SEC. ___. AUTHORITY TO WAIVE RECOUPMENT OF SEPARATION PAY, SEVERANCE PAY, OR READJUSTMENT PAY FOR INVOLUNTARY DISCHARGE FOR MEMBERS WHO SUBSEQUENTLY BECOME ENTITLED TO RETIRED OR RETAINER PAY.

Section 1174(h) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3) The Secretary of Defense or the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may waive the requirement to repay separation pay, severance pay, or readjustment pay under paragraph (1) if such Secretary determines that repayment would be against equity and good conscience or would be contrary to the best interests of the United States.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

This proposal would authorize the Secretary of Defense or the Secretary of Homeland Security (in the Coast Guard's case) to waive recoupment of separation pay, severance pay, or readjustment pay from a regular service member who is involuntarily discharged or released from active duty if the Secretary concerned determines that such a waiver supports the best interests of the United States, or that recoupment would be against equity and good conscience. Currently under 10 U.S.C. 1174(h), a member is required to repay any separation pay, severance pay, or readjustment pay received if the member continues to serve and subsequently qualifies for retired or retainer pay under either title 10 or title 14 (Coast Guard) of the United States Code. Providing authority for the Secretary of Defense or the Secretary of Homeland Security to waive recoupment of separation pay, severance pay, or readjustment pay in certain circumstances facilitates the continuation of service for active component (AC) service members transitioning to the reserve component (RC) and preserves the investment that the Services have made in training these service members. Further, this authority to waive recoupment of separation pay, severance pay, or readjustment pay removes a disincentive for a separating AC service member to join the RC upon release from active duty.

For example, the reserve components need experienced and pre-trained non-commission officers (NCOs) and mid-grade officers. This retention increases the reserve components' readiness levels as operational forces. For example, as of July 1, 2016, the Army Reserve had

critical shortages totaling 6,546 officers in the O-3 (1,867 captains) and O-4 (4,679 majors) grades. In addition, while over strength in its E-1 to E-4 ranks (overage of 18,325), the Army Reserve has a shortage of 9,777 NCOs in the ranks of E-5 thru E-7. Giving the Secretary of Defense authority to waive recoupment of separation pay, severance pay, or readjustment pay will eliminate a potential barrier to recruiting and retaining mid-career service members (service members who have 6 or more years of service) who aspire to complete their military careers in the reserve component and that will help to address critical shortages in the reserve components.

The current law impedes the reserve components' ability to recruit and retain qualified personnel who are separating from active duty. As the economy improves and the Services compete to meet the end strength needs to accomplish given missions, eliminating this repay requirement is one means to remove a barrier to the continuum of service and increase the readiness of the reserve components by retaining the knowledge and skills of separating service members.

Involuntary separation pay in its current incarnation was first intended as a contingency payment for an officer (later expanded to enlisted service members) who is career-committed but to whom a full military career may be denied. It was designed to encourage pursuit of a Service career, knowing that if the individual is denied a full career under the competitive system, the member can count on an adequate readjustment pay to ease reentry into civilian life.

Current RC compensation models for the Selected Reserve, in most cases, necessitate total reentry into the civilian life to include civilian employment. When the expansion of involuntary separation pay to enlisted personnel was debated in 1990, the Senate Armed Services Committee (SASC) committee report stated, "The committee believes these [proposed separation pay] provisions provide a safety net to personnel who had planned on a career in the military but who may be required to leave active duty before they become eligible to retire.". The view that involuntary separation pay is compensation for loss of eligibility for the deferred retired benefit is the basis on which separation pay, severance pay, or readjustment pay is recouped from retirement pay recipients. However, this recoupment transforms involuntary separation pay from a payment intended to ease reentry into civilian life into an interest-free loan for the subset of personnel who complete their military career in the reserve force.

