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TITLE I—PROCUREMENT

Sections 101 through 106 would authorize appropriations for fiscal year 2016 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 107 would repeal the limitation on the retirement of U-2 aircraft contained in section 133 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Public Law 109-364), as amended by section 132 of the NDAA for FY 2008 (Public Law 110-181). Additionally, this proposal would require that the Secretary of the Air Force (SECAF) maintain retired U-2 aircraft and critical subsystems in a condition which allows for future recall for at least 3 years while allowing for transfer of parts and systems to other aircraft.

Section 133 of the FY 2007 NDAA prevented the Secretary of the Air Force (SECAF) from retiring the U-2 prior to FY 2007 and required certification by the Secretary of Defense that the intelligence, surveillance, and reconnaissance (ISR) capabilities provided by the U-2 no longer contribute to mitigation of gaps in ISR identified in the 2006 Quadrennial Defense Review. The amendment made by section 132 of the FY 2008 NDAA extended the FY 2007 NDAA language to fiscal years after FY 2007.

The Department notes that the conditions in section 133 of the FY 2012 NDAA (Public Law 112-81) have been satisfied. That section prohibited the SECAF from taking any action that would prevent the Air Force from maintaining the U-2 fleet in its current configuration and capability beyond FY 2016 until two certifications were made, as follows: (1) a certification by the Under Secretary of Defense (Acquisition, Technology, and Logistics) that operating and sustainment costs of the Global Hawk are less than those of the U-2 on a comparable flight-hour cost basis, and (2) a certification by the Chairman of the Joint Requirements Oversight Council (JROC) that the capability fielded at the same time or before the U-2 aircraft retirement would result in equal or greater capability available to the commanders of the combat commands. Both of those certificatons have been submitted to the conguressional defense committees, the one by

the USD(AT&L) on October 31, 2014, and the one by the Chairman of the JROC on August 22, 2014.

The storage of the U-2 and critical subsystems in a condition that allows for future recall for at least 3 years while allowing for the transfer of parts and systems to other Department of Defense aircraft is supported by the FY 2015 budget request. Type 1000 storage is programmed in the U-2 divestment action and provides for near-flyaway condition to be maintained for up to four years. The transfer of U-2 optical sensors to the RQ-4 is also funded in the FY 2016 budget request.

Budgetary Implications: This proposal supports the FY 2016 President's Budget request. The existing funding for the U-2 program is listed below:

RESOURCE REQUIREMENTS ($MILLIONS) PB FUNDING LEVEL									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
U-2	6.8	4.3	0.0	0.0	0.0	Aircraft Procurement, Air Force	05	P-43	0305202F
U-2	0.0	0.0	0.0	0.0	0.0	Other Procurement, Air Force	02	P-1	0305202F
U-2	324.1	11.2	0.7	0.0	0.0	Operation and Maintenance, Air Force	01	011C/M	0305202F
U-2	49.3	0.0	0.0	0.0	0.0	Military Personnel, Air Force	01/02	M-01/02	0305202F
U-2	0.0	0.0	0.0	0.0	0.0	Research, Development, Test and Evaluation, Air Force	01	R-210	0305202F
Total	380.2	15.5	0.7	0.0	0.0	--	--	--	--

RESOURCE REQUIREMENTS ($MILLIONS) BCA FUNDING LEVEL									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
U-2	6.8	4.3	0.0	0.0	0.0	Aircraft Procurement, Air Force	05	P-43	0305202F

U-2	0.0	0.0	0.0	0.0	0.0	Other Procurement, Air Force	02	P-1	0305202F
U-2	314.0	0.9	0.7	0.0	0.0	Operation and Maintenance, Air Force	01	011C/M	0305202F
U-2	49.3	0.0	0.0	0.0	0.0	Military Personnel, Air Force	01/02	M-01/02	0305202F
U-2	0.0	0.0	0.0	0.0	0.0	Research, Development, Test and Evaluation, Air Force	01	R-210	0305202F
Total	370.1	5.2	0.7	0.0	0.0	--	--	--	--

Changes to Existing Law: This proposal would make the following change to exisiting law:

Section 133 of the John Warner National Defense Authorization Act for Fiscal Year 2007

~~**SEC. 133. LIMITATION ON RETIREMENT OF U-2 AIRCRAFT.**~~

~~(a) FISCAL YEAR 2007. The Secretary of the Air Force may not retire any U-2 aircraft of the Air Force in fiscal year 2007.~~

~~(b) YEARS AFTER FISCAL YEAR 2007.—~~

~~(1) CERTIFICATION REQUIRED. For each fiscal year after fiscal year 2007, the Secretary of the Air Force may retire a U-2 aircraft only if the Secretary of Defense, in that fiscal year, certifies to Congress that the intelligence, surveillance, and reconnaissance (ISR) capabilities provided by the U-2 aircraft no longer contribute to mitigating any gaps in intelligence, surveillance, and reconnaissance capabilities identified in the 2006 Quadrennial Defense Review.~~

~~(2) LIMITATIONS. No action may be taken by the Department of Defense in a fiscal year to retire (or to prepare to retire) any U-2 aircraft before a certification specified in paragraph (1) is submitted to Congress for that fiscal year. If such a certification is submitted, no such action may be taken until after the end of the 60-day period beginning on the date on which the certification is submitted.~~

———

For the information of reviewers, section 133 of the National Defense Authorization Act for Fiscal Year 2012 is as follows:

SEC. 133. LIMITATION ON RETIREMENT OF U-2 AIRCRAFT.

(a) LIMITATION.—The Secretary of the Air Force may take no action that would prevent the Air Force from maintaining the U-2 aircraft fleet in its current configuration and capability beyond fiscal year 2016 until—

(1) the Under Secretary of Defense for Acquisition, Technology, and Logistics certifies in writing to the appropriate committees of Congress that the operating and sustainment (O&S) costs for the Global Hawk unmanned aerial vehicle (UAV) are less than the operating and sustainment costs for the U-2 aircraft on a comparable flight-hour cost basis; and

(2) the Chairman of the Joint Requirements Oversight Council certifies in writing to the appropriate committees of Congress that the capability to be fielded at the same time or before the U-2 aircraft retirement would result in equal or greater capability available to the commanders of the combatant commands.

(b) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means-

(1) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

Section 108 would provide authority to use Air Force procurement funds to purchase intercontinental ballistic missile (ICBM) fuze Commercial-Off-The-Shelf (COTS) parts qualified for use during and after exposure to nuclear environments sufficient to support the life of the program. This proposal is for the second year (fiscal year (FY) 2016) of a planned 5-year life-of-type procurement strategy (FY 2015-19) first authorized in section 1645 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. YYY).

The Navy and Air Force are developing nuclear warhead fuzes for use on their respective Trident II and Minuteman III ballistic missiles. The Services are cooperating in their fuze development and production efforts at the direction of the Nuclear Weapons Council. The National Nuclear Security Administration (NNSA) is supporting both Services with Sandia National Labs (SNL) as the design agent and the National Security Campus (NSC-formerly the Kansas City Plant) as the production agent. This cooperation will leverage the use of common designs, processes and parts to improve sustainability and reduce life cycle costs.

The life-of-type procurement strategy is critical to affordably buy qualified COTS parts for use during and after exposure to nuclear environments and to ensure commonality between the Air Force and the Navy. The Air Force plans to procure COTS parts common to the Minuteman III and Trident II warhead fuze programs to provide a pool of interchangeable, qualified, and certified parts. Examples of parts to be procured include: Application Specific Integrated Circuits, Radio Frequency Integrated Circuits, Heterojunction Bipolar Transistors, Wafers, Diodes, Actuators, SB glass igniter, and TKP Powder Igniters. Procured parts will be delivered to the NNSA's NSC for use in producing common component modules for the Air Force and Navy fuzes. Some component modules will be entirely interchangeable between the Services while others will have interchangeable subassemblies.

Procurement of these parts in quantities to support development, production and spares is necessary because qualification and certification of COTS parts to operate during and after exposure to nuclear radiation environments is limited to a selected supplier for a particular period of production. Due to the unique military requirement for operation during and after exposure to nuclear radiation environment, the Government selects, tests, qualifies and certifies these parts for use in nuclear weapon fuzes. This process characterizes the range of degraded performance

in nuclear radiation environments which is then used in determining the design of the fuze and its component modules. The Government's qualification and certification is limited to specific production lots due to variations in supplier processes and materials which significantly change electronics performance in nuclear radiation environments. These changes in supplier processes and materials may not appreciably change performance in meeting commercial specifications. Parts available from the supplier in subsequent production lots or from other suppliers are not qualified or certified for use in nuclear weapon fuzes without retesting, requalification and recertification and associated redesign of the fuze and its component modules, if required. If redesign is required, the parts require a new part number and separate supply chain management.

The FY 2016 President's Budget includes funding for Air Force ICBM Fuze life-of-type buy parts to coincide with Navy nuclear qualification, certification and procurement of the same parts. These procurements must occur in FY 2016 to ensure qualified, interchangeable parts are available for the initiation of Navy fuze procurement and subsequent Air Force fuze procurement. Utilizing subsequent production lots would require separate nuclear qualification and certification processes, resulting in two pools of non-interchangeable parts, loss of commonality with the Navy fuze, increased life cycle costs, and would add significant risk to the ICBM first production unit delivery in 2022.

Budgetary Implications: The FY 2016 budget request includes $13.700 million necessary to procure these COTS parts. Additional funds for FY 2017-2019 have been programmed for follow-on procurements of additional parts. No additional funds are required to execute this authority.

Without this authority, there is a range of impacts. Assuming the program is still able to procure the same hardware for the common components, the program cost will increase by $194.9 million. This total program cost increase is comprised of $77.7 million in additional qualification costs and $117.2 million from a potential 1 year program slip due to the increased development schedule.

At the other end of the range of impacts, the worst case scenario would be that the program cannot procure the same hardware for the common components and will need to redesign those components to support Air Force requirements. In this situation, the program will slip a minimum of three years to support redesign. Given this scenario, the program cost will increase by $430.0 million This total program cost increase is comprised of $77.7 million in additional qualification costs and $352.3 million from the minimum 3-year program slip due to redesign requirements.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Minuteman III Modifications	13.7	17.4	6.4	9.9	0.0	Missile Procurement, Air Force	3	P-9	0101213F
Total	13.7	17.4	6.4	9.9	0.0	--	--	--	--

Changes to Existing Law: This proposal would not change the text of existing law

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2016 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 202 would repeal the requirement to field a conventional variant of the Long-Range Standoff (LRSO) weapon prior to the retirement of the conventionally armed AGM-86C as enacted in section 217 of the National Defense Authorization Act for Fiscal Year (FY) 2014 (Public Law 113-66). That provision requires the Air Force to sustain the conventionally armed AGM-86C beyond its planned retirement date in FY 2016, imposing significant costs to upgrade and sustain the AGM-86C beyond its current service life.

The Air Force intends to retire the AGM-86C, Conventional Air Launched Cruise Missile (CALCM), from service when sufficient quantities of AGM-158B, Joint Air-to-Surface Stand-off Missiles-Extended Range (JASSM-ER), are available. JASSM-ER will be in full rate production starting in FY 2015 and will be available in sufficient quantities to replace the AGM-86C inventory by the end of FY 2016 (186 AGM-86Cs remain in service). The CALCM and JASSM-ER have approximately the same range and provide equivalent target coverage. However, the JASSM-ER is a more capable system, with increased survivability against air defenses, and improved targeting capability via an Imaging Infrared Seeker and a dual mode warhead (penetrator and blast fragmentation). JASSM-ER also provides additional flexibility to the warfighter by being locally mission planned, and employed from multiple aircraft (planned for B-1B, B-2A, B-52H, and F-15E). CALCM can only be carried on the B-52H and there are no plans to incorporate it on other aircraft. The requirement to maintain a limited CALCM inventory on top of the planned JASSM-ER deployement provides little to no operational advantage, and does not justify the additional cost.

This proposal would not remove the option for future development of a conventionally armed LRSO weapon. The proposal removes the linkage between fielding a conventional LRSO variant prior to CALCM retirement. This proposal would prevent incurring costs to sustain the CALCM fleet beyond the current planned retirement. The Air Force intends to develop LRSO as the replacement for the nuclear AGM-86B. The decision on developing a conventional LRSO variant is early to need at this point in LRSO program. As the LRSO matures, the Air Force will consider the conventional option based on future conventional long-range munitions requirements, projected costs and capabilities for a conventional LRSO system, and other viable alternatives. The Air Force recognizes the distinct advantages of leveraging nuclear LRSO development to field the next generation of standoff conventional munitions, similar to what was done with the initial AGM-86B to AGM-86C conversions.

Budgetary Implications: There are significant budget implications to extend the CALCM retirement beyond FY 2016 to include a number of Operations and Sustainment activities, Service Life Extension Programs (SLEPs), and Global Positioning System (GPS) upgrades to

maintain the reliability and capability of the weapon system. The table below outlines funding currently allocated to the AGM-86C (all demil cost).

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Demil	10.9	10.7	0.9	0.9		Operation and Maintenance, Air Force	BA-1	011M	27323F
MILPERS	4.7	4.0	1.9			Military Personnel, Air Force	BA-2	60	27323F
Total	**15.6**	**14.7**	**2.8**	**0.9**	**0.0**				

The Air Force used a notional conventional LRSO fielding date of 2032 for cost computations. Sustaining CALCM through 2032 would require $125 million in addional sustainment funding (O&M and MILPERS). The estimate for sustainment of the 186 CALCM missiles uses 3 percent inflation and adds an additional 4 personnel to support the program. Additionally, four Service Life Extension Programs (SLEP) will be required to maintain missile reliability. CALCM would leverage SLEP programs sustaining the nuclear AGM-86B ALCM through the planned ALCM service life, 2030. CALCM weapon system reliability would be evaluated once per year, expending one missile and one CALCM Test Instrumentation Kit (CATIK). The CALCM fleet will need to have Selective Availability Anti-Spoofing Module (SASSM) compliant GPS receivers installed as the CALCM fleet is currently operating under a waiver. Combination of Sustainment, SLEP, CATIK, and GPS upgrades results in total cost of $257.1 million to sustain CACLM through 2032 ($223.2 million above currently programmed disposal cost).

Changes to Existing Law: This proposal would make the following changes to section 217 of the National Defense Authorization Act for Fiscal Year 2014:

SEC. 217. LONG-RANGE STANDOFF WEAPON REQUIREMENT; PROHIBITION ON AVAILABILITY OF FUNDS FOR NONCOMPETITIVE PROCEDURES FOR OFFENSIVE ANTI-SURFACE WARFARE WEAPON CONTRACTS OF THE NAVY.

(a) LONG-RANGE STANDOFF WEAPON.—

(1) IN GENERAL.—The Secretary of the Air Force shall develop a follow-on air-launched cruise missile to the AGM–86 that—

~~(A) achieves initial operating capability for conventional missions prior to the retirement of the conventionally armed AGM–86;~~

~~(B)~~(A) achieves initial operating capability for nuclear missions prior to the retirement of the nuclear-armed AGM–86; ~~and~~

(B) is capable of being modified to carry a conventional warhead; and

(C) is capable of internal carriage and employment for both conventional and nuclear missions on the next-generation long-range strike bomber.

(2) CONSECUTIVE DEVELOPMENT.—In developing a follow-on air-launched cruise missile to the AGM–86 in accordance with paragraph (1), the Secretary may carry out development and production activities with respect to nuclear missions prior to carrying out such activities with respect to conventional missions if the Secretary determines such consecutive order of development and production activities to be cost effective.

(b) OFFENSIVE ANTI-SURFACE WARFARE WEAPON CONTRACTS OF THE NAVY.—

(1) PROHIBITION.—Except as provided by paragraph (2), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2014 for the offensive antisurface warfare weapon may be used to enter into or modify a contract using procedures other than competitive procedures (as defined in section 2302(2) of title 10, United States Code).

(2) EXEMPTION; WAIVER.—

(A) EXEMPTED ACTIVITIES.—The prohibition in paragraph (1) shall not apply to funds specified in such paragraph that are made available for the development, testing, and fielding of aircraft-launched offensive anti-surface warfare weapons capabilities.

(B) NATIONAL SECURITY WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in paragraph (1) if the Secretary determines that such a waiver is in the national security interests of the United States.

TITLE III—OPERATION AND MAINTENANCE

Section 301 would authorize appropriations for fiscal year 2016 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 302 would amend section 345 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383 (FY11 NDAA) to ease administrative burdens and facilitate non-contentious transfers of aircraft from the Air Reserve Component (ARC) to the regular component of the Air Force (RegAF).

Section 345 requires the Chief of Staff of the Air Force, the Commander of Air Force Reserve Command, and the Director of the Air National Guard to sign a memorandum of agreement and notify the defense committees every time ownership of an aircraft is transferred from the ARC to the RegAF. Interpreted strictly, this section could require more than *3,500 annual* agreements and notifications for transfers that are routine or short-term. Such a requirement is cumbersome and detrimental to Air Force readiness and mission success.

For ARC aircraft, the RegAF performs programmed and unprogrammed maintenance (depot, intermediate, and organizational), aircraft upgrades, conversions, modifications, and tests and evaluations. As such, the ARC executes thousands of routine transfers to the RegAF, each year, simply to maintain fleet readiness. Additionally, short-term aircraft transfers occur between components for operational missions. Recently, the Air National Guard and RegAF proposed transferring two remotely piloted aircraft (RPA) from the Air National Guard to the RegAF for 60 days to replace two crashed RegAF RPA in theater. The proposal did not occur

because drafting, coordinating, and staffing a written agreement outlining the terms required by Section 345 to the senior leaders of each component would have taken too long, interfering with on-going contingency operations. Although Congress explicitly stated that the requirement in Section 345 pertain to short-term transfers, we do not believe Congress intended enactment to delay support to operational missions.

The proposed legislation, therefore, would remove uncontentious, routine transfers and short-term transfers from Section 345's requirements. The proposed legislation also would exempt transfers that terminate the RC's interest in the aircraft (due to aircraft retirement or mission transfer) when that transfer has been the subject of prior notification to the Defense Committees.

In addition to these changes, the proposal makes administrative changes, such as requiring a signature from the Chief of the Air Force Reserve (a staff position), rather than the Commander, Air Force Reserve Command (a command position) and removing references to "ownership" of the aircraft. Because title vests in the United States government, ownership never transfers. The components are merely assigned possessory rights.

The proposed language clarifies that when a written agreement is required, only the leaders of the affected components need sign the agreement. For example, an agreement documenting a 180-day transfer of RPAs from the Air National Guard to RegAF would not have to be signed by the Chief of the Air Force Reserve.

Finally, it is important to note that the proposed exceptions outlined above would not create an oversight vacuum or allow aircraft transfers to occur without coordination and agreement. Instead, in all circumstances, the Air Force would still be required to comply with Department of Defense Instruction (DoDI) 1225.06, *Equipping the Reserve Forces*, May 16, 2012, Enclosure 3, which requires coordination, approval, and a written agreement signed by a general officer or civilian equivalent for equipment transfers, including aircraft.

Subsection (a)(1)(A) – Subsection (a)(1)(A) of the proposal would amend subsection (a) of section 345 to delete the description of the type of aircraft transfers covered by this law; that language is then moved to proposed new subsection (c). The proposed language requires a written agreement to be signed only by the Chief of Staff of the Air Force and the leader of reserve component affected by the aircraft transfer and removes the current requirement that all three components sign all written agreements. For example, if an aircraft is being transferred from the Air Force Reserve to the RegAF, the Director of the Air National Guard would not need to sign the written agreement. The proposed language also assigns the coordination requirement to the Chief of the Air Force Reserve (a staff function, similar to the Chief of Staff of the Air Force and the Director of the Air National Guard), rather than the Commander of Air Force Reserve Command (a Major Command (MAJCOM) command position).

Subsection (a)(1)(B) – Subsection (a)(1)(B) of the proposal would amend subsection (a)(3) of section 345 and clarify that funding responsibility for maintenance would cover all levels of maintenance and not just depot-level maintenance. This change aligns with the exception for

transfers for maintenance in the new subsection (c)(2)(A) of section 345 created by subsection (a)(3) of this proposal.

Subsection (a)(2) – Subsection (a)(2) of the proposal would amend subsection (b) of section 345 to insert a requirement that the Secretary of the Air Force ensure all aircraft transfers comply with applicable DoD regulations, in addition to submitting agreements drafted in compliance with the statute to the congressional defense committees. The proposed language also deletes the phrase "the ownership of" and "of ownership".

Subsection (a)(3) – Subsection (a)(3) of the proposal would add new subsections (c) and (d) to section 345 to specify the type of aircraft transfers that are governed by section 345. Under subsection (c)(1), a written agreement is required for all transfers of aircraft ownership and all transfers of aircraft possession exceeding 90 days. Shorter-duration transfers of possession are often the result of immediate, potentially operational, needs and the time needed to staff a written agreement to the leader of all three components often takes longer than the transfer itself. Shorter-duration transfers pose less risk for harm to the aircraft during the transfer and can be sufficiently coordinated at lower levels. This proposal, therefore, would align Air Force written agreement requirements with the rest of DoD, allowing such transfers to be coordinated and approved at the general officer level between the affected components. Subsection (c)(2) specifies exceptions to the rule. Subsection (c)(2)(A) would not require a written agreement for non-contentious, routine transfers maintenance (depot, intermediate, and organizational), upgrades, conversions, modifications, or testing and evaluation. The ARC relies upon and routinely works with RegAF to perform these functions on ARC aircraft. Subsection (c)(2)(B) would not require a written agreement for non-contentious, routine permanent transfers if the ARC's interest in the aircraft is being permanently terminated, notice has previously been provided to the appropriate congressional committees, and the transfer has been approved by the Secretary of Defense. With such notice, coordination, and congressional oversight, an additional written agreement requires additional administrative effort without providing any additional protection, information, or benefit. Subsection (d) would require that an aircraft transferred for routine work covered by subsection (c)(2)(A) be returned to the reserve component upon completion of the work.

Subsection (b) – Subsection (b) of the proposal would make a conforming amendment to reflect the change in responsibility under section 345 from the Commander of the Air Force Reserve Command to the Chief of the Air Force Reserve.

Subsection (c) – Subsection (c) of the proposal would delete the phrase "the ownership of" in a number of instances as conforming amendments.

Budget Implications: This proposal is requires no additional funding and will not result in a measurable budget savings. If this statute were interpreted in the most stringent manner, we currently estimate that approximately 3,500 memoranda of understanding would be required each year. Because the workload is spread across several agencies and offices, across all three components and will involve military, civilian, and military technician staff members, the workload reduction does not translate directly to a manpower savings and a single appropriation

category cannot be identified. Staff agencies and their personnel, however, would be able to turn their attention to more pressing, contentious matters.

RESOURCE REQUIREMENTS ($MILLION) REFLECTED IN PRESIDENTS BUDGET								
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash-1 Line item
	0	0	0	0	0			
Total	$0	$0	$0	$0	$0			
NUMBER OF PERSONNEL AFFECTED								
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation To	Budget Activity	Dash-1 Line Item
Army	0	0	0	0	0	N/A		
Navy	0	0	0	0	0	N/A		
Marine Corps	0	0	0	0	0	N/A		
Air Force	0	0	0	0	0			
Total	0	0	0	0	0			

NOTE: Section 345 only applies to aircraft transfers in the Air Force, even though all services possess and transfer aircraft between components.

Changes to Existing Law: This proposal would make the following changes to section 345 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011:

SEC. 345. REQUIREMENTS FOR TRANSFERRING AIRCRAFT WITHIN THE AIR FORCE INVENTORY.

(a) REQUIREMENTS.— ~~In proposing the transfer of ownership of any aircraft from ownership by a reserve component of the Air Force to ownership by a regular component of the Air Force, including such a transfer to be made on a temporary basis,~~ Before making an aircraft transfer described in subsection (c), the Secretary of the Air Force shall ensure that a written agreement regarding such transfer ~~of ownership~~ has been entered into between the Chief of Staff of the Air Force and the Director of the Air National Guard or the ~~Commander~~ Chief of the Air Force Reserve ~~Command, and the Chief of Staff of the Air Force~~. Any such agreement shall specify each of the following:

(1) The number of and type of aircraft to be transferred.

(2) In the case of any aircraft transferred on a temporary basis—

(A) the schedule under which the aircraft will be returned to ~~the ownership of~~ the reserve component;

(B) a description of the condition, including the estimated remaining service life, in which any such aircraft will be returned to the reserve component; and

(C) a description of the allocation of resources, including the designation of responsibility for funding aircraft operation and maintenance and a detailed

description of budgetary responsibilities, for the period for which ~~the ownership of~~ the aircraft is transferred to the regular component.

(3) The designation of responsibility for funding ~~depot~~ maintenance requirements or modifications to the aircraft generated as a result of the transfer, including any such requirements and modifications required during the period for which ~~the ownership of~~ the aircraft is transferred to the regular component.

(4) Any location from which the aircraft will be transferred.

(5) The effects on manpower that such a transfer may have at any facility identified under paragraph (4).

(6) The effects on the skills and proficiencies of the reserve component personnel affected by the transfer.

(7) Any other items the Director of the Air National Guard or the ~~Commander of the~~ Chief of Air Force Reserve ~~Command~~ determines are necessary in order to execute such a transfer.

(b) SUBMITTAL OF AGREEMENTS TO THE DEPARTMENT OF DEFENSE AND CONGRESS.—The Secretary of the Air Force may not take any action to transfer ~~the ownership of~~ an aircraft until the Secretary ensures that the Air Force has complied with applicable Department of Defense regulations and, for a transfers ~~as~~ described in subsection ~~(a)~~ (c)(1), until the Secretary submits to the congressional defense committees an agreement entered into pursuant to ~~such~~ subsection (a) regarding the transfer ~~of ownership~~ of the aircraft.

(c) COVERED AIRCRAFT TRANSFERS.—

(1) COVERED TRANSFERS.—An aircraft transfer described in this subsection is the transfer (other than as specified in paragraph (2)) from a reserve component of the Air Force to the regular component of the Air Force of –

(A) the permanent assignment of an aircraft that terminates a reserve component's equitable interest in the aircraft; or

(B) possession of an aircraft for a period in excess of 90 days.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A routine temporary transfer of possession of an aircraft from a reserve component that is made solely for the benefit of the reserve component for the purpose for maintenance, upgrades, conversions, modifications, or testing and evaluation.

(B) A routine permanent transfer of an aircraft that terminates a reserve component's equitable interest in the aircraft when notice of the transfer has previously been provided to the congressional defense committees and the transfer has been approved by the Secretary of Defense pursuant to Department of Defense regulations.

(C) A transfer described in paragraph (1)(A) when there is a reciprocal permanent assignment of an aircraft from the regular component of the Air Force to the reserve component that does not degrade the capability of, or reduce the total number of aircraft assigned to, the reserve component.

(d) RETURN OF AIRCRAFT AFTER ROUTINE TEMPORARY TRANSFER.—In the case of an aircraft transferred from a reserve component of the Air Force to the regular component of the Air Force for which an agreement under subsection (a) is not required by reason of subsection (c)(2)(A), possession of the aircraft shall be transferred back to the reserve component upon completion of the work described in subsection (c)(2)(A).

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2016.

Subtitle B—Reserve Forces

Section 411 would prescribe the end strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense, and the Department of Homeland Security for the Coast Guard Reserve, in the President's Budget for fiscal year 2016.

Section 412 would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2016.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2016.

Section 414 would prescribe the maximum end strengths for non-dual status technicians of the reserve components of the Army and Air Force for fiscal year 2016. The maximum end strength for the Army Reserve set forth in subsection (a)(2) assumes the enactment of legislation contained in section 416 that would change the method used to authorize and account for non-dual status technicians from a numerical limit to a percentage of the workforce.

Section 415 would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

Subtitle C—Authorization of Appropriations

Section 421 would authorize appropriations for fiscal year 2016 for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Office Personnel Policy Generally

Section 501 would amend section 638a of title 10, United States Code, relating to the authority for selective early retirement and early discharges. The Secretary of the military department has the authority, through a selection board convened under section 611(b) of title 10, to select officers for early retirement or early separation. The number of officers recommended for retirement may not be more than 30 percent of the number of officers considered. However, the number of officers recommended for separation may not be more than 30 percent of the number of officers in each grade, year group, or specialty (or combination thereof) in each competitive category. The restrictions on boards convened to separate officers early are more extensive than those of boards convened to retire officers early. Specifically, the restriction to separate not more than 30 percent of a specialty can be a barrier to effective force management. The proposed amendments seek to standardize the restrictions between the early retirement and early separation processes.

Budgetary Implications: If enacted, this proposal would not have any budgetary implications to the Department of Defense.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	+0	+0	+0	+0	+0	Operation and Maintenance, Army			
Navy	+0	+0	+0	+0	+0	Operation and Maintenance, Navy			
Marine Corps	+0	+0	+0	+0	+0	Operation and Maintenance, Marine Corps			
Coast Guard	+0	+0	+0	+0	+0	Operation and Maintenance, Coast Guard			
Air Force	+0	+0	+0	+0	+0	Operation and Maintenance, Air Force			
Total	0	0	0	0	0				

NUMBER OF PERSONNEL AFFECTED

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Personnel Type (Officer, Enlisted, or Civilian)
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A
Marine Corps	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

Changes to Existing Law: This proposal would amend section 638a of title 10, United States Code, as follows:

§ 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a)(1) The Secretary of Defense may authorize the Secretary of a military department to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(2) Any authority provided to the Secretary of a military department under paragraph (1) shall expire on the date specified by the Secretary of Defense, but such expiration date may not be later than December 31, 2018.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times).

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years).

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(4) In the case of an action under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned to waive the five-year period specified in section 638(c) of this title if the Secretary of Defense determines that it is necessary for the Secretary of that military department to have such authority in order to meet mission needs.

(d)(1) In the case of an action under subsection (b)(3), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3). That number may not be more than 30 percent of the number of officers considered.—

~~(A) in each grade in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or~~

~~(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.~~

(3) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(3) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(4) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

Subtitle B—Reserve Component Management

Section 511would increase the number of continuous days of active duty that a Reserve or National Guard member would need to serve to be considered satisfactory "Federal Service" for the purposes of being eligible for Unemployment Compensation for Ex-Servicemembers (UCX). In 1991, Public Law 102-164 amended 5 U.S.C. 8521(a) by reducing the amount of continuous active duty for reserve or guard members from 180 continuous days to 90 continuous days to be considered satisfactory "Federal Service" for the purposes of UCX. This proposal seeks to return eligibility criteria to past levels and re-balance eligibility criteria between the active duty and reserve service members.

Tightening of these eligibility criteria would re-balance the eligibility criteria between active duty and guard members. Currently, in most cases, to become eligible for UCX, active duty members must complete their first full term of service which, on average, is a period of three to six years. In contrast, current rules require only 90 days of continuous service for Reserve or National Guard members to be eligible for UCX.

Over the last ten years, the Department has seen UCX rise by nearly 400 percent, from approximately $240 million in 2002 to $928 million in 2012. While these costs are linked to the recession and higher unemployment numbers overall, another driver is the increased use of Reserve and National Guard forces. In addition, the institution of lower eligibility criteria brought about by the changes implemented in 1992 were a factor. RAND studies executed in 2008 confirm that the increase in UCX payments was largely driven by increases in the number of UCX-eligible Reserves and National Guard members due to their significant participation in in Operation Enduring Freedom and Operation Iraqi Freedom, as well as their higher unemployment compensation claim rates. RAND also found that while various protections existed for Reserve and National Guard forces such as the Uniformed Services Employment and Reemployment Rights Act, a large number afforded these protections did not voluntarily return to their federally protected jobs, but instead received UCX while waiting to return to work.

Budgetary Implications: No additional costs are associated with the enactment of this proposal. This proposal could potentially reduce the amount of money each military department would spend on UCX due to the tightening of eligibility criteria.

Changes to Existing Law: This proposal would make the following changes to section 8521 of title 5, United States Code:

§ 8521. Definitions; application

(a) For the purpose of this subchapter-

(1) "Federal service" means active service (not including active duty in a reserve status unless for a continuous period of ~~90~~ 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service-

(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii) the individual was discharged or released before completing such term of active service-

(I) for the convenience of the Government under an early release program,

(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III) because of hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10), or

(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

Section 512 would reconcile a contradiction between two provisions in law pertaining to the requirements for enlistment in the reserve components of the Armed Forces. Title 10, U.S.C. section 504, addresses the qualifications for enlistment into the Armed Forces, and title 10, U.S.C. section 12102 more specifically addresses qualifications for enlistment in the reserve components.

This proposal would eliminate the potential for misinterpretation of the citizenship requirements for enlistment in the reserve components of the Armed Forces caused by inconsistencies in two provisions of law by simply aligning the language in 10 U.S.C. 12102(b) with the language in 10 U.S.C. 504(b). This alignment is achieved by striking the existing language in section 12102(b) and instead referencing the language in section 504(b).

Budgetary Implications: This proposal has no cost. There is no expectation that this modification will either increase or decrease the number of individuals seeking enlistment in the reserve components of the Armed Forces.

Changes to Existing Law: This proposal would make the following changes to section 12102 of title 10, United States Code:

§ 12102. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 12107 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) ~~he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);~~ that person has met the citizenship or residency requirements established in section 504(b)(1) of this title; or

(2) ~~he.has previously served in the armed forces or in the National Security Training Corps~~ that person is authorized to enlist by the Secretary concerned under section 504(b)(2) of this title.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

Section 513 would give the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, the authority, with consent of the member, to order a member of the Coast Guard Reserve to active duty to receive authorized medical care, to be medically evaluated for disability or other purposes, or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

Section 12301(h) of title 10, United States Code, provides this authority to the Secretary of a military department.

By virtue of being one of the seven reserve components, Coast Guard Reserve members are included in section 12301(h); however, the Secretary of Homeland Security does not have the authority to retain or recall those Reserve members requiring health care.

Adding "The Secretary of Homeland Security" in section 12301(h) would clarify the intent of this section and authorize the Secretary of Homeland Security to retain or recall members of the Coast Guard Reserve for authorized health care. This gap in authority has become increasingly apparent subsequent to the significant number of activated Coast Guard Reserve members under title 10 in support of Operations Noble Eagle, Enduring Freedom, Iraq Freedom, and New Dawn since September 11, 2001. Additionally, this proposal would align section 12301(h) with authority given to the "Secretary concerned" throughout other portions of

section 12301. The term "Secretary concerned" as defined in section 101 of title 10 includes the Secretary of Homeland Security.

Budgetary Implications: No additional costs are associated with the enactment of this proposal. This is a technical change to the statute, and is intended to clarify the authority of the Secretary of Homeland Security to retain or recall Coast Guard Reserve members on active duty for health care as a result of injury, illness, or disability experienced in the line of duty.

Changes to Existing Law: This proposal would make the following change to section 12301(h) of title 10, United States Code:

§ 12301. Reserve components generally

(a) ***

* * * * *

(h)(1) ~~When authorized by the Secretary of Defense, the Secretary of a military department~~ The Secretary of a military department (when authorized by the Secretary of Defense), and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes; or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

* * * * * * *

Section 514. Under the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill), enacted as part of the Supplemental Appropriations Act, 2008 (Public Law 110-252, 122 Stat. 2358), a member of a reserve component of the Armed Forces presently accrues active-duty service time credit for the calculation of educational assistance benefits for service on active duty under a call or order to active duty only under sections 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10 or section 712 of title 14, United States Code. This proposal would expand these categories to include time served on active duty under 10 U.S.C. 12301(h). Under 12301(h), the Secretary of a military department may, with the with the consent of the member, order a member of a reserve component to active duty in order to: receive authorized medical care; be medically evaluated for disability or other purposes; or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

Currently, when a reserve component (RC) service member is serving in a mobilized status and is injured, wounded, suffers a sexual assault, or requires other medical treatment, that service member is transitioned on orders to serve under 10 U.S.C. 12301(h) for evaluation and

treatment. This section is not included within the definition of 'active duty' for the purposes of Post-9/11 GI Bill entitlement. When an active component (AC) service member suffers the same types of injury, service continues in the regular component and that member continues to accrue qualifying time while undergoing the same evaluation and treatment. As detailed in the finding of Congress contained in section 5002 of the Supplemental Appropriations Act, 2008, particularly paragraphs (2), (5), and (6), these reserve component members answered a call to active duty and served under similar conditions to their active component counterparts; their service must similarly be honored.

Current law scenario:

1. A RC service member who is called to service under one of the applicable sections and has served at least 30 days, is wounded or injured, and then is discharged due to a service-connected disability, will qualify for the 100% tier for Post-9/11 entitlements per 38 U.S.C. 3313(c)(1). In this case, time served under 10 U.S.C. 12301(h) is irrelevant, as the RC service member qualifies based on the service during the initial 30 days and subsequent discharge.

2. A RC service member who is serving under one of the applicable qualifying Title 10 sections and becomes wounded or injured will be placed on orders under 10 U.S.C. 12301(h). The RC service member could spend significant time in evaluation, treatment, and recovery, none of which qualifies for Post-9/11 GI Bill entitlements. If an injured RC service member does not discharge (as in scenario 1) and instead returns to service none of the time spent in recovery is qualifying time, regardless of whether they are continuing a deployment or returning to the Selected Reserve. In this case, the SM would leave active status with less qualifying time than one who completed the entire period without an injury, and would not receive the same benefit tier as either their RC or AC counterparts. In effect, they are penalized for requiring medical evaluation or treatment during their service.

Budget Implications: The Department of Defense (DoD) has no responsibility for funding of the basic benefits of the Post-9/11 GI Bill. Costs for the Post-9/11 GI Bill are borne by the Department of Veterans Affairs, under the provisions of section 3324(b) of title 38, which states, "Payments for entitlement to educational assistance earned under this chapter shall be made from funds appropriated to, or otherwise made available to, the Department for the payment of readjustment benefits." While DoD has estimates regarding the number of personnel affected and cost to carry out this proposal, there is no budget implication to DoD.

