SEC. 548. REPEAL OF ALTERNATIVE MECHANISM FOR REQUIRED ALLOTMENTS FROM PAY FOR CHILD AND SPOUSAL SUPPORT OWED BY MEMBERS OF THE UNIFORMED SERVICES ON ACTIVE DUTY.

Section 465 of the Social Security Act (42 U.S.C. 665) is repealed.

Section-by-Section Analysis

This proposal would repeal section 465 of the Social Security Act (42 U.S.C. 665), which provides a process enacted as a supplement to the federal garnishment law, section 459 of the Social Security Act (42 U.S.C. 659). Section 465 was intended to provide a mechanism for enforcing child support and spousal support obligations owed by active duty members of the uniformed services by means of an involuntary allotment against a member's pay without the need for a separate withholding order issued by a State to enforce the support obligation against the member's employer. When section 459 was enacted in 1975, many States did not have legal structures or procedures in place to efficiently enforce court-ordered support obligations. In some cases, obtaining a separate State enforcement order against a member's military pay caused excessive delays in a custodial parent or dependent spouse receiving any support. Therefore, in recognition of the special position of uniformed service members and the expectation that they meet their support obligations, section 465 created an alternate means to enforce an existing support obligation without the need to return to court and obtain a second order, assuming a member was at least two months delinquent in payments.

The Social Security Act, in addition to the provisions of section 459, includes numerous provisions governing the enforcement of support on the Federal level, under the oversight of the Department of Health and Human Services, Federal Office of Child Support Enforcement (FOCSE). As a result, over the last 35 years, all States now have in place streamlined and efficient support enforcement programs that fully implement the provisions of section 459 of the Social Security Act (SSA), as the predominant means for enforcing support obligations against all Federal employees, civilian and military. Most notable is the ability in most States to obtain an income withholding order against the pay of members of the uniformed services simultaneous with the issuance of the underlying child or spousal support order. As a consequence, section 459 of the SSA, as followed by the States, is more efficient and effective in meeting the purposes for which SSA section 465 was originally enacted and fully satisfies the intent and purpose of that section.

Based on the above, there is no longer a need for an alternate support enforcement process, applicable only to uniformed service members. Accordingly, the mandatory income withholding order process governed by SSA section 459 renders SSA section 465 superfluous. Moreover, repealing section 465 will alleviate any potential confusion for the States in having a secondary support enforcement remedy unique to military personnel, in light of the fact that section 459 establishes a uniform mechanism to enforce the support obligations of all Federal

employees, including military members. Therefore, section 465 of the SSA should be repealed as superfluous and its elimination will promote efficiency, prevent confusion, and avoid potential duplication of support enforcement efforts.

Budget Implications: If section 465 of the Social Security Act is repealed, it would eliminate duplicative processes and reduce costs by limiting the involuntary withholding of child support and spousal support to a single process defined under section 459 of that Act. The statutory involuntary allotment process, pursuant to section 465 of the SSA is utilized to collect child and spousal support in very few cases, and therefore, the cost of repealing this section would be minimal to non-existent.

Changes to Existing Law: This proposal would repeal section 465 of the Social Security Act (42 U.S.C. 665), as follows:

~~ALLOTMENTS FROM PAY FOR CHILD AND SPOUSAL SUPPORT OWED BY MEMBERS OF THE UNIFORMED SERVICES ON ACTIVE DUTY~~

~~Sec. 465. (a)(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37, United States Code) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37, United States Code) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 303(b)(1)(A) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)(1)(A)) and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b)) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections 303 (b) and (c) of the Consumer Credit Protection Act (15 U.S.C. 1673 (b) and (c)). An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.~~

~~(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10, United States Code), or with a judge advocate (as defined in section 801(11) of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37, United States Code) in any other case, in person, to discuss the legal and other factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.~~

~~(b) For purposes of this section the term "authorized person" with respect to any member of the uniformed services means—~~

~~(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and~~

~~(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.~~

~~(c) The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37, United States Code) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.~~