SEC. ___. PERMANENT AND GLOBAL AUTHORITY FOR USE OF ACQUISITION AND CROSS-SERVICING AGREEMENTS TO LEND CERTAIN MILITARY EQUIPMENT TO CERTAIN FOREIGN FORCES FOR PERSONNEL PROTECTION AND SURVIVABILITY.

(a) CODIFICATION OF PERMANENT AUTHORITY.—

(1) ENACTMENT IN TITLE 10 OF SECTION 1202 ACQUISITION AND CROSS-SERVICING AGREEMENT AUTHORITY.—Chapter 138 of title 10, United States Code, is amended by inserting after section 2342 a new section 2342a consisting of—

(A) a heading as follows:

"§2342a. Acquisition and cross-servicing agreements: authority to lend certain military equipment to certain foreign forces for personnel protection and survivability";

and

(B) a text consisting of the text of subsections (a) through (d) of section 1202 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), as most recently amended by section 1202 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1621), and revised as specified in subsection (b).

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of such chapter is amended by inserting after the item relating to section 2342 the following new item:

"2342a. Acquisition and cross-servicing agreements: authority to lend certain military equipment to certain foreign forces for personnel protection and survivability.".

(b) REVISIONS TO CODIFIED SECTION.—The revisions to the text specified in subsection (a)(1)(B) are as follows:

(1) GLOBAL AUTHORITY.—In subsection (a)(1)—

(A) insert "military or stability" after "combined" the first place it appears; and

(B) strike "in Afghanistan".

(2) CONFORMING AMENDMENTS.—In subsection (a)(3)—

(A) in subparagraph (A), strike "Afghanistan" and insert "a combined military or stability operation with the United States"; and

(B) in subparagraph (C), strike "Afghanistan or a" and insert "a combined military or stability operation or".

(3) REPORTING EXCEPTION.—In subsection (a)(5)—

(A) insert "(A)" before "Equipment may not"; and

(B) add at the end the following:

"(B) EXCEPTION.—The notice required in subparagraph (A) shall not be required when the equipment to be loaned is intended to be used—

"(i) in a facility that is under the control of the United States; or

"(ii) in connection with training directed by United States personnel.".

(4) WAIVER IN THE CASE OF COMBAT LOSS OF EQUIPMENT.—At the end of subsection (a), insert the following new paragraph:

"(6) WAIVER OF REIMBURSEMENT IN THE CASE OF COMBAT LOSS.—

"(A) AUTHORITY.—In the case of equipment provided to the military forces of another nation under the authority of this section that is damaged or

destroyed as a result of combat operations while held by those forces, the Secretary of Defense may, with respect to such equipment, waive any other applicable requirement under this subchapter for—

"(i) reimbursement;

"(ii) replacement-in-kind; or

"(iii) exchange of supplies or services of an equal value.

"(B) LIMITATIONS.—Any waiver under this subsection may be made only on a case-by-case basis. Any waiver under this subsection may be made only if the Secretary determines that the waiver is in the national security interest of the United States.".

(5) TECHNICAL AND CLERICAL AMENDMENTS.—

(A) In subsection (a)(1), strike "under subchapter I of chapter 138 of title 10, United States Code,".

(B) In subsection (d)(2)(B), strike "Committee on International Relations" and insert "Committee on Foreign Affairs".

(c) REPEAL.—Section 1202 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), as most recently amended by section 1202 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1621), is repealed.

(d) RETROACTIVE APPLICATION OF WAIVER AUTHORITY.—The authority in subsection (a)(6) of section 2342a of title 10, United States Code, as added by this section, shall apply with respect to equipment provided before the date of the enactment of this Act to a foreign nation

1 under section 1202 of the John Warner National Defense Authorization Act for Fiscal Year

2 2007, as amended, in the same manner as to equipment provided under such section 2342a.