Changes to Existing Law: This proposal would make the following changes to section 3301 of title 38 United States Code:

§3301. Definitions

In this chapter:

(1) The term "active duty" has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21)(A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section

688, 12301(a), 12301(d), 12301(g), 12301(h), 12302, or 12304 of title 10 or section 712 of title 14.

(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, in addition to service described in subparagraph (B), full-time service—

(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) in the National Guard under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds. (B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12301(h), 12302, or 12304 of title 10.

(2) * * * *

Subtitle C—Member Education and Training

Section 521 would remove the statutory minimum residency requirements for Joint Professional Military Education (JPME) II courses taught at the Joint Forces Staff College (JFSC) and thereby allow the Secretary of Defense (SECDEF) and/or the Chairman of the Joint Chiefs of Staff (CJCS), consistent with authorities and responsibilities described in 10 U.S.C. 153, to determine the length for in-residence courses. The proposal also removes the "in residence at" requirement for all other JPME II-credit awarding schools and thereby allows the SECDEF or the CJCS to designate and certify various curricula and delivery methods, provided they adhere to joint curricula content, student acculturation, and faculty provisions established in 10 U.S.C. 2155 and CJCS Policy. These changes are designed to provide the Department of Defense (DoD) flexibility to leverage education technology and be better empowered to balance joint, interagency, intergovernmental, and multinational knowledge and acculturation requirements with additional and potentially more cost-effective methods of delivery for JPME phase II. DoD does not plan to create a fully non-resident JPME II course nor reduce the course's educational requirements or objectives.

JPME is a three-phase approach to learning requirements associated with joint matters specified in 10 U.S.C. 2154. Learning requirements to achieve Joint Qualification Level III are available to Active and Reserve Component (AC, RC, respectively) members. Service Members receive JPME II credit by completing accredited instruction "in residence" at National Defense University (NDU) or Senior Level Service School (SLSS) programs. 10 U.S.C. 2154 and 2156 specify that JPME II courses must be "in-residence"; the "principal course" at the JFSC "may not be less than 10 weeks of resident instruction.

JPME II capacity by all sources amounts to nearly 1800 graduates annually, 1020 from the 10-week ("principal course") Joint and Combined Warfighting School (JCWS) in Norfolk, VA; all others are graduates from 10 month master's degree-level programs of the National Defense University (National War College, Eisenhower School, Joint Advanced Warfighting School) and four SLSSs. Although this throughput capacity is deemed sufficient to sustain Joint

Qualifications in order to satisfy Joint Officer Management promotion requirements (JQO Level 3 to be eligible for promotion to O-7), the CJCS espouses that education efforts provide a force multiplier in developing and advancing shared values, standards, and attributes which define the Profession of Arms. In addition, the SECDEF and CJCS contend the quality of rigorous JPME-II may not be sustainable in residence at extant student levels in the current economic environment, or school house constraints. Accordingly, the CJCS sought and was granted Pilot Program Authority (National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012) to offer "JPME Phase II on other than in residence basis." The Non-Resident Satellite Program (NRSP) of the JCWS commenced in Jan 2013 in direct support of two Combatant Commands (the United States Central Command (USCENTCOM) and the United States Special Operations Command (USSOCOM)). NRSP is a fully seminar-based offering of the JCWS curricula and has been exceptionally well-received by the host Combatant Commands. Accordingly, CJCS desires to affect cost-savings/cost avoidance through program changes across the National Defense University and fund broad expansion of the NRSP to every Combatant Command staff as well as Officers in the National Capital Region (NCR) within existing NDU financial and staff resources.

As the NRSP is broadly established, the CJCS will assess additional "non-resident" opportunities to deliver JPME II. Advanced Joint Professional Military Education authorized under the FY 1999 NDAA and intended to accommodate travel costs as well as RC members' limited availability to attend a 10-week or 10-month in-residence course, and/or the non-resident SLSS courses (with a requisite face-to-face seminar), or a blended approach to the JCWS are candidates for additional "other-than-in-residence" delivery of JPME-II. Either of these options further expands JPME-II opportunity, may notionally affect delivery costs, and save Service TAD/TDY at a rate and amount to be determined with future research and analysis. The non-resident SLSS option will also satisfy Service Senior-level PME requirements. DoD has established that there must be a residency period for JPME II. As such, a 100% non-resident delivered JPME II course is not an option under consideration nor an identified approach for future research and analysis.

The Office of the Under Secretary of Defense for Personnel and Readiness (Reserve Affairs, Military Personnel Policy Officer and Enlisted Personnel Management, FRTS) and the Joint Staff J7 (JPMED) have collaborated to develop the overarching plans and implementation strategies which will allow the Department to expand the NRSP as the near term cost-effective means to satisfy the delivery of rigorous JPME II objectives. This proposal does not affect the Service's' prerogative with regard to the screening and selection of students to attend any JPME-II program, regardless of the method of delivery.

Budgetary Implications: No additional costs are associated with the enactment of this proposal. This proposal does not levy a new requirement; it offers increased flexibility for re-engineering delivery within existing resources and the potential to achieve cost savings. The National Defense University will fund the phased expansion of NRSP within existing financial and staff resources. Additional savings will be accrued by the Services in substantively reduced TAD/TDY costs to attend the 10-week JCWS. TAD/TDY savings can/may also be captured as a budget neutral source of funding the NRSP expansion.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	1.3	1.9	2.0	2.0	2.0	Operation and Maintenance Defense-Wide	03	040	08047 5BN

Changes to Existing Law: This proposal would make the following changes to sections 2154 and 2156 of title 10, United States Code:

§ 2154. Joint professional military education: three-phase approach

(a) THREE-PHASE APPROACH.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school or at a joint intermediate level school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of—

(A) a joint professional military education curriculum ~~taught~~ ~~in residence at~~ offered through the Joint Forces Staff College or a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution; or

(B) a senior level service course of at least ten months that has been designated and certified by the Secretary of Defense as a joint professional military education course.

* * * * * * *

~~**§ 2156. Joint Forces Staff College: duration of principal course of instruction**~~

~~**(a)** DURATION. The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than 10 weeks of resident instruction.~~

~~(b) DEFINITION.—In this section, the term "principal course of instruction" means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.~~

Section 522 would amend chapter 1606 of title 10, United States Code (U.S.C.), to designate active duty under two additional authorities (10 U.S.C. 12304a and 12304b) during which a service member's period of entitlement to, and payments for, the Montgomery GI Bill-Selected Reserve (MGIB-SR) education benefits are not lost. Specifically, this proposal would add 10 U.S.C. 12304a and 12304b to the existing list of authorities in 10 U.S.C. 16131 under which a service member may regain lost payments and both 10 U.S.C. 12304a and 12304b would be added to 10 U.S.C. 16133 under which a service member may regain lost entitlement time for MGIB-SR benefits.

The current lists of authorities cited in 10 U.S.C. 16131 and 16133 include authorities that may be used to order a service member to active duty without their consent. Sections 12304a and 12304b are additional authorities that may be used to order a service member to active duty without their consent. Therefore, sections 12304a and 12304b should be added to those authorities under section 16131 where service under these authorities would not count against a member's MGIB-SR benefit because he or she could not complete his or her studies due to activation. In addition, sections 12304a and 12304b are consistent with the current list of cited involuntary activation authorities and should be added to section 16133 so that service under these authorities is not counted against the time limit a member has to use his or her MIGB-SR benefit.

Budgetary Implications: No additional costs are associated with the enactment of this proposal. This proposal is a technical correction.

Section 12304a: When a Governor requests Federal assistance in responding to a major disaster or emergency, the Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty for a continuous period of not more than 120 days to respond to the Governor's request using the authority in 10 U.S.C. 12304a. The anticipated average time for Reserve members serving under section 12304a to respond to major disasters or emergencies is one week or less. A service member's VA-approved course of study should not be affected by one week of activation so as to require the service member to cancel and repeat the course of study. Outliers like Hurricane Katrina (longer calls to active duty) may occur in the future and service members may need to be activated for a period of time that will force them to repeat a course of study. Natural disasters like Katrina are impossible to model and are not expected to occur from fiscal year (FY) 2016 – FY 2020.

Section 12304b: 10 U.S.C. 12304b authorizes military Secretaries to order up to 60,000 Selected Reserve members to active duty to augment the active forces for a preplanned mission in support of a combatant command for up to 365 days without consent of the member. According to statute, these missions must be included in the appropriate fiscal year budget submission. OSD policy requires Services to notify their members a minimum of 180 days before mobilization.

Courses of study are scheduled by semesters that average a maximum of 5 months long. Six months (180 days) is adequate time for a Service member to complete their current class and/or change their future course of study at no cost to the member. However, Selected Reserve members may be activated in less than 180 days if an exception to policy is approved by the Secretary of Defense. When this happens, the Service member may be at risk to incur a cost. Exceptions to policy are rare and may occur from FY 2016 – FY 2020 in very small numbers. Therefore, due to the small numbers of personnel activated in less than 180 days under 12304b authority, DOD does not expect that the accrual funding rates will change by adding 12304b to section 16131.

Changes to Existing Law: This proposal would make the following changes to section 16131 and section 16133 of title 10, United States Code, as follows:

SEC. 16131. EDUCATIONAL ASSISTANCE PROGRAM: ESTABLISHMENT; AMOUNT

(a) ***

* * *

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not-

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual-

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301 (a), 12301 (d), 12301 (g), 12302, ~~or~~ 12304, 12304a, or 12304b of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

* * * * *

SEC. 16133. TIME LIMITATION FOR USE OF ENTITLEMENT

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires on the date the person is separated from the Selected Reserve.

(b)(1) In the case of a person-

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, or the period beginning on October 1, 2007, and ending on September 30, 2014, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, ~~or~~ 12304, 12304a, or 12304b of this title-

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

* * * * *

Subtitle D—Defense Dependents' Education and Military Family Readiness Matters

Subtitle E—Other Matters

Section 541 would extend and enhance authority to conduct programs authorized under section 533 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. prec. 701 note), informed by lessons learned to-date from Navy and Air Force implementation of the Career Intermission Pilot Program (CIP).

Extension and enhancement of this authority would afford the Secretaries of the military departments greater flexibility to test and evaluate alternative career retention options in

specialties and skills in which monetary incentives, alone, have not produced required long-term retention results. CIP provides the Secretary concerned with authority to offer high-quality uniformed service members a temporary career intermission to accomplish personal and professional goals and responsibilities. In return, members participating under this authority agree to additional obligated service, beyond that already incurred, upon return to active duty.

Section 533(b) prohibits participation by any member serving under an agreement upon entry or receiving a critical military skill retention bonus (CSRB) under section 355 of title 37, United States Code (U.S.C.). This prohibition limits the services' ability to offer flexible career path options to service members in order to increase retention. This proposal does not affect retention bonus allocation authority under section 355 of title 37, U.S.C. The Navy's goal is to have the ability to pause the member's bonus and obligated service, allow the member to participate in CIP, and upon completion of CIP, to resume their career. The member's bonus payments would be paused while participating in CIP and upon return from intermission, the CIP obligation would be served consecutively following completion of any other remaining service obligation. The net result is that Navy will retain the member for a longer time period using a combination of monetary and career intermission retention tools than would have been possible using a single incentive, while simultaneously serving the best interests of both Sailor and the Navy.

Section 533(c) limits the number of participants in the program to 20 officers and 20 enlisted members; thereby limiting the services' flexibility to determine composition and number of participants based on force shaping requirements and the personnel manning requirements of the services. Removing that statutory limitation, thereby providing the Secretaries of the military departments discretion to prescribe limits for participation, is necessary, in conjunction with the removal of participation limitations in section 533(b), in order to increase the number of personnel desiring to participate in CIP.

By striking the participation limitations in section 533(b) and (c), the proposal would maximize the retention benefit targeted toward the larger eligible population.

Traditionally, the military has focused recruiting efforts on 17-25 year-old males. However, the percentage of U.S. males qualified, and having a propensity, for military service, is declining. To offset this trend, Navy is actively recruiting and focusing on retaining a higher percentage of women. A 2013 Center for Naval Analysis (CNA) study of female and minority retention in the Navy states that, "…women tend to value non-monetary incentives more than monetary incentives." This is similar to findings in a 2004 survey of Navy officers and a 2006 Naval Postgraduate School study, titled, "US Navy Surface Warfare Community: Is the Navy Losing in the War for Talent?" As Navy continues to expand opportunities for women, the lack of non-monetary retention incentives that appeal to the growing female population will hinder Navy's efforts to capitalize on skills, training and experience they have gained. Male Sailors are also interested in CIP opportunities for a variety of reasons. Reasons for requesting CIP vary, from pursuing higher education, to starting or raising a family, to caring for Exceptional Family Members (EFM) or elderly parents, to volunteering in humanitarian efforts for underprivileged communities. CIP has helped Navy retain both officer and enlisted personnel in critical skills, including: officers in Navy Special Warfare, and aviation (particularly among pilots) and the

enlisted ratings of Aviation Ordnanceman, Cryptologic Technician, and Legalman. Navy-wide surveys indicate 84 percent of women and 70 percent of men share the view that access to CIP positively influences retention. The utility of CIP in addressing a variety of issues in an individualized manner makes it attractive across a broad range of personnel.

Since inception of the program in 2009, 100 enlisted members and officers have applied for CIP, 19 through an administrative board and 81 through the rolling application process. Of those, 92 were selected for participation. Of the 92 selectees, 31 have transitioned into the Individual Ready Reserve and are currently in their career intermission, 13 are on active duty awaiting their transition date, 17 reconsidered, and 31 participants completed intermission and returned to active duty. Navy lessons learned indicate that the low take-rate reflects real and perceived restrictions on participation.

As an example, section 533(b)(2) excludes CIP participation by officers receiving CSRB in the Explosive Ordnance Disposal, Civil Engineering Corps and Surface Warfare Officer communities. Though career decision points differ for these communities, officers in all three communities are opting to leave the Navy at the end of their initial service obligation. Permitting CIP participation would increase options for these officers at a critical career decision point as a means of increasing retention to Department Head and addressing commanding officer/executive officer (CO/XO) requirements. CSRB on its own has also proven inadequate in retaining nuclear-trained surface warfare officers and senior enlisted Sailors. Retention among nuclear trained surface warfare officers declined from 31 percent to 20 percent over the past five years, resulting in a failure for Navy to meet minimum requirements for aircraft carrier (CVN) principal assistants (PA) by the two most recent year groups. Under current monetary incentives, manning of senior nuclear-trained enlisted Sailors serving on submarines and CVNs, specifically supervisors with 10 or more years of service, is projected to drop below 85 percent of required levels in FY 2017.

CSRBs are designed to retain critical skills. Since every CIP applicant must be individually approved to participate, participation can be managed through the assignment process to avoid operational impact, such as offering the intermission during what might otherwise be a shore duty period. Further, CIP is a tool for quality not quantity; Navy is incentivized to approve only Sailors who will be competitive and upwardly mobile throughout the period of their obligation. Navy believes that offering a combination of CSRB with CIP will appeal to a portion of the population currently not persuaded to retain/reenlist by the offer of money alone. Expanding the program offers an opportunity to evaluate the effectiveness of CIP as a retention tool in these communities/ratings.

All Sailors are excluded from participation in CIP during their initial service obligation, which can vary from a four-year enlistment to ~11 year minimum service obligation for a naval aviator. This obligation typically occurs between 18-33 years of age, when professional goals compete most strongly with personal goals such as family planning. Historically, retention at a Sailor's first career decision point is the most difficult to achieve. By electing to participate in CIP during first enlistment/obligation, if available, Sailors would, in effect, be electing retention during this critical timeframe, by incurring the additional associated obligated service.

Navy anticipates that extending the authority, coupled with amendment to the existing authority to permit participation of members receiving CSRB or serving their initial obligation, will further enhance the ability of the armed services to retain high-quality personnel, by offering a career intermission to accomplish personal and professional goals and responsibilities or to address temporary personal hardships prior to returning to active duty and full operational status. Innovative initiatives, such as CIP, respond to growing workforce trends of demographically diverse individuals with generationally different career expectations. These programs also give the Services the ability to refine seamless career transitions, accomplished via Active/Reserve cross-flow, and to evaluate their impact on key issues, such as retention, diversity, and critical competencies.

Budgetary Implications: The table below detailed resource requirements associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force Permanent Change of Station	$1.61	$1.67	$1.73	$1.80	$1.87	Military Personnel, Air Force	05	135	N/A
Air Force 2/30 Base Pay	$0.35	$0.70	$1.01	$0.95	$0.58	Military Personnel, Air Force	01/02	05/60	N/A
Air Force Defense Health Program	$1.17	$2.33	$3.35	$3.19	$1.95	Operation and Maintenance, Defense Health Program	01	10	N/A
Air Force Defense Commissary Agency	$0.02	$0.06	$0.09	$0.08	$0.05	Operation and Maintenance, Air Force	04	4A9X	0702891N
Navy Permanent Change of Station (Active Duty)	$0.64	$1.75	$3.56	$5.16	$5.44	Military Personnel, Navy	05	135	0808731N
Navy 2/30 Base Pay (Active Duty)	$0.24	$0.67	$0.97	$0.95	$0.55	Military Personnel, Navy	01/02	05/60	N/A
Navy Permanent Change of Station (Full Time Support)	$0.05	$0.09	$0.17	$0.23	$0.23	Reserve Personnel, Navy	01	90	0808731N
Navy 2/30 Base Pay (Full Time Support)	$0.02	$0.03	$0.03	$0.03	$0.04	Reserve Personnel, Navy	01	90	N/A

Navy Defense Health Program	$0.88	$2.33	$3.36	$3.20	$1.98	Operation and Maintenance, Defense Health Program	01	N/A	N/A
Navy Defense Commissary Agency	$0.02	$0.06	$0.09	$0.08	$0.05	Operation and Maintenance, Navy	04	4A9X	0702891N
Army						Does not intend to use this authority.			
Army Defense Health Program						Does not intend to use this authority.			
Army Defense Commissary Agency						Does not intend to use this authority.			
Total	$5.00	$9.69	$14.36	$15.67	$12.74	--	--	--	--

The table above details resource requirements associated with this proposal based on a proposed increase in participants resulting from removal of eligibility restrictions in Section 533(b) and (c). **Based on down-sizing, Army and Marine Corps do not intend to use this authority.** For planning purposes, Navy and Air Force's pilot programs are estimated to affect ~0.1 percent of the workforce when they reach steady state operations with 110 participants off-ramping each year. For Navy, 110 will consist of 55 Officers (50 AD & 5 FTS) and 55 Enlisted (50 AD & 5 FTS) per year for up to three years. This breakdown is based upon ratio of MPN end strength to RPN (FTS) end strength. Cost per person is based on Medical (DHA) and 2/30 base pay MPN. There is no cost avoidance associated with this program because there is not a reduction in end strength.

Changes to Existing Law: This proposal would make the following changes to section 533 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (10 U.S.C. prec. 701 note):

SEC. 533. PILOT PROGRAMS ON CAREER FLEXIBILITY TO ENHANCE RETENTION OF MEMBERS OF THE ARMED FORCES.

(a) PILOT PROGRAMS AUTHORIZED.—

(1) IN GENERAL.—Each Secretary of a military department may carry out pilot programs under which officers and enlisted members of the regular components and members on active Guard and Reserve duty and Full Time Support personnel of the reserve components of the Armed Forces under the jurisdiction of such Secretary may be inactivated from active duty in order to meet personal or professional needs and returned to active duty at the end of such period of inactivation from active duty.

(2) PURPOSE.—The purpose of the pilot programs under this section shall be to evaluate whether permitting inactivation from active duty and greater flexibility in career

paths for members of the Armed Forces will provide an effective means to enhance retention of members of the Armed Forces and the capacity of the Department of Defense to respond to the personal and professional needs of individual members of the Armed Forces.

~~(b) LIMITATION ON ELIGIBLE MEMBERS.—A member of the Armed Forces is not eligible to participate in a pilot program under this section during any period of service required of the member –~~

~~(1) under an agreement upon entry of the member on active duty; or~~

~~(2) due to receipt by the member of a retention bonus as a member qualified in a critical military skill or assigned to a high priority unit under section 355 of title 37, United States Code~~.

~~(c) LIMITATION ON NUMBER OF PARTICIPANTS.—Not more than 20 officers and 20 enlisted members of each Armed Force may be selected during a calendar year to participate in the pilot program under this section.~~

(d) PERIOD OF INACTIVATION FROM ACTIVE DUTY; EFFECT OF INACTIVATION.—

(1) LIMITATION. The period of inactivation from active duty under a pilot program under this section of a member participating in the pilot program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (e), except that such period may not exceed three years.

(2) EXCLUSION FROM COMPUTATION OF RESERVE OFFICER'S TOTAL YEARS OF SERVICE. Any service by a Reserve officer while participating in a pilot program under this section shall be excluded from computation of the officer's total years of service pursuant to section 14706(a) of title 10, United States Code.

(3) RETIREMENT AND RELATED PURPOSES. Any period of participation of a member in a pilot program under this section shall not count toward—

(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of title 10, United States Code; or

(B) computation of retired or retainer pay under chapter 71 or 1223 of title 10, United States Code.

(e) AGREEMENT.—Each member of the Armed Forces who participates in a pilot program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of the Armed Force concerned during the period of the member's inactivation from active duty under the pilot program.

(2) To undergo during the period of the inactivation of the member from active duty under the pilot program such inactive duty training as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the member's military skills, professional qualifications, and physical readiness during the inactivation of the member from active duty.

(3) Following completion of the period of the inactivation of the member from active duty under the pilot program, to serve two months as a member of the Armed Forces on active duty for each month of the period of the inactivation of the member from active duty under the pilot program.

(f) CONDITIONS OF RELEASE.—The Secretary of Defense shall issue regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (e). At a minimum, the Secretary shall prescribe the procedures and standards to be used to instruct a member on the obligations to be assumed by the member under paragraph (2) of such subsection while the member is released from active duty.

(g) ORDER TO ACTIVE DUTY.—Under regulations prescribed by the Secretary of the military department concerned, a member of the Armed Forces participating in a pilot program under this section may, in the discretion of such Secretary, be required to terminate participation in the pilot program and be ordered to active duty.

(h) PAY AND ALLOWANCES.—

(1) BASIC PAY.—During each month of participation in a pilot program under this section, a member who participates in the pilot program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the member would otherwise be entitled under section 204 of title 37, United States Code, as a member of the uniformed services on active duty in the grade and years of service of the member when the member commences participation in the pilot program.

(2) PROHIBITION ON RECEIPT OF SPECIAL AND INCENTIVE PAYS.—

(A) PROHIBITION ON RECEIPT DURING PARTICIPATION.—A member who participates in a pilot program shall not, while participating in the pilot program, be paid any special or incentive pay or bonus to which the member is otherwise entitled under an agreement under chapter 5 of title 37, United States Code, that is in force when the member commences participation in the pilot program.

(B) TREATMENT OF REQUIRED SERVICE.—The inactivation from active duty of a member participating in a pilot program shall not be treated as a failure of the member to perform any period of service required of the member in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37, United States Code, that is in force when the member commences participation in the pilot program.

(3) REVIVAL OF SPECIAL PAYS UPON RETURN TO ACTIVE DUTY.—

(A) REVIVAL REQUIRED.—Subject to subparagraph (B), upon the return of a member to active duty after completion by the member of participation in a pilot program—

(i) any agreement entered into by the member under chapter 5 of title 37, United States Code, for the payment of a special or incentive pay or bonus that was in force when the member commenced participation in the pilot program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run when the member commenced participation in the pilot program; and

(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

(B) LIMITATIONS.—

(i) Limitation at time of return to active duty. Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active duty as described in that subparagraph—

(I) such pay or bonus is no longer authorized by law; or

(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active duty.

(ii) Cessation during later service. Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

(C) REPAYMENT.—A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37, United States Code.

(D) CONSTRUCTION OF REQUIRED SERVICE.—Any service required of a member under an agreement covered by this paragraph after the member returns to active duty as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (e).

(4) CERTAIN TRAVEL AND TRANSPORTATION ALLOWANCES.—

(A) IN GENERAL.—Subject to subparagraph (B), a member who participates in a pilot program is entitled, while participating in the pilot program, to the travel and transportation allowances authorized by section 404 of title 37, United States Code, for—

(i) travel performed from the member's residence, at the time of release from active duty to participate in the pilot program, to the location in the United States designated by the member as his residence during the period of participation in the pilot program; and

(ii) travel performed to the member's residence upon return to active duty at the end of the member's participation in the pilot program.

(B) LIMITATION.—An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

(5) LEAVE.—A member who participates in a pilot program is entitled to carry forward the leave balance existing as of the day on which the member begins participation and accumulated in accordance with section 701 of title 10, United States Code, but not to exceed 60 days.

(i) PROMOTION.—

(1) OFFICERS.—

(A) LIMITATION ON PROMOTION. An officer participating in a pilot program under this section shall not, while participating in the pilot program, be eligible for consideration for promotion under chapter 36 or 1405 of title 10, United States Code.

(B) PROMOTION AND RANK UPON RETURN TO ACTIVE DUTY. Upon the return of an officer to active duty after completion by the officer of participation in a pilot program—

(i) the Secretary of the military department concerned shall adjust the officer's date of rank in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(2) ENLISTED MEMBERS. An enlisted member participating in a pilot program shall not be eligible for consideration for promotion during the period that—

(A) begins on the date of the member's inactivation from active duty under the pilot program; and

(B) ends at such time after the return of the member to active duty under the pilot program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the pilot program.

(j) CONTINUED ENTITLEMENTS.—A member participating in a pilot program under this section shall, while participating in the pilot program, be treated as a member of the Armed Forces on active duty for a period of more than 30 days for purposes of—

(1) the entitlement of the member and the member's dependents to medical and dental care under the provisions of chapter 55 of title 10, United States Code, and

(2) retirement or separation for physical disability under the provisions of chapters 55 and 61 of title 10, United States Code.

(k) REPORTS.—

(1) INTERIM REPORTS.—Not later than June 1 of 2011, 2013, 2015, ~~**and**~~ 2017, **2019, and 2021,** the Secretary of each military department shall submit to the congressional defense committees a report on the implementation and current status of the pilot programs conducted by such Secretary under this section.

(2) FINAL REPORT.—Not later than ~~**March 1, 2019**~~ **March 1, 2022**, the Secretary of Defense shall submit to the congressional defense committees a report on the pilot programs conducted under this section.

(3) ELEMENTS OF REPORT.—Each interim report and the final report under this subsection shall include the following:

(A) A description of each pilot program conducted under this section, including a description of the number of applicants for such pilot program and the criteria used to select individuals for participation in such pilot program.

(B) An assessment by the Secretary concerned of the pilot programs, including an evaluation of whether—

(i) the authorities of the pilot programs provided an effective means to enhance the retention of members of the Armed Forces possessing critical skills, talents, and leadership abilities;

(ii) the career progression in the Armed Forces of individuals who participate in the pilot program has been or will be adversely affected; and

(iii) the usefulness of the pilot program in responding to the personal and professional needs of individual members of the Armed Forces.

(C) Such recommendations for legislative or administrative action as the Secretary concerned considers appropriate for the modification or continuation of the pilot programs.

(l) DEFINITION.—In this section, the term "active Guard and Reserve duty" has the meaning given that term in section 101(d)(6) of title 10, United States Code.

(m) DURATION OF PROGRAM AUTHORITY.—No member of the Armed Forces may be released from active duty under a pilot program conducted under this section after **~~December 31, 2015~~ December 31, 2018**.

Section 542 would amend section 4312 of title 38, United States Code, to update the involuntary mobilization authorities exempted from the USERRA five-year limit under chapter 43 of that title (referred to as the Uniformed Services Employment and and Reemployment Rights Act or USERRA). Adding references to sections 12304a and 12304b of title 10 will complete the list of current involuntary mobilization authorities exempted from that limit.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects individuals performing, or who have performed, uniformed service in accordance with 38 U.S.C. 4301-4335 from employment discrimination on the basis of their uniformed service, and provides for their prompt restoration to civilian employment when they return to civilian life. USERRA is intended to ensure that these uniformed service members are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not discriminated against in employment because of their military status or uniformed service obligations.

The purposes of USERRA are clearly stated in section 4301 of title 38, United States Code. Section 4301 states in part:

(a) the purposes of this chapter [USERRA] are—

(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their

communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed service.

USERRA was first designed in a time when Reserve and National Guard forces were intended to function as a strategic reserve. However, national defense strategy has changed and now regards the Reserves and National Guard as operational forces. As such, those forces are now called upon to perform not only the traditional duties in time of national emergency under extended active duty under title 10, United States Code, and certain duty under title 32. In accordance with the purposes above, section 4312(c) of title 38, United States Code, places a limit of five-years of active duty that may be performed without losing the protections of USERRA. Since September 11, 2001, the Department of Defense has relied heavily on activating various members of the Reserves and National Guard for multiple periods of active duty. However, in recognition of the change in national strategy several types of active duty, such as involuntary mobilizations, weekend drills, annual active duty, and exercises are exempted from the five-year limit. 38 U.S.C. 4312(c)(4)(A) already excludes 10 U.S.C. 688, 12301(a), 12301(g), 12302, 12304, and 12305, and 14 U.S.C. 331, 332, 359, 360, and 367, from the five year limit.

The National Defense Authorization Act for Fiscal Year (FY) 2012 added two new involuntary mobilization duty authorities to title 10. Section 12304a provides that when a Governor requests Federal assistance in responding to a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), the Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty for a continuous period of not more than 120 days to respond to the Governor's request. Section 12304b provides that when the Secretary of a military department determines that it is necessary to augment the active forces for a preplanned mission in support of a combatant command, the Secretary may, subject to subsection (b), order any unit of the Selected Reserve (as defined in section 10143 (a) of title 10), without the consent of the members, to active duty for not more than 365 consecutive days.

Such duty under sections 12304a and 12304b is not included among the exemptions listed under 4312(c) of title 38, United States Code. While the basic tenets of USERRA remain, the addition of active duty performed under sections 12304a and 12304b is appropriate and within the spirit of the purposes of USERRA.

Budget Implications: There is no cost to the service to implement the provisions of this proposal. The only action required is to include this provision in service USERRA policies and procedures. There will be an insignificant administrative burden placed on the services to include USERRA exemption statements on members' orders.

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
AIR FORCE	00.0	00.0	00.0	00.0	00.0		N/A	N/A	N/A
Total	00.0	00.0	00.0	00.0	00.0	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 4312(c) of title 38, United States Code:

§ 4312. Reemployment rights of persons who serve in the uniformed services

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if-

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service-

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, **12304a, 12304b,** or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

(d) ***

* * * * * *

Section 543 would provide the Restricted Reporting option (Confidential Reporting) in cases of sexual assault to service members and adult military dependents, preempting any State laws for mandatory reporting. An adult military dependent is a service member's dependent who is 18 years of age and older.

The reporting requirements regarding a sexual assault vary by State. Although most States do not require medical personnel to make a report to law enforcement when they have treated an adult who is a rape or sexual assault victim, State statutes may require that a report be made or that an abbreviate report is made. These laws may be broken down into the following categories in which medical personnel are required to report to law enforcement authorities:

a. treatment specifically for rape or sexual assault;

b. treatment for serious injuries, which may include rape (for example, gunshot wounds may require reporting – if a person was raped and shot, the rape would be reported along with the gunshot wound, even if the law does not specifically require reporting rape alone);

c. treatment for other crimes or injuries that occur along with a sexual assault; and

d. the completion of a sexual assault forensic examination.

These types of State laws have the effect of eliminating the Restricted Reporting option for service members and their adult military dependents who are victims of sexual assault. This prevents service members and their adult military dependents from receiving consistent healthcare, victim advocacy, and reporting options wherever they may be serving throughout the country. Mandatory reporting laws would still apply to military dependents who are 17 years of age and younger.

According to the Fiscal Year (FY) 2013 Department of Defense (DoD) Annual Report on Sexual Assault in the Military, there were 467 sexual assaults reported in California, of which, 149 were Restricted Reports. California is a State that requires mandatory reporting by healthcare workers or an abbreviate report. If they would have feared that their names would have been disclosed to the authorities and not kept confidential, those 149 adult sexual assault victims may not have been able to receive the needed medical or psychological care at the time of their report. In short, this State law presents a barrier to reporting and virtually eliminates the Restricted Reporting option for service members and adult military dependents, who are victims of sexual assault, in California and in other States with similar laws or regulations.

As stated in Section 4 of Executive Order 13132 of August 4, 1999, "Agencies shall construe… a Federal statute to preempt State law only where the statute contains an express preemption provision … or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Mandatory reporting for adult victims of sexual assault, such as that required in California, conflicts with the provision of the Restricted Reporting option for Service members and their adult military dependents. The proposed language provides the express preemption provision outlined in Executive Order 13132.

Budgetary Implications: No Budgetary Implications.

Changes to Existing Law: This proposal would make the following changes to section 1565b of title 10, United States Code:

§1565b. Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates

(a) AVAILABILITY OF LEGAL ASSISTANCE AND VICTIM ADVOCATE SERVICES.-(1) A member of the armed forces, or a dependent of a member, who is the victim of a sexual assault may be provided the following:

(A) Legal assistance provided by military or civilian legal assistance counsel pursuant to sections 1044 and 1044e of this title.

(B) Assistance provided by a Sexual Assault Response Coordinator.

(C) Assistance provided by a Sexual Assault Victim Advocate.

(2) A member of the armed forces or dependent who is the victim of sexual assault shall be informed of the availability of assistance under paragraph (1) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a Sexual Assault Response Coordinator or a Sexual Assault Victim Advocate under paragraph (1) are optional and may be declined, in whole or in part, at any time.

(3) Legal assistance and the services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates under paragraph (1) shall be available to a member or dependent regardless of whether the member or dependent elects unrestricted or restricted (confidential) reporting of the sexual assault.

(b) RESTRICTED REPORTING.-(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces, or ~~a dependent~~ an adult dependent of a member, who is

the victim of a sexual assault may elect to confidentially disclose the details of the assault to an individual specified in paragraph (2) and receive medical treatment, legal assistance under section 1044 of this title, or counseling, without initiating an official investigation of the allegations.

(2) The individuals specified in this paragraph are the following:

(A) A Sexual Assault Response Coordinator.

(B) A Sexual Assault Victim Advocate.

(C) Healthcare personnel specifically identified in the regulations required by paragraph (1).

(3) In the case of information disclosed pursuant to paragraph (1), any State law, regulation, or rule of professional responsibility that would require an individual specified in subsection (b)(2) to disclose the personally identifiable information of the victim or alleged perpetrator of the sexual assault to a State or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual.

(c) DEFINITIONS.—In this section:

(1) SEXUAL ASSAULT.—The term "sexual assault" includes the offenses of rape, sexual assault, forcible sodomy, aggravated sexual contact, abusive sexual contact, and attempts to commit such offenses, as punishable under applicable Federal or State law.

(2) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

Section 544 would amend section 1056 of title 10, United States Code, to provide enhanced flexibility in the provision of relocation assistance to members of the Armed Forces and their families. It would provide the Services with the latitude to adapt the delivery of relocation assistance to meet the evolving needs of military Service members and their families in a time of fiscal constraint by leveraging technology to improve access, efficiency, and responsiveness of the relocation assistance program, especially in situations where military members are assigned overseas or away from a military installation with a relocation assistance program.

Specifically, subsection (a) would eliminate the requirement to provide for the establishment of military relocation assistance programs at each geographic location where at least 500 military members of the armed forces are serving. " Instead, the Services would be given enhanced flexibility by requiring that they "ensure that members of the armed forces and their families are provided relocation assistance regardless of geographic location." Accordingly, the Services will be able to provide relocation assistance in the most cost effective and efficient manner regardless of geographic location.

Additionally, subsection (b) and (c) would make conforming amendments to facilitate such flexibility and to update the proposal to reflect the established nature of the relocation assistance program.

Traditional face-to-face service delivery in all areas of family support has evolved to include increased access through virtual means. Without losing what has been accomplished under the Relocation Assistance Program, we must manage those requirements with recognition of fiscal constraints. Enhanced flexibility to provide relocation assistance by balancing traditional and technology based service delivery will allow the Services to build upon the success of the Relocation Assistance Program while also making it more effective, efficient, and responsive to the needs of service members and their families.

Budget Implications: This is a non-budgetary proposal, as no additional costs are associated with its enactment.

Changes to Existing Law: This proposal would make the following changes to section 1056 of title 10, United States Code:

§1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance~~,~~ through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). Such relocation assistance programs shall ensure that members of the armed forces and their families are provided relocation assistance regardless of geographic location. ~~The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.~~

(2) The Secretary shall ensure that information available through ~~each military~~ a relocation assistance program shall be managed through a computerized information system that can interact with ~~all other~~ the military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) ~~Duties of each military relocation assistance program shall include assisting~~ Assistance shall be provided to personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) ~~Director~~ Program Manager.—The Secretary of Defense shall establish the position of Program Manager of ~~Director of~~ Military Relocation Assistance ~~Programs~~ in the office of the Assistant Secretary of Defense (Readiness and Force Management ~~and Personnel~~). The Program Manager ~~Director~~ shall oversee development and implementation of ~~the~~ military relocation assistance ~~programs~~ under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

Section 545. Section 1142 of title 10 U.S.C., states "the Secretary concerned shall not provide pre-separation counseling to a member who is being discharged or released before the completion of that member's first 180 days of active duty." The "first 180 days" on active duty can be misinterpreted to mean the first 180 cumulative days on active duty, as in the case of National Guard and Reserve Service members. This amendment would expressly exclude Service members serving on active duty for training (ADT) from receiving TAP; thus, the reason for the amendment.

