Section-by Section Analysis

TITLE I—PROCUREMENT

Sections 101 through 106 would authorize appropriations for fiscal year 2011 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2011 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 would authorize appropriations for fiscal year 2011 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011.

Subtitle B—Environmental Provisions

Section 311 would authorize the Secretary of Defense to pay a stipulated penalty to the Environmental Protection Agency (EPA). On June 6, 2007, EPA Region One assessed a stipulated penalty in the amount of $425,000 for the failure by the Navy to timely sample certain monitoring wells pursuant to a schedule included in a Federal Facility Agreement under CERCLA Section 120, executed on October 19, 1990.

The Navy disputed EPA's penalty assessment. During dispute resolution, the Navy and EPA reached a final settlement and Navy agreed to pay a stipulated penalty of $153,000.

Budget Implications: This proposal would be funded from the Department of Defense Base Closure Account 2005. The cost is reflected in the following table:

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
TBD	0.153	0	0	0	0	BRAC 2005		
Total	0.153	0	0	0	0	BRAC 2005		

Changes to Existing Law: This proposal would be a stand-alone provision to the NDAA.

Subtitle C—Workplace and Depot Issues

Section 321 would amend section 4544 of title 10, United States Code, to remove the limitation of eight public-private partnerships; remove the sunset provision, now scheduled for September 30, 2014; and allow multiyear contracting for greater than five years.

The Army, in particular the U.S. Army Materiel Command (AMC), has pursued the use of public-private partnerships for the past five years. Initial efforts were confined to maintenance depots that are funded by the Army Working Capital Fund (AWCF) that could meet the objectives of 10 U.S.C. 2474, which designates them as Centers of Industrial and Technological Excellence (CITEs). Non-depot maintenance facilities were excluded from participating in partnership formation under 10 U.S.C. 2474. In the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Congress enacted 10 U.S.C. 4544 which granted authority to expand partnership formation to cover other industrial facilities such as ammunition plants and arsenals. Section 4544 consolidated several partnering authorities into one and allowed AWCF industrial facilities to enter into public-private arrangements in a more streamlined fashion.

Currently, section 4544 provides that any working-capital funded Army industrial facility may enter into as many as eight cooperative arrangements with non-Army entities to carry out certain military or commercial projects. Although section 4544 did not initially limit the number of partnerships the Army could join, in 2008 Congress imposed the current limit which constrains the Department of Defense's ability to fully tap the potential of public-private cooperation. If authorized, the Army could establish more than the eight partnerships currently allowed under this statute.

The only other significant impediment to increasing private participation is the short duration of the partnerships that the statutory framework imposes on the Department's agreements. Because the authority to enter into these partnerships is set to expire in 2014, and each partnership agreement can last no longer than five years, private industry is hesitant to invest time and resources into relatively short-lived projects.

Expanded use of 10 U.S.C. 4544 authority would not reduce the workload at facilities that use other partnering authorities, such as CITE authority pursuant to 10 U.S.C. 2474. There is no evidence, anecdotal or otherwise, that this would occur.

Similarly, expanded authority under this legislative proposal would not affect other activities relying on section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c) or 10 U.S.C. 2306b, whereby the Government procures items and services. In cases where 10 U.S.C. 4544 is used, the Government is providing items and services to private industry, not acquiring them, and federal multiyear contracting limitations should not apply.

This legislative proposal would broaden the partnership activities by eliminating the cap of eight cooperative agreements. Additionally, by eliminating the sunset provision and the 5-year contract limit, there would be greater incentive for non-Army entities to enter into

cooperative arrangements with the Army, allowing the Department to reap greater benefits from the shared public-private efforts.

Changes to Existing Law: This proposal would make the following changes to section 4544 of title 10, United States Code:

§ 4544. Army industrial facilities: cooperative activities with non-Army entities

(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—A working-capital funded Army industrial facility may enter into a contract or other cooperative arrangement with a non-Army entity to carry out with the non-Army entity a military or commercial project described in subsection (b), subject to the conditions prescribed in subsection (c). ~~This authority may be used to enter into not more than eight contracts or cooperative agreements in addition to the contracts and cooperative agreements in place as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).~~

(b) AUTHORIZED ACTIVITIES.—A cooperative arrangement entered into by an Army industrial facility under subsection (a) may provide for any of the following activities:

(1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of the Army.