Section-by-Section Analysis

This proposal would add a new section 2342a to chapter 138 of title 10, United States Code (relating to cooperative agreements with other countries), which would authorize the Secretary of Defense to use acquisition and cross-servicing agreements (ACSAs) to loan certain equipment to coalition partners for the purpose of enhancing personnel protection and aiding in personnel survivability in coalition operations, in certain peacekeeping operations, and in connection with training for deployment to such operations. In essence, this proposal would make permanent and global the current temporary authority for such action in section 1202 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) (as amended).

This legislation is necessary for two reasons: First, the current authority for these loans expire September 30, 2014. Second, based on our experience in Iraq and Afghanistan, it is clear that coalition operations will be a fact of life in future military, stability, and peacekeeping operations, and the ability of the United States to loan this kind of protective equipment to our partners will continue to be a requirement.

In connection with the loan of equipment during training for deployment, this proposal would add an exception to the current "notify and wait" requirement in section 1202 of the John Warner National Defense Authorization Act for Fiscal Year 2007 for situations where the equipment would be used (1) in a facility that is under the control of the United States, or (2) in connection with training directed by United States personnel. As long as the equipment is under the control or direct observation of the United States, we do not believe that it is necessary to go through this process before we can let our foreign partners train with this life-saving equipment.

Finally, the proposal contains a provision that would give the Secretary of Defense the authority to waive reimbursement when equipment is damaged or destroyed as a result of combat operations. While reimbursement of combat losses of loaned equipment may be appropriate for certain countries in certain circumstances, providing the Secretary with discretionary waiver authority will help the Department – and more specifically, a Combatant Commander conducting such operations -- avoid situations where coalition partners with limited resources decide against contributing forces due to potential combat loss reimbursement liability for high value equipment (e.g., MRAPs) which the U.S. is willing to loan them via ACSAs. Furthermore, we view this provision as cost-neutral since the probability of potential combat losses by U.S. and coalition forces operating the same types of equipment in similar operating environments would be essentially identical. Accordingly, in the event the Secretary exercises the waiver authority and does not seek reimbursement for combat losses from a coalition partner, efforts by the Department to replace coalition combat losses of ACSA-loaned equipment would be implemented through the U.S. Government's budgeting process (either base budget or

supplemental) and the Department's acquisition decisions regarding replacement just as if the equipment were damaged or destroyed in combat operations conducted by the U.S..

Budgetary Implications: This proposal is cost-neutral. ACSA acquisitions and transfers are on a cash-reimbursement, replacement-in-kind, or exchange-of-equal-value basis.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	0	0	0	0	0	N/A	N/A	N/A	N/A
Total	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to existing law:

(1) Repeal section 1202 of Public Law 109-364, as amended, as follows**:**

~~**SEC. 1202. TEMPORARY AUTHORITY TO USE ACQUISITION AND CROSS-SERVICING AGREEMENTS TO LEND CERTAIN MILITARY EQUIPMENT TO CERTAIN FOREIGN FORCES FOR PERSONNEL PROTECTION AND SURVIVABILITY.**~~

~~(a) AUTHORITY.—~~

~~(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), the Secretary of Defense may treat covered military equipment as logistic support, supplies, and services under subchapter I of chapter 138 of title 10, United States Code, for the purpose of providing for the use of such equipment by military forces of a nation participating in combined operations with the United States in Afghanistan or participating in combined operations with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.~~

~~(2) REQUIRED DETERMINATIONS.—Equipment may be provided to the military forces of a nation under the authority of this section only upon—~~

~~(A) a determination by the Secretary of Defense that the United States forces in the combined operation have no unfilled requirements for that equipment; and~~

~~(B) a determination by the Secretary of Defense, with the concurrence of the Secretary of State, that it is in the national security interest of the United States to provide for the use of such equipment by the military forces of that nation under this section.~~

~~(3) LIMITATION ON USE OF EQUIPMENT.—Equipment provided to the military forces of a nation under the authority of this section may be used by those forces only for personnel protection or to aid in the personnel survivability of those forces and only—~~

~~(A) in Afghanistan;~~

~~(B) in a peacekeeping operation described in paragraph (1); or~~

~~(C) in connection with the training of those forces to be deployed to Afghanistan or a peacekeeping operation described in paragraph (1) for such deployment.~~