This proposal would authorize Pre-separation, Employment Assistance and all other transition services prescribed in the Department of Defense (DoD) policy by the Secretary of Defense for ALL Active Component Service members of the Armed Forces and for ALL National Guard and Reserve Service members called or ordered to active duty or full-time operational support after

completion of their first 180 continuous days or more under Title 10, U.S.C., (other than for training) whose discharge or release from active duty is anticipated as of a specific date.

Budgetary Implications: This is a non-budgetary proposal, as no additional costs are associated with its enactment. This proposal is a clarification of language; therefore, there are no costs associated with this proposal.

Changes to Existing Law: This proposal would make the following changes to section 1142 and 1144 of Title 10, U.S.C., as amended:

§1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs

(a) REQUIREMENT.-(1) Within the time periods specified in paragraph (3), the Secretary concerned shall (except as provided in paragraph (4)) provide for individual preseparation counseling of each member of the armed forces whose discharge or release from active duty is anticipated as of a specific date. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned shall use the services available under section 1144 of this title.

(3)(A) In the case of an anticipated retirement, preseparation counseling shall commence as soon as possible during the 24-month period preceding the anticipated retirement date. In the case of a separation other than a retirement, preseparation counseling shall commence as soon as possible during the 12-month period preceding the anticipated date. Except as provided in subparagraph (B), in no event shall preseparation counseling commence later than 90 days before the date of discharge or release.

(B) In the event that a retirement or other separation is unanticipated until there are 90 or fewer days before the anticipated retirement or separation date, or in the event a member of a reserve component is being demobilized under circumstances in which (as determined by the Secretary concerned) operational requirements make the 90-day requirement under subparagraph (A) unfeasible, preseparation counseling shall begin as soon as possible within the remaining period of service.

(4)(A) Subject to subparagraph (B), the Secretary concerned shall not provide preseparation counseling to a member who is being discharged or released before the completion of that member's first 180 <u>continuous</u> days of active duty.

(B) Subparagraph (A) shall not apply in the case of a member who is being retired or separated for disability.

<u>(C) For purposes of subparagraph (A), the term “active duty” does not include full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.</u>

(b) MATTERS TO BE COVERED BY COUNSELING.-Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Provision of information on civilian occupations and related assistance programs, including information concerning-

(A) certification and licensure requirements that are applicable to civilian occupations;

(B) civilian occupations that correspond to military occupational specialties; and

(C) Government and private-sector programs for job search and job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement programs established under sections 1152 and 1153 of this title and the Troops-to-Teachers Program.

(5) If the member has a spouse, inclusion of the spouse, at the discretion of the member and the spouse, when counseling regarding the matters covered by paragraphs (9), (10), and (16) is provided, job placement counseling for the spouse, and the provision of information on survivor benefits available under the laws administered by the Secretary of Defense or the Secretary of Veterans Affairs.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individuals and their families and the availability to the member and dependents of suicide prevention resources following separation from the armed forces.

(9) Financial planning assistance, including information on budgeting, saving, credit, loans, and taxes.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, employment, and financial objectives of the member and, if the member has a spouse, the spouse of the member.

(11) Information concerning the availability of mental health services and the treatment of post-traumatic stress disorder, anxiety disorders, depression, suicidal ideations, or other mental health conditions associated with service in the armed forces.

(12) Information concerning the priority of service for veterans in the receipt of employment, training, and placement services provided under qualified job training programs of the Department of Labor.

(13) Information concerning veterans small business ownership and entrepreneurship programs of the Small Business Administration.

(14) Information concerning employment and reemployment rights and obligations under chapter 43 of title 38.

(15) Information concerning veterans preference in Federal employment and Federal procurement opportunities.

(16) Information on home loan services and housing assistance benefits available under the laws administered by the Secretary of Veterans Affairs and counseling on responsible borrowing practices.

(17) A description, developed in consultation with the Secretary of Veterans Affairs, of health care and other benefits to which the member may be entitled under the laws administered by the Secretary of Veterans Affairs, and information regarding the means by which the member can receive additional counseling regarding the member's actual entitlement to such benefits and apply for such benefits.

(c) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.-In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the member's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Subtitle B—Bonuses and Special Incentive Pays

Section 611 would extend until December 31, 2016 accession and retention incentives for certain nurses, psychologists, and medical, dental and pharmacy officers. Experience shows that manning levels in these health care professional fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and development of replacements. The Department of Defense and Congress have long recognized the prudence of these incentives in supporting effective personnel levels within these specialized fields.

This proposal also would extend two critical recruitment and retention incentive programs for Reserve component health care professionals. The Reserve components historically have found it challenging to meet the required manning in the health care professions. The incentive that targets health care professionals who possess a critically short skill is essential to meet required manning levels. In addition, the health professions loan repayment program has proven to be one of our most powerful recruiting tools for attracting health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is critical to the continued success of recruiting skilled health professionals into the Selected Reserve. Finally, this section would extend the consolidated special and incentive pay authorities in section 335 of title 37, United States Code (Special

Bonus and Incentive Pay Authorities for Officers in Health Professions), to which the Department is in the process of transitioning.

This proposal would extend for one year, through December 31, 2016, accession and retention incentives for nuclear-qualified officers. These incentives enable Navy to attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Over the past few years, the NNPP observed several troubling retention indicators. The nuclear-trained surface warfare officer (SWO(N)) retention has steadily declined since 2009, with a marked decrease in the last two years. In fiscal year (FY) 2013, SWO(N) retention did not meet minimum CVN Principal Assistant (PA) requirements, and FY 2014 retention is also expected to be well below the minimum PA requirement. The Navy met its submarine officer retention target for FY 2013 for the sixth time in ten years, and while it projects it will meet the submarine officer retention target for FY 2014, retention remains short of the target. The Navy expects to meet its FY 2015 retention goal for submarine warfare officers, but believes additional measures will be required to meet the retention goal for nuclear-trained surface warfare officers. The NNPP retention challenge has contributed to Navy's current shortage of control grade officers (Captains, Commanders, and Lieutenant Commanders). NOIP is the primary financial retention incentive for the highly skilled officers in these communities.

This proposal would extend for one year, through December 31, 2016, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY 2008, to which the Department will transition over the next 10 years. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

This proposal would extend for one year, through December 31, 2016, accession, conversion, and retention bonuses for uniformed personnel possessing or acquiring critical skills or assigned to high priority units. This includes arduous occupations, as well as those that require extremely high training and replacement costs. This section also would extend incentive

pay for members in designated assignments and the bonus for transfers between the Armed Forces.

This proposal discontinues the extension of sections 316a – Special pay: incentive pay for members of precommissioning programs pursuing foreign language proficiency, and 478a – Travel and transportation allowance: inactive duty training outside of normal commuting distances. The Department no longer uses these authorities and has transitioned the programs under them to other sections in title 37, United States Code. Incentive pay for members of precommissioning programs pursuing foreign language proficiency is authorized under section 353-Skill incentive pay or proficiency bonus. The travel and transportation allowance for inactive duty training outside of normal commuting distances is authorized under section 452 – Allowable travel and transportation: general authorities.

ONE-YEAR EXTENSION AUTHORITIES FOR RESERVE FORCES:

Budgetary Implications: This section would extend for one year critical recruiting and retention incentive programs the Department of Defense funds each year. The military departments already have projected expenditures of $349.4 to $378 million each year from FY 2016 through 2020 for these incentives in their budget proposals, to be funded from the Reserve Component, Military Personnel accounts.

Table 1a.	**NUMBER OF PERSONNEL AFFECTED**							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
ARNG	32,998	38,676	45,101	54,671	52,822	National Guard Personnel, Army	01	90
USAR	25,637	26,658	25,246	28,271	27,531	Reserve Personnel, Army	01	90
USNR	6,757	7,116	6,762	6,992	7,139	Reserve Personnel, Navy	01	90
USMCR	461	461	461	461	461	Reserve Personnel, Marine Corps	01	90
ANG	10,102	9,843	6,746	7,141	6,989	National Guard Personnel, Air Force	01	90
USAFR	11,092	11,107	10,800	9,206	9,655	Reserve Personnel, Air Force	01	90
Total	87,047	93,861	95,116	106,742	104,597			

Table 1b.	**RESOURCE REQUIREMENTS ($MILLIONS)**							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line**

								Item
ARNG	$131.2	$136.3	$175.1	$200.5	$197.4	National Guard Personnel, Army	01	90
USAR	$85.7	$73.0	$68.8	$70.7	$67.6	Reserve Personnel, Army	01	90
USNR	$22.6	$23.8	$21.7	$20.8	$21.1	Reserve Personnel, Navy	01	90
USMCR	$6.5	$6.5	$6.5	$6.5	$6.5	Reserve Personnel, Marine Corps	01	90
ANG	$77.9	80.1	$53.1	$53.2	$54.1	National Guard Personnel, Air Force	01	90
USAFR	$30.3	$29.7	$28.8	$26.2	$26.6	Reserve Personnel, Air Force	01	90
Total	$354.2	$349.4	$354.0	$377.9	$373.3			

ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS:

Budgetary Implications: This section would extend for one year critical accession and retention incentive programs the military departments fund each year. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of $156 to $162 million each year from FY 2016 through 2020 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

Table 2a. NUMBER OF PERSONNEL AFFECTED

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation To	Budget Activity	Dash-1 Line Item
Army	615	603	603	603	603	Military Personnel, Army	01	40
Army Res	2,034	2,034	2,034	2,034	2,034	Reserve Personnel, Army	01	120
Army National Guard	820	838	789	667	616	National Guard Personnel, Army	01	90
Navy	234	234	234	234	234	Military Personnel, Navy;	01	40
Navy Res	748	897	909	907	907	Reserve Personnel, Navy	01	120
Air Force	162	173	173	173	173	Military Personnel, Air Force	01	40
AF Res	250	250	250	250	250	Reserve Personnel, Air Force	01	120
Air	605	665	734	744	748	National Guard	01	90

National Guard						Personnel, Air Force		
Total	5,468	5,694	5,726	5,612	5,565			

Table 2b.	RESOURCE REQUIREMENTS ($MILLIONS)							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	$29.5	$29.0	$29.1	$29.1	$29.1	Military Personnel, Army;	01	40
Army Res	$63.7	$63.2	$62.8	$62.5	$61.7	Reserve Personnel, Army	01	120
Army National Guard	$16.67	$16.93	$15.87	$13.44	$12.15	National Guard Personnel, Army	01	90
Navy	$8.5	$8.5	$8.5	$8.5	$8.5	Military Personnel, Navy;	01	40
Navy Res	$11.0	$13.8	$13.9	$13.9	$13.9	Reserve Personnel, Navy	01	120
Air Force	$11.7	$14.7	$14.7	$14.7	$14.7	Military Personnel, Air Force	01	40
AF Res	$5.0	$5.0	$5.0	$5.0	$5.0	Reserve Personnel, Air Force	01	120
Air National Guard	$9.9	$10.8	$12.1	$11.9	$12.0	National Guard Personnel, Air Force	01	90
Total	$156.0	$161.9	$162.0	$159.0	$157.1			

ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Budgetary Implications: This section would extend for one year the critical accession and retention incentive programs the Navy funds each year. The Navy has already projected expenditures for these incentives and programmed them into budget proposals. The Navy has projected expenditures of about $83 million each year, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2016 through 2020. The Army and Air Force are not authorized in the statute to pay these bonuses.

Table 3a.	NUMBER OF PERSONNEL AFFECTED							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Navy	2,858	2,871	2,876	2,902	2,891	Military	01, 02, 03	40 (for

						Personnel, Navy		01); 90 (for 02); 110 (for 03)
Navy Res	158	158	158	158	158	Reserve Personnel, Navy	01	90
Total	3,016	3,029	3,034	3,060	3,049			

Table 3b.	RESOURCE REQUIREMENTS ($MILLIONS)							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Navy	$80.0	$80.2	$80.3	$80.7	$80.5	Military Personnel, Navy	01, 02, 03	40 (for 01); 90 (for 02); 110 (for 03)
Navy Res	$2.4	$2.4	$2.4	$2.4	$2.4	Reserve Personnel, Navy	01	90
Total	$82.4	$82.6	$82.7	$83.1	$82.9			

ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Budgetary Implications: This section would extend for one year the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted bonuses, non-physician health professions pays, and critical skill retention bonuses. This section does not include the nuclear officer pays which are located in tables 3a and 3b. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of $986.2 to $1,266.7 million each year from FY 2016 through FY 2020 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

Table 4a.	NUMBER OF PERSONNEL AFFECTED							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	50,320	71,033	46,874	47,053	47,021	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy	50,679	52,342	50,873	53,744	54,128	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps	9,868	9,798	9,770	9,826	9,843	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90

								(for 02)
Air Force	38,737	34,835	32,010	32,808	76,185	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	149,604	168,008	139,527	143,431	187,177			

Table 4b.	**RESOURCE REQUIREMENTS ($MILLIONS)**							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	$254.5	$496.8	$211.3	$211.4	$210.9	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy	$419.7	$437.9	$452.5	$445.9	$445.9	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps	$78.8	$78.8	$79.1	$79.4	$80.5	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Air Force	$256.2	$253.2	$250.1	$249.5	$250.1	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	$1,009.2	$1,266.7	$993.0	$986.2	$987.4			

ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER TITLE 37 BONUSES AND SPECIAL PAY:

Budgetary Implications: This section would extend for one year critical recruiting and retention incentive programs the military departments fund each year. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of $194.7 to $209.6 million each year from FY 2016 through FY 2020 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

Table 5a.	**NUMBER OF PERSONNEL AFFECTED**							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	12,264	12,263	12,264	12,244	12,248	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy	5,733	5,778	5,809	5,829	5,816	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)

Marine Corps	343	229	97	98	72	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Air Force	7,635	6851	6,799	6,621	6,621	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	25,975	25,121	24,969	24,792	24,757			

Table 5b.	**RESOURCE REQUIREMENTS ($ MILLIONS)**							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	$54.2	$54.2	$54.2	$53.9	$53.9	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy	$52.5	$54.1	$56.1	$57.8	$59.0	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps	$3.7	$2.2	$.9	$.9	$.6	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Air Force	$99.2	$84.2	$84.5	$83.5	$82.9	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	$209.6	$194.7	$195.7	$196.1	$196.4			

Changes to Existing Laws: This proposal would make the following changes to title 10 and title 37, United States Code:

TITLE 10, UNITED STATES CODE

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2015~~ December 31, 2016, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

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§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2015~~ December 31, 2016.

TITLE 37, UNITED STATES CODE

§ 301b. Special pay: aviation career officers extending period of active duty

(a) BONUS AUTHORIZED.—An aviation officer described in subsection (b) who, during the period beginning on January 1, 1989, and ending on ~~December 31, 2015~~December 31, 2016, executes a written agreement to remain on active duty in aviation service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

* * * * * * *

§ 302c-1. Special pay: accession and retention bonuses for psychologists

(f) TERMINATION OF AUTHORITY.—No agreement under subsection (a) or (b) may be entered into after ~~December 31, 2015~~ December 31, 2016.

* * * * * * *

§ 302d. Special pay: accession bonus for registered nurses

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a registered nurse and who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2015~~ December 31, 2016, executes a written agreement described in subsection (c) to accept a commission as an officer and remain on active duty for a period of not less than three years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $30,000.

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§ 302e. Special pay: nurse anesthetists

(a) SPECIAL PAY AUTHORIZED.—(1) An officer described in subsection (b)(1) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2015~~ December 31, 2016, executes a written agreement to remain on active duty for a period of one year or more may, upon the acceptance of the agreement by the Secretary concerned, be paid incentive special pay in an amount not to exceed $50,000 for any 12-month period.

(2) The Secretary concerned shall determine the amount of incentive special pay to be paid to an officer under paragraph (1). In determining that amount, the Secretary concerned shall consider the period of obligated service provided for in the agreement under that paragraph.

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§ 302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties

(e) TERMINATION OF AGREEMENT AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 302h. Special pay: accession bonus for dental officers

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a graduate of an accredited dental school and who, during the period beginning on September 23, 1996, and ending on ~~December 31, 2015~~ December 31, 2016, executes a written agreement described in subsection (c) to accept a commission as an officer of the armed forces and remain on active duty for a period of not less than four years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $200,000.

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§ 302j. Special pay: accession bonus for pharmacy officers

(a) ACCESSION BONUS AUTHORIZED.—A person who is a graduate of an accredited pharmacy school and who, during the period beginning on October 30, 2000, and ending on ~~December 31, 2015~~ December 31, 2016, executes a written agreement described in subsection (d) to accept a commission as an officer of a uniformed service and remain on active duty for a period of not less than 4 years may, upon acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

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§ 302k. Special pay: accession bonus for medical officers in critically short wartime specialties

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 302l. Special pay: accession bonus for dental specialist officers in critically short wartime specialties

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 307a. Special pay: assignment incentive pay

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~December 31, 2016.

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§ 308. Special pay: reenlistment bonus

(g) No bonus shall be paid under this section with respect to any reenlistment, or voluntary extension of an active-duty reenlistment, in the armed forces entered into after ~~December 31, 2015~~December 31, 2016.

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§308b. Special pay: reenlistment bonus for members of the Selected Reserve

(g) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any enlisted member who, after ~~December 31, 2015~~ December 31, 2016, reenlists or voluntarily extends his enlistment in a reserve component.

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§ 308c. Special pay: bonus for affiliation or enlistment in the Selected Reserve

(i) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any agreement entered into under subsection (a) or (c) after ~~December 31, 2015~~ December 31, 2016.

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§ 308d. Special pay: members of the Selected Reserve assigned to certain high priority units

(c) Additional compensation may not be paid under this section for inactive duty performed after ~~December 31, 2015~~ December 31, 2016.

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§ 308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve

(f) A bonus may not be paid under this section to any person for an enlistment—

(1) during the period beginning on October 1, 1992, and ending on September 30, 2005; or

(2) after ~~December 31, 2015~~ December 31, 2016.

* * * * * * *

§ 308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve

(e) TERMINATION OF AUTHORITY.—A bonus may not be paid under this section to any person for a reenlistment, enlistment, or voluntary extension of an enlistment after ~~December 31, 2015~~December 31, 2016.

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§ 308i. Special pay: prior service enlistment bonus

(f) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any person for an enlistment after ~~December 31, 2015~~ December 31, 2016.

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§ 309. Special pay: enlistment bonus

(e) DURATION OF AUTHORITY.—No bonus shall be paid under this section with respect to any enlistment in the armed forces made after ~~December 31, 2015~~ December 31, 2016.

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§ 312. Special pay: nuclear-qualified officers extending period of active duty

(f) DURATION OF AUTHORITY.—The provisions of this section shall be effective only in the case of officers who, on or before ~~December 31, 2015~~ December 31, 2016 execute the required written agreement to remain in active service.

* * * * * * *

§ 312b. Special pay: nuclear career accession bonus

(c) The provisions of this section shall be effective only in the case of officers who, on or before ~~December 31, 2015~~ December 31, 2016, have been accepted for training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

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§ 312c. Special pay: nuclear career annual incentive bonus

(d) For the purposes of this section, a ''nuclear service year'' is any fiscal year beginning before ~~December 31, 2015~~ December 31, 2016.

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§ 324. Special pay: accession bonus for new officers in critical skills

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 326. Incentive bonus: conversion to military occupational specialty to ease personnel shortage

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 327. Incentive bonus: transfer between armed forces

(h) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 330. Special pay: accession bonus for officer candidates

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 331. General bonus authority for enlisted members

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~ December 31, 2016.

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§ 332. General bonus authority for officers

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~December 31, 2016.

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§ 333. Special bonus and incentive pay authorities for nuclear officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~ December 31, 2016.

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§ 334. Special aviation incentive pay and bonus authorities for officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~ December 31, 2016.

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§ 335. Special bonus and incentive pay authorities for officers in health professions

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~ December 31, 2016.

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§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2015~~ December 31, 2016.

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§ 351. Hazardous duty pay

(i) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2015~~ December 31, 2016.

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§ 352. Assignment pay or special duty pay

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~ December 31, 2016.

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§ 353. Skill incentive pay or proficiency bonus

(j) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2015~~ December 31, 2016.

* * * * * * *

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2015~~ December 31, 2016, and no agreement under this section may be entered into after that date.

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§ 403. Basic allowance for housing

(b)(7)(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2015~~ December 31, 2016.

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§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2015~~ December 31, 2016, unless the entitlement of the member to payments under this section is commenced on or before that date.

TITLE VII—HEALTHCARE PROVISIONS

Subtitle A—TRICARE and Other Health Care Benefits

Subtitle B—Health Care Administration

Section 711 would add a new section to title 10 providing limitations on the conversation of military medical and dental positions to civilian medical and dental positions and repeal the existing prohibition on such conversions. This will allow the Services to more effectively and efficiently manage the total force with respect to their conflict readiness and beneficiary care missions.

Section 721(a) of Public Law 110-181, which was signed into law on January 28, 2008, as amended by section 701 of Public Law 111-84, which was signed into law on October 28, 2009, provides that, "The Secretary of a military department may not convert any military medical or dental position to a civilian medical or dental position on or after October 1, 2007."

This blanket prohibition on military medical or dental conversions denies the Services the flexibility to manage military and civilian medical manpower in concert with nonmedical elements of the military force. The lack of flexibility prevents the Services from achieving an efficient medical force mix aligned with their operational medical mission and places pressure on non-medical manpower, which is subject to top-line statutory and resource limitations from which the prohibition effectively exempts medical manpower.

This proposal would eliminate the prohibition on converting military medical and dental positions to civilian or contract performance and would thus allow the Services to more effectively and efficiently manage the total force with respect to their conflict readiness and beneficiary care missions. Conversions would allow the Services to correct persistent skill and specialty imbalances and align medical forces with readiness requirements to provide medical care to members serving on contingency operations or overseas deployments. The added flexibility would also allow the Services to consider both medical and non-medical positions when managing operational risk in their total force mix decisions pursuant to statutory and budgetary limitations on both military and civilian personnel. Finally, ending the prohibition on

conversions allows Services to efficiently manage a force mix of military, civilian, and contract personnel for the provision of high quality medical care to beneficiaries including members, retirees, and family members.

This proposal is mission critical because the current prohibition imposes a less efficient force mix which consumes budgetary resources, making them unavailable for delivering mission. Additionally, a large portion of officer billets is being consumed by medical positions. For example, in the Army 22 percent of officers (O-4 to O-6) are medical, in the Navy 19 percent, and in the AF 20 percent. With the continuing downward pressures on the force, it is essential that Services have the ability to allocate officer and other military medical billets to other pressing mission areas.

In addition, subsections (b) and (c) of section 721 would be repealed since the actions required by those provisions are completed: Subsection (b) "Restoration of Certain Positions to Military Positions", and Subsection (c) "Report".

Budgetary Implications: No additional costs are associated with the enactment of this proposal. However, there are potential savings. While the legislative proposal does not mandate conversion, it would permit the Services to conduct medical military to civilian conversions, which could result in significant savings, illustrated below.

Recent analysis of the full cost of medical manpower (per Directive-Type Memorandum (DTM) 09-007, superseded by Department of Defense Instruction (DoDI) 7041.01 "Estimating and Comparing the Full Costs of Civilian and Actives Duty Military Manpower and Contract Support") resulted in the following findings, which are illustrative of the potential savings to be yielded by lifting the conversion ban:

- The full cost of medical personnel, military versus civilian.
  - For the average Army medical enlisted soldier, full cost to the taxpayer is about $125,000, whereas the full cost to the taxpayer of the equivalent civilian personnel is about $75,000.
  - For the average Navy physician, the full cost to the taxpayer is about $440,000, whereas the full cost to the taxpayer of the equivalent civilian personnel is about $328,000
  - For the average Air Force nurse, the full cost to the taxpayer is about $230,000, whereas the full cost to the taxpayer of the equivalent civilian personnel is about $142,000.
- To illustrate the impacts of these cost differences in a total force mix decision-making context, transition of 50 military providers, 200 military nurses, and 250 enlisted staff (500 personnel) to civilian positions would save on-average $21 million annually from a DoD short-run cash flow perspective in personnel costs with even larger savings when adjusted for fixed costs, deferred costs, and non-DoD costs.
- Each Service will need to determine the military/civilian ratio that meets their health care and readiness needs.

Changes to Existing Law: This proposal would enact a replacement of section 721 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 129c note), with a new section of title 10, United States Code,. The next proposed for the new title 10

section is show in the legislative text above. The text to be replaced (current law) is shown below:

SEC. 721. ~~PROHIBITION ON~~ CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS.

~~(a) PROHIBITION.--The Secretary of a military department may not convert any military medical or dental position to a civilian medical or dental position on or after October 1, 2007.~~

~~(b) RESTORATION OF CERTAIN POSITIONS TO MILITARY POSITIONS.—In the case of any military medical or dental position that is converted to a civilian medical or dental position during the period beginning on October 1, 2004, and ending on September 30, 2008, if the position is not filled by a civilian by September 30, 2008, the Secretary of the military department concerned shall restore the position to a military medical or dental position that can be filled only by a member of the Armed Forces who is a health professional.~~

~~(c) REPORT.—~~

~~(1) REQUIREMENT.—The Secretary of Defense shall submit to the congressional defense committees a report on conversions made during fiscal year 2007 not later than 180 days after the enactment of this Act [Jan 28, 2008].~~

~~(2) MATTERS COVERED.—The report shall include the following:~~

~~(A) The number of military medical or dental positions, by grade or band and specialty, converted to civilian medical or dental positions.~~

~~(B) The results of a market survey in each affected area of the availability of civilian medical and dental care providers in such area in order to determine whether there were civilian medical and dental care providers available in such area adequate to fill the civilian positions created by the conversion of military medical and dental positions to civilian positions in such area.~~

~~(C) An analysis, by affected area, showing the extent to which access to health care and cost of health care was affected in both the direct care and purchased care systems, including an assessment of the effect of any increased shifts in patient load from the direct care to the purchased care system, or any delays in receipt of care in either the direct or purchased care system because of the conversions.~~

~~(D) The extent to which military medical and dental positions converted to civilian medical or dental positions affected recruiting and retention of uniformed medical and dental personnel.~~

~~(E) A comparison of the full costs for the military medical and dental positions converted with the full costs for civilian medical and dental positions, including expenses such as recruiting, salary, benefits, training, and any other costs the Department identifies.~~

~~(F) An assessment showing that the military medical or dental positions converted were in excess of the military medical and dental positions needed to~~

~~meet medical and dental readiness requirements of the uniformed services, as determined jointly by all the uniformed services.~~

~~(d~~b) ~~DEFINITIONS.—In this section:~~

~~(1) The term "military medical or dental position" means a position for the performance of health care functions within the Armed Forces held by a member of the Armed Forces.~~

~~(2) The term "civilian medical or dental position" means a position for the performance of health care functions within the Department of Defense held by an employee of the Department or of a contractor of the Department.~~

~~(3) The term "uniformed services" has the meaning given that term in section 1072(1) of title 10, United States Code.~~

~~(4) The term "conversion", with respect to a military medical or dental position, means a change of the position to a civilian medical or dental position, effective as of the date of the manning authorization document of the military department making the change (through a change in designation from military to civilian in the document, the elimination of the listing of the position as a military position in the document, or through any other means indicating the change in the document or otherwise).~~

(~~e~~) REPEAL.—Section 742 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2306) is repealed.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

Section 801 would add a new chapter 164 to title 10, United States Code, to establish an effective program fraud civil remedy that may be used by the Department of Defense (DoD) or the National Aeronautics and Space Agency (NASA) to redress fraud in DoD and NASA procurement programs and acquisitions. This administrative remedy is a non-judicial remedy that would permit DoD and NASA (subject to DoJ approval) to impose penalties and assessments on contractors that make false claims and statements to DoD and NASA. The proposal creates a remedy for DoD and NASA to use in lieu of the existing Program Fraud Civil Remedies Act (chapter 38 of title 31, United States Code). DoD has rarely used the existing legal authority because it imposes requirements that DoD cannot readily meet (for example, the need for administrative law judges to resolve factual disputes – DoD does not have ready access to administrative law judges and would need to acquire services from another agency on a reimbursable basis), and the procedures are cumbersome to the point of making it impractical for DoD or the military departments to pursue a remedy under title 31.

This legislative proposal streamlines and simplifies the cumbersome, multi-tiered approach set forth in title 31, while preserving its standards of review and providing contractors with due process and judicial review. The proposal would vest DoD, military department, and NASA suspending and debarring officials with the authority to impose administrative assessments and penalties similar to those permitted under title 31. DoD, military department,

and NASA suspending and debarring officials execute the authorities at Federal Acquisition Regulation Subpart 9.4 (48 C.F.R. Subpart 9.4), and Defense Federal Acquisition Regulation Supplement Subpart 209.4 (48 C.F.R. Subpart 209.4). They serve in a quasi-judicial capacity, with responsibility for taking administrative action to suspend or debar a contractor when necessary to protect the government's interest. Contractors that are suspended or debarred are rendered ineligible to compete for or receive federal contracts or subcontracts, generally for a term of three years.

The proposed legislation eliminates many of the procedural requirements that impede DoD and NASA's use of the authority in title 31, including the exclusive use of administrative law judges to resolve factual disputes, without requiring additional resources to use the authority in title 31. The streamlined procedures set forth in the proposal afford contractors with adequate due process by establishing a legal process and related protections similar to those granted in agency suspensions and debarments, including review under the Administrative Procedure Act (Chapter 7 of Title 5, United States Code). The proposal imposes a $500,000 ceiling on false claims, singularly or combined, that can be pursued against a contractor using this administrative remedy, although, as with the authority in title 31, the assessment imposed may be doubled (for a maximum assessment of $1,000,000). As with the authority in title 31, the proposal authorizes the imposition of penalties of $5000 for each false claim or false statement, and there is no limit on the total number of penalties that can be imposed.

Although suspending and debarring officials would be vested with the authority to impose administrative assessments and penalties similar to those permitted under title 31, the important distinction between penalties to punish misconduct and suspension and debarment as a tool to protect the government from harm would be preserved. For example, the remedies coordination official, required by DoD Instruction 7050.05, will continue to make decisions regarding which remedies to pursue in a given case.

There is a substantial need for this fraud-fighting authority. Currently, the Department of Justice is unable to pursue many relatively low-dollar DoD and NASA-related fraud cases due to limited resources. This leaves a gap in remedial coverage, allowing contractors that engage in relatively low dollar fraud to escape civil remedies that otherwise would have given the United States Government the opportunity to recover damages and impose penalties for the contractors' misconduct. Of equal importance, as discussed above, the proposed legislation creates an administrative fraud remedy that can be readily used by DoD and NASA – a critical feature, considering that DoD is the largest purchaser of products and services in the United States Government. Additionally, the proposed legislation will create a fraud-fighting administrative remedy that could serve as a model that could assist the broader U.S. Government in determining whether this simplified and streamlined program fraud civil remedy is appropriate for use by all federal agencies.

Further, the 2010 Report to Congress by the DOD Panel on Contracting Integrity recommended this change to amend the Program Fraud Civil Remedies Act of 1986. This Panel 2010 action was supported by the Panel senior leaders from the military departments and Defense Agency representatives.

Budget Implications: This proposal creates a procurement fraud remedy that will produce a positive return to the United States Treasury, and would not require new resources to implement, as described below. The authority created by the proposal can be administered with the existing workforce in the DoD agencies and military departments, using the existing suspending and debarring officials and their respective staffs. It is critical to note that the authority established under the proposed legislation is discretionary; it does not mandate that defense agencies or the military departments pursue every possible action. Rather, as with the current suspension and debarment process, which is also a discretionary process, DoD and military department officials must exercise discretion in pursuing recoveries under the proposed legislation. As with the current suspension and debarment process, that exercise of discretion will have to factor in a host of considerations, including the severity of the alleged misconduct, the strength of the evidence, the appropriateness of the remedy, and whether the suspending and debarring official has sufficient resources – including staff – to pursue the administrative remedy. As a final consideration, much of the effort necessary to pursue a suspension or debarment is the same effort required to build a case under the proposed program. By working these matters concurrently, there should be limited additional work imposed on suspending and debarring officials and their staffs.

Changes to Existing Law: This proposal would add a new chapter 164 to title 10, United States Code. The new chapter is set out in the legislative text of the proposal, above.

The proposal would amend 31 U.S.C. 3801 as set forth below: (For the information of reviewers, the entire text of chapter 38 of title 31 United States Code, is set forth):

CHAPTER 38— ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

§ 3801. Definitions

(a) For purposes of this chapter—

(1) "authority" means—

(A) an executive department (other than the Department of Defense);
~~(B) a military department;~~
(~~C~~B) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department (other than the National Aeronautics and Space Administration);
(~~D~~C) the United States Postal Service;
(~~E~~D) the National Science Foundation; and
(~~F~~E) a designated Federal entity (as such term is defined under section 8G(a)(2) of the Inspector General Act of 1978);

(2) "authority head" means—
(A) the head of an authority; or
(B) an official or employee of the authority designated, in regulations promulgated by the

head of the authority to act on behalf of the head of the authority;

(3) "claim" means any request, demand, or submission—
(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);
(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—
(i) for property or services if the United States—
(I) provided such property or services;
(II) provided any portion of the funds for the purchase of such property or services; or
(III) will reimburse such recipient or party for the purchase of such property or services; or
(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—
(I) provided any portion of the money requested or demanded; or
(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or
(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money.
except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986;

(4) "investigating official" means an individual who—

(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule;

(5) "knows or has reason to know" for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—

(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required;

(5) “person” means any individual, partnership, corporation, association, or private organization;

(7) “presiding officer” means—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

(ii) is appointed by the authority head to conduct hearings under section 3803 of this title;

(iii) is assigned to cases in rotation so far as practicable;

(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

(8) “reviewing official” means any officer or employee of an authority—
(A) who is the designated by the authority head to make the determination required under section 3803(a)(2) of this title;

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General

Schedule; and

(C) who is—

(i) not subject to supervision by, or required to report to, the investigating official; and

(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

(9) "statement" means any representation, certification, affirmation, document, record, or an accounting or bookkeeping entry made—

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for)—

(i) a contract with, or a bid or proposal for a contract with an authority; or

(ii) a grant, loan, or benefit from an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

(b) For purposes of paragraph (3) of subsection (a)—

(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity including any State or political subdivision thereof acting for or on behalf of such authority, recipient, or party.

(c) For purposes of paragraph (9) of subsection (a)—

(1) each written representation, certification, or affirmation constitutes a separate statement; and

(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity including any State or political subdivision thereof acting for or on behalf of such authority.

§ 3802. False claims and statements; liability

(a)(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(A) is false, fictitious, or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(C) includes or is supported by any written statement that—

(i) omits a material fact;

(ii) is false, fictitious, or fraudulent as a result of such omission; and

(iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(D) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(A) the person knows or has reason to know—

(i) asserts a material fact which is false, fictitious, or fraudulent; or

(ii)(I) omits a material fact; and

(II) is false, fictitious, or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such

material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection—

(A) a determination under section 3803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

§ 3803. Hearing and determinations

(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 3802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 3802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a presiding officer of such authority. Such notice shall include—

(A) a statement of the reasons of the reviewing official for the referral of such allegations;

(B) a statement specifying the evidence which supports such allegations;

(C) a description of the claims or statements for which liability under section 3802 of this title is alleged;

(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 3802 of this title; and

(E) a statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies—

(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a presiding officer of the allegations of liability stated in such notice;

(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under this section with respect to such allegations is appropriate; and

(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

(2) A reviewing official may refer allegations of liability to a presiding officer only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in a written statement described in paragraph (1) of this subsection.

(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that—

(A) an amount of money in excess of $150,000; or

(B) property or services with a value in excess of $150,000,

is requested or demanded in violation of section 3802 of this title in such claim or in a group of

related claims which are submitted at the time such claim is submitted.

(2)(A) Except as provided in subparagraph (B) of this paragraph, no allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual shall be referred to a presiding officer under paragraph (2) of subsection (b).

(B) Allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual may be referred to a presiding officer under paragraph (2) of subsection (b) if—

(i) such claim or statement is made by such individual in making application for such benefits;

(ii) such allegations relate to the eligibility of such individual to receive such benefits; and

(iii) with respect to such claim or statement, the individual—

(I) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(II) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(III) acts in reckless disregard of the truth or falsity of the claim or statement.

(C) For purposes of this subsection, the term “benefits” means—

(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) benefits under title XVIII of the Social Security Act;

(iv) assistance under a State program funded under part A of title IV of the Social Security Act;

(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(vi) benefits under title XX of the Social Security Act;

(vii) benefits under the supplemental nutrition assistance program (as defined in section 3(l) of the Food and Nutrition Act of 2008);

(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(ix) benefits under the Black Lung Benefits Act;

(x) benefits under the special supplemental nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(xi) benefits under section 336 of the Older Americans Act;

(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

(xiii) benefits under the Richard B. Russell National School Lunch Act;

(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d)(1) On or after the date on which a reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section, the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 3802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice—

(A) the reviewing official shall refer such allegations to a presiding officer for the commencement of such hearing; and

(B) the presiding officer shall commence such hearing by mailing by registered or certified mail, or by delivery of, a notice which complies with paragraphs (2)(A) and (3)(B)(i) of subsection (g) to such person.

(e)(1)(A) Except as provided in subparagraph (B) of this paragraph, at any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to such allegations and upon which the findings and conclusions of the investigating official under paragraph (1) of subsection (a) are based.

(B) A person is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material which is privileged under Federal law.

(2) At any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to obtain all exculpatory information in the possession of the investigating official or the reviewing official relating to the allegations contained in such notice. The provisions of subparagraph (B) of paragraph (1) do not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(f) Any hearing commenced under paragraph (2) of subsection (d) shall be conducted by the presiding officer on the record in order to determine—

(1) the liability of a person under section 3802 of this title; and

(2) if a person is determined to be liable under such section, the amount of any civil penalty or assessment to be imposed on such person.