(2) The performance of work by a non-Army entity at the facility.

(3) The performance of work by the facility for a non-Army entity.

(4) The sharing of work by the facility and a non-Army entity.

(5) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

(6) The preparation and submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal agency.

(c) CONDITIONS.—An activity authorized by subsection (b) may be carried out at an Army industrial facility under a cooperative arrangement entered into under subsection (a) only under the following conditions:

(1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.

(2) The activity does not interfere with performance of—

(A) work by the facility for the Department of Defense; or

(B) a military mission of the facility.

(3) The activity meets one of the following objectives:

(A) Maximized utilization of the capacity of the facility.

(B) Reduction or elimination of the cost of ownership of the facility.

(C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.

(D) Preservation of skills or equipment related to a core competency of the facility.

(4) The non-Army entity agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion

thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—

(A) in any case of willful misconduct or gross negligence; and

(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the United States to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

(d) ARRANGEMENT METHODS AND AUTHORITIES.—To establish a cooperative arrangement under subsection (a) with a non-Army entity, the approval authority described in subsection (f) for an Army industrial facility may—

(1) enter into a firm, fixed-price multiyear contract (or, if agreed to by the non-Army entity, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;

~~(2) enter into a multiyear contract for a period not to exceed five years, unless a longer period is specifically authorized by law;~~

(~~3~~2) charge the non-Army entity the amounts necessary to recover the full costs of the articles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

(~~4~~3) authorize the non-Army entity to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

(~~5~~4) accept payment-in-kind.

(e) PROCEEDS CREDITED TO WORKING CAPITAL FUND.—The proceeds received from the sale of an article or service pursuant to a contract or other cooperative arrangement under this section shall be credited to the working capital fund that incurs the cost of manufacturing the article or performing the service.

(f) APPROVAL AUTHORITY.—The authority of an Army industrial facility to enter into a cooperative arrangement under subsection (a) shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such an arrangement on a case-by-case basis or a class basis.

(g) COMMERCIAL SALES.—Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (f) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

(h) EXCLUSION FROM DEPOT-LEVEL MAINTENANCE AND REPAIR PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by a non-Army entity pursuant to a cooperative arrangement entered into under subsection (a).

(i) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to affect the application of—

(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act (22 U.S.C. 2770 and 2778) to activities of a cooperative arrangement entered into under subsection (a); and

(2) section 2667 of this title to leases of non-excess property in the administration of such an arrangement.

(j) DEFINITIONS.—In this section:

(1) The term "Army industrial facility" includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

(2) The term "non-Army entity" includes the following:

(A) A Federal agency (other than the Department of the Army).

(B) An entity in industry or commercial sales.

(C) A State or political subdivision of a State.

(D) An institution of higher education or vocational training institution.

(3) The term "incremental funding" means a series of partial payments that—

(A) are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

(B) result in full payment being completed as the required work is being completed.

(4) The term "full costs", with respect to articles or services provided under a cooperative arrangement entered into under subsection (a), means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

(5) The term "variable costs" means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.

~~(k) EXPIRATION OF AUTHORITY.—The authority to enter into a cooperative arrangement under subsection (a) expires September 30, 2014.~~

Subtitle D—Other Matters

Section 331. Due to the difficulties in forecasting volatile fuel prices ten to twenty-two months in advance of the fiscal year, the Department of Defense is requesting an indefinite appropriation to cover the difference between the funds the Department budgets for the purchase of refined petroleum products and the actual market prices the Department pays for fuel, *i.e.*, the additional marginal expense.

Dramatic fuel market price volatility, after the budget has been transmitted to the Congress and after the Congress has appropriated funding for fuel, has had a significant impact on the Department of Defense budget process. Recent increases in fuel prices during budget execution have been substantially financed through supplemental appropriations to the Department of Defense. The timing lag between the fuel price increase and the receipt of the supplemental fuel funding results in the disruption of other Defense programs and, in some cases, requires reprogramming actions. This section would eliminate that problem.

The military departments and Defense agencies will continue to budget for fuel and other refined petroleum products as they have in the past. The budget request for fuel starts with the Administration's economic assumptions about the future cost of crude oil, which is based on the futures market and is consistent with private sector forecasts.

The indefinite appropriation would apply only to the additional marginal expense of purchasing refined petroleum products, currently financed through supplemental appropriations. Not covered are the additional costs that the Defense-Wide Working Capital Fund charges its customers for transportation, facilities, overhead, and depreciation costs.

