SEC. 612. MODIFICATION TO SPECIAL AVIATION INCENTIVE PAY AND BONUS AUTHORITIES FOR OFFICERS.

(a) CLARIFICATION OF SECRETARIAL AUTHORITY TO SET REQUIREMENTS FOR AVIATION INCENTIVE PAY ELIGIBILITY.—Subsection (a) of section 334 of title 37, United States Code, is amended—

(1) by inserting "(1)" before "The Secretary";

(2) by redesignating paragraphs (1), (2), (3), (4),and (5) as subparagraphs (A), (B), (C), (D), and (E), respectively; and

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

"(2) The Secretary concerned may pay aviation incentive pay under this section to an officer who is otherwise qualified for such pay but who is not currently engaged in the performance of operational flying duty or proficiency flying duty if the Secretary determines, under regulations prescribed under section 374 of this title, that payment of aviation incentive pay to that officer is in the best interests of the service.".

(b) RESTORATION OF AUTHORITY TO PAY AVIATION INCENTIVE PAY TO MEDICAL OFFICERS PERFORMING FLIGHT SURGEON DUTIES.—Subsection (h)(1) of such section is amended by striking "(except a flight surgeon or other medical officer)".

(c) INCREASE IN MAXIMUM AMOUNT OF AVIATION SPECIAL PAYS.—

(1) MONTHLY AVIATION INCENTIVE PAY.—Subsection (c)(1)(A) of such section is amended by striking "$850" and inserting "$1,000".

(2) ANNUAL AVIATION INCENTIVE BONUS.—Subsection (c)(1)(B) of such section is amended by striking "$25,000" and inserting "$35,000".

(d) AUTHORITY TO PAY AVIATION BONUS AND SKILL INCENTIVE PAY SIMULTANEOUSLY TO OFFICERS.—Subsection (f) of such section is amended—

(1) in paragraph (1), by striking "353" and inserting "353(a)"; and

(2) in paragraph (2)—

(A) by inserting "bonus" after "may not receive a"; and

(B) by striking "353" and inserting "353(b)".

Section-by-Section Analysis

As the Department of Defense nears full implementation of aviation pays and bonuses under section 334 of title 37, United States Code (U.S.C.), and works to completes transition from the authorities in sections 301a/301b, several deficiencies and unintended consequences of section 334 have been identified. In this single, comprehensive legislative proposal, the Department seeks to correct those deficiencies, as well as institute improvements to the statute that will be needed in the future to sustain aviator recruiting and retention requirements.

The Department began its transition to 37 U.S.C. 334 ("Special aviation incentive pay and bonus authorities for officers") back in 2011 when it notified the Congressional Defense Committees of its intent to utilize the authorities under the section and published its implementing guidance on December 12, 2011. However, as the October 1, 2013 deadline for the military departments to complete transition approached, it became apparent the language of the statute placed greater restrictions on the Services' use of these monetary incentives than had been envisioned when they were enacted in 2008. Rather than providing increased flexibility for the military services in the employment of the incentives as envisioned, the statute actually diminishes their flexibility by limiting payment of the monthly incentive pay to aeronautically rated/designated officers *only* when they are assigned to operational or proficiency flying duties. No longer could the pay be offered on a continuous basis as a *career* incentive, even though allowing that as an option was what the Department had originally intended in 2008 when it submitted its legislative proposal to the Congress. Of late, there has been a growing concern among the Military Departments that without the ability to offer to the incentive pay (and by extension, the retention bonus) during certain career-broadening or aviation-related non-flying assignments, aviation officer attrition will increase—an unintended, unwelcome, and unacceptable consequence of the existing statutory language.

To address the issue, the Department embarked on a thorough review of the statutes and the DoD implementing guidance to determine how best to remedy the situation—through legislation, policy change, or some combination of the two. This legislative proposal is the result of that review. It primarily seeks to rectify this deficiency in the statute by providing the Secretaries concerned with the authority to pay the aviation incentive pay during certain points in an aviation officer's career when he or she is not engaged in flying and to govern this authority through regulations under section 374 of title, 37, U.S. Code. The proposal also seeks other specific changes to the statute in an effort to ensure it provides the full aviation force

management authority originally intended by the Department and the Congress when it was enacted. Further, so as to avoid a piecemeal approach to legislative change, this proposal also seeks to posture the Department to be able to meet future aviation officer retention challenges by increasing the statutory maximum bonus and incentive pay amounts.