Any such determination shall be based on the preponderance of the evidence.

(g)(1) Each hearing under subsection (f) of this section shall be conducted—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, in accordance with—

(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection.

(2) An authority head of an authority described in subparagraph (B) of paragraph (1) shall by regulation promulgate procedures for the conduct of hearings under this chapter. Such procedures shall include:

(A) The provision of written notice of the hearing to any person alleged to be liable under section 3802 of this title, including written notice of—

(i) the time, place, and nature of the hearing;

(ii) the legal authority and jurisdiction under which the hearing is to be held; and

(iii) the matters of facts and law to be asserted.

(B) The provision to any person alleged to be liable under section 3802 of this title of opportunities for the submission of facts, arguments, offers of settlement, or proposals of adjustment.

(C) Procedures to ensure that the presiding officer shall not, except to the extent required for the disposition of ex parte matters as authorized by law—

(i) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

(ii) be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(D) Procedures to ensure that the investigating official and the reviewing official do not participate or advise in the decision required under subsection (h) of this section or the review of the decision by the authority head under subsection (i) of this section, except as provided in subsection (j) of this section.

(E) The provision to any person alleged to be liable under section 3802 of this title of opportunities to present such person's case through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(F) Procedures to permit any person alleged to be liable under section 3802 of this title to be accompanied, represented, and advised by counsel or such other qualified representative as the authority head may specify in such regulations.

(G) Procedures to ensure that the hearing is conducted in an impartial manner, including procedures to—

(i) permit the presiding officer to at any time disqualify himself; and

(ii) permit the filing, in good faith, of a timely and sufficient affidavit alleging personal bias or another reason for disqualification of a presiding officer or a reviewing official.

(3)(A) Each authority head shall promulgate by regulation procedures described in subparagraph (B) of this paragraph for the conduct of hearings under this chapter. Such procedures shall be in addition to the procedures described in paragraph (1) or paragraph (2) of this subsection, as the case may be.

(B) The procedures referred to in subparagraph (A) of this paragraph are:

(i) Procedures for the inclusion, in any written notice of a hearing under this section to any person alleged to be liable under section 3802 of this title, of a description of the procedures

for the conduct of the hearing.

(ii) Procedures to permit discovery by any person alleged to be liable under section 3802 of this title only to the extent that the presiding officer determines that such discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, except that such procedures shall not apply to documents, transcripts, records, or other material which a person is entitled to review under paragraph (1) of subsection (e) or to information to which a person is entitled under paragraph (2) of such subsection. Procedures promulgated under this clause shall prohibit the discovery of the notice required under subsection (a)(2) of this section.

(4) Each hearing under subsection (f) of this section shall be held—

(A) in the judicial district of the United States in which the person alleged to be liable under section 3802 of this title resides or transacts business;

(B) in the judicial district of the United States in which the claim or statement upon which the allegation of liability under such section was made, presented, or submitted; or

(C) in such other place as may be agreed upon by such person and the presiding officer who will conduct such hearing.

(h) The presiding officer shall issue a written decision, including findings and determinations, after the conclusion of the hearing. Such decision shall include the findings of fact and conclusions of law which the presiding officer relied upon in determining whether a person is liable under this chapter. The presiding officer shall promptly send to each party to the hearing a copy of such decision and a statement describing the right of any person determined to be liable under section 3802 of this title to appeal the decision of the presiding officer to the authority head under paragraph (2) of subsection (i).

(i)(1) Except as provided in paragraph (2) of this subsection and section 3805 of this title, the decision, including the findings and determinations, of the presiding officer issued under subsection (h) of this section are final.

(2)(A)(i) Except as provided in clause (ii) of this subparagraph, within 30 days after the presiding officer issues a decision under subsection (h) of this section, any person determined in such decision to be liable under section 3802 of this title may appeal such decision to the authority head.

(ii) If, within the 30-day period described in clause (i) of this subparagraph, a person determined to be liable under this chapter requests the authority head for an extension of such 30-day period to file an appeal of a decision issued by the presiding officer under subsection (h) of this section, the authority head may extend such period if such person demonstrates good cause for such extension.

(B) Any authority head reviewing under this section the decision, findings, and determinations of a presiding officer shall not consider any objection that was not raised in the hearing conducted

pursuant to subsection (f) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(C) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer pursuant to this section. The authority head shall promptly send to each party to the appeal a copy of the decision of the authority head and a statement describing the right of any person determined to be liable under section 3802 of this title to judicial review under section 3805 of this title.

(j) The reviewing official has the exclusive authority to compromise or settle any allegations of liability under section 3802 of this title against a person without the consent of the presiding officer at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section and prior to the date on which the presiding officer issues a decision under subsection (h) of this section. Any such compromise or settlement shall be in writing.

§ 3804. Subpoena authority

(a) For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the authority.

(b) For the purposes of conducting a hearing under section 3803(f) of this title, a presiding officer is authorized—

(1) to administer oaths or affirmations; and

(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing.

(c) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (a) or (b) of this section, the district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt. In any case in which an authority seeks the enforcement of a subpoena issued pursuant to subsection (a) or (b) of this section, the authority shall request the Attorney General to petition any district court in which a hearing under this chapter is being conducted, or in which the person receiving the subpoena resides or conducts business, to issue such an order.

§ 3805. Judicial review

(a)(1) A determination by a reviewing official under section 3803 of this title shall be final and shall not be subject to judicial review.

(2) Unless a petition is filed under this section, a determination under section 3803 of this title that a person is liable under section 3802 of this title shall be final and shall not be subject to judicial review.

(b)(1)(A) Any person who has been determined to be liable under section 3802 of this title pursuant to section 3803 of this title may obtain review of such determination in—

(i) the United States district court for the district in which such person resides or transacts business;

(ii) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

(iii) the United States District Court for the District of Columbia.

(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed—

(i) only after such person has exhausted all administrative remedies under this chapter; and

(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 3803(i)(2) of this title.

(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority and to the Attorney General. Upon receipt of the copy of such petition, the authority shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 3802 of this title. Except as otherwise provided in this section, the district courts of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the authority, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

(c) The decisions, findings, and determinations of the authority with respect to questions of fact shall be final and conclusive, and shall not be set aside unless such decisions, findings, and determinations are found by the court to be unsupported by substantial evidence. In concluding whether the decisions, findings, and determinations of an authority are unsupported by substantial evidence, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(d) Any district court reviewing under this section the decision, findings, and determinations of an authority shall not consider any objection that was not raised in the hearing conducted pursuant to section 3803(f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the authority for consideration of such additional evidence.

(e) Upon a final determination by the district court that a person is liable under section 3802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States.

§ 3806. Collection of civil penalties and assessments

(a) The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

(b) Any penalty or assessment imposed in a determination which has become final pursuant to this chapter may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 3803(f) of this title or pursuant to judicial review under section 3805 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

(c) The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, cross-claim, or setoff by the United States in any other civil action which includes as parties the United States and the person against whom such action may be brought.

(e) The United States Court of Federal Claims shall have jurisdiction of any action under subsection (b) of this section to recover any penalty or assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court.

(f) The Attorney General shall have exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition pursuant to section 3805 of this title or a pending action to recover such penalty or assessment pursuant to this section.

(g)(1) Except as provided in paragraph (2) of this subsection, any amount of penalty or assessment collected under this chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

(2)(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this chapter shall be deposited in the Postal Service Fund established by section 2003 of title 39.

(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.

(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

§ 3807. Right to administrative offset

(a) The amount of any penalty or assessment which has become final under section 3803 of this title, or for which a judgment has been entered under section 3805(e) or 3806 of this title, or any amount agreed upon in a settlement or compromise under section 3803(j) or 3806(f) of this title, may be collected by administrative offset under section 3716 of this title, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty or assessment.

(b) All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 3806(g) of this title.

§ 3808. Limitations

(a) A hearing under section 3803(d)(2) of this title with respect to a claim or statement shall be commenced within 6 years after the date on which such claim or statement is made, presented, or submitted.

(b) A civil action to recover a penalty or assessment under section 3806 of this title shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.

§ 3809. Regulations

Within 180 days after the date of enactment of this chapter [Oct. 21, 1986], each authority head shall promulgate rules and regulations necessary to implement the provisions of this chapter. Such rules and regulations shall—

(1) ensure that investigating officials and reviewing officials are not responsible for conducting the hearing required in section 3803(f) of this title, making the determinations required by subsections (f) and (h) of section 3803 of this title, or making collections under section 3806 of this title; and

(2) require a reviewing official to include in any notice required by section 3803(a)(2) of this title a statement which specifies that the reviewing official has determined that there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable.

[§ 3810. Repealed. Pub.L. 104-66, Title III, § 3001(c)(1), Dec. 21, 1995, 109 Stat. 734]

§ 3811. Effect on other law

(a) This chapter does not diminish the responsibility of any agency to comply with the provisions of chapter 35 of title 44.

(b) This chapter does not supersede the provisions of section 3512 of title 44.

(c) For purposes of this section, the term “agency” has the same meaning as in section 3502(1) of title 44.

§ 3812. Prohibition against delegation

Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General, shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.

Section 802. The proposed changes to section 1705 of title 10, United States Code, would implement improvements to the operation of the Defense Acquisition Workforce Development Fund (DAWDF) as part of establishing a long term acquisition workforce improvement fund. Changes include:

1) Elimination of component remittances effective in Fiscal Year (FY) 2016. Proposed statutory changes would eliminate the annual component collection (tax) on O&M accounts.

2) Limitation on exercise of existing authority of the Department to transfer expired funds into the DAWDF when such authority is provided in appropriation Acts.

3) Conforming changes to funds availability and reporting requirements.

Further, the proposal would facilitate the transition planned for FY2017 for budgeting and appropriation for execution of the fund as a transfer fund. Similar to the Department’s

environmental restoration and drug interdiction and counter-drug activities, the Department would request DAWDF appropriations language that makes amounts appropriated available for transfer to other appropriations for execution. Execution as a transfer fund will simplify the financial management operations, reduce or eliminate the complex process of allocating or allotting DAWDF balances across the Department, and will improve auditability.

Budgetary Implications: The change impacts current DAWDF appropriated fiscal guidance. The fund has been sourced each year, by law, by direct appropriation and component remittances. The following table describes the before and after should 10 U.S.C. 1705 be revised as proposed.

$M		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FYDP
PBR16		51.9	215.0	215.8	223.9	229.0	232.1	1,167.7
ALT	Direct Appropriation		85.0	130.8	468.3	474.2	475.5	1,633.8
	Projected Available Balance of FY14 mandatory credits (collection)		238.9					238.9
	Projected Available Balance of FY15 mandatory credits (collection)		508.1	340.8				848.9
	Total Planned DAWDF Obligations		491.3	471.6	468.3	474.2	475.5	2,380.9
	Alt Adjustment (Alt Direct Appropriation – PBR16)		(130.0)	(85.0)	244.4	245.2	243.4	518.0

*House 2015 Appropriations Bill

Changes to Existing Law: This proposal would make the following changes to section 1705 of title 10, United States Code:

§ 1705. Department of Defense Acquisition Workforce Development Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a fund to be known as the "Department of Defense Acquisition Workforce Development Fund" (in this section referred to as the "Fund") to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense.

(b) PURPOSE.—The purpose of the Fund is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) MANAGEMENT.—The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for that purpose, from among persons with an extensive background in management relating to acquisition and personnel.

(d) ELEMENTS.—

(1) IN GENERAL.— The Fund shall consist of amounts as follows:

(A) Amounts ~~credited~~ appropriated to the Fund ~~under paragraph (2)~~.

(B) Amounts transferred to the Fund pursuant to paragraph ~~(3)~~(2).

~~(C) Any other amounts appropriated to, credited to, or deposited into the Fund by law.~~

~~(2) CREDITS TO THE FUND.— (A) There shall be credited to the Fund an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance.~~

~~(B) Subject to paragraph (4), not later than 30 days after the end of the first quarter of each fiscal year, the head of each military department and Defense Agency shall remit to the Secretary of Defense, from amounts available to such military department or Defense Agency, as the case may be, for contract services for operation and maintenance, an amount equal to the applicable percentage for such fiscal year of the amount expended by such military department or Defense Agency, as the case may be, during such fiscal year for services covered by subparagraph (A). Any amount so remitted shall be credited to the Fund under subparagraph (A).~~

~~(C) For purposes of this paragraph, the applicable percentage for a fiscal year is the percentage that results in the credit to the Fund in such fiscal year of an amount as follows:~~

~~(i) For fiscal year 2013, $500,000,000.~~
~~(ii) For fiscal year 2014, $800,000,000.~~
~~(iii) For fiscal year 2015, $700,000,000.~~
~~(iv) For fiscal year 2016, $600,000,000.~~
~~(v) For fiscal year 2017, $500,000,000.~~
~~(vi) For fiscal year 2018, $400,000,000.~~

~~(D) The Secretary of Defense may reduce an amount specified in subparagraph (C) for a fiscal year if the Secretary determines that the amount is greater than is reasonably needed for purposes of the Fund for such fiscal year. The Secretary may not reduce the amount for a fiscal year to an amount that is less than 80 percent of the amount otherwise specified in subparagraph (C) for such fiscal year.~~

~~(3)~~ (2) TRANSFER OF CERTAIN UNOBLIGATED BALANCES.—To the extent provided in appropriations Acts, the Secretary of Defense may, during the 36-month period following the expiration of availability for obligation of any appropriations made to the Department of Defense for procurement, research, development, test, and evaluation, or operation and maintenance, transfer to the Fund any unobligated balance of such appropriations. Any amount so transferred shall be credited to amounts appropriated to the Fund for the fiscal year in which such funds are transferred.

(3) PRIOR NOTICE TO CONGRESSIONAL COMMITTEES OF CERTAIN TRANSFERS.— The Secretary of Defense may make a transfer to the Fund pursuant to paragraph (2) that increases to an amount greater than $500,000,000 the total amount made available to the Fund for a fiscal year only after the Secretary submits to the congressional defense committees notice of the Secretary's intent to make such transfer and a period of 10 days has elapsed following the date of the notification.

~~(4) Additional requirements and limitations on remittances. (A) In the event amounts are transferred to the Fund during a fiscal year pursuant to paragraph (1)(B) or appropriated to the Fund for a fiscal year pursuant to paragraph (1)(C), the aggregate amount otherwise required to be remitted to the Fund for that fiscal year pursuant to paragraph (2)(B) shall be reduced by the amount equal to the amounts so transferred or appropriated to the Fund during or for that fiscal year. Any reduction in the aggregate amount required to be remitted to the Fund for a fiscal year under this subparagraph shall be allocated as provided in applicable provisions of appropriations Acts or, absent such provisions, on a pro rata basis among the military departments and Defense Agencies required to make remittances to the Fund for that fiscal year under paragraph (2)(B), subject to any exclusions the Secretary of Defense determines to be necessary in the best interests of the Department of Defense.~~

~~(B) Any remittance of amounts to the Fund for a fiscal year under paragraph (2) shall be subject to the availability of appropriations for that purpose.~~

(e) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Subject to the provisions of this subsection, amounts in the Fund shall be available to the Secretary of Defense for expenditure, or for transfer to appropriations available to a military department or Defense Agency, for the recruitment, training, and retention of acquisition personnel of the Department of Defense for the purpose of the Fund, including for the provision of training and retention incentives to the acquisition workforce of the Department. In the case of temporary members of the acquisition workforce designated pursuant to subsection (h)(2), such funds shall be available only for the limited purpose of providing training in the performance of acquisition-related functions and duties.

(2) PROHIBITION.—Amounts in the Fund may not be obligated for any purpose other than purposes described in paragraph (1) or otherwise in accordance with this subsection.

(3) GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the senior official designated to manage the Fund, shall issue guidance for the administration of the Fund. Such guidance shall include provisions—

(A) identifying areas of need in the acquisition workforce for which amounts in the Fund may be used, including-

(i) changes to the types of skills needed in the acquisition workforce;

(ii) incentives to retain in the acquisition workforce qualified, experienced acquisition workforce personnel; and

(iii) incentives for attracting new, high-quality personnel to the acquisition workforce;

(B) describing the manner and timing for applications for amounts in the Fund to be submitted;

(C) describing the evaluation criteria to be used for approving or prioritizing applications for amounts in the Fund in any fiscal year; and

(D) describing measurable objectives of performance for determining whether amounts in the Fund are being used in compliance with this section.

(4) LIMITATION ON PAYMENTS TO OR FOR CONTRACTORS.—Amounts in the Fund shall not be available for payments to contractors or contractor employees, other than for the purpose of providing advanced training to Department of Defense employees.

(5) PROHIBITION ON PAYMENT OF BASE SALARY OF CURRENT EMPLOYEES.—Amounts in the Fund may not be used to pay the base salary of any person who was an employee of the Department serving in a position in the acquisition workforce as of January 28, 2008, and who has continued in the employment of the Department since such time without a break in such employment of more than a year.

(6) DURATION OF AVAILABILITY.—Amounts ~~credited to the Fund in accordance with subsection (d)(2),~~ transferred to the Fund pursuant to subsection ~~(d)(3),~~ (d)(2) or appropriated to the Fund~~, or deposited to the Fund~~ shall remain available for obligation in the fiscal year ~~for which credited,~~ in which transferred, or for which appropriated, ~~or deposited~~ and the ~~two~~ succeeding fiscal ~~years~~ year.

(f) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report on the operation of the Fund during such fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

(1) A statement of the amounts ~~remitted to the Secretary for crediting to the Fund for such fiscal year by each military department and Defense Agency, and a statement of the amounts credited~~ transferred to the Fund in such fiscal year or appropriated to the Fund for such fiscal year.

(2) A description of the expenditures made from the Fund (including expenditures following a transfer of amounts in the Fund to a military department or Defense Agency) in such fiscal year, including the purpose of such expenditures.

(3) A description and assessment of improvements in the Department of Defense acquisition workforce resulting from such expenditures.

(4) Recommendations for additional authorities to fulfill the purpose of the Fund.

(5) A statement of the balance remaining in the Fund at the end of such fiscal year.

(g) EXPEDITED HIRING AUTHORITY.—

(1) For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—

(A) designate any category of acquisition workforce positions as positions for which there exists a shortage of candidates or there is a critical hiring need; and

(B) utilize the authorities in such sections to recruit and appoint qualified persons directly to positions so designated.

(2) The Secretary may not appoint a person to a position of employment under this subsection after September 30, 2017.

(h) ACQUISITION WORKFORCE DEFINED.—In this section, the term "acquisition workforce" means the following:

(1) Personnel in positions designated under section 1721 of this title as acquisition positions for purposes of this chapter.

(2) Other military personnel or civilian employees of the Department of Defense who—

(A) contribute significantly to the acquisition process by virtue of their assigned duties; and

(B) are designated as temporary members of the acquisition workforce by the Under Secretary of Defense for Acquisition, Technology, and Logistics, or by the senior acquisition executive of a military department, for the limited purpose of receiving training for the performance of acquisition-related functions and duties.

Subtitle B—Amendments to General Contract Authorities, Procedures, and Limitations

Section 811 would amend section 1908(e)(2) of title 41, United States Code, to determine the dollar range for purposes of rounding on the dollar value of the calculated adjustment to the dollar threshold, rather than on the dollar value of the threshold on the day before the adjustment is calculated. Further, the proposal would provide additional rounding increments for acquisition-related thresholds that are $10 million or more up to more than $1 billion.

41 U.S.C. 1908 provides, with some exceptions, for adjustment every five years of dollar thresholds that are specified in law as a factor in defining the scope of the applicability of the policy, procedure, requirement, or restriction provided in the law to the procurement of property or services by an executive agency, as determined by the Federal Acquisition Regulatory Council. 41 U.S.C. 1908 (e)(1) specifies how to calculate the adjustment based on changes in the Consumer Price Index for all urban consumers. Paragraph (e)(2) specifies how to round the resultant calculation, using dollar ranges of less than $10,000, less than $100,000, less than $1,000,000, and $1,000,000 or more, based on the value of the dollar threshold the day before adjustment.

The first problem with regard to the specified rounding procedures is that basing the rounding increment on the threshold prior to the adjustment calculation can in some circumstances lead to an inconsistent and inappropriate level of rounding. If the unadjusted threshold is just under the top end of a range, and the calculated adjustment will bring it into the next higher range, then the threshold should be rounded based on the calculated adjustment, rather than on the unadjusted amount in the lower range.

Secondly, for acquisition thresholds of $10 million or more up to more than $1 billion, rounding to the nearest $500,000 is not efficient and causes unnecessarily frequent changes in the thresholds. The rounding should be more appropriate to the dollar value of the threshold.

This legislative proposal corrects both these issues, by:

- Changing the lead-in to paragraph (e)(2) to address value of the dollar threshold that is calculated in accordance with (e)(1), rather than the value of the dollar threshold on the day before the adjustment; and

- Providing additional dollar ranges for rounding values from $10 million and over to $1 billion and over, with rounding values proportional to the rounding values in the ranges currently established in 41 U.S.C. 1908(e)(2).

Budgetary Implications: There would be no budgetary impact as a result of this legislative change because the proposal only addresses the process for how acquisition-related dollar thresholds are adjusted every five years to pace with inflation and does not increase costs to the Government.

Changes to Existing Law: This proposal would make changes to section 1908(e)(2) of title 41, United States Code, as follows:

§ 1908. Inflation adjustment of acquisition-related dollar thresholds

(a) ***

* * * * *

(e) CALCULATION.—An adjustment under this section shall be—

(1) calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Secretary of Labor; and

(2) rounded, in the case of a dollar threshold that ~~on the day before the adjustment~~ as calculated under paragraph (1) is—

(A) less than $10,000, to the nearest $500;

(B) not less than $10,000, but less than $100,000, to the nearest $5,000;

(C) not less than $100,000, but less than $1,000,000, to the nearest $50,000; ~~and~~

(D) not less than $1,000,000 ~~or more~~, but less than $10,000,000, to the nearest $500,000;

(E) not less than $10,000,000, but less than $100,000,000, to the nearest $5,000,000;

(F) not less than $100,000,000, but less than $1,000,000,000, to the nearest $50,000,000; and

(G) $1,000,000,000 or more, to the nearest $500,000,000.

Section 812 would extend by three years the authority under section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2399), as amended by section 841(a) of the FY 2013 NDAA (Public Law 112-239; 126 Stat. 1845) and section 832 of the FY 2014 NDAA (Public Law 113-66; 127 Stat. 814). Section 801 provides the Department of Defense with enhanced authority to acquire products and services produced in countries along a major route of supply to Afghanistan. This proposal would extend the authority under that section by three years, from December 31, 2015, to December 31, 2018.

Extension of authority under section 801 of the FY 2010 NDAA is necessitated by the ongoing and emerging U.S. mission in the region. Extension of authority under section 801 would support U.S. counterterrorism operations, Afghan National Security Forces training mission, and promote stability in the region through U.S.-led efforts to help the growth of the Afghan economy and increase trade with its neighbors.

This authority is an important tool for accessing the route of supply to Afghanistan by maintaining our established relationships with Northern Distribution Network (NDN) countries. Inattention to relationships may compromise our freedom of movement in or through a region for future security efforts or humanitarian response by U.S. Government agencies. In addition, the procurement of supplies, services, and construction material from NDN countries will provide economic opportunities and bolster stability in the region.

On September 30, 2014, the U. S. and the new Afghan Government of National Unity signed a Bilateral Security Agreement (BSA), permitting continued training and advising of Afghan security forces as well as counterterrorism operations against remnants of Al Qaeda. The BSA reflects an enduring partnership between the U.S. and the new Afghan Unity Government and shared goal of defeating Al Qaeda and its extremist affiliates in the region. Also, on September 30th, the new Afghan Unity Government and the North Atlantic Treaty Organization (NATO) officials signed the NATO Status of Forces Agreement giving forces from Allied and partner countries the legal protections necessary to carry out the NATO Resolute Support mission when Operation Enduring Freedom comes to an end at the end of 2014. Considering U.S. and Allies continued presence and escalating Islamic militants activities in Iraq, the Department requests this authority be extended by three years to ensure DoD continues to support our security training forces and counterterrorism operations in the region.

Budget Implications: This proposal to extend the authority would not increase costs to the Government because this proposal only addresses procurement processes. This proposal has positive fiscal implications, such as increasing the local procurement of goods, which will decrease overall U.S. transportation costs and risks. Shipping goods from Europe or the United States to Afghanistan is very costly, requires multiple modes of transportation, and relies on uninterrupted throughput in a number of diverse facilities (ports, rails, roads, and air) in many different countries, while dealing with numerous customs services. By reducing the distance, complexity, risk, and cost involved in resupplying forces in Afghanistan, the United States will gain a strategic advantage in that effort.

Changes to Existing Law: This proposal would make the following change to section 801 of the FY 2010 NDAA (P.L. 111-84), as amended by section 841 of the FY 2013 NDAA and section 832 of the FY 2014 NDAA:

SEC. 841. EXTENSION OF AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN COUNTRIES ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.

(a) IN GENERAL.—In the case of a product or service to be acquired in support of military or stability operations in Afghanistan for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

(1) competition is limited to products or services that are from one or more countries along a major route of supply to Afghanistan; or

(2) a preference is provided for products or services that are from one or more countries along a major route of supply to Afghanistan.

(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that —

(1) the product or service concerned is to be used—

(A) in the country that is the source of the product or service;

(B) in the course of efforts by the United States or NATO forces to ship goods to or from Afghanistan in support of military or stability operations in Afghanistan;

(C) by the military forces, police, or other security personnel of Afghanistan; or

(D) by the United States or coalition forces in Afghanistan if the product or service is from a country that has agreed to allow the transport of coalition personnel, equipment, and supplies;

(2) it is in the national security interest of the United States to limit competition or provide a preference as described in subsection (a) because such limitation or preference is necessary—

(A) to reduce overall United States transportation costs and risks in shipping goods in support of military or stability operations in Afghanistan;

(B) to encourage countries along a major route of supply to Afghanistan to cooperate in expanding supply routes through their territory in support of military or stability operations in Afghanistan; or

(C) to help develop more robust and enduring routes of supply to Afghanistan; and

(3) limiting competition or providing a preference as described in subsection (a) will not adversely affect—

(A) military or stability operations in Afghanistan; or

(B) the United States industrial base.

(c) PRODUCTS AND SERVICES FROM A COUNTRY ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.—For the purposes of this section:

(1) A product is from a country along a major route of supply to Afghanistan if it is mined, produced, or manufactured in a covered country.

(2) A service is from a country along a major route of supply to Afghanistan if it is performed in a covered country by citizens or permanent resident aliens of a covered country.

(d) COVERED COUNTRY DEFINED.—In this section, the term "covered country" means Georgia, Kyrgyzstan, Pakistan, Armenia, Azerbaijan, Kazakhstan, Tajikistan, Uzbekistan, or Turkmenistan.

(e) CONSTRUCTION WITH OTHER AUTHORITY.—The authority provided in subsection (a) is in addition to the authority set forth in section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 266; 10 U.S.C. 2302 note).

(a) TERMINATION OF AUTHORITY.—The Secretary of Defense may not exercise the authority provided in subsection (a) after December 31, ~~2015~~ 2018.

Section 813 would amend title 41, United States Code, with respect to civilian contracting, and title 10, United States Code, with respect to defense contracting, to provide an exception to the existing statutory requirement to include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals for all contracts. The exception would only apply, if the Government elects at its discretion to invoke for a given solicitation, to multiple award task or delivery order contracts to acquire services. Furthermore, the exception would only apply in those instances where the Government intends to make a contract award to each qualifying offeror, thus affording maximum opportunity for effective competition at the task order level. An offeror would be qualified only if it is a responsible source, submits a proposal that conforms to the requirements of the solicitation, and is a source that the contracting officer has no reason to believe would likely submit other than fair and reasonable pricing for orders.

The Competition in Contracting Act (CICA) requires agencies to include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals. According to Government Accountability Office (GAO) case law, "agencies have considerable discretion in determining the appropriate method for taking cost into account, but the method used must provide for a reasonable assessment of the cost of performance of the competing proposals." With respect to multiple award task or delivery contracts, the Court of Federal Claims has agreed with the GAO in concluding that "there is no exception to the requirement set forth in CICA that cost or price to the government be considered in selecting proposals for award because the selected awardees will be provided the opportunity to compete for task orders under the awarded contracts" (SERCO INC. v. United States, 81 Fed. Cl. 463, 492 (COFC) (March 2008) citing MIL Corp., 2004 WL 3190217, at 7.).

However, in practice, the evaluation of price as a source selection factor in determining which offerors will receive initial contracts awards for service contracts is problematic at best and is, in many cases for all intents and purposes meaningless. A legislative change is necessary to address this area of procurement law, particularly in light of the fact that over 51 percent of

the dollars obligated for Fiscal Year (FY) 2014 in support of the Federal Agencies acquisitions for services are executed under these types of contracts.

For multiple award task and delivery order contracts to acquire services, there are two primary techniques that the GAO has recognized as legitimate methods to evaluate cost and price. Each technique has to account for the "indefinite" nature of an indefinite delivery/indefinite quantity (IDIQ) arrangement. By definition, the agency does not know specifically at the time the award is made to what extent the contract vehicle will be used to place orders. One technique is for the agency to structure the Request for Proposals (RFP) to instruct offerors to fill in a table in their proposal listing their labor rates for services. Another method is to instruct offerors to respond to a hypothetical ("sample") task.

When using the rate table technique, agencies must develop estimates of the quantity and mix of various labor hours based on historical experience of similar services acquired in the past. These estimates reflect what the agency expects to experience over the life of the new contract. For evaluation purposes, the agency multiplies its estimated hours against the offerors' proposed rates to arrive at the evaluated price.

Although the rate table method has been accepted by the GAO as a valid means to evaluate price in multiple award IDIQ contracts, the technique is flawed because it presumes that a given set of fully loaded labor rates can be meaningfully evaluated by comparing one offeror's set to another's. The flaw lies in the fact that each prospective offeror has its own unique array of labor categories and its own unique disclosure statement that governs how work will be proposed and executed. Despite an agency's best attempt to develop and normalize a common set of labor rate categories from which each offeror will be required to propose, this set will invariably not correlate to the company's actual labor structure. As a result, there is an artificial basis for comparison. Furthermore, the rate table technique runs counter to the statutory preference for performance-based service contracting. It should not matter how a particular offeror's proposed fully burdened labor rates compare another's if the awardees are required to propose bottom line firm fixed prices to perform task orders under performance-based terms. Since the rate table technique simply multiplies the offerors' rates by the Government's estimated hours, the evaluated price does not reflect any consideration for the fact that one offeror might ultimately bid an innovative or efficient means to accomplish the work under a particular task order.

An alternative to the rate table method is the use of sample tasks. When an agency lacks historical data from which to establish an estimate of the mix and quantity of labor hours to be expended over the life of the IDIQ contract, it may employ the sample task technique as a means to evaluate cost or price (as well as technical factors). The GAO found this approach may provide a reasonable basis to evaluate cost, even if it results in substantial variations in offeror responses (see Matter of High-Point Schaer, B-242616, May 28, 1991).

However, in another case, the GAO sustained the protestor's contention that the agency's price evaluation to acquire travel services under a multiple award IDIQ arrangement was flawed because the agency's request for proposals did not require offerors to propose binding prices for which they would be required to honor in future task order proposals (see In Matter of CW

Government Travel Inc.—Reconsideration, B-295530, July 25, 2005 at 10). The GAO held that "[b]ecause the sample task pricing is not binding, a price realism and reasonableness analysis based on that pricing provides no meaningful assessment of the likely cost to the government of an offeror's proposal." When offerors are held bound under the resultant IDIQ contract to the rates proposed in their sample task order, agencies are able to assert that they fulfilled the current statutory requirement to evaluate cost or price to the Government. As a technique, agencies typically incorporate sample task rates as ceiling rates in the resultant contract, which enables awardees to bid lower rates (if they desire) in individual task order proposals. However, agencies often structure IDIQ service contracts to afford flexibility to award task orders under the full range of contract types and when cost reimbursable orders are used, it is not appropriate to cap the order rates at the "ceiling" rates bid in the sample task. Notably, in the aforementioned case, the GAO decision stated, "We acknowledge that the evaluation of price or cost in the award of an ID/IQ 'umbrella' contract can be challenging, particularly in the procurement of services, because the more meaningful price competition may take place at the time individual task or delivery orders are to be issued."

Relieving the requirement to account for cost or price when evaluating proposals for the initial award of multiple award IDIQ service contracts will enable procurement officials to focus their energy on establishing and evaluating the non-price factors that will result in more meaningful distinctions among offerors. Source selection officials typically spend (collectively) hundreds of hours evaluating cost and price as a factor in awarding any given multiple award IDIQ contract to acquire services. This is non-value added effort since the meaningful evaluation of cost and price takes place at the point in time when subsequent task or delivery order proposals are evaluated.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Changes to Existing Law: The proposal would amend section 3306 of title 41, United States Code, and section 2305 of title 10, United States Code, as follows:

TITLE 41, UNITED STATES CODE

§3306. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.-

(1) PREPARING FOR PROCUREMENT.-In preparing for the procurement of property or services, an executive agency shall-

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.-Each solicitation under this division shall include specifications that-

(A) consistent with this division, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.-For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy those needs. Subject to those needs, specifications may be stated in terms of-

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) CONTENTS OF SOLICITATION.-In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include-

(1) a statement of-

(A) all significant factors and significant subfactors that the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids-

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals-

(i) either a statement that the proposals are intended to be evaluated with, and the award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and the award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.-

(1) IN GENERAL.-In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall-

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) except as provided in paragraph (3), include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) except as provided in paragraph (3), disclose to offerors whether all evaluation factors other than cost or price, when combined, are-

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.-Regulations implementing paragraph (1)(C) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(3) EXCEPTIONS FOR CERTAIN INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACTS.—If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 4103(d) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

(A) cost or price to the Federal Government need not, at the Government's discretion, be considered under subparagraph (B) of paragraph (1) as an evaluation factor for the contract award; and

(B) if, pursuant to subparagraph (A), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(i) the disclosure requirement of subparagraph (C) of paragraph (1) shall not apply; and

(ii) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section 4106(c) of this title of a task or delivery order under any contract resulting from the solicitation.

(4) QUALIFYING OFFEROR DEFINED.—In paragraph (3), the term 'qualifying offeror' means an offeror that—

(A) is determined to be a responsible source;

(B) submits a proposal that conforms to the requirements of the solicitation; and

(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(d) ADDITIONAL INFORMATION IN SOLICITATION.-This section does not prohibit an executive agency from-

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.-An executive agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in the solicitation a clause providing for the evaluation of prices for options to purchase additional

property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.

(f) ***

TITLE 10, UNITED STATES CODE

§2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals-

(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(II) the time and place for submission of proposals.

(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(ii) shall (except as provided in subparagraph (C)) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals); and

(iii) shall (except as provided in subparagraph (C)) disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(I) significantly more important than cost or price;

(II) approximately equal in importance to cost or price; or

(III) significantly less important than cost or price.

(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(C) If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 2304a(d)(1)(B) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

(i) cost or price to the Federal Government need not, at the Government's discretion, be considered under clause (ii) of subparagraph (A) as an evaluation factor for the contract award; and

(ii) if, pursuant to clause (i), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(I) the disclosure requirement of clause (iii) of subparagraph (A) shall not apply; and

(II) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section 2304c(b) of this title of a task or delivery order under any contract resulting from the solicitation.

(D) In subparagraph (C), the term "qualifying offeror" means an offeror that—

(i) is determined to be a responsible source;

(ii) submits a proposal that conforms to the requirements of the solicitation; and

(iii) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(4) Nothing in this subsection prohibits an agency from—

(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(b) ***

* * * * * * *

Subtitle C—Acquisition Reform Proposals

Section 821. Based on analyses of historical data, the Department of Defense (DoD) has determined that one of the most important factors in predicting good cost performance for a development contract is the use of incentive-type contracts relating to cost, schedule, and performance. This category includes fixed-price incentive fee (FPIF) and cost-plus incentive fee (CPIF) contracts. These types of contracts provide objective and predictable measures of contractor performance, provide appropriate incentives to control cost growth, and help maximize value. The analyses supporting this finding were initiated following release of the report issued by the Under Secretary of Defense (Acquisition, Technology and Logistics) in June 2013, “Performance of the Defense Acquisition System.” Therefore, the Department proposes replacing section 818 of the National Defense Authorization Act, Fiscal Year 2007 (FY07 NDAA) with a new subsection of section 2306 of title 10, United States Code, to require the acquisition strategy for a major defense acquisition program or a major automated information system to identify and justify the contract type used for development. The justification must explain how the level of program risk relates to the contract type selected and how the use of incentives, if any, supports the objectives of the program. The new title 10 provision would require the Department to establish in guidance that the use of predetermined, formula-type incentives in development contracts is ordinarily in the Government’s interest.

Budgetary Implications: DoD acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the Future Years Defense Program.
Changes to Existing Law: This proposal would strike subsections (b), (c), (d), and (e) of section 818 of the FY07 NDAA and replace them with a new subsection of section 2306 of title 10, United States Code, shown in full in the legislative text above.

SEC. 818. DETERMINATION OF CONTRACT TYPE FOR DEVELOPMENT PROGRAMS.

(a) REPEAL OF SUPERSEDED REQUIREMENTS.--Section 807 of the National Defense Authorization Act, Fiscal Year 1989 (10 U.S.C. 2304 note) is repealed.