The indefinite appropriation would provide additional funds when fuel prices increase above the budgeted price. When fuel prices drop below the budgeted price, the extra budgeted funds would be cancelled. In this way the risk is shared. Over time it is anticipated that any additional funds provided by the indefinite appropriation would be offset by the cancellation of funds budgeted for fuel purchases, but not needed for that purpose due to decreases in the price of fuel.

The establishment of a separate transfer account would provide visibility. In addition, business rules have been established to allow for the monthly reconciliation of Department of Defense fuel purchases. The monthly reconciliation will ensure auditability and transparency of transactions to and from the transfer account.

Changes to Existing Law: This proposal would create a new section in title 10, United States Code.

Section 332 would not change the authorities already granted by Congress, but instead would extend the program for four more years, from 2010 to 2014. This extension is requested to allow continued exploration of potential projects and to develop an evaluation to be submitted to Congress as to whether the authorities should be made permanent or allowed to expire. With the current emphasis on competitive procurements to support major weapon systems, there should be more opportunities available for the Defense Logistics Agency (DLA) to provide the efficient and effective support envisioned by this program.

DLA has used the existing authorities by establishing a Marketing Integrated Product Team that developed policy and procedures and which outline the roles and responsibilities for providing support for weapon systems contracts. DLA developed a brochure outlining logistics support and logistics services DLA may provide under the current authorities.

As a continuous process in identifying potential pilots, DLA has provided educational workshops concerning the support authorized by this section to major weapon systems contractors such as Lockheed Martin, AM General, BAE, Boeing and General Dynamics; and contractors have shown interest. DLA wants to continue exploration and evaluation of available opportunities.

Budget Implications: The proposal is budget neutral as it does not impact amounts appropriated. The logistics support and services made available under this provision would be provided on a reimbursable basis pursuant section 2208(h) of title 10, United States Code.

Changes to Existing Law: This proposal would change section 365(g)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 203 (Public Law 107-314; 10 U.S.C. 2302 note) as follows:

SEC. 365. LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS.

(a) Authority.--The Secretary of Defense may make available logistics support and logistics services to a contractor in support of the performance by the contractor of a contract for the construction, modification, or maintenance of a weapon system that is entered into by an official of the Department of Defense.

(b) Support Contracts.--Any logistics support and logistics services to be provided under this section to a contractor in support of the performance of a contract described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to the contract between the Director of the Defense Logistics Agency and the contractor.

(c) Scope of Support and Services.--The logistics support and logistics services that may be provided under this section in support of the performance of a contract described in subsection (a) are the distribution, disposal, and cataloging of materiel and repair parts necessary for the performance of that contract.

(d) Limitations.--(1) The number of contracts described in subsection (a) for which the Secretary of Defense makes logistics support and logistics services available under the authority of this section may not exceed five contracts. The total amount of the estimated costs of all such contracts for which logistics support and logistics services are made available under this section may not exceed $100,000,000.

(2) No contract entered into by the Director of the Defense Logistics Agency under subsection (b) may be for a period in excess of five years, including periods for which the contract is extended under options to extend the contract.

(e) Regulations.--Before exercising the authority under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that logistics support and logistics services are provided under this section only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:

(1) A requirement for the authority under this section to be used only for providing logistics support and logistics services in support of the performance of a contract that is entered into

using competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act *(41 U.S.C. 403)).*

(2) A requirement for the solicitation of offers for a contract described in subsection (a), for which logistics support and logistics services are to be made available under this section, to include--

(A) a statement that the logistics support and logistics services are to be made available under the authority of this section to any contractor awarded the contract, but only on a basis that does not require acceptance of the support and services; and

(B) a description of the range of the logistics support and logistics services that are to be made available to the contractor.

(3) A requirement for the rates charged a contractor for logistics support and logistics services provided to a contractor under this section to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

(4) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

(5) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of logistics support and logistics services provided to the contractor under this section.

(f) Relationship to Treaty Obligations.--The Secretary shall ensure that the exercise of authority under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

(g) Termination of Authority.--(1) The authority provided in this section shall expire on September 30, ~~2010~~ **2014**.

