SEC. ___. PERMANENT AUTHORITY FOR ALTERNATIVE PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL.

(a) PERMANENT AUTHORITY AND CODIFICATION.—Chapter 81 of title 10, United States Code, is amended by inserting after section 1589 a new section 1590 consisting of—

(1) a heading as follows:

"§1590. Alternative personnel program for scientific and technical personnel"; and

(2) a text consisting of the text of subsections (a), (b), (c), and (d) of section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note).

(b) INCREASE TO LIMITATION ON RATE OF BASIC PAY.— Subsection (b)(2) of section 1590 of title 10, United States Code, as added by subsection (a), is amended by striking "maximum" and all that follows through "such title," and inserting "rate of basic pay for level II of the Executive Schedule,".

(c) LIMITATIONS ON ADDITIONAL PAYMENTS.—

(1) IN GENERAL.—Paragraphs (2) and (3) of subsection (d) of such section are amended to read as follows:

"(2) In paragraph (1), the terms 'base quarter' and 'Employment Cost Index' have the meaning given those terms in section 5302 of title 5.

"(3)(A) Notwithstanding any other provision of this section, no additional payments under paragraph (1) or other compensation payments permitted under paragraph (4) may be paid in any calendar year to an employee appointed under subsection (b)(1) if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of

title 3. Section 5307 of title 5 is not applicable to an employee appointed under subsection (b)(1).

"(B) The portion of any additional payment authorized under paragraph (1) which cannot be paid due to the limitation in subparagraph (A) may not be paid at any time.

"(C) Any amount of a payment authorized under title 5 which cannot be paid due to the limitation in subparagraph (A) shall be paid to such an employee in a lump sum at the beginning of the following calendar year or upon separation from employment covered by this section. Any such amount paid at the beginning of a calendar year shall be taken into account for purposes of applying the limitation under subparagraph (A) with respect to such calendar year.".

(2) CERTAIN OTHER FORMS OF COMPENSATION.—Paragraph (4) of such subsection is amended by adding at the end the following new sentence: "An employee appointed under the program may receive other types of compensation under title 5, as applicable.".

(d) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in subsection (a)—

(A) by striking "During the program period specified in subsection (e)(1), the" and inserting "The"; and

(B) by striking "of experimental use of" and inserting "to use"; and

(2) in subsection (b)(1), by striking ", United States Code,".

(e) CONFORMING REPEAL.—Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note) is repealed.

1 (f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of title

2 10, United States Code, is amended by inserting after the item relating to section 1589 the

3 following new item:

"1590. Alternative personnel program for scientific and technical personnel.".

[NOTE: THE "CHANGES TO EXISTING LAW" SECTION AT THE END SETS OUT IN RED-LINE FORMAT HOW THE LEGISLATIVE TEXT ABOVE WOULD AMEND EXISTING LAW.]

Section-by-Section Analysis

This proposal would make the temporary hiring and compensation authority under section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year (FY) 1999 a permanent authority.

The Defense Advanced Research Projects Agency (DARPA) has successfully executed this temporary hiring and compensation authority for scientific and technical personnel under section 1101 for over 15 years. This proposal would make that authority permanent. Rapid recruiting and hiring of the most qualified technical experts is central to DARPA's ability to accomplish its mission. This authority enables DARPA to identify the best and brightest candidates and, following approval of a hiring decision by the DARPA Director, allows DARPA to make immediate offers of employment. Prior to this hiring authority, it would take upwards of six to nine months to advertise a position, receive a list of eligible candidates from the servicing personnel office, review the list of candidates, and if a highly qualified candidate was identified from the list, wait for the servicing personnel office to formalize an offer. This lengthy delay in the standard civil service hiring timeline meant that many of the brightest candidates that DARPA needed – individuals in great demand in private industry and academia – would have opted for other opportunities. Providing permanent hiring authority under this section will enable DARPA to make long range plans to continue to use this hiring authority to carry out its mission and support the Department of Defense.

In order to fulfill its mission, DARPA will continue to aggressively recruit individuals who can engage in multidisciplinary activities with industry, academia, and the military to understand critical problem sets and then change the world by changing what people think is possible. These individuals provide the flow of fresh ideas and passion needed to meet the challenge of an ever-changing threat environment and to leverage global advances in science and technology. DARPA's continued ability to attract, hire, and appropriately retain talent is dependent on an agile, streamlined hiring process supported by the correct mix of permanent flexible personnel authorities.

Finally, this proposal eliminates the annual reporting requirement. This reporting requirement is duplicative to other personnel reports already provided to Congress.