~~(b) MODIFICATION OF REGULATIONS.--Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall modify the regulations of the Department of Defense regarding the determination of contract type for development programs.~~

~~(c) ELEMENTS.--As modified under subsection (b), the regulations shall require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program at the time of a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program) that is consistent with the level of program risk for the program. The Milestone Decision Authority may select--~~

~~(1) a fixed-price type contract (including a fixed price incentive contract); or~~

~~(2) a cost type contract.~~

~~(d) CONDITIONS WITH RESPECT TO AUTHORIZATION OF COST TYPE CONTRACT.--As modified under subsection (b), the regulations shall provide that the Milestone Decision Authority may authorize the use of a cost type contract under subsection (c) for a development program only upon a written determination that--~~

~~(1) the program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and~~

~~(2) the complexity and technical challenge of the program is not the result of a failure to meet the requirements established in section 2366a of title 10, United States Code.~~

~~(e) JUSTIFICATION FOR SELECTION OF CONTRACT TYPE.--As modified under subsection (b), the regulations shall require the Milestone Decision Authority to document the basis for the contract type selected for a program. The documentation shall include an explanation of the level of program risk for the program and, if the Milestone Decision Authority determines that the level of program risk is high, the steps that have been taken to reduce program risk and reasons for proceeding with Milestone B approval despite the high level of program risk.~~

Section 822. This is one of a series of acquisition reform proposals developed by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) to streamline and simplify the complex statutory requirements applicable to the defense acquisition system. The overarching objective is to synthesize and streamline statutory requirements that have accumulated in layers over several years, while retaining the underlying statutory principles. The numerous information requirements attributable to these statutes combine to reproduce or duplicate analysis in other documents, thus creating redundancy and significantly delaying key acquisition decisions. The desired effect of this initiative is to 1) to support tailoring of the acquisition process; thereby focusing decisions on key issues and risks in each program; 2) reduce redundant and unnecessary documentation burdens on the Program Manager within the defense acquisition process; and 3) consolidate related statutory requirements in a coherent manner within foundational statutory provisions.

This proposal would eliminate the statutory requirement for consideration by the Secretary of Defense of a stand-alone manpower estimate, in addition to an independent estimate of lifecycle cost, prior to approval of development or production and deployment of a major

defense acquisition program as established by section 2434 of title 10, United States Code. Within the Department of Defense (DoD), manpower estimates are integral for the development of multiple documents prepared during the acquisition process including the independent cost estimate. Requiring the Secretary at development and demonstration or production and deployment decision points to consider a separate manpower document, which provides the low level details that are used when conducting the independent cost estimate, places an unnecessary burden on the acquisition process.

The Department recognizes that an estimate of total required manpower is fundamental in defining a program's affordability and life-cycle resource estimates, including operations and support. As amended, section 2434 of title 10, United States Code, requires the independent estimate of the full life-cycle cost of a major defense acquisition program to include an estimate of the manpower cost. These independent estimates are informed by detailed program information obtained by the acquisition community, to include detailed system descriptions and manpower estimates. The Department will update its guidance regarding the timely development of manpower estimates and any associated documentation to ensure that they continue to be considered. Accordingly, the language in paragraph (2) [current paragraph (1)(B)] of section 2434(b) has been modified to reinforce the importance of including a cost estimate and analysis based on the manpower estimates in the independent estimate of a program's full life-cycle cost.

The elimination of the statutory requirement for a manpower estimate report will reduce unnecessary staffing time in the defense acquisition process. A manpower estimate report will be provided to the Office of Cost Assessment and Program Evaluation to assist the development of cost estimates by the Services. An assessment of the documentation required for several recent Major Defense Acquisition Programs (MDAPs) at key milestone reviews indicated that Manpower Estimate Reports require between 5-12 months to develop and complete staffing. Efficiencies are achieved by eliminating the requirement to staff and have the Secretary consider the manpower estimate report when the estimated manpower costs are included and considered as part of the independent cost estimate.

Budgetary Implications: DoD acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the Future Year Defense Program.

Changes to Existing Law: This proposal would make the following changes to section 2434 of title 10, United States Code:

§ 2434. Independent cost estimates~~; operational manpower requirements~~

(a) REQUIREMENT FOR APPROVAL.—The Secretary of Defense may not approve the system development and demonstration or the production and deployment, of a major defense acquisition program unless an independent estimate of the full life-cycle cost of the program ~~and a manpower estimate for the program have~~ has been considered by the Secretary.

(2) The provisions of this section shall apply to any major subprogram of a major defense acquisition program (as designated under section 2430a(a)(1) of this title) in the same manner as those provisions apply to a major defense acquisition program, and any reference in this section to a program shall be treated as including such a subprogram.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

~~(1)~~ that the independent estimate of the full life-cycle cost of a program—

~~(A)~~ (1) be prepared or approved by the Director of Cost Assessment and Program Evaluation; and

~~(B)~~ (2) include all costs of development, procurement, military construction, ~~and~~ operations and support, and manpower to operate, maintain, and support the program upon full operational deployment, without regard to funding source or management control~~; and~~.

~~(2) that the manpower estimate include an estimate of the total number of personnel required~~

~~(A) to operate, maintain, and support the program upon full operational deployment; and~~

~~(B) to train personnel to carry out the activities referred to in subparagraph (A).~~

Section 823. This is part of a series of acquisition reform proposals developed by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) to streamline and simplify the complex defense acquisition system. This initiative is focused on developing legislative proposals to synthesize and streamline statutory requirements for acquisition programs that have accumulated in layers over several years, while retaining the underlying statutory principles. The numerous, and often redundant, documentation requirements attributable to these statutes combine to significantly delay key decision points in defense acquisition programs. Though intended to ensure that key issues are considered prior to these decision points, many of these statutory requirements result in redundant documentation that reproduces or duplicates analysis in other documents or processes that already precede these key program reviews. The desired effect of this initiative is to 1) support tailoring of the acquisition process; thereby focusing decisions on key issues and risks in each program; 2) reduce redundant and unnecessary documentation burdens on the Program Manager responsible for demonstrating that the program is eligible for approval by Department officials; and 3) consolidate related statutory requirements in a coherent manner within foundational statutory provisions.

Sections 2366a and 2366b of title 10, United States Code currently establish a certification requirement for the Department official serving as the milestone decision authority in the defense acquisition process. These requirements impose specific considerations that must be factored prior to a determination that an acquisition program should proceed to successive milestones in the defense acquisition process. As written, the requirements of 2366a and 2366b call for the milestone decision authority to certify specific findings prior to milestone approval. This proposal replaces the existing certification requirements with a broader set of required findings that generally describing critical risks affecting acquisition programs. The proposal

also, and makes conforming changes to other statutes, to clearly define the responsibilities of the milestone decision authority in granting approval at milestones A and B and to ensure that Congress is notified of milestone approvals. The current certification requirements are highly specific and have resulted in duplicative documentation. For instance, the current certification requirements at Milestone B include a requirement for the Undersecretary of Defense (Acquisition, Technology & Logistics) to certify that the Joint Requirements Oversight Council (JROC) has met its responsibilities under Title 10, Section 181(b), which include the assessment and approval of requirements for weapon systems and equipment. Acquisition programs for weapon systems and equipment cannot receive consideration for Milestone approval without a valid military requirement approved by the JROC. However, the current statute nonetheless creates a redundant documentation requirement consistent with this independent certification requirement. The revised certification requirements replace existing requirements with a more streamlined set of principles that reflect the underlying issues addressed in the original statute. Finally, the provision replaces the milestone certification requirements currently in statute which address some of the milestone decision authority considerations contained in the proposal.

Section 2366a, as amended by the proposal, establishes the Milestone Decision Authority's responsibility to ensure that an acquisition program has demonstrated sufficient knowledge to enter into a risk reduction phase following Milestone A and has sound plans to progress to the development phase before granting milestone approval. It specifies the considerations the milestone decision authority must take into account, thereby addressing the critical activities that need to precede and occur during the succeeding risk reduction phase. It specifies how the milestone decision authority should consider the requirements of related statutes including the requirements of the Weapons Systems Acquisition Reform Act of 2009. Section 2366a as amended by the proposal eliminates the requirement that Congress be notified of cost increases or schedule growth occurring during the risk reduction phase. This requirement has resulted in notification in only a few instances since it was established because the lack of a program baseline during the risk reduction phase makes it difficult to determine when such events have occurred. To the extent that projected cost or schedule growth during the risk reduction phase does occur, it is best addressed by the milestone decision authority in the preparation for milestone B.

Section 2366b, as amended by the proposal, establishes the milestone decision authority's responsibility to ensure that an acquisition program has demonstrated sufficient knowledge to enter a development phase and has sound plans in place to deliver the required capability before granting milestone approval. It specifies the considerations the milestone decision authority must take into account, thereby addressing the critical activities that need to precede and occur during the development phase. It specifies how the milestone decision authority should consider the requirements of related statutes, including the requirements of the Weapon Systems Acquisition Reform Act of 2009, the Competition in Contracting Act, and statutes relating to sustainment.

The proposal, also, makes conforming changes to section 139b and section 2334 of title 10, United States Code.

Budgetary Implications: Department of Defense acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the FYDP.

Changes to Existing Law: This section would make the following changes in the provisions of existing law:

Section 2366a of title 10, United States Code, is completely revised. The new text appears in the legislative text above. The current text appears below

Section 2366b of title 10, United States Code, is completely revised. The new text appears in the legislative text above. The current text appears below

Section 139b of title 10, United States Code would be amended as follows:

§139b. Deputy Assistant Secretary of Defense for Developmental Test and Evaluation; Deputy Assistant Secretary of Defense for Systems Engineering; joint guidance

(a) DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENTAL TEST AND EVALUATION.-

(1) APPOINTMENT.-There is a Deputy Assistant Secretary of Defense for Developmental Test and Evaluation, who shall be appointed by the Secretary of Defense from among individuals with an expertise in test and evaluation.

(2) PRINCIPAL ADVISOR FOR DEVELOPMENTAL TEST AND EVALUATION.-The Deputy Assistant Secretary shall be the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on developmental test and evaluation in the Department of Defense.

(3) SUPERVISION.-The Deputy Assistant Secretary shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics and shall report to the Under Secretary. The Deputy Assistant Secretary may communicate views on matters within the responsibility of the Deputy Assistant Secretary directly to the Under Secretary without obtaining the approval or concurrence of any other official within the Department of Defense.

(4) COORDINATION WITH DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.-The Deputy Assistant Secretary of Defense for Developmental Test and Evaluation shall closely coordinate with the Deputy Assistant Secretary of Defense for Systems Engineering to ensure that the developmental test and evaluation activities of the Department of Defense are fully integrated into and consistent with the systems engineering and development planning processes of the Department.

(5) DUTIES.-The Deputy Assistant Secretary shall-

(A) develop policies and guidance for-

(i) the conduct of developmental test and evaluation in the military departments and other elements of the Department of Defense (including integration and developmental testing of software);

(ii) in coordination with the Director of Operational Test and Evaluation, the integration of developmental test and evaluation with operational test and evaluation;

(iii) the conduct of developmental test and evaluation conducted jointly by more than one military department or Defense Agency;

(B) ~~review and approve or disapprove~~ advise the Milestone Decision Authority regarding review and approval of the developmental test and evaluation plan within the test and evaluation master plan for each major defense acquisition program of the Department of Defense;

(C) monitor and review the developmental test and evaluation activities of the major defense acquisition programs in order to advise relevant technical authorities for such programs on the incorporation of best practices for developmental test from across the Department (including the activities of chief developmental testers and lead developmental test evaluation organizations designated in accordance with subsection (c));

(D) provide advocacy, oversight, and guidance to elements of the acquisition workforce responsible for developmental test and evaluation;

(E) periodically review the organizations and capabilities of the military departments with respect to developmental test and evaluation and identify needed changes or improvements to such organizations and capabilities, and provide input regarding needed changes or improvements for the test and evaluation strategic plan developed in accordance with section 196(d) of this title;

(F) in consultation with the Assistant Secretary of Defense for Research and Engineering, assess the technological maturity and integration risk of critical technologies at key stages in the acquisition process; and

(G) perform such other activities relating to the developmental test and evaluation activities of the Department of Defense as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

(6) ACCESS TO RECORDS.-The Secretary of Defense shall ensure that the Deputy Assistant Secretary has access to all records and data of the Department of Defense (including the records and data of each military department and including classified and proprietary information, as appropriate) that the Deputy Assistant Secretary considers necessary in order to carry out the Deputy Assistant Secretary's duties under this subsection.

(7) CONCURRENT SERVICE AS DIRECTOR OF DEPARTMENT OF DEFENSE TEST RESOURCES MANAGEMENT CENTER.-The individual serving as the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation shall also serve concurrently as the Director of the Department of Defense Test Resource Management Center under section 196 of this title.

(8) RESOURCES.-

(A) The President shall include in the budget transmitted to Congress, pursuant to section 1105 of title 31, for each fiscal year, a separate statement of estimated expenditures and proposed appropriations for the fiscal year for the activities of the Deputy Assistant Secretary of Defense for Developmental

Test and Evaluation in carrying out the duties and responsibilities of the Deputy Assistant Secretary under this section.

(B) The Deputy Assistant Secretary of Defense for Developmental Test and Evaluation shall have sufficient professional staff of military and civilian personnel to enable the Deputy Assistant Secretary to carry out the duties and responsibilities prescribed by law.

(b) DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.-

(1) APPOINTMENT.-There is a Deputy Assistant Secretary of Defense for Systems Engineering, who shall be appointed by the Secretary of Defense from among individuals with an expertise in systems engineering and development planning.

(2) PRINCIPAL ADVISOR FOR SYSTEMS ENGINEERING AND DEVELOPMENT PLANNING.-The Deputy Assistant Secretary shall be the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on systems engineering and development planning in the Department of Defense.

(3) SUPERVISION.-The Deputy Assistant Secretary shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics and shall report to the Under Secretary.

(4) COORDINATION WITH DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENT TEST AND EVALUATION.-The Deputy Assistant Secretary of Defense for Systems Engineering shall closely coordinate with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation to ensure that the developmental test and evaluation activities of the Department of Defense are fully integrated into and consistent with the systems engineering and development planning processes of the Department.

(5) DUTIES.-The Deputy Assistant Secretary shall-

(A) develop policies and guidance for-

(i) the use of systems engineering principles and best practices, generally;

(ii) the use of systems engineering approaches to enhance reliability, availability, and maintainability on major defense acquisition programs;

(iii) the development of systems engineering master plans for major defense acquisition programs including systems engineering considerations in support of lifecycle management and sustainability; and

(iv) the inclusion of provisions relating to systems engineering and reliability growth in requests for proposals;

(B) ~~review and approve~~ advise the Milestone Decision Authority regarding approval of the systems engineering master plan for each major defense acquisition program;

(C) monitor and review the systems engineering and development planning activities of the major defense acquisition programs in order to

advise relevant technical authorities for such programs on the incorporation of best practices for systems engineering from across the Department;

(D) provide advocacy, oversight, and guidance to elements of the acquisition workforce responsible for systems engineering, development planning, and lifecycle management and sustainability functions;

(E) provide input on the inclusion of systems engineering requirements in the process for consideration of joint military requirements by the Joint Requirements Oversight Council pursuant to section 181 of this title, including specific input relating to each capabilities development document;

(F) periodically review the organizations and capabilities of the military departments with respect to systems engineering, development planning, and lifecycle management and sustainability, and identify needed changes or improvements to such organizations and capabilities; and

(G) perform such other activities relating to the systems engineering and development planning activities of the Department of Defense as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

(6) Access to records.-The Deputy Assistant Secretary shall have access to any records or data of the Department of Defense (including the records and data of each military department and including classified and proprietary information as appropriate) that the Deputy Assistant Secretary considers necessary to review in order to carry out the Deputy Assistant Secretary's duties under this subsection.

(c) SUPPORT OF MDAPS BY CHIEF DEVELOPMENTAL TESTER AND LEAD DEVELOPMENTAL TEST AND EVALUATION ORGANIZATION.-

(1) SUPPORT.-The Secretary of Defense shall require that each major defense acquisition program be supported by-

(A) a chief developmental tester; and

(B) a governmental test agency, serving as lead developmental test and evaluation organization for the program.

(2) RESPONSIBILITIES OF CHIEF DEVELOPMENTAL TESTER.-The chief developmental tester for a major defense acquisition program, consistent with policies and guidance issued pursuant to subsection (a)(5)(A), shall be responsible for-

(A) coordinating the planning, management, and oversight of all developmental test and evaluation activities for the program;

(B) maintaining insight into contractor activities under the program and overseeing the test and evaluation activities of other participating government activities under the program; and

(C) helping program managers make technically informed, objective judgments about contractor developmental test and evaluation results under the program.

(3) RESPONSIBILITIES OF LEAD DEVELOPMENTAL TEST AND EVALUATION ORGANIZATION.-The lead developmental test and evaluation organization for a major defense acquisition program, consistent with policies and guidance issued pursuant to subsection (a)(5)(A), shall be responsible for-

(A) providing technical expertise on testing and evaluation issues to the chief developmental tester for the program;

(B) conducting developmental testing and evaluation activities for the program, as directed by the chief developmental tester; and

(C) assisting the chief developmental tester in providing oversight of contractors under the program and in reaching technically informed, objective judgments about contractor developmental test and evaluation results under the program.

(4) TRANSMITTAL OF RECORDS AND DATA.-The chief developmental tester and the lead developmental test and evaluation organization for a major defense acquisition program shall promptly transmit to the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation any records or data relating to the program that are requested by the Deputy Assistant Secretary, as provided in subsection (a)(6).

(d) ANNUAL REPORT.-

(1) IN GENERAL.-Not later than March 31 each year, beginning in 2010, the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation and the Deputy Assistant Secretary of Defense for Systems Engineering shall each submit to the congressional defense committees a report on the activities undertaken pursuant to subsections (a) and (b) during the preceding year. Each report shall include a section on activities relating to the major defense acquisition programs which shall set forth, at a minimum, the following:

(A) A discussion of the extent to which the major defense acquisition programs are fulfilling the objectives of their systems engineering master plans and developmental test and evaluation plans.

(B) A discussion of the waivers of and deviations from requirements in test and evaluation master plans, systems engineering master plans, and other testing requirements that occurred during the preceding year with respect to such programs, any concerns raised by such waivers or deviations, and the actions that have been taken or are planned to be taken to address such concerns.

(C) An assessment of the organization and capabilities of the Department of Defense for systems engineering, development planning, and developmental test and evaluation with respect to such programs.

(D) Any comments on such report that the Secretary of Defense considers appropriate.

(2) ADDITIONAL REQUIREMENTS FOR REPORT BY DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENTAL TEST AND EVALUATION.-With respect to the report required under paragraph (1) by the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation, the report shall include-

(A) a separate section that covers the activities of the Department of Defense Test Resource Management Center (established under section 196 of this title) during the preceding year; and

(B) a separate section that addresses the adequacy of the resources available to the Deputy Assistant Secretary of Defense for Developmental

Test and Evaluation and to the lead developmental test and evaluation organizations of the military departments to carry out the responsibilities prescribed by this section.

(e) JOINT GUIDANCE.-The Deputy Assistant Secretary of Defense for Developmental Test and Evaluation and the Deputy Assistant Secretary of Defense for Systems Engineering shall jointly, in coordination with the official designated by the Secretary of Defense under section 103 of the Weapon Systems Acquisition Reform Act of 2009, issue guidance on the following:

(1) The development and tracking of detailed measurable performance criteria as part of the systems engineering master plans and the developmental test and evaluation plans within the test and evaluation master plans of major defense acquisition programs.

(2) The use of developmental test and evaluation to measure the achievement of specific performance objectives within a systems engineering master plan.

(3) A system for storing and tracking information relating to the achievement of the performance criteria and objectives specified pursuant to this subsection.

(f) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.-In this section, the term "major defense acquisition program" has the meaning given that term in section 2430 of this title.

* * * * *

Section 2334 of title 10, United States Code, would be amended as follows:

SEC. 2334. INDEPENDENT COST ESTIMATION AND COST ANALYSIS

(a) IN GENERAL.-The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense. In carrying out that responsibility, the Director shall-

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), the Secretaries of the military departments, and the heads of the Defense Agencies with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program under chapter 144 of this title or a major automated information system program under chapter 144A of this title;

(3) issue guidance relating to the proper selection of confidence levels in cost estimates generally, and specifically, for the proper selection of confidence levels in cost estimates for major defense acquisition programs and major automated information system programs;

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major automated information system programs;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated information system programs;

(6) conduct independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority-

(A) in advance of-

(i) ~~any certification under~~ any decision to grant milestone approval pursuant to section 2366a or 2366b of this title;

(ii) any decision to enter into low-rate initial production or full-rate production;

(iii) any certification under section 2433a of this title; and

(iv) any report under section 2445c(f) of this title; and

(B) at any other time considered appropriate by the Director or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the Department's needs for realistic cost estimation; and

(8) annually review the cost and associated information required to be included, by section 2432(c)(1) of this title, in the Selected Acquisition Reports required by that section.

(b) REVIEW OF COST ESTIMATES, COST ANALYSES, AND RECORDS OF THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.-The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation-

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major automated information system programs of the military departments and Defense Agencies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this section.

(c) PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.-The Director of Cost Assessment and Program Evaluation may-

(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department or Defense Agency for a major defense acquisition program or major automated information system program of the Department of Defense;

(2) comment on deficiencies in the methodology or execution of any cost estimate or cost analysis developed by a military department or Defense Agency for a major defense acquisition program or major automated information system program;

(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the confidence level for any such cost estimate) for use at any event specified in subsection (a)(6); and

(4) participate in the consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

(d) DISCLOSURE OF CONFIDENCE LEVELS FOR BASELINE ESTIMATES OF MAJOR DEFENSE ACQUISITION PROGRAMS.-The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each-

(1) disclose in accordance with paragraph (3) the confidence level used in establishing a cost estimate for a major defense acquisition program or major automated information system program and the rationale for selecting such confidence level;

(2) ensure that such confidence level provides a high degree of confidence that the program can be completed without the need for significant adjustment to program budgets; and

(3) include the disclosure required by paragraph (1)-

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in subsection (a)(6); and

(B) in the next Selected Acquisition Report pursuant to section 2432 of this title in the case of a major defense acquisition program, or the next quarterly report pursuant to section 2445c of this title in the case of a major automated information system program.

(e) ESTIMATES FOR PROGRAM BASELINE AND ANALYSES AND TARGETS FOR CONTRACT NEGOTIATION PURPOSES.-(1) The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of subsection (a) shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (a)(6) are not to be used for the purpose of contract negotiations or the obligation of funds.

(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(3) The Program Manager and contracting officer for each major defense acquisition program and major automated information system program shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of paragraph (1) and the policies, procedures, and guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2).

(4) Funds that are made available for a major defense acquisition program or major automated information system program in accordance with a cost estimate conducted pursuant to subsection (a)(6), but are excess to a cost analysis or target

developed pursuant to paragraph (2), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(5) Funds described in paragraph (4)-

(A) may be used-

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to paragraph (2);

(ii) to acquire additional end items in accordance with the requirements of section 2308 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(f) ANNUAL REPORT ON COST ASSESSMENT ACTIVITIES.-(1) The Director of Cost Assessment and Program Evaluation shall prepare an annual report summarizing the cost estimation and cost analysis activities of the Department of Defense during the previous year and assessing the progress of the Department in improving the accuracy of its cost estimates and analyses. Each report shall include, for the year covered by such report-

(A) an assessment of the extent to which each of the military departments and Defense Agencies have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates for major defense acquisition programs and major automated information systems;

(B) an assessment of the overall quality of cost estimates prepared by each of the military departments and Defense Agencies for major defense acquisition programs and major automated information system programs;

(C) an assessment of any consistent differences in methodology or approach among the cost estimates prepared by the military departments, the Defense Agencies, and the Director; and

(D) a summary of the cost and associated information reviewed under subsection (a)(8), an identification of any trends in that information, an aggregation of the cumulative risk of the portfolio of systems reviewed under that subsection, and recommendations for improving cost estimates on the basis of the review under that subsection.

(2) Each report under this subsection shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the congressional defense committees not later than 10 days after the transmittal to Congress of the budget of the President for the next fiscal year (as submitted pursuant to section 1105 of title 31).

(3)(A) Each report submitted to the congressional defense committees under this subsection shall be submitted in unclassified form, but may include a classified annex.

(B) The Director shall ensure that a report submitted under this subsection does not include any information, such as proprietary or source selection sensitive information, that could undermine the integrity of the acquisition process.

(C) The unclassified version of each report submitted to the congressional defense committees under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.

(4) The Secretary of Defense may comment on any report of the Director to the congressional defense committees under this subsection.

(g) STAFF.-The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.

* * * * *

Sections 2366a and 2366b of title 10, United States Code, would be replaced with entirely new texts. Their current text is shown below:

~~§2366a. Major defense acquisition programs: certification required before Milestone A approval~~

~~(a) CERTIFICATION.- A major defense acquisition program may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the Milestone Decision Authority certifies, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs-~~

~~(1) that the program fulfills an approved initial capabilities document;~~

~~(2) that the program is being executed by an entity with a relevant function as identified by the Secretary of Defense under section 118b of this title;~~

~~(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;~~

~~(4) that a determination of applicability of core logistics capabilities requirements has been made;~~

~~(5) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation; and~~

~~(6) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is consistent with the priority level assigned by the Joint Requirements Oversight Council.~~

~~(b) NOTIFICATION.- (1) With respect to a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram, at any time prior to Milestone B approval, exceeds the cost estimate for the program submitted at the time of the certification by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent, the program manager for the program concerned shall notify the Milestone Decision Authority. The Milestone Decision Authority, in consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs, shall determine whether the level of resources required to develop and procure the program remains consistent with the priority level assigned by the~~

Joint Requirements Oversight Council. The Milestone Decision Authority may withdraw the certification concerned or rescind Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(2) Not later than 30 days after a program manager submits a notification to the Milestone Decision Authority pursuant to paragraph (1) with respect to a major defense acquisition program or designated major subprogram, the Milestone Decision Authority shall submit to the congressional defense committees a report that-

(A) identifies the root causes of the cost or schedule growth in accordance with applicable policies, procedures, and guidance;

(B) identifies appropriate acquisition performance measures for the remainder of the development of the program; and

(C) includes one of the following:

(i) A written certification (with a supporting explanation) stating that-

(I) the program is essential to national security;

(II) there are no alternatives to the program that will provide acceptable military capability at less cost;

(III) new estimates of the development cost or schedule, as appropriate, are reasonable; and

(IV) the management structure for the program is adequate to manage and control program development cost and schedule.

(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(c) DEFINITIONS. In this section:

(1) The term "major defense acquisition program" has the meaning provided in section 2430 of this title.

(2) The term "designated major subprogram" means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term "initial capabilities document" means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(4) The term "technology development program" means a coordinated effort to assess technologies and refine user performance parameters to fulfill a capability gap identified in an initial capabilities document.

(5) The term "entity" means an entity listed in section 118b(c)(3) of this title.

(6) The term "Milestone B approval" has the meaning provided that term in section 2366(e)(7) of this title.

(7) The term "core logistics capabilities" means the core logistics capabilities identified under section 2464(a) of this title.

§2366b. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATION. A major defense acquisition program may not receive Milestone B approval until the milestone decision authority-

(1) has received a business case analysis and certifies on the basis of the analysis that-

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program; and

(D) funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made, consistent with the estimates described in subparagraph (C) for the program;

(2) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(3) further certifies that-

(A) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(B) the Department of Defense has completed an analysis of alternatives with respect to the program;

(C) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(D) the technology in the program has been demonstrated in a relevant environment, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation;

(E) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(F) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(G) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired; and

(H) the program complies with all relevant policies, regulations, and directives of the Department of Defense; and

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019.

(b) CHANGES TO CERTIFICATION.—(1) The program manager for a major defense acquisition program that has received certification under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certification of the milestone decision authority relating to any component of such certification specified in paragraph (1) or (2) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certification.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certification concerned or rescind Milestone B approval if the milestone decision authority determines that such certification or approval is no longer valid.

(c) SUBMISSION TO CONGRESS.—(1) The certification required under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

(2) A summary of any information provided to the milestone decision authority pursuant to subsection (b) and a description of the actions taken as a result of such information shall be submitted with the first Selected Acquisition Report submitted under section 2432 of this title after receipt of such information by the milestone decision authority.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification requirement if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification components specified in paragraphs (1), (2), and (3) of subsection (a) until

such time as the milestone decision authority determines that the program satisfies all such certification components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 2433a(c) of this title if the milestone decision authority-

(A) determines in writing that-

(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION. Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification components.

(f) NONDELEGATION. The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

(g) DEFINITIONS. In this section:

(1) The term "major defense acquisition program" means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title.

(2) The term "designated major subprogram" means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term "milestone decision authority", with respect to a major defense acquisition program, means the individual within the Department of Defense designated with overall responsibility for the program.

(4) The term "Milestone B approval" has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term "core logistics capabilities" means the core logistics capabilities identified under section 2464(a) of this title.

Section 824. This is one of a series of acquisition reform proposals developed by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) to streamline and simplify the complex statutory requirements applicable to the defense acquisition system. The overarching objective is to synthesize and streamline statutory requirements that have accumulated in layers over several years, while retaining the underlying statutory principles. The numerous information requirements attributable to these statutes combine to

reproduce or duplicate analysis in other documents, thus creating redundancy and significantly delaying key acquisition decisions. The desired effect of this initiative is to 1) to support tailoring of the acquisition process; thereby focusing decisions on key issues and risks in each program; 2) reduce redundant and unnecessary documentation burdens on the Program Manager within the defense acquisition process; and 3) consolidate related statutory requirements in a coherent manner within foundational statutory provisions.

This proposal would completely revise section 2222 of title 10, United States Code, to clarify responsibilities for the management of defense business systems. The proposal requires the Secretary of Defense to issue guidance on the management of defense business systems that enables planning, programming and control of defense business system investments and includes: a policy governing business process reengineering, a process for approving requirements for defense business systems, mechanisms for the planning and control of defense business systems investments, and policy requiring the periodic review of deployed defense business systems. The proposal also requires the Deputy Chief Management Officer of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Chief Information Officer, and the Chief Management Officers of the military departments to issue supporting guidance. Such supporting guidance should include direction that approvals of "Fourth Estate" systems by the Deputy Chief Management Officer, under subsection (f)(2)(B) of this proposal, shall be made in consultation with the Principal Staff Assistant serving as the functional sponsor for the system in question.

The proposal clarifies the purpose of the defense business enterprise architecture so that it serves as the blueprint for integrating the business processes of the Department and guides the development of interoperable defense business systems. Responsibility for developing and updating the defense business enterprise architecture is assigned to the Deputy Chief Management Office of the Department of Defense, who receives input and advice from a Defense Business Council, which is co-chaired by the Chief Information Officer and includes the Chief Management Officers of the military departments and officials who are assigned functional responsibility for major business processes of the Department. Officials with functional responsibility include the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Personnel and Readiness. The Defense Business Council is also required to provide input and advice on business process reengineering and requirements for defense business systems. The Defense Business Council would replace the current Investment Review Board.

Under the proposal, no acquisition program for a covered defense business system, which is defined as a defense business system that is expected to have a total amount of budget authority over the current future-years defense program submitted to Congress under section 221 of this title, in excess of the threshold established for the use of special simplified acquisition procedures pursuant to section 2304(g)(1)(B) of this title (currently $5,000,000.00), could proceed past Milestone B unless approved by the Chief Management Office of the military department for the system, or by the Deputy Chief Management Officer of the Department of Defense if the system belongs to a defense agency, defense field activity, or is joint. In order to receive this approval, the process the system supports must have undergone business process reengineering, the system must comply with the defense business enterprise architecture, and the

system must have valid requirements. The proposal retains an annual review and certification requirement to be performed by the Defense Business Council; however, the certification is specifically tied to covered defense business systems where an acquisition program is expending funds for development. If such a program cannot be certified, the Board must notify the appropriate approving official and the acquisition milestone decision authority and recommend corrective action. Non-compliance with the modified annual certification process is deemed a violation of the Anti-Deficiency Act under section 1341(a)(1)(A) of title 31, United States Code. The proposal clarifies that all decision making within the defense acquisition system necessary to comply with this section is the responsibility of the milestone decision authority for the systems, acting under the control and direction of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Finally, the proposal aligns congressional reporting on defense business systems with the revised structure of the section and codifies, in modified form, a reporting requirement enacted in Section 811 of the John Warner National Defense Authorization Act for Fiscal Year 2007 for covered defense business systems that fail to achieve full initial operational capability within five years. These reports would be included in the annual report to Congress on defense business systems and the five year period would be measured beginning with Milestone B approval rather than Milestone A approval. In the case of defense business systems, the risk reduction activities that occur between Milestone A and Milestone B should not typically be required.

Budgetary Implications: Department of Defense acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the Future-Years Defense Program (FYDP).

Changes to Existing Law: This section would make the following changes to provisions of existing law:

Section 2222 of title 10, United States Code, would be completely revised. The proposed new text appears in full in the legislative text above; the current text, which would be replaced, is as follows:

~~**§ 2222. Defense business systems: architecture, accountability, and modernization**~~

~~(a) CONDITIONS FOR OBLIGATION OF FUNDS FOR COVERED DEFENSE BUSINESS SYSTEM PROGRAMS.—Funds available to the Department of Defense, whether appropriated or non-appropriated, may not be obligated for a defense business system program that will have a total cost in excess of $1,000,000 over the period of the current future-years defense program submitted to Congress under section 221 of this title unless—~~

~~(1) the appropriate pre-certification authority for the covered defense business system program has determined that—~~

~~(A) the defense business system program is in compliance with the enterprise architecture developed under subsection (c) and appropriate business process re-engineering efforts have been undertaken to ensure that—~~

~~(i) the business process supported by the defense business system program is or will be as streamlined and efficient as practicable; and~~

~~(ii) the need to tailor commercial-off-the-shelf systems to meet unique requirements or incorporate unique requirements or incorporate unique interfaces has been eliminated or reduced to the maximum extent practicable;~~

~~(B) the defense business system program is necessary to achieve a critical national security capability or address a critical requirement in an area such as safety or security; or~~

~~(C) the defense business system program is necessary to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration the alternative solutions for preventing such adverse effect;~~

~~(2) the covered defense business system program has been reviewed and certified by the investment review board established under subsection (g); and~~

~~(3) the certification of the investment review board under paragraph (2) has been approved by the Defense Business Systems Management Committee established by section 186 of this title.~~

~~(b) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a covered defense business system program that has not been certified and approved in accordance with subsection (a) is a violation of section 1341(a)(1)(A) of title 31.~~

~~(c) ENTERPRISE ARCHITECTURE FOR DEFENSE BUSINESS SYSTEMS.—(1) The Secretary of Defense, acting through the Defense Business Systems Management Committee, shall develop—~~

~~(A) an enterprise architecture, known as the defense business enterprise architecture, to cover all defense business systems, and the functions and activities supported by defense business systems, which shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable defense business system solutions and consistent with the policies and procedures established by the Director of the Office of Management and Budget; and~~

~~(B) a transition plan for implementing the defense business enterprise architecture.~~

~~(2) The Secretary of Defense shall delegate responsibility and accountability for the defense business enterprise architecture content, including unambiguous definitions of functional processes, business rules, and standards, as follows:~~

~~(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible and accountable for the content of those portions of the defense business enterprise architecture that support acquisition, logistics, installations, environment, or safety and occupational health activities of the Department of Defense.~~

~~(B) The Under Secretary of Defense (Comptroller) shall be responsible and accountable for the content of those portions of the defense business enterprise architecture that support financial management activities or strategic planning and budgeting activities of the Department of Defense.~~

~~(C) The Under Secretary of Defense for Personnel and Readiness shall be responsible and accountable for the content of those portions of the defense business enterprise architecture that support human resource management activities of the Department of Defense.~~

~~(D) The Chief Information Officer of the Department of Defense shall be responsible and accountable for the content of those portions of the defense business enterprise architecture that support information technology infrastructure or information assurance activities of the Department of Defense.~~

~~(E) The Deputy Chief Management Officer of the Department of Defense shall be responsible and accountable for developing and maintaining the defense business enterprise architecture as well as integrating business operations covered by subparagraphs (A) through (D).~~

~~(d) COMPOSITION OF ENTERPRISE ARCHITECTURE.—The defense business enterprise architecture developed under subsection (c)(1)(A) shall include the following:~~

~~(1) An information infrastructure that, at a minimum, would enable the Department of Defense to—~~

~~(A) comply with all applicable law, including Federal accounting, financial management, and reporting requirements;~~

~~(B) routinely produce timely, accurate, and reliable business and financial information for management purposes;~~

~~(C) integrate budget, accounting, and program information and systems; and~~

~~(D) provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.~~

~~(2) Policies, procedures, data standards, performance measures, and system interface requirements that are to apply uniformly throughout the Department of Defense.~~

~~(3) A target defense business systems computing environment, compliant with the defense business enterprise architecture, for each of the major business processes conducted by the Department of Defense, as determined by the Chief Management Officer of the Department of Defense.~~

~~(e) COMPOSITION OF TRANSITION PLAN.—The transition plan developed under subsection (c)(1)(B) shall include the following:~~

~~(1) A listing of the new systems that are expected to be needed to complete the target defense business systems computing environment described in subsection (d)(3), along with each system's time-phased milestones, performance measures, financial resource needs, and risks or challenges to integration into the business enterprise architecture.~~

~~(2) A listing of the defense business systems that will be phased out of the defense business systems computing environment within three years after review and certification as "legacy systems" by the investment management process established under subsection (g), together with the schedule for terminating those legacy systems.~~

~~(3) A listing of the existing systems that are part of the target defense business systems computing environment, together with a strategy for making the modifications to those systems that will be needed to ensure that such systems comply with the defense~~

business enterprise architecture, including time-phased milestones, performance measures, and financial resource needs.

