SEC. ____. EXTENSION OF AUTHORITY FOR ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS.

Section 842(d)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1513; 10 U.S.C. 2313 note) is amended by striking "the date that is three years after the date of the enactment of this Act" and inserting "December 31, 2016".

Section-by-Section Analysis

This proposal would amend section 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Public Law 112-81; 125 Stat. 1513) to extend the authority by two years, from December 31, 2014, through December 31, 2016.

Extension of this authority is necessitated by the support required for United States enduring forces presence in Afghanistan after December 31, 2014. After a November meeting with NATO defense ministers, then-Secretary of Defense Panetta stated that "We'll maintain an enduring presence to be able to fulfill two key missions: train, assist and support the Afghan army and in addition conduct counterterrorism activity to make sure that al Qaeda and its affiliates never again are able to establish a safe haven."

The importance of this authority was further emphasized by the Senate Armed Services Committee during the Principal Deputy Undersecretary of Defense for Acquisition Technology and Logistics confirmation hearing on February 28, 2013. Senator Ayotte stated that "we need additional tools to be able make this legislation even more effective… plan to introduce legislation to give you additional tools to cut off funds to our enemies and to cut off funds to those we're worried about going to corruption, other means that we wouldn't want taxpayer dollars going. And I think this is an authority that should be expanded beyond Afghanistan."

As a part of and in support of the enemy identification/verification processes (section 841 of the FY 2012 NDAA), this authority allows contracting officers additional access to contractor and subcontractor records. During the first reporting period (January 1, 2012, through December 31, 2012), contracting officers were able to examine any contract documents as necessary, including subcontracts for any contract/subcontract value in excess of $100,000, resulting in the eleven actions that stopped flow of United States funds to the enemy. In calendar year 2012, ten subcontracts with Afghan vendors were terminated and funds were withheld from one Afghan prime vendor. The dollar value associated with these eleven actions equates to $31 million, which otherwise would have flowed to the enemy. As implementation of this authority continues to evolve and mature, the Department will be able to achieve greater counterterrorism results in coming years by preventing the flow of U.S. funds to persons or entities that support an insurgency in Afghanistan.

Budget Implications: This proposal would not increase costs to the Government to grant

contracting officers the authority to restrict contracting or void any contract or subcontract determined to be affiliated with an insurgent group or otherwise opposing U.S. or coalition forces.

Changes to Existing Law: This proposal would make the following change to section 842 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81):

SEC. 842. ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS.

(a) DEPARTMENT OF DEFENSE CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that—

(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of the Department of Defense that is awarded on or after the date of the enactment of this Act; and

(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of the Department that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the Secretary, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds available under the contract, grant, or cooperative agreement—

(A) are not subject to extortion or corruption; and

(B) are not provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer or comparable official responsible for a grant or cooperative agreement, upon a finding by the Commander of the United States Central Command, that there is reason to believe that funds available under the contract, grant, or cooperative agreement concerned may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

(4) FLOWDOWN.—A clause described in paragraph (2) shall also be required in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $100,000.

(b) REPORTS.—Not later than March 1 of each of 2013, 2014, and 2015, the Secretary shall submit to the congressional defense committees a report on the use of the authority provided by this section in the preceding calendar year. Each report shall identify, for the

calendar year covered by such report, each instance in which the Department of Defense exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken, Any report under this subsection may be submitted in classified form.

(c) DEFINITIONS.—In this section:

(1) The term "contingency operation" has the meaning given that term in section 101(a)(13) of title 10, United States Code.

(2) The term "covered contract, grant, or cooperative agreement" means a contract, grant, or cooperative agreement with an estimated value in excess of $100,000 that will be performed in the United States Central Command theater of operations in support of a contingency operation.

(d) SUNSET.—

(1) IN GENERAL.—The clause described by subsection (a)(2) shall not be required in any contract, grant, or cooperative agreement that is awarded after ~~the date that is three years after the date of the enactment of this Act~~ December 31, 2016.

(2) CONTINUING EFFECT OF CLAUSES INCLUDED BEFORE SUNSET.—Any clause described by subsection (a)(2) that is included in a contract, grant, or cooperative agreement pursuant to this section before the date specified in paragraph (1) shall remain in effect in accordance with its terms.