These legislative changes are necessary for fiscal year 2016 to ensure the Department meets the congressionally mandated timeline to fully transition from the legacy pay authorities in subchapter I of chapter 5 of title 37 U.S. Code, to the consolidated pay authorities in subchapter II and, in particular, the aviation pay authority in section 334, title 37, U.S. Code. The Department's current guidance does not address these necessary changes and has led the Services to inaction. Any additional delay will jeopardize full implementation of aviation incentives prior to January 28, 2018. Additionally, the Department needs enough time to ensure the pay system is responsive enough to accommodate the changes. If the Department defers this proposal or piece meals it out as several separate legislative proposal over the next few legislation cycles, the Department will not have the necessary time to complete the transition.

Subsection (a) would provide the authority to define in regulation, guidelines allowing the Secretary concerned to pay aviation incentive pay to an officer while the officer is not engaged in the performance of operational flying duty or proficiency flying duty but serving in positions vital to the Services. Aviators are currently paid Aviation Career Incentive Pay (ACIP) which was established by the Aviation Career Incentive Act of 1974. ACIP serves as both a recruiting and retention incentive. Specifically, section 301a was designed to provide additional pay to access members to enter the armed services and remain in flying duty while compensate for the inherent dangers associated with such duty. Under the consolidated aviation pay authority-aeronautically rated or designated officers pursuing an ideal aviation career path are viewed as being financially penalized (ineligible for aviation incentive pay) based on existing assignment practices. An example of this is the career and promotion requirements enacted in the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433) necessitating the assignment of aviators to non-flying positions such as joint duty positions and in-residence professional military education. Adding (a) (2) into section 334 will allow the Department the flexibility to structure an aviation incentive program for aviators while performing essential duties in warfighting and aviation support assignments, and meet current and future retention requirements for aviators throughout an aviation career.

Subsection (b) would give the Secretaries of the military departments the ability to continue to provide aviation incentive pay to flight surgeons and other medical officers while assigned to operational flying duty. Currently, the Secretaries of the military departments have discretionary authority to provide aviation incentive pay to aeromedical officers under section 301a of title 37, U.S. Code, "Incentive Pay: Aviation Career"; however, this authority will no longer be available when the authority transitions to section 334(a). Language included in section 334 established the following definition: 'The term "aviation service" means service performed by an officer in a regular or reserve component (except a flight surgeon or other medical officer) while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation', and applied the term "aviation service" to the eligibility criteria for aviation incentive pay, thus making aeromedical officers ineligible for aviation incentive pay. The unintended consequence of the definition is that it removes the discretion of the Secretaries of the military departments' to allocate resources to meet

aeromedical staffing needs upon transition to the new authority. The change proposed in subsection (b) would allow the military departments to continue to pay medical officers aviation incentive pay while performing the duties of a flight surgeon while assigned to operational flying duties. This will be a continuation of the status quo.

Subsection (c) would increase the statutory limits for the aviation incentive pay and retention bonus and would allow the Department the flexibility to increase the aviation incentive pay limit set forth in regulations issued by the Secretary of Defense under section 374 of title 37. The Department will be positioned to quickly effect a change in the aviation incentive pays should the Services demonstrate a need for an increase to positively affect retention.

The airline industry is exiting a decade of consolidation and restructuring and is in a position for greater stability in the foreseeable future. This stability, new Congressional mandates (minimum hours, mandatory retirement age, greater work/rest rules), and global hiring, may exert a significant pull on military pilots as reorganized airlines start to increase compensation packages. Private industry hiring forecasts are expected to exceed pre-September 2001 levels. Three independent industry analysts have confirmed the forecasted hiring of 50,000 pilots by the airlines over the next ten years. The forecasted hiring has begun. Future and Active Pilot Advisors (http://fapa.aero/hiringhistorymonth.asp) reflects airline hiring at ~1K in calendar year 13 and with a projected increase to ~3K hires in calendar year 14. The Air Force recently confirmed via Airlines for America (A4A), that major airline hiring is above 3,000 in calendar year 14 and projected to be higher in future years. A4A has a 75-year history and collaboratively works with airlines, labor, Congress and the Administration and other groups to improve air travel for everyone. Additionally, the total airline career income and benefit packages are lucrative in light of their first year pay scales. As the economy improves and airlines increase pay, it is critical that the Department have the ability to retain needed aviator inventory to maintain mission readiness.

