefings implement a communication and outreach mission already delegated to DPMO by directive of the Secretary of Defense (paragraph 5.4.13 of DoD Directive 5111.01E). However, although 10 U.S.C. 1501(b)(1)(B) tasks the Secretary of Defense with establishing uniform procedures for disseminating and updating information about missing persons, the statute does not, for example, specifically refer to the periodic briefings for families now organized by DPMO. The proposed addition of new language to section 1501(a)(1) would confirm the statutory basis for this mission and ensure its continued implementation as an essential part of the overall accounting mission.

Section 541 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Public Law 111-84) tasked the Secretary of Defense with developing a fully-resourced worldwide accounting effort that would attempt to account for missing Service members on five continents and to increase identifications of recovered Service members from approximately 85 in 2010 to 200 per year by 2015. To achieve this goal, DoD must develop new and more effective ways of accounting for missing personnel with limited resources. Because there are many individuals and organizations willing to assist in this effort without compensation, DoD would like the authority to accept such services where they can further DoD's mission to account for the missing. With this authority, DPMO would develop collaborative efforts to increase DoD's efficiency in accounting for the missing by, for example, assisting DPMO in researching basic case data, identifying possible leads for future attempts to recover the remains of missing Service members, and otherwise assisting DoD in resolving missing persons cases. However, DPMO is hesitant to accept any offers if they could be construed as an offer of voluntary services prohibited under section 1342 of title 31, United States Code. Section 1342 prohibits agencies from accepting voluntary services unless authorized by law. DoD Instruction (DoDI) 1100.21 implements section 1342, as well as a limited grant of authority to the Military Services to accept voluntary services under section 1588 of title 10, United States Code. However, paragraph 2.2 of DoDI 1100.21 specifically excludes from its scope, "gratuitous services" (i.e., services offered under an agreement waiving any claim to compensation from the government) and voluntary services accepted by a DoD Component under "applicable legal authority".

This proposed addition of new language to section 1501(a)(6) of title 10 would give the Secretary of Defense specific authority to accept gratuitous or voluntary services where the Secretary deems that such services may assist in accounting for our missing.

Budget Implications: None. The proposed addition to section 1501(a)(1) confirms the authority of DoD to conduct family outreach programs that already are paid for with appropriated funds of the respective participating organizations. The proposed addition to section 1501(a)(6) would allow acceptance of services only where offered on a voluntary or gratuitous basis and would not result in any additional costs. It is not anticipated that any additional employees would be hired to oversee uncompensated services accepted under this new authority.

Changes to Existing Law: This proposal would amend section 1501 of title 10, United States Code, as follows:

§ 1501. System for accounting for missing persons

(a) RESPONSIBILITY FOR MISSING PERSONNEL.—(1) The Secretary of Defense shall designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters relating to missing persons. Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the official designated under this paragraph shall include—

(A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion);

(B) policy, control, and oversight of the program established under section 1509 of this title, as well as the accounting for missing persons (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased); ~~and~~

(C) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons~~.~~; and

(D) coordination of periodic briefing of families of missing persons about the efforts of the Department of Defense to account for those persons.

(2) The official designated under paragraph (1) shall also serve as the Director, Defense Prisoner of War/Missing Personnel Office, as established under paragraph (6)(A), exercising authority, direction, and control over that activity.

(3) In carrying out the responsibilities established under this subsection, the official designated under paragraph (1) and (2) shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(4) The designated official shall establish policies, which shall apply uniformly throughout the Department of Defense, for personnel recovery (including search, rescue, escape, and evasion) and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased).

(5) The designated official shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.

(6)(A) The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office. The Secretary of Defense shall ensure that the activity is provided sufficient military and civilian

personnel, and sufficient funding, to enable the activity to fully perform the complete range of missions of the activity. The Secretary shall ensure that Department of Defense programming, planning, and budgeting procedures are structured so as to ensure compliance with the preceding sentence for each fiscal year.

(B)(i) For any fiscal year, the number of military and civilian personnel, whether temporary or permanent, assigned or detailed activity may not be less than the number requested in the President's budget for fiscal year 2003, unless a level below such number is expressly required by law.

(ii) If for any reason the number of military and civilian personnel assigned or detailed activity should fall below the required level under clause (i), the Secretary of Defense shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of the number of personnel so assigned or detailed and of the Secretary's plan to restore the staffing level of the activity to at least the required minimum number under clause (i). The Secretary shall publish such notice and plan in the Federal Register.

(C) For any fiscal year, the level of funding allocated to the activity within the Department of Defense may not be below the level requested for such purposes in the President's budget for fiscal year 2003, unless such a level of funding is expressly required by law.

(D) To facilitate accounting for missing persons, the Secretary of Defense may accept voluntary or gratuitous services provided by persons or entities outside of the United States Government that further the purposes of this chapter.

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