(f) DESIGNATION OF APPROPRIATE PRE-CERTIFICATION AUTHORITIES AND SENIOR OFFICIALS.—(1) For purposes of subsections (a) and (g), the appropriate pre-certification authority for a defense business system program is as follows:

(A) In the case of an Army program, the Chief Management Officer of the Army.

(B) In the case of a Navy program, the Chief Management Officer of the Navy.

(C) In the case of an Air Force program, the Chief Management Officer of the Air Force.

(D) In the case of a program of a Defense Agency, the Director, or equivalent, of such Defense Agency, unless otherwise approved by the Deputy Chief Management Officer of the Department of Defense.

(E) In the case of a program that will support the business processes of more than one military department or Defense Agency, an appropriate pre-certification authority designated by the Deputy Chief Management Officer of the Department of Defense.

(2) For purposes of subsection (g), the appropriate senior official of the Department of Defense for the functions and activities supported by a covered defense business system is as follows:

(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics, in the case of any defense business system the primary purpose of which is to support acquisition, logistics, installations, environment, or safety and occupational health activities of the Department of Defense.

(B) The Under Secretary of Defense (Comptroller), in the case of any defense business system the primary purpose of which is to support financial management activities or strategic planning and budgeting activities of the Department of Defense.

(C) The Under Secretary of Defense for Personnel and Readiness, in the case of any defense business system the primary purpose of which is to support human resource management activities of the Department of Defense.

(D) The Chief Information Officer of the Department of Defense, in the case of any defense business system the primary purpose of which is to support information technology infrastructure or information assurance activities of the Department of Defense.

(E) The Deputy Chief Management Officer of the Department of Defense, in the case of any defense business system the primary purpose of which is to support any activity of the Department of Defense not covered by subparagraphs (A) through (D).

(g) DEFENSE BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Secretary of Defense shall require the Deputy Chief Management Officer of the Department of Defense, not later than March 15, 2012, to establish an investment review board and investment management process, consistent with section 11312 of title 40, to review and certify the planning, design, acquisition, development, deployment, operation, maintenance, modernization, and project cost benefits and risks of covered defense business systems programs. The investment review board and investment management process so established shall specifically address the requirements of subsection (a).

(2) The review of defense business systems programs under the investment management process shall include the following:

(A) Review and approval by an investment review board of each covered defense business system program before the obligation of funds on the system in accordance with the requirements of subsection (a).

(B) Periodic review, but not less than annually, of all covered defense business system programs, grouped in portfolios of defense business systems.

(C) Representation on each investment review board by appropriate officials from among the Office of the Secretary of Defense, the armed forces, the combatant commands, the Joint Chiefs of Staff, and the Defense Agencies, including representation from each of the following:

(i) The appropriate pre-certification authority for the defense business system under review.

(ii) The appropriate senior official of the Department of Defense for the functions and activities supported by the defense business system under review.

(iii) The Chief Information Officer of the Department of Defense.

(D) Use of threshold criteria to ensure an appropriate level of review within the Department of Defense of, and accountability for, defense business system programs depending on scope, complexity, and cost.

(E) Use of procedures for making certifications in accordance with the requirements of subsection (a).

(F) Use of procedures for ensuring consistency with the guidance issued by the Secretary of Defense and the Defense Business Systems Management Committee, as required by section 186(c) of this title, and incorporation of common decision criteria, including standards, requirements, and priorities that result in the integration of defense business systems.

(3)(A) The investment management process required by paragraph (1) shall include requirements for the military departments and the Defense Agencies to make available to the Deputy Chief Management Officer such information on covered defense business system programs and other business functions as the Deputy Chief Management Officer shall require for the review of defense business system programs under the process. Such information shall be made available to the Deputy Chief Management Officer through existing data sources or in a standardized format established by the Deputy Chief Management Officer for purposes of this paragraph.

(h) BUDGET INFORMATION.—In the materials that the Secretary submits to Congress in support of the budget submitted to Congress under section 1105 of title 31 for fiscal year 2006 and fiscal years thereafter, the Secretary of Defense shall include the following information:

(1) Identification of each defense business system program for which funding is proposed in that budget.

(2) Identification of all funds, by appropriation, proposed in that budget for each such program, including—

(A) funds for current services (to operate and maintain the system covered by such program); and

(B) funds for business systems modernization, identified for each specific appropriation.

~~(3) For each such program, identification of the appropriate pre-certification authority and senior official of the Department of Defense designated under subsection (f).~~

~~(4) For each such program, a description of each approval made under subsection (a)(3) with regard to such program.~~

~~(i) CONGRESSIONAL REPORTS.—Not later than March 15 of each year from 2012 through 2016, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense compliance with the requirements of this section. Each report shall—~~

~~(1) describe actions taken and planned for meeting the requirements of subsection (a), including—~~

~~(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and~~

~~(B) specific actions on the defense business system programs submitted for certification under such subsection;~~

~~(2) identify the number of defense business system programs so certified;~~

~~(3) identify any covered defense business system program during the preceding fiscal year that was not approved under subsection (a), and the reasons for the lack of approval;~~

~~(4) discuss specific improvements in business operations and cost savings resulting from successful defense business systems programs; and~~

~~(5) include a copy of the most recent report of the Chief Management Officer of each military department on implementation of business transformation initiatives by such department in accordance with section 908 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4569; 10 U.S.C. 2222 note).~~

~~(j) DEFINITIONS.—In this section:~~

~~(1)(A) The term "defense business system" means an information system operated by, for, or on behalf of the Department of Defense, including financial systems, mixed systems, financial data feeder systems, and information technology and information assurance infrastructure, used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.~~

~~(B) The term does not include—~~

~~(i) a national security system; or~~

~~(ii) an information system used exclusively by and within the defense commissary system or the exchange system or other instrumentality of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces using nonappropriated funds.~~

~~(2) The term "covered defense business system program" means any defense business system program that is expected to have a total cost in excess of $1,000,000 over the period of the current future-years defense program submitted to Congress under section 221 of this title.~~

~~(3) The term "enterprise architecture" has the meaning given that term in section 3601(4) of title 44.~~

~~(4) The terms "information system" and "information technology" have the meanings given those terms in section 11101 of title 40.~~

~~(5) The term "national security system" has the meaning given that term in section 3542(b)(2) of title 44.~~

~~(6) The term "business process mapping" means a procedure in which the steps in a business process are clarified and documented in both written form and in a flow chart.~~

Section 811 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2222 note) would be repealed, as follows:

~~SEC. 811. TIME-CERTAIN DEVELOPMENT FOR DEPARTMENT OF DEFENSE INFORMATION TECHNOLOGY BUSINESS SYSTEMS.~~

~~(a) MILESTONE A LIMITATION.—The Department of Defense executive or entity that is the milestone decision authority for an information system described in subsection (c) may not provide Milestone A approval for the system unless, as part of the decision process for such approval, that authority determines that the system will achieve initial operational capability within a specified period of time not exceeding five years.~~

~~(b) INITIAL OPERATIONAL CAPABILITY LIMITATION.—If an information system described in subsection (c), having received Milestone A approval, has not achieved initial operational capability within five years after the date of such approval, the system shall be deemed to have undergone a critical change in program requiring the evaluation and report required by section 2445c(d) of title 10, United States Code (as added by section 816 of this Act).~~

~~(c) COVERED SYSTEMS.—An information system described in this subsection is any Department of Defense information technology business system that is not a national security system, as defined in 3542(b)(2) of title 44, United States Code.~~

~~(d) DEFINITIONS.—In this section:~~

~~(1) MILESTONE DECISION AUTHORITY.—The term ''milestone decision authority'' has the meaning given that term in Department of Defense Instruction 5000.2, dated May 12, 2003.~~

~~(2) MILESTONE A.—The term ''Milestone A'' has the meaning given that term in Department of Defense Instruction 5000.2, dated May 12, 2003.~~

Section 825 would consolidate various logistics and sustainment related statutory provisions in to the existing section 2337 of title 10, United States Code, and outlines conforming changes to the affected pieces of legislation and statute. Comprehensive life-cycle sustainment planning and management is a critical necessity for all Department of Defense programs. In concert with fulfilling the current requirements of section 2337, the Department of Defense (DoD) requires program managers to develop a Life-Cycle Sustainment Plan (LCSP) for each program (i.e., the existing system, the replacement system). The LCSP is a living document that details the formulation, implementation, and execution of a program's sustainment strategy.

The LCSP includes the maintenance and support concepts, funding required and budgeted by year and appropriation, sustainment risk areas and mitigation plans, and product support implementation status. Over a program's life-cycle, shifting operational needs and threats, technology advances, fiscal constraints, plans for follow-on systems, or a combination of various factors may warrant revisions to the LCSP. The current breadth of section 2337 and its relationship to the LCSP makes it an appropriate place to consolidate various logistics and sustainment requirements.

In order to consolidate the various logistics and sustainment provisions, this proposal recommends substantive changes to section 2337, in addition to the corresponding conforming changes.

First, this proposal would modify subparagraph (A) of section 2337(b)(2) to capture the intent of section 2437 of title 10, United States Code, and would repeal section 2437 of title 10, United States Code, which requires Department of Defense programs to develop stand-alone sustainment plans for systems being replaced.

Second, this proposal would explicitly reference the requirements of section 2464 of title 10, United States Code.

Third, this proposal would add to section 237(b)(2) a new subparagraph (J), which would add a consideration related to unique tooling as currently outlined in section 815, Public Law 110-417.

Fourth, this proposal would add to section 237(b)(2) a new subparagraph (K), which would add a consideration related to the obsolescence of electronic parts as currently outlined in section 805(b)(5), Public Law 113-66.

Finally, this proposal would repeal section 815 of Public Law 110-417 and section 803(b)(5) of Public Law 113-66.

Budgetary Implications: DoD acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the Future Year Defense Program.

Changes to Existing Law: This proposal would make the following changes to the text of existing law:

TITLE 10, UNITED STATES CODE

§ 2337. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.–The Secretary of Defense shall issue and maintain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) PRODUCT SUPPORT MANAGERS.—

(1) REQUIREMENT.-The Secretary of Defense shall require that each major weapon system be supported by a product support manager in accordance with this subsection.

(2) RESPONSIBILITIES.-A product support manager for a major weapon system shall—

(A) develop and implement a comprehensive product support strategy for the weapon system in order to sustain the system until either (i) a replacement system is fielded and assumes the majority of responsibility for the mission of the existing system, or (ii) the mission of the system is eliminated and the system is disposed of;

(B) use appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy, including cost-benefit analyses as outlined in Office of Management and Budget Circular A–94;

(D) ensure sustainment of core logistics capabilities specified in section 2464 of this title and achievement of desired product support outcomes through development and implementation of appropriate product support arrangements;

(E) adjust performance requirements and resource allocations across product support integrators and product support providers as necessary to optimize implementation of the product support strategy;

(F) periodically review product support arrangements between the product support integrators and product support providers to ensure the arrangements are consistent with the overall product support strategy;

(G) prior to each change in the product support strategy or every five years, whichever occurs first, revalidate any business-case analysis performed in support of the product support strategy;

(H) ensure that the product support strategy maximizes small business participation at the appropriate tiers; ~~and~~

(I) ensure that product support arrangements for the weapon system describe how such arrangements will ensure efficient procurement, management, and allocation of Government-owned parts inventories in order to prevent unnecessary procurements of such parts~~.~~;

(J) make a determination regarding the applicability of preservation and storage of unique tooling associated with the production of program-specific hardware, if relevant, including a plan for the preservation, storage, or disposal of all production tooling; and

(K) identify obsolete electronic parts that are included in the specifications of the system being acquired and determine suitable replacements for such parts.

(c) DEFINITIONS.-In this section:

(1) PRODUCT SUPPORT.-The term "product support" means the package of support functions required to field and maintain the readiness and operational capability of major weapon systems, subsystems, and components, including all functions related to weapon system readiness.

(2) PRODUCT SUPPORT ARRANGEMENT.-The term "product support arrangement" means a contract, task order, or any type of other contractual arrangement, or any type of agreement or non-contractual arrangement within the Federal Government, for the performance of sustainment or logistics support required for major weapon systems, subsystems, or components. The term includes arrangements for any of the following:

(A) Performance-based logistics.

(B) Sustainment support.

(C) Contractor logistics support.

(D) Life-cycle product support.

(E) Weapon systems product support.

(3) PRODUCT SUPPORT INTEGRATOR.-The term "product support integrator" means an entity within the Federal Government or outside the Federal Government charged with integrating all sources of product support, both private and public, defined within the scope of a product support arrangement.

(4) PRODUCT SUPPORT PROVIder.-The term "product support provider" means an entity that provides product support functions. The term includes an entity within the Department of Defense, an entity within the private sector, or a partnership between such entities.

(5) MAJOR WEAPON SYSTEM.-The term "major weapon system" means a major system within the meaning of section 2302d(a) of this title.

———

§ 2464. Core logistics capabilities

(a) NECESSARY FOR CORE LOGISTICS CAPABILITIES.—(1) It is essential for the national defense that the Department of Defense maintain a core logistics capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government-operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities.

(3) The core logistics capabilities identified under paragraphs (1) and (2) shall include those capabilities that are necessary to maintain and repair the weapon systems and other military equipment (including mission-essential weapon systems or materiel not later than four years after achieving initial operational capability, but excluding systems and equipment under special access programs, nuclear aircraft carriers, and commercial items described in paragraph (5)) that are identified by the Secretary, in consultation with the Chairman of the Joint Chiefs of Staff, as necessary to enable the armed forces to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff under section 153(a) of this title.

(4) The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified under paragraphs (1), (2), and (3) at Government-owned, Government-operated facilities of the Department of Defense (including Government-owned, Government-operated facilities of a military department) and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities necessary to support fully the strategic and contingency plans referred to in paragraph (3).

(5) The commercial items covered by paragraph (3) are commercial items that have been sold or leased in substantial quantities to the general public and are purchased without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

(b) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of workload needed to maintain a logistics capability identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A-76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.

(3)(A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) NOTIFICATION OF DETERMINATIONS REGARDING CERTAIN COMMERCIAL ITEMS.— The first time that a weapon system or other item of military equipment described in subsection (a)(3) is determined to be a commercial item for the purposes of the exception contained in that subsection, the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

(1) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the Government's version of the item.

(2) The value of any unique support and test equipment and tools that are necessary to support the military requirements if the item were maintained by the Government.

(3) A comparison of the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the Government.

(d) ACQUISITION MANAGEMENT INFORMATION REQUIREMENTS.—The Secretary of Defense shall ensure that, when milestone approval for a major defense acquisition program is under consideration, matters relating to core logistics capabilities are considered as follows:

(1) Before Milestone A approval for the program is granted, an analysis of the applicability of core logistics capabilities requirements to the program shall be considered.

(2) Before Milestone B approval for the program is granted, an estimate of the requirements for core logistics capabilities for the program, and the associated sustaining workloads required to support such requirements, shall be considered.

(3) Before approval is granted for the program to enter low-rate initial production, a description of requirements for core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities and the associated sustaining workloads required to support such requirements, shall be considered.

(~~d~~e) BIENNIAL CORE REPORT.—Not later than April 1 of each even-numbered year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (except for the Coast Guard), for the fiscal year after the fiscal year during which the report is submitted, each of the following:

(1) The core depot-level maintenance and repair capability requirements and sustaining workloads, organized by work breakdown structure, expressed in direct labor hours.

(2) The corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements, expressed in direct labor hours and cost.

(3) In any case where core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads, a detailed rationale for any and all shortfalls and a plan either to correct or mitigate the effects of the shortfalls.

(~~e~~f) COMPTROLLER GENERAL REVIEW.— The Comptroller General of the United States shall review each report submitted under subsection (d) for completeness and compliance and shall submit to the congressional defense committees findings and recommendations with respect to the report by not later than 60 days after the date on which the report is submitted to Congress.

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§2437. Development of major defense acquisition programs: sustainment of system to be replaced

(a) REQUIREMENT FOR SUSTAINING EXISTING FORCES. (1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a "sustainment plan") for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

(2) In this section, the term "defense acquisition authority" means the Secretary of a military department or the commander of the United States Special Operations Command.

(b) SUSTAINMENT PLAN.-The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

(2) An analysis of the existing system to assess the following:

(A) Anticipated funding levels necessary to-

(i) ensure acceptable reliability and availability rates for the existing system; and

(ii) maintain mission capability of the existing system against the relevant threats.

(B) The extent to which it is necessary and appropriate to-

(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

(c) EXCEPTIONS.-Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that-

(1) the existing system is no longer relevant to the mission;

(2) the mission has been eliminated;

(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

(d) WAIVER.- The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.

Duncan Hunter National Defense Authorization Act for Fiscal Year 2009

SEC. 815. PRESERVATION OF TOOLING FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) GUIDANCE REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance requiring the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program. Such guidance shall—

(1) require that the milestone decision authority approve a plan, including the identification of any contract clauses, facilities, and funding required, for the preservation and storage of such tooling prior to Milestone C approval;

(2) require that the milestone decision authority periodically review the plan required by paragraph (1) prior to the end of the service life of the end item, to ensure that the preservation and storage of such tooling remains adequate and in the best interest of the Department of Defense;

(3) provide a mechanism for the Secretary to waive the requirement for preservation and storage of unique production tooling, or any category of unique production tooling, if the Secretary—

(A) makes a written determination that such a waiver is in the best interest of the Department of Defense; and

(B) notifies the congressional defense committees of the waiver upon making such determination; and

(4) provide such criteria as necessary to guide a determination made pursuant to paragraph (3)(A).

(b) DEFINITIONS.—In this section:

(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term ''major defense acquisition program'' has the meaning provided in section 2430 of title 10, United States Code.

(2) MILESTONE DECISION AUTHORITY.—The term ''milestone decision authority'' has the meaning provided in section 2366a(f)(2) of such title.

~~(3) MILESTONE C APPROVAL.—The term ''Milestone C approval'' has the meaning provided in section 2366(e)(8) of such title.~~

National Defense Authorization Act for Fiscal Year 2014

SEC. 803. IDENTIFICATION AND REPLACEMENT OF OBSOLETE ELECTRONIC PARTS.

(a) IN GENERAL.-Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall implement a process for the expedited identification and replacement of obsolete electronic parts included in acquisition programs of the Department of Defense.

(b) ISSUES TO BE ADDRESSED.-At a minimum, the expedited process established pursuant to subsection (a) shall-

(1) include a mechanism pursuant to which contractors, or other sources of supply, may provide to appropriate Department of Defense officials information that identifies-

(A) obsolete electronic parts that are included in the specifications for an acquisition program of the Department of Defense; and

(B) suitable replacements for such electronic parts;

(2) specify timelines for the expedited review and validation of information submitted by contractors, or other sources of supply, pursuant to paragraph (1);

(3) specify procedures and timelines for the rapid submission and approval of engineering change proposals needed to accomplish the substitution of replacement parts that have been validated pursuant to paragraph (2); and

(4) provide for any incentives for contractor participation in the expedited process that the Secretary may determine to be appropriate~~; and~~.

~~(5) provide that, in addition to the responsibilities under section 2337 of title 10, United States Code, a product support manager for a major weapon system shall work to identify obsolete electronic parts that are included in the specifications for an acquisition program of the Department of Defense and approve suitable replacements for such electronic parts.~~

(c) ADDITIONAL MATTERS.-For the purposes of this section-

(1) an electronic part is obsolete if-

(A) the part is no longer in production; and

(B) the original manufacturer of the part and its authorized dealers do not have sufficient parts in stock to meet the requirements of such an acquisition program; and

(2) an electronic part is a suitable replacement for an obsolete electronic part if-

(A) the part could be substituted for an obsolete part without incurring unreasonable expense and without degrading system performance; and

(B) the part is or will be available in sufficient quantity to meet the requirements of such an acquisition program."

Section 826. This proposal is part of a series of acquisition reform proposals developed by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) to streamline and simplify the complex defense acquisition system. This initiative is focused on developing legislative proposals to synthesize and streamline statutory requirements for acquisition programs that have accumulated in layers over several years, while retaining the underlying statutory principles. The numerous, and often redundant, documentation requirements attributable to these statutes combine to significantly delay key decision points in defense acquisition programs. Though intended to ensure that key issues are considered prior to these decision points, many of these statutory requirements result in redundant documentation that reproduces or duplicates analysis in other documents or processes that already precede these key program reviews. The desired effect of this initiative is to 1) to support tailoring of the acquisition process; thereby focusing decisions on key issues and risks in each program; 2) reduce redundant and unnecessary documentation burdens on the Program Manager responsible for demonstrating that the program is eligible for approval by Department officials; and 3) consolidate related statutory requirements in a coherent manner within foundational statutory provisions.

This proposal adds a statutory requirement for Department of Defense major defense acquisition programs to maintain an acquisition strategy, which is already a core document developed and updated in advance of key program reviews within the Department. This proposal also consolidates various related statutory provisions, and outlines conforming changes to existing statute. Currently, a number of sections require content in an undefined (in statute) acquisition strategy. By codifying the existence of the acquisition strategy and consolidating the various content requirements, this proposal eliminates uncertainty regarding the open-ended range of requirements that can be imposed on an acquisition program's published strategy.

An acquisition strategy is the Program Manager's plan for program execution across the entire system's life-cycle. This document is relied upon by Program Managers and acquisition officials to review the program and recommend or decide whether it has met criteria for each milestone in the defense acquisition process. Though it is widely accepted as the most critical document within the acquisition process – it addresses key risks and issues across the entire program lifecycle – it is not currently required by statute. Acquisition strategy requirements have thus been interpreted expansively over time, which has resulted in a prolix document that often contains redundant information. Accordingly, the proposal also outlines key considerations that the Program Manager should address in their acquisition strategy. Additionally, this provision recognizes that discretion regarding changes to the acquisition strategy and its approval is vested in the milestone decision authority, who currently determines whether the underlying program can proceed to the next milestone within the defense acquisition process. Such clarification serves to significantly streamline the review process for these documents and helps to crystallize key program issues for milestone decision authority resolution. The current open-ended process for developing and approving changes to the acquisition strategies often results in significant staffing timelines and unclear processes for resolution. This language does not limit any statutorily granted authority for other approvals

(e.g., the authorities and duties of the Director of Operational Test and Evaluation as outlined in section 139 of title 10, United States Code and the authorities and duties for the Director of Cost Assessment and Program Evaluation as outlined in section 139a of title 10, United States Code). Finally, by consolidating various statutory provisions, which already refer to 'acquisition strategies' under an umbrella provision, this proposal clarifies the relationship between statutes such as sections 2440 and 2320, amends section 2350a of this title, and incorporates elements of section 803 of Public Law 107-314.

Budgetary Implications: Department of Defense acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the Future-Years Defense Program (FYDP).

Changes to Existing Law: This proposal would make the following changes to provisions of existing law:

The proposal would add a new section to chapter 144 of title 10, United States Code, as shown in full in the legislative text above.

The proposal would also revised existing provision of law as follows:

TITLE 10, UNITED STATES CODE

§ 2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries

(a) AUTHORITY TO ENGAGE IN COOPERATIVE R&D PROJECTS.- (1) The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more countries or organizations referred to in paragraph (2) for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(2) The countries and organizations with which the Secretary may enter into a memorandum of agreement (or other formal agreement) under paragraph (1) are as follows:

(A) The North Atlantic Treaty Organization.

(B) A NATO organization.

(C) A member nation of the North Atlantic Treaty Organization.

(D) A major non-NATO ally.

(E) Any other friendly foreign country.

(3) If such a memorandum of understanding (or other formal agreement) is with a country referred to in subparagraph (E) of paragraph (2), such memorandum (or agreement) may go into effect only after the Secretary submits to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report with respect to the proposed memorandum (or agreement) and a period of 30 days has passed after the report has been submitted.

(b) REQUIREMENT THAT PROJECTS IMPROVE CONVENTIONAL DEFENSE CAPABILITIES.—(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization or the common conventional defense capabilities of the United States and a country or organization referred to in subsection (a)(2).

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering.

(c) COST SHARING.-Each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.

(d) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.-(1) In order to assure substantial participation on the part of countries and organizations referred to in subsection (a)(2) in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

(2) A country or organization referred to in subsection (a)(2) may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making the contribution of that country or organization to a cooperative research and development program entered into with the United States under this section.

(e) COOPERATIVE OPPORTUNITIES ~~DOCUMENT~~.-(1) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, ~~the Under Secretary of Defense for Acquisition, Technology, and Logistics shall prepare a cooperative opportunities document before the first milestone or decision point with respect to that project for review by the Defense Acquisition Board at formal meetings of the Board~~ cooperative opportunities shall be addressed in the program's Acquisition Strategy.

(2) A cooperative opportunities ~~document~~ discussion referred to in paragraph (1) shall ~~include~~ consider the following:

(A) ~~A statement indicating~~ ~~w~~Whether or not a project similar to the one under consideration by the Department of Defense is in development or production by any country or organization referred to in subsection (a)(2) or NATO organizations.

(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more countries and organizations referred to in subsection (a)(2), an assessment ~~by the Under Secretary of Defense for Acquisition, Technology, and Logistics~~ as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project ~~of the United States under consideration by the Department of Defense~~.

(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

(D) ~~The~~ A recommendation ~~of~~ to the ~~Under Secretary~~ Milestone Decision Authority as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

[(f) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(17), Nov. 24, 2003, 117 Stat. 1597 .]

(g) SIDE-BY-SIDE TESTING.—(1) It is the sense of Congress—

(A) that the Secretary of Defense should test conventional defense equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2) to determine the ability of such equipment, munitions, and technologies to satisfy United States military requirements or to correct operational deficiencies; and

(B) that while the testing of nondevelopmental items and items in the late state of the development process are preferred, the testing of equipment, munitions, and technologies may be conducted to determine procurement alternatives.

(2) The Secretary of Defense may acquire equipment, munitions, and technologies of the type described in paragraph (1) for the purpose of conducting the testing described in that paragraph.

(h) SECRETARY TO ENCOURAGE SIMILAR PROGRAMS.-The Secretary of Defense shall encourage member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries to establish programs similar to the one provided for in this section.

(i) DEFINITIONS.-In this section:

(1) The term "cooperative research and development project" means a project involving joint participation by the United States and one or more countries and organizations referred to in subsection (a)(2) under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program-

(A) to develop new conventional defense equipment and munitions; or

(B) to modify existing military equipment to meet United States military requirements.

(2) The term "major non-NATO ally" means a country (other than a member nation of the North Atlantic Treaty Organization) that is designated as a major non-NATO ally for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(3) The term "NATO organization" means any North Atlantic Treaty Organization subsidiary body referred to in section 2350(2) of this title and any other organization of the North Atlantic Treaty Organization.

Section 803 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003

(Public Law 107-314; 10 U.S.C. 2430 note)

~~**SEC. 803. SPIRAL DEVELOPMENT UNDER MAJOR DEFENSE ACQUISITIONPROGRAMS.**~~

~~(a) AUTHORITY.—The Secretary of Defense is authorized to conduct major defense acquisition programs as spiral development programs.~~

~~(b) LIMITATION ON SPIRAL DEVELOPMENT PROGRAMS.—A research and development program for a major defense acquisition program of a military department or Defense Agency may not be conducted as a spiral development program unless the Secretary of Defense approves the spiral development plan for that research and development program in accordance with subsection (c). The Secretary of Defense may delegate authority to approve the plan to the Under Secretary of Defense for Acquisition, Technology, and Logistics, or to the senior acquisition executive of the military department or Defense Agency concerned, but such authority may not be further delegated.~~

~~(c) SPIRAL DEVELOPMENT PLANS.—A spiral development plan for a research and development program for a major defense acquisition program shall, at a minimum, include the following matters:~~

~~(1) A rationale for dividing the research and development program into separate spirals, together with a preliminary identification of the spirals to be included.~~

~~(2) A program strategy, including overall cost, schedule, and performance goals for the total research and development program.~~

~~(3) Specific cost, schedule, and performance parameters, including measurable exit criteria, for the first spiral to be conducted.~~

~~(4) A testing plan to ensure that performance goals, parameters, and exit criteria are met.~~

~~(5) An appropriate limitation on the number of prototype units that may be produced under the research and development program.~~

~~(6) Specific performance parameters, including measurable exit criteria, that must be met before the major defense acquisition program proceeds into production of units in excess of the limitation on the number of prototype units.~~

~~(d) GUIDANCE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance for the implementation of spiral development programs authorized by this section. The guidance shall include appropriate processes for ensuring the independent validation of exit criteria being met, the operational assessment of fieldable prototypes, and the management of spiral development programs.~~

~~(e) REPORTING REQUIREMENT.—The Secretary shall submit to Congress by September 30 of each of 2003 through 2008 a status report on each research and development program that is a spiral development program. The report shall contain information on unit costs that is similar to the information on unit costs under major defense acquisition programs that is required to be provided to Congress under chapter 144 of title 10, United States Code, except~~

~~that the information on unit costs shall address projected prototype costs instead of production costs.~~

~~(f) APPLICABILITY OF EXISTING LAW.—Nothing in this section shall be construed to exempt any program of the Department of Defense from the application of any provision of chapter 144 of title 10, United States Code, section 139, 181, 2366, 2399, or 2400 of such title, or any requirement under Department of Defense Directive 5000.1, Department of Defense Instruction 5000.2, or Chairman of the Joint Chiefs of Staff Instruction 3170.01B in accordance with the terms of such provision or requirement.~~

~~(g) DEFINITIONS.—In this section:~~

~~(1) The term ''spiral development program'', with respect to a research and development program, means a program that—~~

~~(A) is conducted in discrete phases or blocks, each of which will result in the development of fieldable prototypes; and~~

~~(B) will not proceed into acquisition until specific performance parameters, including measurable exit criteria, have been met.~~

~~(2) The term ''spiral'' means one of the discrete phases or blocks of a spiral development program.~~

~~(3) The term ''major defense acquisition program'' has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.~~

Section 827 would amend section 203 of the Weapon System Acquisition Reform Act of 2009 to expand the measures pursued to reduce programmatic risk beyond the requirement for competitive prototyping currently included in that section. The revised section would require the Secretary of Defense to ensure that the acquisition strategy for a major defense acquisition program identifies and documents the major sources of risk for the program (including technical, cost, and schedule risk) and includes a comprehensive approach to retiring that risk. The proposal would require that the comprehensive approach to retiring risk utilize some combination of 12 different elements, including prototyping and competitive prototyping, design reviews, program phasing, allocating schedule and funding margins to specific risks, multiple design approaches, and others measures.

Budgetary Implications: Department of Defense acquisition programs budget to the approved cost estimate. For this reason, although the changes made by this proposal are anticipated to result in overall efficiencies in individual programs and in the Defense Acquisition System, no programmatic budget reductions are projected to result during the period of the Future-Years Defense Program (FYDP).

Changes to Existing Law: This proposal would completely revise section 203 of the Weapon System Acquisition Reform Act of 2009 (P.L. 111-23) with a new text. The revised text proposed for that section is shown in the legislative text above. The text to be replaced (current law) is shown below:

~~SEC. 203. PROTOTYPING REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.~~

~~(a) COMPETITIVE PROTOTYPING.—Not later than 90 days after the date of the enactment of this Act [May 22, 2009], the Secretary of Defense shall modify the guidance of the Department~~

of Defense relating to the operation of the acquisition system with respect to competitive prototyping for major defense acquisition programs to ensure the following:

(1) That the acquisition strategy for each major defense acquisition program provides for competitive prototypes before Milestone B approval (or Key Decision Point B approval in the case of a space program) unless the Milestone Decision Authority for such program waives the requirement pursuant to paragraph (2).

(2) That the Milestone Decision Authority may waive the requirement in paragraph (1) only—

(A) on the basis that the cost of producing competitive prototypes exceeds the expected life-cycle benefits (in constant dollars) of producing such prototypes, including the benefits of improved performance and increased technological and design maturity that may be achieved through competitive prototyping; or

(B) on the basis that, but for such waiver, the Department would be unable to meet critical national security objectives.

(3) That whenever a Milestone Decision Authority authorizes a waiver pursuant to paragraph (2), the Milestone Decision Authority-

(A) shall require that the program produce a prototype before Milestone B approval (or Key Decision Point B approval in the case of a space program) if the expected life-cycle benefits (in constant dollars) of producing such prototype exceed its cost and its production is consistent with achieving critical national security objectives; and

(B) shall notify the congressional defense committees in writing not later than 30 days after the waiver is authorized and include in such notification the rationale for the waiver and the plan, if any, for producing a prototype.

(4) That prototypes—

(A) may be required under paragraph (1) or (3) for the system to be acquired or, if prototyping of the system is not feasible, for critical subsystems of the system; and

(B) may be acquired from commercial, government, or academic sources.

(b) COMPTROLLER GENERAL REVIEW OF CERTAIN WAIVERS.—

(1) Notice to comptroller general.-Whenever a Milestone Decision Authority authorizes a waiver of the requirement for prototypes pursuant to paragraph (2) of subsection (a) on the basis of excessive cost, the Milestone Decision Authority shall submit the notification of the waiver, together with the rationale, to the Comptroller General of the United States at the same time it is submitted to the congressional defense committees.

(2) Comptroller general review. Not later than 60 days after receipt of a notification of a waiver under paragraph (1), the Comptroller General shall—

(A) review the rationale for the waiver; and

(B) submit to the congressional defense committees a written assessment of the rationale for the waiver.

Subtitle D—Other Matters

Section 831 would reauthorize the successful Department of Defense (DoD) Mentor-

Protégé Program (MPP) from Fiscal Year (FY) 2016 to FY 2020. The MPP was established in section 831 of National Defense Authorization Act for Fiscal Year 1991for the purpose of developing the technical capabilities of small disadvantaged business (SDB) (including organizations employing the severely disabled, as defined in subsection (l) of that section), women-owned small business (WOSB), service-disabled veteran-owned small business (SDVOSB), and historically underutilized business zone (HUBZone) small business. The program enables major prime contractors (mentors) to support small businesses (protégés) in transferring and developing technology that is critical to the National Defense. In so doing, the DoD MPP helps to increase supplier diversity in DoD's industrial base.

The DoD MPP has expanded the number of qualified SDBs able to support DoD contracts as prime contractors, strengthening competition potential and the industrial base, and serving as an important gateway into the Federal marketplace. In FY 2012, DOD awarded $20.1 billion in SDB prime contracts. Historically, 12 percent of all SDB prime contract awards have been made by DOD to former or current protégés. Extending the MPP to 2020 will continue to contribute substantially to the Department's continued progress in meeting these and other small business statutory goals.

Budgetary Implications: Mentor-Protégé Program, Procurement, DW PE 0901388D8Z (P-1 Line #42/Major Equipment OSD)

The proposal reflects the FY 2016-FY 2020 Program Objective Memorandum (POM). The Department of Defense calculated the projected programmatic requirement increases based on prior year successes and current trends, and future year requests from the Military Departments. In projecting program growth, added value to the warfighter was prioritized with the consideration that funds will be used to invest in near term delivery of cost effective and proven technologies to protect and empower the warfighter, reduce injuries, and enhance security.

Subject to the appropriation, this section would require $30.452 million in fiscal year FY 2016, increasing to $34.663 million in FY 2020, as demonstrated in the exhibit below. This represents a total anticipated cost of $161.2 million from fiscal year FY 2016-FY 2020. This section would support an increasing number of Mentor-Protégé Program agreements from 120 in FY 2016 to over an estimated 200 in FY 2020. This section would be funded from the Defense-wide Procurement account. to support activities in the Army, Navy, Air Force, Defense Intelligence Agency, Missile Defense Agency, National Geospatial Intelligence Agency, National Security Agency, and the Department of Defense Office of Small Business Programs.

The associated budgetary implications would have no direct impact on the number of employees and family members in non-foreign areas.

RESOURCE REQUIREMENTS ($MILLIONS)*								
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army	4.750	4.750	5.100	5.698	5.698	Procurement, Defense-Wide	01	P-1 30
Navy	4.750	4.800	5.100	5.462	5.462	Procurement,	01	P-1 30

						Defense-Wide		
Air Force	3.945	4.280	4.539	4.876	4.876	Procurement, Defense-Wide	01	P-1 30
MDA	4.884	4.854	4.745	5.496	5.496	Procurement, Defense-Wide	01	P-1 30
NGA	5.500	5.200	5.100	5.350	5.550	Procurement, Defense-Wide	01	P-1 30
DIA	4.475	4.500	5.000	5.016	5.064	Procurement, Defense-Wide	01	P-1 30
NSA	0.975	0.953	1.200	1.066	1.250	Procurement, Defense-Wide	01	P-1 30
OSBP	1.173	0.425	1.288	1.233	1.267	Procurement, Defense-Wide	01	P-1 30
Total Change	2.285	-0.69	2.310	2.125	0.466			
Total	30.452	29.762	32.072	34.197	34.663			

***Positive and negative resource requirements described above are in relation to the FY14 base.**

Changes to Existing Law: This section would make the following changes in provisions of existing law.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991

SEC. 831. MENTOR-PROTEGE PILOT PROGRAM.

(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the "Mentor-Protege Program".

* * * * *

(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

(1) A developmental program for the protege firm, in such detail as may be reasonable, including (A) factors to assess the protege firm's developmental progress under the program, and (B) the anticipated number and type of subcontracts to be awarded the protege firm.

(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

* * * * *

(j) Expiration of Authority.—(1) No mentor-protégé agreement may be entered into under subsection (e) after ~~September 30, 2015~~ September 30, 2020.

(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after ~~September 30, 2018~~ September 30, 2023.

Section 832 would change the scope of periodic reports the Assistant Secretary of Defense for Research and Engineering (ASD(R&E)) is required to deliver to the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) and annual reports ASD(R&E) is required to deliver to the Secretary of Defense and the congressional defense committees regarding technological maturity and integration risk of critical technologies of the major defense acquisition programs (MDAPs) of the Department of Defense (DoD).