(2) The expiration of the authority under this section does not terminate--

(A) any contract that was entered into by the Director of the Defense Logistics Agency under subsection (b) before the date specified in paragraph (1) or any obligation to provide logistics support and logistics services under that contract; or

(B) any authority to enter into a contract described in subsection (a) for which a solicitation of offers was issued in accordance with the regulations prescribed pursuant to subsection (e)(2) before the date specified in paragraph (1) or to provide logistics support and logistics services to the contractor with respect to that contract in accordance with this section.

Section 333. Section 1014 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 provided the Navy with the authority to purchase meals on behalf of embarked members of non-governmental organizations (NGOs), host and partner nations, joint services, and U.S. government agencies and foreign national patients treated on Navy ships and their escorts during Navy's execution of humanitarian and civic assistance missions. This proposal would make that authority permanent. Prior to the enactment of section 1014, there was no specific statutory authority to waive such meal payment or to use general operation and maintenance appropriated funds to pay for official visitor/guest messing.

Section 1011 of title 37, United States Code, mandates that the Secretary of Defense establish rates for meals sold at messes to officers, civilians, and enlisted members. The USNS MERCY Southeast Asia tsunami relief mission and subsequent humanitarian civic assistance deployments successfully fostered a positive image of America worldwide. Project Hope and other NGOs, host and partner nations, joint services, and other government agencies participate in the missions by integrating into the Navy team and providing primarily medical services, including the treatment of foreign national patients on board and ashore. Members of NGOs, host and partner nations, joint services, and other government agencies embarked and patients treated on Navy vessels are official visitors and guests required to purchase meals at the messing facility.

Budget Implications: Based on fiscal year (FY) 2006 - 2009 expenditures, the Department of Defense estimates that the following amounts will be executed if this authority is made permanent. The estimates are funded in the Navy's FY 2011 budget.

RESOURCE REQUIRMENTS ($THOUSANDS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Total	700	750	800	850	900	OMN-1804	01	1B1BSO

Changes to Existing Law: This proposal would make the following changes to section 1014 of the National Defense Authorization Act for Fiscal Year 2009:

SEC. 1014. REIMBURSEMENT OF EXPENSES FOR CERTAIN NAVY MESS OPERATIONS.

(a) AUTHORITY FOR PAYMENT.—Of the amounts appropriated for operation and maintenance for the Navy, not more than $1,000,000 may be used annually to pay the charge established under section 1011 of title 37, United States Code, for meals sold by messes for United States Navy and Naval Auxiliary vessels to the following:

(1) Members of nongovernmental organizations and officers or employees of host and foreign nations when participating in or providing support to United States civil-military operations.

(2) Foreign national patients treated on Naval vessels during the conduct of United States civil-military operations, and their escorts.

~~(b) EXPIRATION OF AUTHORITY.—The authority to pay for meals under subsection (a) shall expire on September 30, 2010.~~

~~(c)~~(b)REPORT.—Not later than March 31 of each year ~~during which the authority to pay for meals under subsection (a) is in effect~~, the Secretary of Defense shall submit to Congress a report on the use of ~~such~~ the authority to pay for meals under subsection (a).

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2011.

Section 402 would revise the permanent strength levels for the Navy and Air Force under the provisions of section 691(b)(2) and (4) of title 10, United States Code.

Subtitle B—Reserve Forces

Section 411 would prescribe the strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2011.

Section 412 would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2011.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2011.

Section 414 would prescribe the maximum end strengths for non-dual status technicians of the reserve components of the Army and Air Force for fiscal year 2011.

Section 415 would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

Section 416. By striking paragraphs (2), (3), and (5) from subsection (c) of 10 U.S.C. 12004, this proposal would provide the Navy flexibility in managing the Reserve Flag Officer pool to properly provide for the needs of the service.

Current law places strict limitations on the community representation for the Navy Reserve Flag Officers, especially in the Staff Corps. No other service component suffers from similar constraints. There is no flexibility allowed to tailor the Reserve Flag Officer ranks in a manner that best suits the needs of the service at that time. As the needs of the service change in accordance with the geopolitical events in the world, it is essential to have a Navy Reserve that can augment or supplement the Navy in communities that are in high demand. The proposed change will allow flexibility to increase/decrease manning within certain corps to meet the needs

of the Navy. In addition, this proposal would afford the Navy the ability to adjust numbers in certain corps to better meet any additional joint requirements.