Budget Implications: This proposal is a permanent extension of a previously authorized temporary hiring authority. There are no budget implications. The DARPA Comptroller certifies

that the proposal is funded in the Program Objective Memorandum and President's Budget for FY 2017 as reflected in the table below. There is no net increase to DARPA's civilian personnel authorization.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Defense-Wide	15.8	16.1	16.3	16.6	17.0	Research, Development, Test and Evaluation, Defense-Wide	06	138
Total	15.8	16.1	16.3	16.6	17.0			

Changes to Existing Law: This proposal would make the following changes to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note), as proposed to be codified as section 1590 of title 10, United States Code:

~~SEC. 1101.~~ § 1590. ~~EXPERIMENTAL~~ Alternative personnel program for scientific and technical personnel~~.~~

(a) PROGRAM AUTHORIZED.~~—During the program period specified in subsection (e)(1), the~~ The Secretary of Defense may carry out a program ~~of experimental use of~~ to use the special personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects administered by the Defense Advanced Research Projects Agency~~-~~and research and development projects administered by laboratories designated for the program by the Secretary from among the laboratories of each of the military departments.

(b) SPECIAL PERSONNEL MANAGEMENT AUTHORITY.—Under the program, the Secretary may—

(1) without regard to any provision of title 5~~, United States Code,~~ governing the appointment of employees in the civil service, appoint scientists and engineers from outside the civil service and uniformed services (as such terms are defined in section 2101 of such title) to—

(A) not more than 100 scientific and engineering positions in the Defense Advanced Research Projects Agency;

(B) not more than 40 scientific and engineering positions in the designated laboratories of each of the military services; and

(C) not more than a total of 10 scientific and engineering positions in the Office of the Director of Operational Test and Evaluation;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the ~~maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5, United States Code,~~ rate of basic pay for level II of the Executive Schedule, ~~as increased by locality-based comparability payments under section 5304 of such title,~~ notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limit applicable to the employee under subsection (d).

(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed 4 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 2 years if the Secretary determines that such action is necessary to promote the efficiency of the Department of Defense.

(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) Subject to paragraph (3), the total amount of additional payments paid to an employee under subsection (b)(3) for any calendar year may not exceed the lesser of the following amounts:

(A) $50,000 in calendar year 2010, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

(2) In paragraph (1), the terms ‘base quarter’ and ‘Employment Cost Index’ have ~~has~~ the meaning given those terms ~~that term~~ in section 5302~~(3)~~ of title 5~~, United States Code~~.

(3)(A) Notwithstanding any other provision of this section, ~~or section 5307 of title 5, United States Code,~~ no additional payments under paragraph (1) or other compensation payments permitted under paragraph (4) may be paid in any calendar year to an employee appointed under subsection (b)(1) ~~under subsection (b)(3) in any calendar year~~ if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3~~, United States Code~~. Section 5307 of title 5 is not applicable to an employee appointed under subsection (b)(1).

(B) The portion of any additional payment authorized under paragraph (1) which cannot be paid due to the limitation in subparagraph (A) may not be paid at any time.

(C) Any amount of a payment authorized under title 5 which cannot be paid due to the limitation in subparagraph (A) shall be paid to such an employee in a lump sum at the beginning of the following calendar year or upon separation from employment covered by this section. Any such amount paid at the beginning of a calendar year shall be taken into account for purposes of applying the limitation under subparagraph (A) with respect to such calendar year.

(4) An employee appointed under the program is not eligible for any bonus, monetary award, or other monetary incentive for service under the appointment other than payments authorized by this section. An employee appointed under the program may receive other types of compensation under title 5, as applicable.

~~(e) PERIOD OF PROGRAM.—(1) The period for carrying out the program authorized under this section begins on October 17, 1998, and ends on September 30, 2019.~~

~~(2) After the termination of the program—~~

~~(A) no appointment may be made under paragraph (1) of subsection (b);~~

~~(B) a rate of basic pay prescribed under paragraph (2) of that subsection may not take effect for a position; and~~

~~(C) no period of service may be extended under subsection (c)(2).~~

~~(f) SAVINGS PROVISIONS.—In the case of an employee who, on the last day of the program period specified in subsection (e)(1), is serving in a position pursuant to an appointment under subsection (b)(1)—~~

~~(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—~~

~~(A) the period for which the employee was appointed; or~~

~~(B) the period to which the employee's service is limited under subsection (c), including any extension made under paragraph (2) of that subsection before the termination of the program; and~~

~~(2) the rate of basic pay prescribed for the position under subsection (b)(2) may not be reduced for so long (within the period applicable to the employee under paragraph (1)) as the employee continues to serve in the position without a break in service.~~

~~(g) ANNUAL REPORT.—~~

~~(1)(A) Not later than December 31 of each year in which the authority under this section is in effect, the Secretary of Defense shall submit to the committees of Congress specified in subparagraph (B) a report on the operation of this section. Each report shall cover the fiscal year that most recently ended before such December 31.~~

~~(B) The committees of Congress specified in this subparagraph are—~~

~~(i) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and~~

~~(ii) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.~~

~~(2) The annual report shall contain, for the period covered by the report, the following:~~

~~(A) A detailed discussion of the exercise of authority under this section.~~

~~(B) The sources from which individuals appointed under subsection (b)(1) were recruited.~~

~~(C) The methodology used for identifying and selecting such individuals.~~

~~(D) Any additional information that the Secretary considers helpful for assessing the utility of the authority under this section.~~