These emerging factors will make it difficult to retain pilots under the current pay caps. According to a recent RAND study, over the next twenty years, the commercial airline industry will be hiring pilots in increasing numbers to replace its aging pilot workforce. Furthermore, as the commercial airlines expand and the economy grows, it is imperative for the USAF to anticipate potential changes in pilot retention and be able to allocate the appropriate resources in a timely manner to ensure the inventory of rated aviators is maintained at required manning levels. Any delay in the allocation of resources could have a detrimental impact to the aviation community. Therefore, it is essential to increase the aviation incentive pay and aviation bonus caps now to ensure the USAF meets future aviation manning requirements.

As part of the study, RAND explored possible future changes in demand for pilots in the civilian sector, analyzed civilian pay opportunities for military pilots and developed a Dynamic Retention Model (DRM). This model estimates both how USAF pilot retention changes in response to civilian pilot demand and what influence special and incentive pays have on an officer's decision to stay. Specifically, RAND simulated the steady state retention effects of a 2 thru 8 percent across the board increase in civilian pilot pay. The results from the model reveal a relatively small change in civilian opportunities leads to significant changes in USAF pilot retention. According to the DRM, a 2-percent increase in civilian aviation pay equates to an

increase to the retention bonus of 14 to 33 percent. In other words, to maintain aviation retention when there is an increase of 2 percent in civilian aviation pay, the retention bonus would need to be increased by an additional $3,500 to $8,300 per year. If the increase in real pay is higher (i.e. 8-percent), the increase in retention incentives must also be higher. RAND and the Services feel a 2-percent assumption is reasonable and likely based off the fact that airline salaries have already returned to pre 9-11 levels, and the airlines are reporting record yearly profits. The alternative would be to increase basic pay for all members which is contrary to reason the Department uses special and incentive pays; to selectively and narrowly target additional pay to specific groups and address specific force manning challenges. RAND's increased retention bonus logic and justification also applies to aviation incentive pay.

Additionally, the DRM model provides the USAF a capability to consider the rated retention effects of other compensation scenarios and justifies current special and incentive pays and changes in those pays. RAND has simulated the retention effects of cutting monthly aviation incentive pay for rated personnel assigned to non-flying positions. These rated personnel are typically mid-career or senior personnel filling key rated staff billets at the joint, OSD, and HAF/MAJCOM levels. RAND's analysis reveals that eliminating aviation incentive pay for rated personnel assigned to non-flying positions has a similar pilot retention decline that resulted from a 1.4 to 1.5 percent increase in civilian aviation pay.

The maximum amount of aviation incentive pay was last increased to $840 in 1998. Since 1998, the incentive values of the career pay and retention bonus have eroded degrading their ability to positively influence aviator recruiting and retention behavior. For this reason the Department is seeking to adjust the maximum payment for the incentive pay to $1,000 per month and $35,000 per year for the aviation retention bonus. The increase in the aviation incentive pay amount will allow aviators to receive an incentive pay equal to other skill incentive pays provided in section 353, title 37, U.S.C. Similarly applying insight from the RAND study demonstrates the need to increase the retention bonus to $28,500 to $33,500. RAND also specifies if the increase in real pay is higher, the increase in the retention bonus must also be higher to offset retention affects. In light of recent increases in pilot salaries, which are consistent with a re-stabilization of the airlines and with recent pilot pay contracts; an authority limit of $35,000 provides the Services conservative flexibility should the airline pay increase trend continue. An increase in these particular incentive pays provides the Department the necessary flexibility to respond quickly to current and unexpected retention concerns within the Services rated force.

In summary, the economy is improving and airline hiring is increasing (approx. 1,000 hires in CY13 to approx. 3,000 hires in CY14). Additionally, airline salaries have returned to pre 9-11 values and are expected to increase with the growing demand for air transportation as a result of the improving economy. Postponing action will severely dampen the Services ability to recruit and retain aviators. As the economy improves and airlines increase pay, it is critical that the Department have the flexibility to retain needed aviator inventory to maintain mission readiness.

Subsection (d) would allow an aviation officer to receive a skill incentive pay and aviation retention bonus simultaneously. The intent is to not switch aviators between multiple 37

U.S.C. authorities as they are career-broadening or are in aviation-related non-flying assignments but to ensure aviators are not disadvantaged should they have a different skill that needs to be incentivized for retention purposes. Under current law, aviation officers are authorized to receive both an aviation career incentive pay and aviation career retention bonus. As the Department transitions to the consolidated authority in section 334 of title 37, U.S.C., an aviator is eligible for both the aviation incentive pay and aviation retention bonus while performing operational or proficiency flying duty.