~~(4) LIMITATION ON DURATION OF PROVISION OF EQUIPMENT.--Equipment provided to the military forces of a nation under the authority of this section may be used by the military forces of that nation for not longer than one year.~~

~~(5) NOTICE AND WAIT ON PROVISION OF EQUIPMENT FOR CERTAIN PURPOSES.--Equipment may not be provided under paragraph (1) in connection with training as specified in paragraph (3)(C) until 15 days after the date on which the Secretary of Defense submits to the specified congressional committees written notice on the provision of such equipment for such purpose.~~

~~(b) SEMIANNUAL REPORTS TO CONGRESSIONAL COMMITTEES.--~~

~~(1) USE OF AUTHORITY DURING FIRST SIX MONTHS OF FISCAL YEAR.--If the authority provided in subsection (a) is exercised during the first six months of a fiscal year, the Secretary of Defense shall submit to the specified congressional committees a report on that exercise of such authority not later than the following April 30.~~

~~(2) USE OF AUTHORITY DURING SECOND SIX MONTHS OF FISCAL YEAR.--If the authority provided in subsection (a) is exercised during the second six months of a fiscal year, the Secretary of Defense shall submit to the specified congressional committees a report on that exercise of such authority not later than the following October 30.~~

~~(3) CONTENT.--Each report under paragraph (1) or (2) shall include, with respect to each exercise of the authority provided in subsection (a) during the period covered by the report, the following:~~

~~(A) A description of the basis for the determination of the Secretary of Defense that it is in the national security interests of the United States to provide for the use of covered military equipment in the manner authorized in subsection (a).~~

~~(B) Identification of each foreign force that receives such equipment.~~

~~(C) A description of the type, quantity, and value of the equipment provided to each foreign force that receives such equipment.~~

~~(D) A description of the terms and duration of the provision of the equipment to each foreign force that receives such equipment.~~

~~(E) With respect to equipment provided to each foreign force that is not returned to the United States, a description of the terms of disposition of the equipment to the foreign force.~~

~~(F) The percentage of equipment provided to foreign forces under the authority of this section that is not returned to the United States.~~

~~(4) COORDINATION.--Each report under paragraph (1) or (2) shall be prepared in coordination with the Secretary of State.~~

~~(c) LIMITATIONS ON PROVISION OF MILITARY EQUIPMENT.--The provision of military equipment under this section is subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and of any other export control process under laws relating to the transfer of military equipment and technology to foreign nations.~~

~~(d) DEFINITIONS.--In this section:~~

~~(1) The term "covered military equipment" means items designated as significant military equipment in categories I, II, III, VII, XI, and XIII of the United States Munitions List under section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).~~

~~(2) The term "specified congressional committees" means--~~

~~(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and~~

~~(B) the Committee on Armed Services and the Committee on International Relations of the House of Representatives.~~

~~(e) EXPIRATION.--The authority to provide military equipment to the military forces of a foreign nation under this section expires on September 30, 2014.~~

---

(2) Add to title 10, United States Code, a new section 2342a as follows **[changes from section 1202 are shown by stricken-thru text (for deletions) and underlined text (for insertions]**:

§ 2342a. Acquisition and cross-servicing agreements: authority to lend certain military equipment to certain foreign forces for personnel protection and survivability

(a) AUTHORITY.—

(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), the Secretary of Defense may treat covered military equipment as logistic support, supplies, and services ~~under subchapter I of chapter 138 of title 10, United States Code,~~ for the purpose of providing for the use of such equipment by military forces of a nation participating in combined military or stability operations with the United States ~~in Afghanistan~~ or participating in combined operations with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.

(2) REQUIRED DETERMINATIONS.—Equipment may be provided to the military forces of a nation under the authority of this section only upon—

(A) a determination by the Secretary of Defense that the United States forces in the combined operation have no unfilled requirements for that equipment; and

(B) a determination by the Secretary of Defense, with the concurrence of the Secretary of State, that it is in the national security interest of the United States to provide for the use of such equipment by the military forces of that nation under this section.

