SEC. 547. CLARIFICATION OF PARTIES WITH WHOM DEPARTMENT OF DEFENSE MAY CONDUCT EXCHANGES OF REAL PROPERTY AT MILITARY INSTALLATIONS.

Section 2869(a)(1) of title 10, United States Code is amended—

(1) by striking "eligible"; and

(2) by striking "entity" both places it appears and inserting "person".

Section-by-Section Analysis

This proposal would amend section 2869(a)(1) of title 10 United States Code, as amended by section 2815 of the National Defense Authorization Act for Fiscal Year 2012, to change the party with whom a real estate exchange can be conducted from any "eligible entity" to any "person". The term "person", as defined by section 1 of title 1, United States Code, makes clear the intent to include all types of parties, public and private, including corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

The FY12 NDAA amended 10 USC 2869 by changing the title of the section; eliminating the sunset date of September 30, 2013; adding authority for a transfer of real property to the United States without additional condition; and changing the party with whom any transfer or acquisition under the section may be accomplished from any "person" to any "eligible entity". The first three changes benefit the Service Secretary, but the last change may decrease the authority of the Service Secretary such that the section will have relatively little practical use.

10 USC 2869 can be a powerful tool to limit encroachment by a private developer on a military installation, testing or training range or route, or other operational area. The ability to acquire privately owned land by real property exchange can sometimes be the only way to protect a military mission. The authority to deal with any "person" in 10 USC 2869(a)(1) enabled such exchanges. The change from "person" to "eligible entity" jeopardizes this authority, as it throws into question which parties are "eligible" to deal with.

Eliminating the word "eligible" minimizes the change required to restore the authority to deal with any type of entity.

Budget Implications: There are no budget increases or decreases associated with this proposal.

Changes to Existing Law: This proposal would make the following change to section 2869(a) of title 10, United States Code, as amended by section 2815 of the National Defense Authorization Act for Fiscal Year 2012:

§ 2869. Exchange of property at military installations

(a) EXCHANGE AUTHORIZED.—(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any ~~eligible entity~~ person who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the ~~entity~~ person in and to a parcel of real property, including any improvements thereon under their control, or to carry out a land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

(A) is located on a military installation that is closed or realigned under a base closure law; or

(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.

(b) ***

******