This proposed change would allow the military departments to offer aviation officers both a skill incentive pay and aviation retention bonus while serving in a non-flying position as long as all other eligibility criteria for these pays are met. These pays are for two separate and distinct purposes. The skill incentive pay is an incentive to motivate an officer or service member to serve in a career field or skill designated as critical by the Secretary concerned. The aviation retention bonus is a retention tool utilized by the military departments to retain aviation officers on active duty or in an active status in the reserve component, and requires a written agreement for the bonus. Officers in other career fields are authorized to receive skill incentive pay and a retention bonus simultaneously. The legislative change proposed in subsection (d) fixes the inequities of section 334(f)(2) for the aviation community.

Budgetary Implications: The Department believes this proposal to be budget neutral. Although the rates are increasing the number of eligible officers for the pays is decreasing. Previously, all aviators received aviation career incentive pay for the first 12 years of their aviation career as an entitlement. Under the consolidated authority of section 334, title 37, U.S. Code, aviation incentive pay is a “may pay” and fewer aviators may qualify for the incentive for shorter periods of time. Therefore, the Services may use these savings to offset any increases due to raising the incentive pay and retention bonus amounts.

The budget table details Air Force resource requirements associated with this proposal based on a projected increase in authority for aviation special pays. The Air Force estimates it will immediately need to restructure the yearly aviation incentives bonus to preserve up to 130 Fighter pilots each year for an additional $1.3 million per year. The $1.3 million consists of 130 Fighter pilots times an additional $10,000 per pilot. Funding for this assumption will first be sourced through program contract length and up-front amount restructuring to fit the need of the Services and if needed, internal programing actions within the Special and Incentive Pay budget.

Table 1a.	**NUMBER OF PERSONNEL AFFECTED**							
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
USA						Army does not intend to use the authority under the amendments made by subsection (c). .		

ARNG						Army National Guard does not intend to use the authority under the amendments made by subsection (c) . .		
USAR						Army Reserve does not intend to use the authority under the amendments made by subsection (c). .		
USN						Navy does not intend to use the authority under the amendments made by subsection (c).		
USNR FTS						Navy Reserve does not intend to use the authority under the amendments made by subsection (c). .		
USMC						Marine Corps does not intend to use the authority under the amendments made by subsection (c). .		
USMCR						Marine Corps Reserve does not intend to use the authority under the amendments made by subsection (c). .		
USAF	130	130	130	130	130	Military Personnel, Air	01	M1-35

						Force		
ANG	60	60	60	60	60	National Guard Personnel, Air Force	01	090
USAFR	10	10	10	10	10	Reserve Personnel, Air Force	01	090
Total	200	200	200	200	200			

Table 1b.	**RESOURCE REQUIREMENTS ($MILLIONS)**								
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
USA						Army does not intend to use the authority under the amendments made by subsection (c).			
ARNG						Army National Guard does not intend to use the authority under the amendments made by subsection (c).			
USAR						Army Reserve does not intend to use the authority under the amendments made by subsection (c).			
USN						Navy does not intend to use the authority under the amendments made by subsection (c).			
USNR FTS						Navy Reserve does not intend to use the authority under the amendments made by subsection (c).			
USMC						Marine Corps does not intend to use the authority under the amendments made by			

						subsection (c).			
USMCR						Marine Corps Reserve does not intend to use the authority under the amendments made by subsection (c).			
USAF	$1.3	$2.6	$3.9	$5.2	$6.5	Military Personnel, Air Force	01	M1-35	
ANG	$0.6	$1.2	$1.8	$2.4	$3	National Guard Personnel, Air Force	01	090	
USAFR	$0.1	$0.2	$0.3	$0.4	$0.5	Reserve Personnel, Air Force	01	090	
Total	$2.0	$4.0	$6.0	$8.0	$10.0	--	--	--	--

Changes to Existing Law: This section would make the following changes to section 334 of title 37, United States Code:

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

(a) AVIATION INCENTIVE PAY.—(1)The Secretary concerned may pay aviation incentive pay under this section to an officer in a regular or reserve component of a uniformed service who-

~~(1)~~ (A) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title;

~~(2)~~ (B) maintains, or is in training leading to, an aeronautical rating or designation that qualifies the officer to engage in operational flying duty or proficiency flying duty;

~~(3)~~ (C) engages in, or is in training leading to, frequent and regular performance of operational flying duty or proficiency flying duty;

~~(4)~~ (D) engages in or remains in aviation service for a specified period; and

~~(5)~~ (E) meets such other criteria as the Secretary concerned determines appropriate.