The reserve components provide nearly half of the Army's maneuver support including logistics, transportation, engineer and civil affairs, as well as intelligence and medical assets. In order to maintain our operational proficiency and personnel readiness, it is vital to remove any disincentive for AC service members (with their vast war time experience, training, and readiness) to continue their service in the reserve components.

Budget Implications: This proposal will not add more costs to the current program in place regarding involuntary separation pay. This proposal will eliminate future recoupment of separation pay, severance pay, or readjustment pay for regular service members that continue to serve in the RC and earn a non-regular retirement.

It is a "Sunk Cost" in the fact that eligible service members who are involuntarily separated are given the pay regardless of whether or not the service member continues to serve in

the RC. Therefore, for separated service members that never again serve, there will be no recoupment while those that decide to continue to serve the nation must pay recoupment. This is funded in the FY 2019 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Air Force	0	0	0	0	0				
The Navy and Marine Corps do not intend to use this authority.									
Total	0	0	0	0	0				

PERSONNEL AFFECTED									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	265	265	265	265	265				
Air Force	75	25	25	25	25				
The Navy and Marine Corps do not intend to use this authority.									
Total	340	290	290	290	290				

Back up Data: Calculation of Army Separation Costs and Lost Treasury Recoupment

Separation Payments	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FYDP**
Personnel Expected to be affected	265	265	265	265	265	1,325
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Paid	$10,345,059	$10,500,235	$10,681,889	$10,914,755	$11,114,045	$53,585,983
Total Separation $M	**$10.35**	**$10.50**	**$10.68**	**$10.91**	**$11.14**	**$53.58**

Lost Recoupment Opportunity	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FYDP**
Personnel Expected to Retire	30	30	30	30	30	150
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Not Recouped	$1,171,139	$1,188,706	$1,209,270	$1,235,633	$1,261,590	$6,066,338
Total Separation $M	**$1.17**	**$1.18**	**$1.21**	**$1.24**	**$1.26**	**$6.06**

Back up Data: Calculation of Air Force Separation Costs and Lost Treasury Recoupment

Separation Payments	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FYDP**
Personnel Expected to be affected	25	25	25	25	25	125
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Paid	$975,950	$990,600	$1,007,725	$1,029,700	$1,051,323	$5,055,300
Total Separation $M	**$0.98**	**$0.99**	**$1.01**	**$1.02**	**$1.05**	**$5.05**

Lost Recoupment Opportunity	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FYDP
Personnel Expected to Retire	10	10	10	10	10	50
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Not Recouped	$390,380	$396,240	$403,090	$411,880	$420,530	$2,022,120
Total Separation $M	**$0.39**	**$0.39**	**$0.40**	**$0.41**	**$0.42**	**$2.37**

*Please note that the U.S. Treasury could lose the opportunity to recoup $5.96 million assuming that the affected personnel will all receive involuntary separation pay, continue to serve, and earn a 20-year RC retirement. However, the recoupment does not occur until the service member starts to receive retirement pay at the age of 60 (which would be around 30 years after the receipt of the separation pay, severance pay, or readjustment pay). This loss opportunity is mitigated by the following facts: (1) the program will only be implemented at the discretion of the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; (2) taxes are paid on it by the service member at the time of the receipt of involuntary separation pay ($5.96 million would be reduced by approximately 25 percent as taxes are withheld); (3) the future value of this loss opportunity would be approximately $2.3 million (based on 3 percent inflation rate, zero percent return/interest paid by the member, and a time span of 30 years).

Changes to Existing Law: This proposal would make the following change to section 1174 of title 10, United States Code:

§1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for

promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member-

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and

member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(3) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in Navy, may waive the requirement to repay separation pay, severance pay, or readjustment pay under paragraph (1) if such Secretary determines that repayment would be against equity and good conscience or would be contrary to the best interests of the United States.

(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—(1) A member of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term “sole survivorship discharge” means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which-

(A) the father or mother or one or more siblings-

(i) served in the armed forces; and

(ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.