Subparagraph (A) of section 138(b)(8) of title 10, United States Code, as amended by section 901(h)(2) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, requires periodic reporting to USD(AT&L) on the technological maturity and integration risk of critical technologies of all DoD MDAPs. This requirement creates a substantial reporting effort and results in reports with little actionable information. Technological maturity and integration risk of critical technologies are most relevant to an acquisition program at the Milestone B approval when it influences whether or not a program is allowed to proceed to the Engineering and Manufacturing Development phase. Programs significantly earlier in the process do not have their critical technologies identified, and programs significantly later in the process have already had the design finalized and risks realized, producing a report of little value to decision makers. Therefore, changing the reporting requirements of this section from periodic reports on all MDAPs to a report on each MDAP before it receives the Milestone B approval would provide USD(AT&L) actionable decision-making information and would minimize the associated administrative burden to produce it.

Subparagraph (B) of that section requires annual reporting to the Secretary of Defense and the congressional defense committees on the technological maturity and integration risk of critical technologies of all DoD MDAPs. For the same reason as in the subparagraph (A) discussion above, only the information in the reports pertaining to programs that reached a Milestone B approval will have significant value. The proposed changes would preserve the value of the report but considerably reduce the associated administrative burden to produce it.

Budget Implications: There are no resource requirements associated with this proposal. However, the Office of ASD(R&E) does not have sufficient staff to implement the requirements of section 138b as written, which amounts to periodically reviewing the critical technologies of over 100 MDAPs and reporting on them annually, since as of April 2014, there were 79 MDAPs and 32 pre-MDAPs. This requirement could drive a yearly cost of up to $9 million dollars to maintain the additional staff and contract support needed to accomplish this process.

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
	0	0	0	0	0	--	--	--	--
Total	0	0	0	0	0	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 138(b)(8) of title 10, U.S.C., as amended by section 901(h)(2) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015:

§ 138. Assistant Secretaries of Defense

(a) ***

(b)(1) ***

* * * * * * *

(8) One of the Assistant Secretaries is the Assistant Secretary of Defense for Research and Engineering. Except as otherwise prescribed by the Secretary of Defense, the Assistant Secretary of Defense for Research and Engineering shall perform such duties relating to research and engineering as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe. The Assistant Secretary, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation, shall—

(A) ~~**periodically**~~ review and assess the technological maturity and integration risk of critical technologies of ~~**the**~~ **each** major defense acquisition program~~**s**~~ of the Department of Defense **before the Milestone B approval for that program** and report on the findings of such ~~**reviews and assessments**~~ **review and assessment** to the Under Secretary of Defense for Acquisition, Technology, and Logistics; and

(B) submit to the Secretary of Defense and to the congressional defense committees by March 1 of each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense **for which a Milestone B approval occurred during the preceding fiscal year**.

* * * * * * *

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Section 901 would reorganize and redesign the Office of Community Support for Military Families with Special Needs (OSN) and the Office of Family Policy/Children and

Youth (OFP/CY) into the Office of Military Family Readiness Policy (OMFRP), and realigns the requirement for the director of OSN to be a member of the Senior Executive Service or a General or Flag officer to the newly formed OMFRP. This will increase efficiency, enhance productivity and develop synergies between complementary functions within the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy (MC&FP). Co-locating all cross-functional teams within MC&FP is essential for team-building and collaboration.

The mission of the OFP/CY is to promote military family readiness by preparing Service members and their families to effectively navigate the challenges of daily living experienced in the unique context of military service. Working with the military Services, OFP/CY develops and maintains several components of the Family Readiness System, a network of agencies, programs, services, and individuals, and the collaboration among them, that promotes the readiness and quality of life of Service members and their families.

Support to military families with special needs is an especially important task for the Department. Military families with special needs are first *military* families. They have the same challenges any other military family may encounter in the face of periodic moves, deployments, and separation from family. Further, they face additional challenges, navigating often complex systems to obtain the services and benefits their families need to help their loved one function to their maximum potential.

Reorganizing OSN and OFP/CY into the new Office of Military Family Readiness Policy is critical to the quality, breadth and responsiveness of services this directorate provides to millions of Service members and military families.

Budgetary Implications: This is a non-budgetary proposal, as no additional costs are associated with its enactment.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DOD	0.0	0.0	0.0	0.0	0.0	O&M, D-W			
Total	0.0	0.0	0.0	0.0	0.0	--	--	--	--

Changes to Existing Law: This section would make the following changes to sections 1781, 1781a, 1781c, and 131 of title 10, United States Code:

§1781. Office of <u>Military</u> Family <u>Readiness</u> Policy

(a) ESTABLISHMENT.—There is in the Office of the Secretary of Defense an Office of <u>Military</u> Family <u>Readiness</u> Policy (in this section referred to as the "Office"). The Office shall be

headed by the Director of Military Family Readiness Policy, who shall serve within the Office of the Under Secretary of Defense for Personnel and Readiness. The Director shall be a member of the Senior Executive Service or a general officer of flag officer.

(b) DUTIES.—The Office—

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

(c) STAFF.—The Office shall have not less than five professional staff members.

§1781a. Department of Defense Military Family Readiness Council

(a) IN GENERAL.—There is in the Department of Defense the Department of Defense Military Family Readiness Council (in this section referred to as the "Council").

(b) MEMBERS.—(1) The Council shall consist of the following members:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall serve as chair of the Council and who may designate a representative to chair the council in the Under Secretary's absence.

(B) The following persons, who shall be appointed or designated by the Secretary of Defense:

(i) One representative of each of the Army, Navy, Marine Corps, and Air Force, each of whom shall be a member of the armed force to be represented.

(ii) One representative of the Army National Guard or the Air National Guard, who may be a member of the National Guard.

(iii) One spouse or parent of a member of each of the Army, Navy, Marine Corps, and Air Force, two of whom shall be the spouse or parent of an active component member and two of whom shall be the spouse or parent of a reserve component member.

(C) Three individuals appointed by the Secretary of Defense from among representatives of military family organizations, including military family organizations of families of members of the regular components and of families of members of the reserve components.

(D) The senior enlisted advisor from each of the Army, Navy, Marine Corps, and Air Force, except that two of these members may instead be selected from among the spouses of the senior enlisted advisors.

(E) The Director of the Office of Military Family Readiness Policy~~Community Support for Military Families with Special Needs~~.

* * * * *

§ 1781c. Office of ~~Community Support for Military Families With~~ Special Needs

(a) ESTABLISHMENT.—There is in the ~~Office of the Under Secretary of Defense for Personnel and Readiness~~ Office of Military Readiness Policy the Office of ~~Community Support for Military Families With~~ Special Needs (in this section referred to as the "Office").

(b) PURPOSE.—The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

~~(c) Director.—~~

~~(1) The head of the Office shall be the Director of the Office of Community Support for Military Families with Special Needs who shall be a member of the Senior Executive Service or a general officer or flag officer.~~

~~(2) In the discharge of the responsibilities of the Office, the Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness.~~

*** * * * ***

§131. Office of the Secretary of Defense

(a) ***

(b) The Office of the Secretary of Defense is composed of the following:

***

(7) Other officials provided for by law, as follows:

****

(F) The Director of Military Family Readiness Policy under section 1781 of this title.

*** * * * ***

Section 902 would change the requirement for the Chairman of the Joint Chiefs of Staff (CJCS) to "review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command," found within the Unified Command Plan (UCP), from not less than every two years to not less than every four years. This would increase the minimum length of time permitted between reviews without limiting the ability of the CJCS to accomplish a review of combatant command responsibilities more frequently or as situations develop that may justify a review. It also aligns the requirement for the CJCS to review roles and missions with requirements for the Quadrennial Defense Review (QDR) and the quadrennial review of roles and missions, found in sections 118 and 118b, respectively, of title 10, United States Code.

The intent of this legislative proposal is to align the UCP reviews more effectively with those of the QDR in order to optimize the identification of combatant command responsibilities based on national strategic guidance. In accordance with section 118 of title 10 (QDR), the Secretary of Defense: "shall every four years, during a year following a year evenly divisible by four, conduct a comprehensive examination (to be known as a 'quadrennial defense review') of

the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program and policies of the United States with a view toward determining and expressing the defense strategy of the United States and establishing a defense program for the next 20 years. Each such quadrennial defense review shall be conducted in consultation with the Chairman of the Joint Chiefs of Staff."

Section 118b of title 10 provides a similar requirement to that in section 161 of that title, but achieves a greater economy of effort by requiring this review on a quadrennial basis. Section 118b provides that the: "Secretary of Defense shall every four years conduct a comprehensive assessment (to be known as the 'quadrennial roles and missions review') of the roles and missions of the armed forces and the core competencies and capabilities of the Department of Defense to perform and support such roles and missions." Additionally, it requires the CJCS to accomplish an independent military assessment of roles and missions: "In each year in which the Secretary of Defense is required to conduct a comprehensive assessment pursuant to subsection (a), the Chairman of the Joint Chiefs of Staff shall prepare and submit to the Secretary the Chairman's assessment of the roles and missions of the armed forces and the assignment of functions to the armed forces, together with any recommendations for changes in assignment that the Chairman considers necessary to achieve maximum efficiency and effectiveness of the armed forces."

The modification that this proposal would make to section 161 of title 10 would better align the requirements for CJCS review of the responsibilities, roles, and missions of the combatant commands with the requirements for the QDR and quadrennial review of roles and missions. It would align the reviews with the review and development of quadrennial strategic guidance, and would do so at no additional cost. This change would facilitate the quadrennial production of the UCP without limiting the Chairman's ability to conduct a review of responsibilities, roles, and missions on a more frequent basis if required or desired.

Changes to Existing Law: This proposal would make the following change to existing law:

§ 161. Combatant Commands: establishment

(a) UNIFIED AND SPECIFIED COMBATANT COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands and specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

(b) PERIODIC REVIEW.—(1) The Chairman periodically (and not less often than every ~~**two**~~ **four** years) shall—

(A) review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command; and

(B) recommend to the President, through the Secretary of Defense, any changes to such missions, responsibilities, and force structures as may be necessary.

(2) Except during time of hostilities or imminent threat of hostilities, the President shall notify Congress not more than 60 days after—

(A) establishing a new combatant command; or

(B) significantly revising the missions, responsibilities, or force structure of an existing combatant command.

(c) DEFINITIONS.—In this chapter:

(1) The term "unified combatant command" means a military command which has broad, continuing missions and which is composed of forces from two or more military departments.

(2) The term "specified combatant command" means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

(3) The term "combatant command" means a unified combatant command or a specified combatant command.

Section 903 would amend section 153 of title 10, United States Code, relating to functions of the Chairman of the Joint Chiefs of Staff, to update that section to reflect additional joint force integration functions already overseen by the Chairman resulting from the disestablishment of United States Joint Forces Command on August 31, 2011, and the subsequent deletion of that command from the Unified Command Plan.

Budget Implications: There are no projected budget implications due to these changes. The Chairman of the Joint Chiefs of Staff currently provides oversight of these joint force integration functions. This proposal would codify these new responsibilities.

Changes to Existing Law: This proposal would make the following changes to section 153 of title 10, United States Code:

TITLE 10 - ARMED FORCES
Subtitle A - General Military Law
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 5 - JOINT CHIEFS OF STAFF

§153. Chairman: functions

(a) PLANNING; ADVICE; POLICY FORMULATION. - Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

(1) ***

*** * * * * * * ***

(4) ADVICE ON REQUIREMENTS, PROGRAMS, AND BUDGET.—(A) Advising the Secretary, under section 163(b)(2) of this title, on the priorities of the requirements identified by the commanders of the unified and specified combatant commands.

(B) Advising the Secretary on the extent to which the program recommendations and budget proposals of the military departments and other components of the Department of Defense for a fiscal year conform with the priorities established in strategic plans and with the priorities established for the requirements of the unified and specified combatant commands.

(C) Submitting to the Secretary alternative program recommendations and budget proposals, within projected resource levels and guidance provided by the Secretary, in order to achieve greater conformance with the priorities referred to in clause (B).

(D) Recommending to the Secretary, in accordance with section 166 of this title, a budget proposal for activities of each unified and specified combatant command.

(E) Advising the Secretary on the extent to which the major programs and policies of the armed forces in the area of manpower and contractor support conform with strategic plans.

(F) Identifying, assessing, and approving military requirements (including existing systems and equipment) to meet the National Military Strategy.

(G) Recommending to the Secretary appropriate trade-offs among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, to ensure that such trade-offs are made in the acquisition of materiel and equipment to support the strategic and contingency plans required by this subsection in the most effective and efficient manner.

(H) Advising the Secretary on development of joint command, control, communications, and cyber capability, including integration and interoperability of such capability, through requirements, integrated architectures, data standards, and assessments.

* * * * * * * *

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001. The Secretary of Defense and the Secretary of State would exercise the approved authority to enter into agreements for certain logistic support, supplies, and services in accordance with the procedures established by the proposal. This proposal would supply the national security stakeholders with greater flexibility and agility during contingency operations and transition periods. It would support a collaborative, "whole-of-government" efforts between the Department of Defense and the Department of State by leveraging available resources between the two Departments and, therefore, reduce duplication of effort. This proposed legislation represents an important step towards achieving greater efficiency and productivity in Defense spending and achieving better buying power U.S. Government-wide. Additionally, this proposal would have immediate application in furtherance of the U.S. strategic objective of building a more stable and secure Afghanistan, while also serving as a model for addressing interagency support during future contingencies.

Section 1535 of title 31, United States Code, referred to as the "Economy Act," provides authority for Federal departments and agencies to purchase goods or services from other Federal

departments and agencies under the following conditions: (1) amounts for the purchase are available; (2) the purchase is in the best interest of the government; (3) the ordered goods or services cannot be provided more cost-efficiently by contract from a commercial enterprise; and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services. The Federal Acquisition Regulation, 48 CFR 17.503(b), states that Economy Act orders must include: (1) a description of the supplies or services required; (2) delivery requirements; (3) a funds citation; (4) a payment provision; and (5) acquisition authority as may be appropriate. This proposal would supplement the Economy Act to authorize the Secretary of Defense and the Secretary of State to enter into an agreement during a contingency operation and related transition period for up to 2 years following the end of such contingency operation. This proposal would provide for the Departments of State and Defense an authority akin to that which already is statutorily available to friendly foreign governments and specified international organizations allowing their military forces to acquire from and transfer to U.S. forces logistics support, supplies, and services in accordance with sections 2341-2350 of title 10, United States Code. It is envisioned that the execution of interagency agreements between DOS and DoD and the implementation of financial procedures will follow and be consistent with established Acquisition and Cross-Servicing Agreement practices and procedures.

Budget Implications: This proposal would not require any additional funding.

Changes to Existing Law: This proposal would make no changes to the text of existing law.

Subtitle B—Counter-Drug Activities

Subtitle C—Naval Vessels and Shipyards

Section 1021. Section 1014 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 provided the Navy with the authority to purchase meals on behalf of embarked members of non-governmental organizations (NGOs), host and partner nations, joint services, and U.S. government agencies and foreign national patients treated on Navy ships and their escorts during Navy's execution of humanitarian and civic assistance missions. Section 1021 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 extended this authority to September 30, 2015. This proposal would extend the authority to September 30, 2020. Prior to the enactment of section 1014, there was no specific statutory authority to waive such meal payment or to use general operation and maintenance appropriated funds to pay for official visitor/guest messing.

Section 1011 of title 37, United States Code, requires that the Secretary of Defense establish rates for meals sold at messes to officers, civilians, and enlisted members. The USNS MERCY Southeast Asia tsunami relief mission and subsequent humanitarian civic assistance deployments successfully fostered a positive image of America worldwide. Project Hope and other NGOs, host and partner nations, joint services, and other government agencies participate in the missions by integrating into the Navy team and providing primarily medical services, including the treatment of foreign national patients on board and ashore. Members of NGOs, host and partner nations, joint services, and other government agencies embarked and patients

treated on Navy vessels are official visitors and guests required to purchase meals at the messing facility.

In addition, the proposal would make technical and clarifying amendments (1) to correct a typographic error in subsection (a) of the current law ("not more that" should be "not more than"), and (2) to provide consistency within section 1014 in the manner of reference to Navy vessels.

Budget Implications: Based on fiscal year (FY) 2010 - 2013 expenditures, the Department of Defense estimates that the following amounts will be executed if this authority is extended. The estimates are funded in the Navy's FY 2016 budget.

RESOURCE REQUIRMENTS ($THOUSANDS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	920	940	960	980	1000	Operation and Maintenance, Navy	01	1B1B	0408036N

Changes to Existing Law: This proposal would make the following change to section 1014 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, as amended:

SEC. 1014. REIMBURSEMENT OF EXPENSES FOR CERTAIN NAVY MESS OPERATIONS.

(a) AUTHORITY FOR PAYMENT.—Of the amounts appropriated for operation and maintenance for the Navy, not more ~~that~~ **than** $1,000,000 may be used in any fiscal year to pay the charge established under section 1011 of title 37, United States Code, for meals sold by messes for United States Navy and Naval Auxiliary vessels to the following:

(1) Members of nongovernmental organizations and officers or employees of host and foreign nations when participating in or providing support to United States civil-military operations.

(2) Foreign national patients treated on ~~Naval~~ **such** vessels during the conduct of United States civil-military operations, and their escorts.

(b) EXPIRATION OF AUTHORITY.—The authority to pay for meals under subsection (a) shall expire on September 30, ~~2015~~ **2020**.

(c) REPORT.—Not later than March 31 of each year during which the authority to pay for meals under subsection (a) is in effect, the Secretary of Defense shall submit to Congress a report on the use of such authority.

Subtitle D—Other Matters

Section 1041. In support of the Secretary of Defense's March 14, 2011, efficiency initiatives "designed to reduce duplication, overhead, and excess, and instill a culture of savings and cost accountability across the Department of Defense [DoD]," DoD is recommending the repeal of the statutory requirement for a Federal Advisory Committee Act (FACA) advisory board for the Radiation Dose Reconstruction Program. DoD believes that this advisory board has achieved its objectives, and its functions can now be more effectively conducted through an interagency effort rather than through a FACA advisory board.

Beginning in 1978, radiation dose reconstructions have been performed for veterans with radiogenic diseases; in particular, atomic veterans. The term "atomic veteran" applies to United States (U.S.) military personnel who participated in the atmospheric testing of nuclear weapons from 1945 to 1962, or those who were either prisoners of war in Japan or stationed in Hiroshima or Nagasaki around the time the atomic bombs were detonated. Dose reconstruction is the scientific estimation of radiation dose levels received by a particular individual. These dose levels are used to determine the increased risk of cancer, illness, or other adverse health effects, as well as the compensation that will be provided to those individuals. The Veterans' Advisory Board on Dose Reconstruction (VBDR) is a Federal Advisory Committee composed of private sector experts and scientists, in addition to one representative each from the Defense Threat Reduction Agency and U.S. Strategic Command Center for Combating Weapons of Mass Destruction (DTRA/SCC-WMD), and the Department of Veterans Affairs (VA), who provide technical and academic advice on DoD's Radiation Dose Reconstruction Program and the VA's radiological disease claims processing procedures.

Due to the VBDR's recommendations, the Radiation Dose Reconstruction Program is a mature program with established scientific procedures for determining the overall radiation doses received by affected individuals. In addition, the board's recommendations have streamlined the VA's atomic veteran's claims processes, resulting in significant efficiencies and shortened processing times. To ensure sustained emphasis of this important program, DoD requests that the review and oversight functions of the VBDR be transferred to the Secretaries of Defense and Veterans Affairs.

Budgetary Implications: The board is jointly funded by DoD and VA, with DoD providing for the administration of the program. The fiscal year (FY) 2013 committee cost was $427,233, and 0.9 man-years. The Board held no meetings in FY14. Of this total committee cost, the VA contributes approximately $157,000. This total includes government salaries, member travel and per diem costs, the program support contract, and costs associated with holding an annual public meeting accessible to atomic veterans. The board's recommended termination schedule included a final public meeting in July 2013 with the finalization and archival of files required by July 2014. The VBDR public website will be supported by DTRA/SCC-WMD for two years after termination. Savings to DoD after shutdown will be $270,233 per year. This plan is dependent on DoD obtaining required Congressional relief.

	Resource Requirements		

Savings	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriaton From	BA	Dash-1 Line Item
DoD	$270,233	$270,233	$270,233	$270,233	$270,233	Operation and Maintenance, Defense-Wide	04	4GTN
VA	$157,000	$157,000	$157,000	$157,000	$157,000			
Total	**$427,233**	**$427,233**	**$427,233**	**$427,233**	**$427,233**	--	--	--

Changes to Existing Law: This proposal would amend section 601 of the Veterans Benefits Act of 2003 (Public Law 108-183, 117 Stat. 2667; prec. 38 U.S.C. 1154 note). The amendment to section 601 is a complete restatement of that section. The current text is set forth below. The proposed replacement text is in thelegislative language at the beginning of this proposal.

Veterans Benefits Act of 2003

(PUBLIC LAW 108-183 – DEC. 16, 2003)

~~SEC. 601. [38 USC 1154 note]RADIATION DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE.~~

~~(a) REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION. (1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Radiation Dose Reconstruction Program of the Department Of Defense.~~

~~(2) In conducting the review under paragraph (1), the Secretaries shall~~

~~(A) determine whether an)' additional actions are required to ensure that the quality assurance and quality control mechanisms of the Radiation Dose Reconstruction Program are adequate and sufficient for purposes of the program: and~~

~~(B) determine the actions that are required to ensure that the mechanisms of the Radiation Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit Veterans to review the assumptions utilized in their dose reconstructions.~~

~~(3) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth~~

~~(A) the results of the review;~~

~~(B) a plan for any actions determined to be required under paragraph (2); and~~

~~(C) such other recommendations for the improvement of the mission, procedures, and administration of the Radiation Dose Reconstruction Program as the Secretaries jointly consider appropriate.~~

~~(b) ON GOING REVIEW AND OVERSIGHT. The Secretaries shall jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose~~

~~Reconstruction Program, including the establishment of the advisory board required by subsection (c).~~

~~(c) ADVISORY BOARD.—(1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Radiation Dose Reconstruction Program.~~

~~(2) The advisory board under paragraph (1) shall be composed of the following:~~

~~(A) At least one expert in historical dose reconstruction of the type conducted under the Radiation Dose Reconstruction Program.~~

~~(B) At least one expert in radiation health matters.~~

~~(C) At least one expert in risk communications matters.~~

~~(D) A representative of the Department of Veterans Affairs.~~

~~(E) A representative of the Defense Threat Reduction Agency.~~

~~(F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.~~

~~(3) The advisory board under paragraph (1) shall~~

~~(A) conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of decisions by the Department of Veterans Affairs on Claims for service connection of radiogenic diseases;~~

~~(B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program; and~~

~~(C) carry out such other activities with respect to the review and oversight of the Radiation Dose Reconstruction Program as the Secretaries shall jointly specify.~~

~~(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Radiation Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).~~

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would extend through fiscal year (FY) 2017 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

This authority has been granted since 2006 to provide certain allowances, benefits, and gratuities to individuals on official duty in Pakistan or a combat zone. The extension of the authority would ensure employees receive benefits promptly and for the periods of time when the conditions warrant the designation of a combat zone. This is a provision that applies to all Federal agencies, not just the Department of Defense (DoD), and is necessary to incentivize and support all Federal civilian employees taking assignments in Pakistan or a conflict zone.

Budgetary Implications: The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost

associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act (22 U.S.C. 3979; and 4081 et seq.) (i.e., death gratuity equal to EX-II ($183,300 in 2015); payment of commercial roundtrip travel for Rest and Recuperation (R&R) breaks (up to three per year for employees deployed for 12 consecutive months and home leave; and administrative leave for R&R travel). Specifically, the total cost for the death gratuity is calculated based on the assumption that there is one civilian death per Service during the two year period. This cost is added to FY 2017. Payment of commercial roundtrip travel for R&R is based on the estimated number of currently deployed civilians who will remain deployed for 12 consecutive months, and thus entitled to up to three R&R breaks and home leave. Estimates of the number of employees are: Army – 1,770; Navy – 215; Air Force – 168; Defense Agencies – 239. The average cost for each roundtrip travel for R&R is $18,000.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	Operation and Maintenance, Defense-Wide OCO	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	31.9	32.0				Operation and Maintenance, Army OCO	BA1	OCO-CIVPAY	
Navy	3.87	4.05				Operation and Maintenance, Navy OCO	BA1	OCO-CIVPAY	
Air Force	3.02	3.21				Operation and Maintenance, Air Force OCO	BA1	OCO-CIVPAY	
Defense Agencies	4.30	4.48				Operation and Maintenance, Defense-Wide OCO	BA3	OCO-CIVPAY	
Total	43.09	43.74							

NUMBER OF PERSONNEL AFFECTED									
	FY 2016	**FY 2017**	**FY 2018**	**FY 20019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1,770	1,770				Operation and Maintenance, Army OCO	BA1	OCO-CIVPAY	
Navy	215	215				Operation and Maintenance, Navy OCO	BA1	OCO-CIVPAY	
Air Force	168	168				Operation and Maintenance, Air Force OCO	BA1	OCO-CIVPAY	
Defense Agencies	239	239				Operation and Maintenance,	BA3	OCO-CIVPAY	

						Defense-Wide OCO			
Total	2,392	2,392							

Changes to Existing Law: This proposal would make the following change to Section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443):

SEC. 1603.

(a) IN GENERAL.—(1) During fiscal years 2006 (including the period beginning on October 1, 2005, and ending on June 15, 2006), 2007, and 2008 the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Iraq or Afghanistan.

(2) During fiscal years 2009 through ~~2016~~ 2017, the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

(b) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect the authority of the head of an agency under any other provision of law.

(c) APPLICABILITY OF CERTAIN AUTHORITIES.—Section 912(a) of the Internal Revenue Code of 1986 shall apply with respect to amounts received as allowances or otherwise under this section in the same manner as section 912 of the Internal Revenue Code of 1986 applies with respect to amounts received by members of the Foreign Service as allowances or otherwise under chapter 9 of title I of the Foreign Service Act of 1980.

Section 1102 would enable the Secretary of Defense to include certain civilian who are assigned to the Defense Clandestine Service among the population of the Department of Defense workforce eligible to receive special pay, allowances, and benefits, in addition to basic pay, similar to that provided to employees performing comparable, specialized work.

Among other matters, this proposal would provide authority for the Secretary of Defense to establish a special allowance to help create and maintain a workforce that is more mobile in support of the Defense Intelligence Agency's worldwide mission.

Additional classified justification will be provided separately

Budget Implications: Classified budget display will be provided separately, upon request.

Changes to Existing Law: This proposal would add a new subsection to section 1603 of title 10, United States Code, as follows:

§1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.-The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.-(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on-

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(c) ADDITIONAL ALLOWANCES AND BENEFITS FOR EMPLOYEES OF THE DEFENSE CLANDESTINE SERVICE. –In addition to the authority to provide compensation under subsection (a), the Secretary of Defense may provide an employee in a defense intelligence position who is assigned to the Defense Clandestine Service allowances and benefits under paragraph (1) of section 9904 without regard to the limitations in that section–

(1) that the employees be assigned to activities outside the United States; or

(2) that the activities to which the employee is assigned be in support of Department of Defense activities abroad.

For the information of the reader, section 9904 of title 5, United States Code, appears as follows:

§9904. Special pay and benefits for certain employees outside the United States

The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment-

(1) allowances and benefits-

(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96–465, 22 U.S.C. 4081 et seq.) or any other provision of law; or

(B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and

(2) special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).1

Section 1103 would extend by two years the sunset provision applicable to the special pay authority enacted in section 1105 of the Ike Skelton National Defense Authorization Act for Fiscal Year (FY) 2011 (P.L. 111-383), and codified in 5 U.S.C. 5542(a)(6), that allows overtime pay equal to one and one-half times the hourly rate of basic pay for Department of the Navy employees assigned to temporary duty in direct support of the forward-deployed nuclear-powered aircraft carrier in Japan. Section 1106 of the FY 2015 NDAA provides a one-year extension of the sunset provision, through September 30, 2015.

Non-Fair Labor Standards Act (FLSA) exempt Department of the Navy employees paid under the General Schedule (GS) and working in a non-foreign area earn a standard overtime rate that is one and one-half times their base rate, including any specialty or differential pay because of the foreign exemption criteria (5 CFR 551.212). The proposal is needed because the overtime pay of these employees can be impacted by a provision within the Code of Federal Regulations (5 CFR 551.212 Foreign Exemption Criteria), which restricts an employee in a foreign area (which includes Japan), from receiving standard overtime pay for overtime work. In the absence of an extension of the current authority in 5 U.S.C. 5542(a), non-FLSA exempt Department of the Navy employees paid under the GS assigned to temporary duty in direct support of the forward deployed nuclear-powered aircraft carrier in Japan would only be entitled to overtime pay equal to one times the hourly rate of basic pay, which is less than they would be entitled to earn while working in the United States (5 CFR 551.212). Consequently, Naval Shipyard employees who work more than 40 hours per week in Japan (a foreign country) would earn less than they would earn in the United States for the same amount of work. This foreign exemption does not apply to wage-grade employees covered by the Federal Wage System.

The United States nuclear-powered aircraft carrier forward-deployed to Yokosuka, Japan, and its battle group represent critical national assets that allow the United States to promptly and powerfully respond to any emerging issues of national interest in the Far East. The nature, scope, and complexity of the repairs and maintenance work on a nuclear-powered aircraft carrier require annual depot level work periods. However, the Navy does not have the organic depot level capacity permanently stationed in Yokosuka, Japan, to meet the maintenance requirements for a nuclear-powered aircraft carrier to maintain operational readiness. Therefore, sustaining a mobile workforce of sufficient numbers and technical skill to accomplish the unique annual aircraft carrier maintenance in a professional and confident manner is of the utmost importance to the Department of the Navy. The completion of such maintenance without incident also maintains and enhances the relationship that the U.S. Navy has with Japan.

The Department of the Navy's civilian employees are critical to maintaining the readiness and mission capabilities of the United States' forward deployed ships. These highly specialized and technically skilled employees must leave their families and homes, often for extended periods, in order to accomplish the planned maintenance. In many instances, the length of the civilian deployment combined with the repetitive annual cycle has been greater than what is expected of many uniformed military personnel. Overtime pay for these employees must

continue to be authorized because of the continuing need to support the carrier's maintenance cycle, the finite pool of skilled Naval Shipyard employees, and the need to maintain the confidence of the Japanese people by successfully completing maintenance of a nuclear-powered aircraft carrier in their port.

The overtime allowance authority of 5 U.S.C. 5542(a) has helped to ensure that the Navy retains qualified and competent employees who are committed to maintain the readiness and mission capabilities of the forward-deployed nuclear-powered aircraft carrier in Japan. Developing the skills of Naval Shipyard nuclear workers takes many years, so retaining workers with these skills is imperative to the success of Navy maintenance work and to the strategic national assets needed to ensure a powerful and ready response to any emerging issues of national interest.

Budgetary Implications: There would be minimal budgetary impact as a result of this legislative change. Since the enactment of section 1105 of P.L. 111-183, the naval shipyards have successfully completed four depot-level ship maintenance availabilities and four one-month upkeep periods in Japan on the forward-deployed nuclear-powered aircraft carrier, allowing this carrier to complete five successful deployments in mission-ready condition. Under this authority, approximately $200,000 per year has been paid in overtime compensation.

The resource requirements are reflected below and are budgeted:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	.2	.2	0	0	0	Operation & Maintenance, Navy	01	1B4B	0204112N

Changes to Existing Law: This proposal would make the following change to section 5542 of title 5, United States Code:

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) or the hourly rate of basic pay of the employee, and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a non-managerial position in GS-14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of—

(A) one and one-half times the minimum hourly rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee, and all that amount is premium pay.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, the overtime hourly rate of

pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(B) Subparagraph (A) shall expire on September 30, ~~2015~~ **2017**.

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TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Section 1201 would continue the authorization of funds for the operations and activities of the Office of Security Cooperation in Iraq (OSC-I), including life support, transportation and personal security, and facilities renovation and construction in fiscal year (FY) 2016. Section 1243 of the House version of the National Defense Authorization Act (NDAA) for FY 2015 would strike the term "non-operational" and replace "institutional environment" with "at a base or facility of the Government of Iraq," providing OSC-I the flexibility to provide training to the Iraqi Security Forces in other than a classroom environment and during military operations. This proposal would continue the authority to train Iraqi Ministry of Defense and Counter Terrorism Service (CTS) personnel to address capability gaps; to integrate processes relating to intelligence, air sovereignty, combined arms, logistics and maintenance; and to manage and integrate defense-related institutions.

OSC-I is on a glide path toward becoming a traditional Security Cooperation Office. However, because the security situation in Iraq has drastically deteriorated in the last 6 months, extending the OSC-I authorization and funding for an additional year would allow OSC-I to work with Iraqi Security Forces and CTS to bridge existing gaps in critical capabilities while transitioning to training cases developed as Foreign Military Sales and Foreign Military Financing cases.

Budgetary Implications: This proposal would be funded from within Overseas Contingency Operations (OCO) appropriations within the Administration's FY 2016 OCO, Operation and Maintenance, Air Force request. This proposal has been offset by a reduction to other program expenditures. The cost is reflected in the following table:

RESOURCE REQUIREMENTS ($MILLION)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
O&M-AF	$143	$0	$0	$0	$0	Operation and Maintenance,	BA04	42G-OCO	

						Air Force - OCO			
Total	$143	$0	$0	$0	$0				

Changes to Existing Law: This proposal would make the following changes to section 1215 of the National Defense Authorization Act for Fiscal Year 2012, as most recently amended by section 1214 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 112-81; 10 U.S.C. 113 note):

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

SEC. 1215. AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OF THE OFFICE OF SECURITY COOPERATION IN IRAQ.

(a) AUTHORITY.—The Secretary of Defense may support United States Government transition activities in Iraq by providing funds for the following:

(1) Operations and activities of the Office of Security Cooperation in Iraq.

(2) Operations and activities of security assistance teams in Iraq.

(b) TYPES OF SUPPORT.—The operations and activities for which the Secretary may provide funds under the authority in subsection (a) may include life support, transportation and personal security, and construction and renovation of facilities.

(c) LIMITATION ON AMOUNT.—The total amount of funds provided under the authority in subsection (a) in fiscal year ~~2015~~2016 may not exceed ~~$140,000,000~~$143,000,000.

(d) SOURCE OF FUNDS.—Funds for purposes of subsection (a) for fiscal year ~~2015~~ 2016 shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

(e) COVERAGE OF COSTS OF OSCI IN CONNECTION WITH SALES OF DEFENSE ARTICLES OR DEFENSE SERVICES TO IRAQ.—The President shall ensure that any letter of offer for the sale to Iraq of any defense articles or defense services issued after the date of the enactment of this Act includes, consistent with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.), charges sufficient to recover the costs of operations and activities of security assistance teams in Iraq in connection with such sale.

(f) ADDITIONAL AUTHORITY FOR ACTIVITIES OF OSCI.—

(1) IN GENERAL.—During fiscal year ~~2015~~2016, the Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Office of Security Cooperation in Iraq to conduct training activities in support of Iraqi Ministry of Defense and Counter Terrorism Service at a base or facility of the Government or Iraq to address capability gaps, integrate processes relating to intelligence, air sovereignty, combined arms, logistics and maintenance, and to manage and integrate defense-related institutions.

(2) REQUIRED ELEMENTS OF TRAINING.—The training conducted under paragraph (1) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Military professionalism.

(C) Respect for legitimate civilian authority within Iraq.

~~(g) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report on the activities of the Office of Security Cooperation in Iraq. The report shall include the following:~~

~~(1) A description, in unclassified form (but with a classified annex if appropriate), of any capability gaps in the security forces of Iraq, including capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance.~~

~~(2) A description of the manner in which the programs of the Office of Security Cooperation in Iraq, in conjunction with other United States programs such as the Foreign Military Financing program, the Foreign Military Sales program, and joint training exercises, will address the capability gaps described in paragraph (1) if the Government of Iraq requests assistance in addressing such capability gaps.~~

Section 1202 would extend through fiscal year (FY) 2016 current authority for the use of Operation and Maintenance, Defense-wide (O&M D-W) appropriations for the Coalition Support Fund (CSF). The existing requirements and limitations with respect to such authority, including the exemption from the congressional notification requirement of CSF reimbursements for access based on an international agreement, are continued unchanged. This would allow the Department of Defense to make routine payments quickly following each quarter once the access provided under the agreement is validated. Congress would maintain visibility over these payments through the CSF quarterly reports.

The requested extension through FY2016 is consistent with the United States-North Atlantic Treaty Organization Strategic Plan for Afghanistan, which envisions that coalition operations continue in Afghanistan into 2016. All parties are aware that as the transition in Afghanistan continues, CSF reimbursements will decline. However, it remains in the best interests of the United States that we facilitate consistent coalition support through the critical transition period.

This proposal also would strike the limitation on CSF reimbursements for Pakistan during FY 2015. A limitation such as this enacted independently of Pakistani military operations is perceived as arbitrary, unilateral, and inconsistent when Pakistan has expectation of being reimbursed to offset the cost of increased Pakistani military operations that have been repeatedly urged by the U.S. The limitation unnecessarily complicates our reimbursement process and ability to consistently project CSF reimbursements for Pakistan, at a critical time for the U.S.-Pakistan bilateral relationship. Imposing the limitation during a crucial juncture in Pakistan's counterterrorism/ counterinsurgency campaign along the Afghanistan/Pakistan border and specifically in North Waziristan, is viewed by the PAKMIL as breaking faith. The CSF flexibility to support these operations within the full scope of available authority is essential.

Budgetary Implications: The proposal would be funded through O&M, D-W under the FY 2016 Overseas Contingency Operations budget request of which $1.26 billion is for the CSF authority.