(3) LIMITATION ON USE OF EQUIPMENT.—Equipment provided to the military forces of a nation under the authority of this section may be used by those forces only for personnel protection or to aid in the personnel survivability of those forces and only—

(A) in ~~Afghanistan~~ a combined military or stability operation with the United States;

(B) in a peacekeeping operation described in paragraph (1); or

(C) in connection with the training of those forces to be deployed to ~~Afghanistan or~~ a combined military or stability operation or peacekeeping operation described in paragraph (1) for such deployment.

(4) LIMITATION ON DURATION OF PROVISION OF EQUIPMENT.—Equipment provided to the military forces of a nation under the authority of this section may be used by the military forces of that nation for not longer than one year.

(5) NOTICE AND WAIT ON PROVISION OF EQUIPMENT FOR CERTAIN PURPOSES.—(A) Equipment may not be provided under paragraph (1) in connection with training as specified in paragraph (3)(C) until 15 days after the date on which the Secretary of Defense submits to the specified congressional committees written notice on the provision of such equipment for such purpose.

(B) EXCEPTION.—The notice required in subparagraph (A) shall not be required when the equipment to be loaned is intended to be used—

(i) in a facility that is under the control of the United States; or

(ii) in connection with training directed by United States personnel.

(6) WAIVER OF LIABILITY IN THE CASE OF COMBAT LOSS.—

(A) AUTHORITY.—In the case of equipment provided to the military forces of another nation under the authority of this section that is damaged or destroyed as a result of combat operations while held by those forces, the Secretary of Defense may, with respect to such equipment, waive any otherwise applicable requirement under this subchapter for—

(i) reimbursement;

(ii) replacement-in-kind; or

(iii) exchange of supplies or services of an equal value.

(B) LIMITATIONS.—Any waiver under this subsection may be made only on a case-by-case basis. Any waiver under this subsection may be made only if the Secretary determines that the waiver is in the national security interest of the United States.

(b) SEMIANNUAL REPORTS TO CONGRESSIONAL COMMITTEES.—

(1) USE OF AUTHORITY DURING FIRST SIX MONTHS OF FISCAL YEAR. —If the authority provided in subsection (a) is exercised during the first six months of a fiscal year, the Secretary of Defense shall submit to the specified congressional committees a report on that exercise of such authority not later than the following April 30.

(2) USE OF AUTHORITY DURING SECOND SIX MONTHS OF FISCAL YEAR. —If the authority provided in subsection (a) is exercised during the second six months of a fiscal year, the Secretary of Defense shall submit to the specified congressional committees a report on that exercise of such authority not later than the following October 30.

(3) CONTENT. —Each report under paragraph (1) or (2) shall include, with respect to each exercise of the authority provided in subsection (a) during the period covered by the report, the following:

(A) A description of the basis for the determination of the Secretary of Defense that it is in the national security interests of the United States to provide for the use of covered military equipment in the manner authorized in subsection (a).

(B) Identification of each foreign force that receives such equipment.

(C) A description of the type, quantity, and value of the equipment provided to each foreign force that receives such equipment.

(D) A description of the terms and duration of the provision of the equipment to each foreign force that receives such equipment.

(E) With respect to equipment provided to each foreign force that is not returned to the United States, a description of the terms of disposition of the equipment to the foreign force.

(F) The percentage of equipment provided to foreign forces under the authority of this section that is not returned to the United States.

(4) COORDINATION. —Each report under paragraph (1) or (2) shall be prepared in coordination with the Secretary of State.

(c) LIMITATIONS ON PROVISION OF MILITARY EQUIPMENT.—The provision of military equipment under this section is subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and of any other export control process under laws relating to the transfer of military equipment and technology to foreign nations.

(d) DEFINITIONS.—In this section:

(1) The term "covered military equipment" means items designated as significant military equipment in categories I, II, III, VII, XI, and XIII of the United States Munitions List under section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).

(2) The term "specified congressional committees" means—

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on ~~International Relations~~ Foreign Affairs of the House of Representatives.

~~(e) EXPIRATION.—The authority to provide military equipment to the military forces of a foreign nation under this section expires on September 30, 2014.~~