(2) The Secretary concerned may pay aviation incentive pay under this section to an officer who is otherwise qualified for such pay but who is not currently engaged in the performance of operational flying duty or proficiency flying duty if the Secretary determines, under regulations prescribed under section 374 of this title, that payment of aviation incentive pay to that officer is in the best interests of the service.

(b) AVIATION BONUS.—The Secretary concerned may pay an aviation bonus under this section to an officer in a regular or reserve component of a uniformed service who-

(1) is entitled to aviation incentive pay under subsection (a);

(2) has completed any active duty service commitment incurred for undergraduate aviator training or is within one year of completing such commitment;

(3) executes a written agreement to remain on active duty in a regular component or to serve in an active status in a reserve component in aviation service for at least one year; and

(4) meets such other criteria as the Secretary concerned determines appropriate.

(c) MAXIMUM AMOUNT AND METHOD OF PAYMENT.—

(1) MAXIMUM AMOUNT.—The Secretary concerned shall determine the amount of a bonus or incentive pay to be paid under this section, except that—

(A) aviation incentive pay under subsection (a) shall be paid at a monthly rate, not to exceed ~~$850~~ $1,000 per month; and

(B) an aviation bonus under subsection (b) may not exceed ~~$25,000~~ $35,000 for each 12-month period of obligated service agreed to under subsection (d).

(2) LUMP SUM OR INSTALLMENTS.—A bonus under this section may be paid in a lump sum or in periodic installments, as determined by the Secretary concerned.

(3) FIXING BONUS AMOUNT.—Upon acceptance by the Secretary concerned of the written agreement required by subsection (d), the total amount of the bonus to be paid under the agreement shall be fixed.

(d) WRITTEN AGREEMENT FOR BONUS.—To receive an aviation officer bonus under this section, an officer determined to be eligible for the bonus shall enter into a written agreement with the Secretary concerned that specifies—

(1) the amount of the bonus;

(2) the method of payment of the bonus under subsection (c)(2);

(3) the period of obligated service; and

(4) the type or conditions of the service.

(e) RESERVE COMPONENT OFFICERS PERFORMING INACTIVE DUTY TRAINING.—A reserve component officer who is entitled to compensation under section 206 of this title and who is authorized aviation incentive pay under this section may be paid an amount of incentive pay that is proportionate to the compensation received under section 206 for inactive-duty training.

(f) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—

(1) AVIATION INCENTIVE PAY.—Aviation incentive pay paid to an officer under subsection (a) shall be in addition to any other pay and allowance to which the officer is entitled, except that an officer may not receive a payment under such subsection and section 351(a)(2) or ~~353~~ 353(a) of this title for the same skill and period of service.

(2) AVIATION BONUS.—An aviation bonus paid to an officer under subsection (b) shall be in addition to any other pay and allowance to which the officer is entitled, except that an officer may not receive a bonus payment under such subsection and section 332 or ~~353~~ 353(b) of this title for the same skill and period of service.

(g) REPAYMENT.—An officer who receives aviation incentive pay or an aviation bonus under this section and who fails to fulfill the eligibility requirements for the receipt of the

incentive pay or bonus or complete the period of service for which the incentive pay or bonus is paid, as specified in the written agreement under subsection (d) in the case of a bonus, shall be subject to the repayment provisions of section 373 of this title.

(h) DEFINITIONS.—In this section:

(1) The term "aviation service" means service performed by an officer in a regular or reserve component ~~(except a flight surgeon or other medical officer)~~ while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation.

(2) The term "operational flying duty" means flying performed under competent orders by rated or designated regular or reserve component officers while serving in assignments in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying performed by members in training that leads to the award of an aeronautical rating or designation.

(3) The term "proficiency flying duty" means flying performed under competent orders by rated or designated regular or reserve component officers while serving in assignments in which such skills would normally not be maintained in the performance of assigned duties.

(4) The term "officer" includes an individual enlisted and designated as an aviation cadet under section 6911 of title 10.

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after December 31, 2014.