The Chief of Naval Operations forwards an annual Reserve Flag Officer Promotion Plan to the Secretary of the Navy for approval. The Promotion Plan details the specific numbers for distribution to the various corps, and is the venue where the Navy would prefer for distribution requirements to be decided, rather than in Title 10 language.

Budget Implications: The proposal has no budgetary impact as it does not affect the total number of Flag Officers in the Navy Reserve, as delineated in subsection 12004(a).

Changes to Existing Law: This proposal would amend section 12004(c) of title 10, U.S. Code, by striking paragraphs (2), (3), and (5)):

SEC. 12004. STRENGTH IN GRADE: RESERVE GENERAL AND FLAG OFFICERS IN AN ACTIVE STATUS.

*** * * ***

(c)(1) The following Navy reserve officers shall not be counted for purposes of this section:

(A) Those counted under section 526 of this title.

(B) Those serving in a joint duty assignment for purposes of chapter 38 of this title, except that the number of officers who may be excluded under this paragraph may not exceed the number equal to 20 percent of the number of officers authorized for the Navy in subsection (a).

~~(2) Of the number of Navy reserve officers authorized by subsection (a), 40 are distributed among the line and staff corps as follows:~~

~~Line 33~~
~~Medical Department staff corps 5~~
~~Chaplain Corps 1~~
~~Judge Advocate General's Corps 1~~

~~(3) The remaining authorizations for the Navy under subsection (a) shall be distributed among such other staff corps as are established by the Secretary of the Navy under the authority provided by section 5150(b) of this title, except that -~~

~~(A) if the Secretary has established a Supply Corps, the authorized strength for the Supply Corps shall be six; and~~

~~(B) if the Secretary has established a Civil Engineering Corps, the authorized strength for the Civil Engineering Corps shall be two.~~

(4) Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

~~(5)(A) For the purposes of paragraph (1), the Medical Department staff corps referred to in the table are as follows:~~

~~(i) The Medical Corps.~~
~~(ii) The Dental Corps.~~
~~(iii) The Nurse Corps.~~
~~(iv) The Medical Service Corps.~~

~~(B) Each of the Medical Department staff corps is authorized one rear admiral (lower half) within the strength authorization distributed to the Medical Department staff corps under paragraph (1). The Secretary of the Navy shall distribute the remainder of the strength authorization for the Medical Department staff corps under that paragraph among those staff corps as the Secretary determines appropriate to meet the needs of the Navy.~~

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Subtitle C—Authorization of Appropriations

Section 421 would authorize appropriations for fiscal year 2011 for military personnel.

TITLE V—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Officer Personnel Policy

Section 501 would provide for the administrative removal of an officer from a promotion list under regulations prescribed by the Secretary of the military department in those cases where an officer was recommended for promotion and the officer is no longer on the active-duty list or the reserve active-status list because they have been discharged or dropped from the rolls, transferred to a retired status, or found to have been erroneously included in a zone of consideration separated for cause. This will alleviate the need for the Secretary of military department concerned to formally remove an officer in the enumerated circumstances. This proposal allows for an expeditious remedy in cases of officers who are no longer eligible for promotion and to correct the eligibility of an officer who was erroneously included in a zone of consideration. This change does not interfere with the provisions of section 14317 of title 10, United States Code, concerning the transition to and from the Active-Duty List and the Reserve Active-Status List.

Changes to Existing Law: This proposal would make the following changes to section 629 and 14310 of title 10, United States Code:

§ 629. Removal from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) REMOVAL DUE TO SENATE NOT GIVING ADVICE AND CONSENT.—If, after consideration of a list of officers approved for promotion by the President to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) In this subsection, the term "promotion eligibility period" means, with respect to an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

(d) ADMINISTRATIVE REMOVAL.—If an officer on the active-duty list is discharged or dropped from the rolls, transferred to a retired status, or found to have been erroneously included in a zone of consideration, after having been recommend for promotion to a higher grade under this chapter, but before being promoted, the officer shall be administratively removed from the promotion list under regulations prescribed by the Secretary concerned.

~~(d)~~ (e) CONTINUED ELIGIBILITY FOR PROMOTION.—(1) An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, or if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

§ 14310. Removal of officers from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

(b) REMOVAL FOR WITHHOLDING OF SENATE ADVICE AND CONSENT.—If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer shall be removed from the list.