RESOURCE REQUIREMENTS ($BILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
CSF	$1.26	0	0	0	0	Operation & Maintenance, Defense-Wide	04	DSCA	1002199T
Total	$1.26	0	0	0	0				

Changes to Existing Law: This proposal would amend section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), as most recently amended by section 1222 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291) as follows:

SEC. 1233. REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) AUTHORITY.—From funds made available for the Department of Defense for ~~fiscal year 2015~~ fiscal year 2016 for overseas contingency operations for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation for the following:

(1) Logistical and military support provided by that nation to or in connection with United States military operations in Iraq of in Operation Enduring Freedom in Afghanistan.

(2) Logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations.

(b) OTHER SUPPORT.—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military operations in Iraq or in Operation Enduring Freedom in Afghanistan through the following:

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a nonreimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

(2) SUPPORT.—Support authorized by subsection (b) may be provided in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, considers appropriate.

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.—The total amount of reimbursements made under the authority in subsection (a) during fiscal year 2008 may not exceed $1,200,000,000. The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) ~~during fiscal year 2015 may not exceed $1,200,000,000~~ during fiscal year 2016 may not exceed $1,260,000,000. ~~Of the aggregate amount specified in the preceding sentence, the total amount of reimbursements made under subsection (a) and support provided under subsection (b) to Pakistan during fiscal year 2015 may not exceed $900,000,000.~~

(2) PROHIBITION ON CONTRACTUAL OBLIGATIONS TO MAKE PAYMENTS.—The Secretary of Defense may not enter into any contractual obligation to make a reimbursement under the authority in subsection (a).

(3) PROHIBITION ON REIMBURSEMENT OF PAKISTAN FOR SUPPORT DURING PERIODS CLOSED TO TRANSSHIPMENT.—Effective as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013, funds (including funds from a prior fiscal year that remain available for obligation) may not be used for reimbursements under the authority in subsection (a) for Pakistan for claims of support provided during any period when the ground lines of supply through Pakistan to Afghanistan were closed to the transshipment of equipment and supplies in support of United States military operations in Afghanistan.

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b). In the case of any reimbursement to Pakistan under the authority of this section, such notice shall be made in accordance with the notice requirements under section 1232(b).

(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.

(f) QUARTERLY REPORTS.—The Secretary of Defense shall submit to the appropriate congressional committees on a quarterly basis a report on any reimbursements made under the authority in subsection (a), and any support provided under the authority in subsection (b), during such quarter.

(g) DEFINITION.—In this section, the term "appropriate congressional committees" means—

(1) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.

Section 1203 would extend the authorization provided to the Department of Defense (DoD) to transfer nonexcess defense articles from the stocks of the Department of Defense,

without reimbursement from the Government of Afghanistan, and provide defense services in connection with the transfer of such defense articles, to the military and security forces of Afghanistan to support the efforts of those forces to restore and maintain peace and security in that country. This legislative proposal would also continue the exemption from the limitations applicable to excess defense articles pursuant to section 516 of the Foreign Assistance Act of 1961. That is, excess defense articles transferred from the stocks of the Department of Defense in Afghanistan through December 31, 2016, would not be subject to the authorities and limitations applicable to excess defense articles under section 516 of the Foreign Assistance Act of 1961 contained in subsections (b)(1)(B) and (e) of such section.

The continuation of this authorization beyond the drawdown period of combat forces from Afghanistan would provide DoD the flexibility to effectively transfer or dispose of materiel and equipment turned in by units redeploying in the latter weeks of 2016.

Budget Implications: If enacted, this proposal would not increase the budgetary requirements of the Department of Defense. This proposal would provide the military departments and the United States Central Command (USCENTCOM) the option, when it makes financial sense -- e.g., a determination has been made by the military department that it would be beneficial and cost effective -- to transfer nonexcess defense articles rather than bringing the equipment home to the United States. The intent of the proposal is to provide cost saving alternatives allowing the military departments to off-ramp equipment that they foresee will not meet current and future requirements instead of incurring the full retrograde and reset cost to bring equipment back to the United States.
Cost Methodology: DoD currently projects that the cost of retrograde of the equipment currently in theater will exceed $4.3 billion. Although each transaction will be on a case-by-case basis to determine if it is more economical, looking at the total life cycle cost of the equipment plus retrograde and reset cost, to procure a new end item or transfer the equipment, including transportation paid for by the military department, the net result would be a reduced cost of operations to the Government. Savings, predicated on the actual transfer of materiel, are anticipated to be minimal but would be realized as reduced transportation costs compared to the currently budgeted amount to retrograde the identified equipment.

Changes to Existing Law: This proposal would change section 1222 of the National Defense Authorization Act for Fiscal Year 2013, as amended by section 1231 of the FY 2015 NDAA, as follows:

SEC. 1222. AUTHORITY TO TRANSFER DEFENSE ARTICLES AND PROVIDE DEFENSE SERVICES TO THE MILITARY AND SECURITY FORCES OF AFGHANISTAN.

(a) NONEXCESS ARTICLES AND RELATED SERVICES.--The Secretary of Defense may, with the concurrence of the Secretary of State, transfer nonexcess defense articles from the stocks of the Department of Defense, without reimbursement from the Government of Afghanistan, and provide defense services in connection with the transfer of such defense articles, to the military and security forces of Afghanistan to support the efforts of those forces to restore and maintain peace and security in that country.

(b) LIMITATIONS.--

(1) VALUE.--The aggregate replacement value of all defense articles transferred and defense services provided in connection with such defense articles under subsection (a) in any fiscal year may not exceed $250,000,000.

(2) SOURCE OF TRANSFERRED ARTICLES.--The authority under subsection (a) may only be used for defense articles that—

(A) were present in Afghanistan as of the date of the enactment of this Act [Jan. 2, 2013];

(B) immediately before transfer were in use to support operations in Afghanistan; and

(C) are no longer required by United States forces in Afghanistan.

(c) APPLICABLE LAW.--Any defense articles transferred or defense services provided under the authority of subsection (a) shall be subject to the authorities and limitations applicable to excess defense articles under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), other than the authorities and limitations in subsections (b)(1)(B), (e), (f), and (g) of such section.

(d) REPORT REQUIRED BEFORE EXERCISE OF AUTHORITY.—

(1) IN GENERAL.--The Secretary of Defense may not exercise the authority under subsection (a) until 15 days after the Secretary submits to the appropriate committees of Congress a report on the equipment and other property of the Department of Defense in Afghanistan.

(2) ELEMENTS.--The report required under paragraph (1) shall include the following:

(A) A description of the process for inventorying equipment and property, including defense articles, in Afghanistan owned by the Department of Defense, including equipment and property owned by the Department and under the control of contractors in Afghanistan.

(B) An estimate of the types and quantities of equipment and property of the Department of Defense, including defense articles, anticipated to be withdrawn from Afghanistan in connection with the drawdown of United States military forces from Afghanistan between the date of the enactment of this Act [Jan. 2, 2013] and December 31, 2014, including equipment and property owned by the Department and under the control of contractors in Afghanistan.

(e) NOTICE ON EXERCISE OF AUTHORITY.—

(1) IN GENERAL.--The Secretary of Defense may not transfer defense articles or provide defense services under subsection (a) until 15 days after the date on which the Secretary of Defense, with the concurrence of the Secretary of State, submits to the appropriate committees of Congress notice of the proposed transfer of defense articles and provision of defense services.

(2) ELEMENTS.--A notice under paragraph (1) shall include the following:

(A) A description of the amount and types of defense articles to be transferred and defense services to be provided.

(B) A statement describing the current value of the defense articles to be transferred and the estimated replacement value of such articles.

(C) An identification of the element of the military or security force that is the proposed recipient of the defense articles to be transferred and defense service to be provided.

(D) An identification of the military department from which the defense articles to be transferred are to be drawn.

(E) An assessment of the impact, if any, of the transfer of defense articles on the readiness of units from which the defense articles are to be transferred, and the plan, if any, for mitigating such impact or reimbursing the military department of such units for such defense articles.

(F) An assessment of the ability of the Government of Afghanistan to sustain the costs associated with receiving, possessing, and using the defense articles to be transferred.

(G) A determination and certification by the Secretary of Defense, with the concurrence of the Secretary of State, that—

(i) the proposed transfer of the defense articles to be transferred and the provision of defense services to be provided in connection with such transfer is in the national interest of the United States; and

(ii) such defense articles are required by the military and security forces of Afghanistan to build their capacity to restore and maintain peace and security in that country.

(f) QUARTERLY REPORTS.—

(1) IN GENERAL.--Not later than 90 days after the date of the first transfer of defense articles and provision of defense services under the authority in subsection (a), and at the end of each calendar quarter, if any, thereafter through March 31, 2016, in which the authority in subsection (a) is exercised, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the implementation of the authority in subsection (a). Each report shall include the replacement value of the defense articles transferred pursuant to subsection (a), both in the aggregate and by military department, and defense services provided to the Government of Afghanistan, during the 90-day period ending on the date of such report.

(2) INCLUSION IN OTHER REPORT.--A report required under paragraph (1) may be included in the report required under section 9204 of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 122 Stat. 2410) or any follow on report to such other report.

(g) DEFINITIONS.--In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.--The term ``appropriate committees of Congress'' means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(2) DEFENSE ARTICLES.--The term ``defense articles" has the meaning given the term in section 644(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(d)).

(3) DEFENSE SERVICES.--The term ``defense services" has the meaning given the term in section 644(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(f)).

(4) MILITARY AND SECURITY FORCES.--The term ``military and security forces" means national armies, national air forces, national navies, national guard forces, police forces, and border security forces, but does not include nongovernmental or irregular forces (such as private militias).

(h) EXPIRATION.--The authority provided in subsection (a) may not be exercised after December 31, ~~2015~~ 2016.

(i) EXCESS DEFENSE ARTICLES.--

(1) ADDITIONAL AUTHORITY.--The authority provided by subsection (a) is in addition to the authority provided by section 516 of the Foreign Assistance Act of 1961.

(2) EXEMPTIONS.--

(A) ~~During fiscal years 2013, 2014, and 2015~~ Through December 31, 2016, the value of excess defense articles transferred from the stocks of the Department of Defense in Afghanistan pursuant to section 516 of the Foreign Assistance Act of 1961 shall not be counted against the limitation on the aggregate value of excess defense articles transferred contained in subsection (g) of such section.

(B) ~~During fiscal years 2013, 2014, and 2015~~ Through December 31, 2016, any excess defense articles specified in subparagraph (A) shall not be subject to the authorities and limitations applicable to excess defense articles under section 516 of the Foreign Assistance Act of 1961 contained in subsections (b)(1)(B) and (e) of such section.

Section 1204 would authorize the Secretary of Defense, after consultation with the Secretary of State, to accept contributions from the Government of Kuwait in support of construction, maintenance, and repair projects within Kuwait that are mutually beneficial to the Department of Defense and the Kuwait Armed Forces. Federal law currently permits the Department of Defense to accept cash contributions from any country or regional organization designated for such purposes to pay for, among other things, “military construction projects of the Department of Defense” (title 10, United States Code, section 2350j). This proposed legislation would give the Department of Defense the ability to accept cash contributions from the Government of Kuwait for the purpose of constructing, maintaining and repairing facilities that mutually benefit the Department of Defense and the Kuwait Armed Forces. This authorization will give the Department of Defense a critical tool for improving host nation relations and increase the Department of Defense’s ability to access and use host nation facilities for present and future defense operations.

The Government of Kuwait has expressed a strong desire to provide funds to the Department of Defense for the purpose of constructing, maintaining and repairing facilities that mutually benefit the Department of Defense and the Kuwait Armed Forces. Proposed projects include training facilities for combined use, as well as projects that could be used by the

Department of Defense if needed in the future. One of the primary reasons the host nation seeks this mechanism for such projects is because its defense ministry has greater flexibility for allocating funds already in its control. Currently, no authority exists to permit the Department of Defense to accept host nation funds for mutually beneficial construction, maintenance or repair.

Currently, the Government of Kuwait, pursuant to the Agreement Between the Government of the United States of America and the Government of the State of Kuwait Concerning Defense Cooperation, Use of Facilities, Logistical Support, Prepositioning of Defense Materials and the Status of the Forces of the United States of America in the State of Kuwait (DCA), provides the Department of Defense with burden sharing funding for the Department of Defense to use for purposes consistent with title 10, United States Code sections 2350j and 2350k. However, these authorities do not allow the Department of Defense to use burden sharing funds for mutually beneficial construction, maintenance and repair projects because the purpose of those statutory provisions and the burden sharing arrangements found in the DCA is to permit and require the Government of Kuwait to offset the cost to the United States of having U.S. forces in Kuwait. Consequently, these funds are only available for requirements exclusive to the Department of Defense. This restriction has resulted in Kuwait officials curtailing contributions and limiting Department of Defense access to host nation territory. In at least one instance, representatives from the Kuwait Ministry of Defense withheld approvals for the Department of Defense to construct facilities in Kuwait, even though funded by United States appropriations.

This new authority will support and create larger cooperative efforts and opportunities within Kuwait. Specifically, it will enhance partnership relations, and the Department of Defense will reap the benefits of construction, maintenance and repair projects that otherwise may not be realized as a result of the host nation's internal politics. The authorization will also give the United States direct input, oversight, and continued access to host nation infrastructure, whereas the inability of the Department of Defense to accept host nation funding for such projects prejudices the ability of the United States to extend its influence within the host nation because the host nation is likely to rely on other foreign nations to fulfill their requirements. Finally, this proposal will assist the Department of Defense in increasing the interoperability effectiveness for host nation forces, and by building partnership capability and investing in long-term relationships, the authorization will create opportunities for follow-on training requests under the Foreign Military Sales (FMS) program.

It is important to note that the objectives of this proposal will not impede the FMS program under Section 29 of the Arms Export Control Act. The FMS program does not envisage projects beneficial to both the United States and the host nation, and when the United States fulfills a foreign military construction project under the FMS program, there is no requirement for the host nation to provide the United States access to or use of that facility.

Notably, this authorization is for construction, maintenance and repair projects that are mutually beneficial, and therefore, the authorization will not replace military construction under the FMS program. Though important, mutually beneficial projects within a host nation are limited, and as noted above, the effect of increased interoperability and an enhanced host nation relationship as a result of this proposal is likely to generate future host nation FMS requests.

Finally, this proposal supports the Defense Strategic Priorities to provide a stabilizing presence abroad and project power in the Middle East by emphasizing the United States' commitment to a key ally and by building partner capacity and increasing interoperability between our forces. At a time when the Department of Defense faces reductions in resources, this proposal will allow the United States to meet its objectives for strengthening alliance cohesion at the voluntary expense of the host nation, while increasing the influence of the United States abroad.

Budget Implications: There are no budgetary implications for this proposal (no budget table is included). If enacted, this proposal would be self-funded by the contributions from the Government of Kuwait.

Changes to Existing Law: This proposal would add a new section to chapter 138 of title 10, United States Code. The full text of the proposed section appears in the legislative text above.

Section 1205 would extend through fiscal year (FY) 2016 the authorization for the Commanders' Emergency Response Program (CERP) in Afghanistan under section 1201 of the National Defense Authorization Act for Fiscal Year 2012 and would authorize $10 million for that program for FY 2016.

Budgetary Implications: This proposal would be funded from within the Overseas Contingency Operations appropriations requested in the Administration's FY 2016 request. The cost is reflected in the following table:

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
CERP	10	-	-	-	-	Operation and Maintenance, Army OCO	01	136
Total	10	-	-	-	-	Operation and Maintenance, Army OCO	01	136

Changes to Existing Law: This proposal would make the following changes to section 1201 of the National Defense Authorization Act for Fiscal Year 2012, as amended:

SEC. 1201. COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN.

(a) AUTHORITY.—During fiscal year ~~2015~~2016, from funds made available to the Department of Defense for operation and maintenance, not to exceed $10,000,000may be used by the Secretary of Defense in such fiscal year to provide funds for the Commanders' Emergency Response Program in Afghanistan.

(b) QUARTERLY REPORTS.—

(1) QUARTERLY REPORTS.—Not later than 45 days after the end of each fiscal year quarter of fiscal year ~~2015~~2016, the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that quarter that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes of the program under subsection (a).

(2) FORM.—Each report required under paragraph (1) shall be submitted, at a minimum, in a searchable electronic format that enables the congressional defense committees to sort the report by amount expended, location of each project, type of project, or any other field of data that is included in the report.

(c) SUBMISSION OF GUIDANCE.—

(1) INITIAL SUBMISSION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of the guidance issued by the Secretary to the Armed Forces concerning the allocation of funds through the Commanders' Emergency Response Program in Afghanistan.

(2) MODIFICATIONS.—If the guidance in effect for the purpose stated in paragraph (1) is modified, the Secretary shall submit to the congressional defense committees a copy of the modification not later than 15 days after the date on which the Secretary makes the modification.

(d) WAIVER AUTHORITY.—For purposes of exercising the authority provided by this section or any other provision of law making funding available for the Commanders' Emergency Response Program in Afghanistan, the Secretary of Defense may waive any provision of law not contained in this section that would (but for the waiver) prohibit, restrict, limit, or otherwise constrain the exercise of that authority.

(e) RESTRICTION ON AMOUNT OF PAYMENTS.—Funds made available under this section for the Commanders' Emergency Response Program in Afghanistan may not be obligated or expended to carry out any project if the total amount of funds made available for the purpose of carrying out the project, including any ancillary or related elements of the project, exceeds $20,000,000.

(f) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept cash contributions from any person, foreign government, or international organization to provide funds for the Commanders' Emergency Response Program in Afghanistan in fiscal year ~~2015~~2016. Funds received by the Secretary may be credited to the operation and maintenance account from which funds are made available to provide such funds, and may be used for such purpose until expended in addition to the funds specified in subsection (a).

(g) NOTIFICATION.—Not less than 15 days before obligating or expending funds made available under this section for the Commanders' Emergency Response Program in Afghanistan for a project in Afghanistan with a total anticipated cost of $5,000,000 or more, the Secretary of

Defense shall submit to the congressional defense committees a written notice containing the following information:

(1) The location, nature, and purpose of the proposed project, including how the project is intended to advance the military campaign plan for Afghanistan.

(2) The budget and implementation timeline for the proposed project, including any other funding under the Commanders' Emergency Response Program in Afghanistan that has been or is anticipated to be contributed to the completion of the project.

(3) A plan for the sustainment of the proposed project, including any agreement with either the Government of Afghanistan, a department or agency of the United States Government other than the Department of Defense, or a third party contributor to finance the sustainment of the activities and maintenance of any equipment or facilities to be provided through the proposed project.

(h) COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN DEFINED.—In this section, the term "Commanders' Emergency Response Program in Afghanistan" means the program that--

(1) authorizes United States military commanders in Afghanistan to carry out small-scale projects designed to meet urgent humanitarian relief requirements or urgent reconstruction requirements within their areas of responsibility; and

(2) provides an immediate and direct benefit to the people of Afghanistan.

(i) CONFORMING AMENDMENT.—***

Section 1206 would amend section 47(6) of the Arms Export Control Act (AECA) (22 U.S.C. 2794(6)) to increase the dollar values that define major defense equipment (MDE) from $50,000,000 to $200,000,000 in nonrecurring research and development cost and from $200,000,000 to $800,000,000 in total production cost.

Current law defines MDE for purposes of the AECA as any item of significant military equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000. These dollar value thresholds have not been revised since their original enactment into law in 1976. During this time the cost of research and development, and the cost of production, have steadily increased. Based on the Consumer Price Index, $50,000,000 in 1976 dollars is equivalent to $208,000,000 in 2014 dollars. An increase in the minimum thresholds for MDE, therefore, would update the dollar value of nonrecurring research and development and total production costs to reflect current values.

Over the years the MDE list has grown significantly, with some equipment barely meeting the thresholds even after multiple versions and equipment model updates. The thresholds for qualification as MDE were originally established in policy by Department of Defense (DoD) Directive 2140.2 in 1967 as $25,000,000 in nonrecurring research and development cost or total production cost of $100,000,000. These values were revised in policy in 1974 and implemented into law on September 30, 1976, to reflect the current minimum thresholds. At the end of 1977, the list of MDE included 190 equipment item variants; in mid-2014 it includes more than 1,000 equipment item variants.

FMS customers may submit to DoD a request to waive the nonrecurring costs associated with any purchase of MDE to DoD. These requests require significant interagency coordination and thus impose an administrative burden on already-constrained resources. Increasing the cost thresholds for MDE would reduce the number of FMS cases that qualify for nonrecurring cost waivers, thereby minimizing the administrative costs associated with responding to such requests.

Budgetary Implications: The proposed revision to section 47(6) of the AECA to increase the threshold for qualification as MDE from $50,000,000 to $200,000,000 and from $200,000,000 to $800,000,000 would not have any budgetary impact on the DoD. Nonrecurring costs are costs sunk into the design and development of equipment that is required for DoD needs.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
MDE	0.0	0.0	0.0	0.0	0.0	N/A	N/A	N/A	N/A

Changes to Existing Law: This proposal would amend section 47 of the Arms Export Control Act (22 U.S.C. 2794(6)) as follows:

Sec. 47. Definitions.—For purposes of this Act, the term—

(1) ***

* * * * * * *

(6) "major defense equipment" means any item of significant military equipment on the United State Munitions List having a nonrecurring research and development cost of more than ~~$50,000,000~~ $200,000,000 or a total production cost of more than ~~$200,000,000~~ $800,000,000;

(7) ***

* * * * * * *

(9) "significant military equipment" means articles—

(A) for which special export controls are warranted because of the capacity of such articles for substantial military utility or capability; and

(B) identified on the United States Munitions List;

Section 1207. Section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006 (Public Law 109-163) prohibits the Secretary of Defense from procuring goods or services, through a contract or any subcontract (at any tier), from any Communist Chinese military company if those goods or services are on the munitions list of the International Traffic in Arms Regulations. The term "munitions list of the International Trafficking in Arms

Regulations" is currently defined in the statute as the United States Munitions List (USML), which imposes controls on defense articles and defense services.

The Administration is revising the USML in order to protect and enhance U.S. national security interests. Items remaining on the USML are those that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls; all other military items are being moved to the jurisdiction of the "600 series" of the Commerce Control List, which will increase allied access to such items. This will enhance U.S. national security by: (i) improving interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing the incentives for foreign manufacturers to "design out" and avoid U.S.-origin content and services; and (iii) allowing officials to focus government resources on transactions that pose greater concern. The Administration has concluded that, even though the items moved to the "600 series" are less-sensitive items, they are still military items and should remain prohibited for export to destinations subject to U.S. arms embargoes and, in the case of comparable Communist China-origin items, should remain prohibited from procurement by the Department of Defense.

Consistent with the intent of Congress to prohibit Department of Defense procurement of military items from Communist Chinese military companies, the Department seeks an amendment to Section 1211 of the NDAA for FY 2006 to include military items moved from the USML to the "600 series" of the Commerce Control List. This will ensure the prohibition remains in place for the same universe of items as currently required under Section 1211 and can be implemented in a change to Defense Federal Acquisition Regulations Supplement (DFARS) Clause 225.770. The amendment does not expand or narrow the scope of items subject to the current prohibition. Without an amendment, the Department of Defense could not maintain the prohibition. As a result, legislation is necessary to maintain the current prohibition effectively and more efficiently and ensure that Communist Chinese-origin military items are not procured by the Department of Defense in order to protect the security of the supply chain for U.S. weapons systems and other defense programs.

Budgetary Implications: None. Proposed editorial changes are for clarification and have no budgetary implications.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DTSA	-	-	-	-	-	O&M, DW	04	200	0901532D8T

Changes to Existing Law: This proposal would make the following changes to section 1211 of National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163):

SEC. 1211. PROHIBITION ON PROCUREMENTS FROM COMMUNIST CHINESE MILITARY COMPANIES.

(a) PROHIBITION.—The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company.

(b) GOODS AND SERVICES COVERED.—For purposes of subsection (a), the goods and services described in this subsection are goods and services on the munitions list of the International ~~Trafficking~~ Traffic in Arms Regulations or in the 600 series of the control list of the Export Administration Regulations, other than goods or services procured—

(1) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People's Republic of China;

(2) for testing purposes; or

(3) for purposes of gathering intelligence.

(c) WAIVER AUTHORIZED.—The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

(d) REPORT.—The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

(e) DEFINITIONS.—In this section:

(1) The term "Communist Chinese military company" has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701 note).

(2) The term "munitions list of the International ~~Trafficking~~ Traffic in Arms Regulations" means the United States Munitions List contained in part 121 of subchapter M or title 22 of the Code of Federal Regulations.

(3) The term "600 series of the control list of the Export Administration Regulations" means the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15 of the Code of Federal Regulations.

Section 1208 would amend 10 USC 127d to authorize the Secretary to provide transportation and aerial refueling services on a non-reimbursable basis to a foreign partner based solely on the Secretary's determination that the assistance is critical. This proposal draws specifically on efforts to provide U.S. support to French operations in Mali, and would allow for more expeditious, flexible U.S. support for future such operations. The proposed amendment would not increase the overall budget requirements of DoD or discourage foreign partners from devoting more resources to national defense.

Budget Implications: This proposal would not increase the overall budget requirements of DoD as it is limited to increasing the flexibility of extant authorities.

RESOURCE REQUIREMENTS ($MILLIONS)	

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Dept of Defense						Operation & Maintenance, Defense-Wide	04	4GTD	1002200T

Changes to Existing Law: This proposal would make the following changes to section 127d of title 10, United States Code:

§ 127d. Allied forces participating in combined operations: authority to provide logistic support, supplies, and services

(a) Authority.—(1) Subject to subsections (b) and (c), the Secretary of Defense may provide logistic support, supplies, and services to allied forces participating in a combined operation with the armed forces of the United States.

(2) In addition to any logistic support, supplies, and services provided under paragraph (1), the Secretary may provide logistic support, supplies, and services to allied forces solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in combined operations with the United States in order to facilitate such operations. Such logistic support, supplies, and services may also be provided under this paragraph to a nonmilitary logistics, security, or similar agency of an allied government if such provision would directly benefit the armed forces of the United States.

(3) Provision of support, supplies, and services pursuant to paragraph (1) or (2) may be made only with the concurrence of the Secretary of State.

(b) Limitations.—(1) The authority provided by subsection (a)(1) may be used only in accordance with the Arms Export Control Act and other export control laws of the United States.

(2) The authority provided by subsection (a)(1) may be used only for a combined operation—

(A) that is carried out during active hostilities or as part of a contingency operation or a noncombat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance, a country stabilization operation, or a peacekeeping operation under chapter VI or VII of the Charter of the United Nations); and

(B) in a case in which the Secretary of Defense determines that the allied forces to be provided logistic support, supplies, and services—

(i) are essential to the success of the combined operation; and

(ii) would not be able to participate in the combined operation but for the provision of such logistic support, supplies, and services by the Secretary.

(3) Clause (ii) of paragraph (2)(B) does not apply in a case in which the Secretary determines that the provision of assistance is critical to the timely and effective participation of the allied forces in the combined operation.

(c) Limitations on Value.—(1) The value of logistic support, supplies, and services provided under subsection (a)(1) in any fiscal year may not exceed $100,000,000.

(2) The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not exceed $5,000,000.

(d) Annual Report.—(1) Not later than December 31 each year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives a report on the use of the authority provided by subsection (a) during the preceding fiscal year.

(2) Each report under paragraph (1) shall be prepared in coordination with the Secretary of State.

(3) Each report under paragraph (1) shall include, for the fiscal year covered by the report, the following:

(A) Each nation provided logistic support, supplies, and services through the use of the authority provided by subsection (a).

(B) For each such nation, a description of the type and value of logistic support, supplies, and services so provided.

(e) Definition.— In this section, the term "logistic support, supplies, and services" has the meaning given that term in section 2350 (1) of this title.

TITLE XIII—[RESERVED]

TITLE XIV—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

Section 1401 would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 1402 would authorize appropriations for the Joint Urgent Operational Needs Fund in the amount equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 1403 would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 1404 would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 1405 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President's Budget for fiscal year 2016.

Section 1406 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President's Budget for fiscal year 2016. However, this bill assumes enactment of legislation contained in section XXX to phase in the replacement of the current TRICARE Prime, Standard, and Extra options with a Consolidated Health Plan that incorporates cost-sharing for certain members. Section XXX would also adjust the prescription drug co-payment for active duty families and all retirees regardless of age of the beneficiary. If sections XXX and XXX are not enacted, the authorization and appropriation for the Defense Health Program would need to be decreased by $85 million for up-front costs associated with the Consolidated Health Plan proposal and increased by $15 million to restore the savings assumed for the prescription drug co-payment proposal.

Subtitle B—Other Matters

Section 1411, within the funds authorized for operation and maintenance under section 506, would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

Section 1412 would authorize appropriations for fiscal year 2016 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President's Budget for fiscal year 2016.

TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

[RESERVED]

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXI—ARMY MILITARY CONSTRUCTION

TITLE XXII—NAVY MILITARY CONSTRUCTION

TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION

TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

TITLE XXVII—BASE REALIGNMENT AND CLOSURE ACTIVITIES

TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS

Section 2801 would allow the Department of Defense (DoD) to increase the scope of a military construction project by up to 10 percent above the amount authorized by Congress after notifying the appropriate committees of Congress and waiting the appropriate time period.

The Department submits its annual requests for military construction projects well before the projects are fully designed. The budget timeline requires DoD to prepare project documentation (including description, size, price, and justification) to Congress for authorization at least 15 months in advance of the award of construction contracts. DoD uses this time to concurrently refine projects and either complete project design work, or prepare packages for soliciting design-build proposals. Therefore, although the functional requirements of a project are generally well defined in a DD Form 1391, for the preceding reasons, the primary and supporting facilities quantities shown are only approximations of the actual quantities that will be needed to fulfill the authorized purpose of the project. Performing more advanced design on the projects to better define the scope quantities on the DD Forms 1391 would not be cost effective, and it would be inconsistent with the design build acquisitions that are used for the majority of projects.

During this 15-month (or longer) period, increases in project scope quantities can occur for generally two reasons. Functional changes are the first reason as DoD Components may refine their facility sizing criteria (e.g., standard designs) to respond to late developing mission changes or to incorporate important lessons learned. Technical design changes are the second reason as designers may identify emerging technologies or life-safety issues that lead to the need for additional space, e.g., thicker wall sections for energy conservation, wastewater collection and reuse, active and passive solar energy collection, high-efficiency heating, ventilating, and air-conditioning (HVAC) components, and egress requirements. Typically, space increases for either reason are modest and may generate no associated increase in overall cost. However, some space increases, primarily associated with functional changes, may exceed five percent.

One example for needing the flexibility to increase scope is in the case where a value-engineering study during design shows that it is more economical for buildings to have self-contained HVAC systems than to be connected to a central energy plant. However, self-contained HVAC systems require larger mechanical rooms that would marginally increase the square footage of a building. Without scope flexibility, the choices would be either to forgo the cost saving measure, reduce the space of needed functional areas, or delay the project for at least one year to obtain authorization of the additional square footage.

The type of acquisition can also spur a need for scope flexibility. Design-build, which has become the most widely used method for executing military construction projects, allows the government, by using requirements based specifications, to benefit from innovation and alternate solutions developed in the private sector. Design-Build allows competing proposers the opportunity to identify efficiencies and alternative engineering solutions that meet the government's functional requirements within the government's stated criteria. By restricting a project to the precise square footage and engineering attributes stated in a DD Form 1391, the government would hinder industry's ability to contribute towards better design solutions and undermine many of the benefits achieved under the Design-Build approach. For example, the military family housing construction program, which started using design-build in the 1970's quickly recognized that for the government to achieve the best value, proposers needed the flexibility to offer their standard homes, which for same number of bedrooms and features still varied slightly in square footage between different home builders.

In view of a DoD Inspector General report on scope of work (DoDIG-2012-057, February 27, 2012), the Department recognizes that there have been situations where insufficient oversight was being provided to ensure the scope authorized by Congress was not being exceeded. As a result, internal management controls are being established to more clearly define and measure scope. Nevertheless, the current prohibition on any increase to facility size is detrimental to providing facilities that support important missions in a timely and cost efficient manner. Without relief, inevitable changes to projects after being submitted to Congress for approval will lead to a number of unfavorable outcomes such as: reducing needed functional space to accommodate required refinements, not adopting lessons learned that would improve mission accomplishment or reduce energy consumption, or even delaying the project for one or more years until a new authorization can be obtained for the increased scope. For DoD to effectively respond to rapidly changing missions, and to demands for the installation enterprise to become more agile and efficient, it is critical that military construction project authorizations have some limited scope flexibility with Congressional notification. Other federal agencies with large construction programs have such flexibility, which provides added reason for the Department's request.

Budget Implications: There are no budgetary impacts associated with implementing the proposed amendment. Allowing increases to the scope of individual authorized projects will not impact overall military construction budgets, as the total construction appropriation would be locked by the time these changes may occur. Moreover, allowing increases to the authorized scope of a project does not necessarily result in a need to increase the project appropriation. This proposal will allow projects to accommodate the most current criteria and technology at the time of construction, within existing project budgets. Also, this scope increase authority will likely be used only rarely. The Department will continue to develop project budget estimates based upon the most current criteria available at the time of budget preparation.

RESOURCE REQUIREMENTS ($M)							
Account	Budget Activity	Description	FY16	FY17	FY18	FY19	FY20
0500D	01	Major Construction, Defense-Wide	2,415.7	2,296.6	2,250.8	2,259.7	

1205N	01	Major Construction, Navy	1,111.7	1,106.4	953.5	935.4	935.4
1235N	01	Major Construction, Navy Reserve	34.2	55.9	24.0	19.7	19.7
2050A	01	Major Construction, Army	330.8	404.2	465.6	579.5	
2085A	01	Major Construction, Army National Guard	131.0	291.6	159.3	186.5	
2086A	01	Major Construction, Army Reserve	93.3	88.6	61.3	70.1	
3300F	01	Major Construction, Air Force	1,651.3	890.3	953.0	796.1	
3730F	01	Major Construction, Air Force Reserve	41.3	32.0	60.1	15.2	
3830F	01	Major Construction, Air National Guard	85.6	55.7	68.1	53.1	

Changes to Existing Law: This proposal would make the following change to section 2853 of title 10, United States Code:

§ 2853. Authorized cost and scope of work variations

(a) Except as provided in subsection (c), (d), or ~~(d)~~ (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the ~~The~~ scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term "scope of work" refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data

provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress in writing of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can ~~be~~ still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(B) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title; or

(2) in the case of a cost decrease, the Secretary concerned notifies the appropriate committees of Congress in writing not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if—

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the appropriate committees of Congress in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(~~d~~e) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(~~e~~f) Notwithstanding the authority under subsections (a) through (d), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the 'Anti-Deficiency Act').

Section 2802 would help ensure the availability of the emergency construction authority to support urgent requirements of the commanders of the combatant commands. Currently,

section 2803 of title 10, United States Code, allows for the Secretary concerned to obligate up to $50 million in any given fiscal year to fund military construction projects not otherwise authorized by law that support national security or the protection of health, safety, or environmental quality, when the deferral of those projects to the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality. This proposal would allow the Secretary concerned to obligate an additional $25 million to support the emergency construction requirements of the combatant commands.

The original $50 million in authority can be used by the Secretary concerned to support either a Service- or combatant command-generated requirement. Under this proposal, the Secretary concerned could exceed the $50 million by up to an additional $25 million, but only if the requirement supports a combatant command. Thus, the maximum that could be obligated under section 2803 for a Service-generated requirement is $50 million, while the maximum that could be obligated under this section for a combatant command-generated requirement is $75 million. Under no circumstance could the Secretary concerned exceed $75 million in obligations in any given fiscal year under section 2803.

The combatant commands face a dynamic environment, in which they are directed to respond to world events and emergent military operations. Sometimes these operations require military construction in order to provide the infrastructure necessary to conduct their missions. Due to the emergent nature of some of the combatant command military operations, military construction requirements may arise after a service has already used the full value of the authority in a given fiscal year. Despite the best planning efforts by the services, they cannot anticipate every world event to which the combatant commands will have to respond that requires emergency construction. This proposal would help ensure that the emergency construction authority remains available to address these combatant command requirements.

This proposal would retain the current requirements that the Department provide notice to the congressional committees before the execution of a military construction project under this authority and that the Department wait seven days before carrying out any such project.

Budgetary Implications: This proposal would represent an increase in authority and would not necessarily result in its use in any given fiscal year. The proposal would allow up to an additional $25 million to be executed from within existing resources in the military construction appropriations for emergency construction efforts.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	25.0	25.0	25.0	25.0	25.0	Military Construction, Army	01	N/A	0202096A
Navy	25.0	25.0	25.0	25.0	25.0	Military Construction, Navy	01	N/A	0212176N
Air	25.0	25.0	25.0	25.0	25.0	Military	01	N/A	0901211F

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Force						Construction, Air Force			
Defense -Wide	25.0	25.0	25.0	25.0	25.0	Military Construction, Defense-Wide	01	N/A	0904903D
Total	100.0	100.0	100.0	100.0	100.0				

Changes to Existing Law: This proposal would make the following changes to section 2803 of title 10, United States Code:

TITLE 10, UNITED STATES CODE

§ 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress [*defined in 10 U.S.C. 2801(c)(1)*] on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the seven-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c)(1) Except as provided in paragraph (2), ~~The~~ the maximum amount that the Secretary concerned may obligate in any fiscal year under this section is $50,000,000.

(2) In applying the limitation under paragraph (1) for any fiscal year, the Secretary concerned may exclude any amount obligated by the Secretary under this section in that fiscal year for a military construction project that is carried out to support the requirements of the commander of a combatant command, except that the maximum amount that may be so excluded by the Secretary concerned in any fiscal year is $25,000,000.

~~(2)~~(d) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.