(c) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved for promotion under section 14308(a) of this title to a grade for which appointment is required by section 12203(a) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) In this subsection, the term "promotion eligibility period" means, with respect to an

officer whose name is on a list of officers approved for promotion under section 14308(a) of this title to a grade for which appointment is required by section 12203(a) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

(d) ADMINISTRATIVE REMOVAL.—If an officer on the reserve active-status list is discharged or dropped from the rolls, transferred to a retired status, or found to have been erroneously included in a zone of consideration, after having been recommended for promotion to a higher grade under this chapter or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer shall be administratively removed from the promotion list under regulations prescribed by the Secretary concerned.

~~(d)~~ (e) CONTINUED ELIGIBILITY FOR PROMOTION.—An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If that officer is recommended for promotion by the next selection board convened for that officer's grade and competitive category and the officer is promoted, the Secretary of the military department concerned may, upon the promotion, grant the officer the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list, as the officer would have had if the officer's name had not been removed from the list.

Section 502. A technical change is necessary to clarify the definition of "joint matters". As currently written, the definition implies all conditions listed in subsections (a)(1) and (a)(2) must be met for qualification in joint matters. To provide clarity to the definition of joint matters, subsection (a)(1) has been modified to reflect that an officer may participate in any one joint activity.

The change to subsection (a)(2) allows for joint credit when military forces operate together or when one or multiple military forces operate with U.S. departments and agencies, military forces from other countries, or non-governmental persons or entities. As currently written, an officer involved in operations with other U.S. armed forces still needs to work with and agent from one of the organizations in subsection (a)(2)(a)-(C) to quality for joint credit.

The Department would like to revert to the original Goldwater-Nichols terminology "integrated military forces" vice the current term "multiple military forces" in the joint matters definition. This will emphasize joint matters is about integration of forces throughout planning and operations.

Changes to Existing Law: This section would make the following changes to 10 U.S.C. 668:

§ **668. Definitions**

(a) JOINT MATTERS.—

(1) In this chapter, the term "joint matters" means matters related to the achievement of unified action by ~~multiple~~ **integrated** military forces in operations conducted across domains such as land, sea, or air, in space, or in the information environment; including matters relating to—

(A) national military strategy;

(B) strategic planning and contingency planning;
(C) command and control of operations under unified command;
(D) national security planning with other departments and agencies of the United States; ~~and~~ **or**
(E) combined operations with military forces of allied nations.

(2) In the context of joint matters, the term "~~multiple~~ **integrated** military forces" refers to forces that involve participants from ~~the armed forces and one or more of the following:~~
~~(A) Other departments and agencies of the United States.~~
~~(B) The military forces or agencies of other countries.~~
~~(C) Non-governmental persons or entities.~~

(A) more than one of the military departments; or
(B) a military department and one or more of the following;
(i) Other departments and agencies of the United States.
(ii) The military forces or agencies of other countries.
(iii) Non-governmental persons or entities.

(b) JOINT DUTY ASSIGNMENT. * * *

* * * * * * *

Section 503 would amend sections 1187 (active duty) and 14906 (reserves) of title 10, United States Code, to expand the pool of officers eligible to serve on officer discharge boards. All board members would have to be senior in rank or grade to the officer required to show cause for retention (i.e., the respondent). For respondents below the grade of major or lieutenant commander, the Board president would have to be in or above the grade of major or lieutenant commander. For respondents in or above the grade of major or lieutenant commander, the Board president would have to be above the grade of lieutenant colonel or commander.

Current law requires that all Board members be senior in grade to the respondent. Moreover, all Board members, regardless of respondent's grade, must be in a grade above major or lieutenant commander, with the Board president being above the grade of lieutenant colonel or commander. These minimum grade eligibility requirements are more stringent than those required of members sitting on courts-martial, to include cases where the death penalty may be imposed. *See* 10 U.S.C. 825 ("Any commissioned officer on active duty is eligible to serve on all courts-martial . . ."); Rule for Court Martial 502(b)(1) ("The president of a court-martial shall be the detailed member senior in rank then serving"); 10 U.S.C. 825(d)(1) (while court-martial members should be senior in grade to an accused, they may be junior in rank or grade where it cannot be avoided). The fewer numbers, higher-level responsibilities, and many operational taskings of those above the grade of major or lieutenant commander contribute to logistical difficulties in timely and efficiently procuring a quorum of eligible officers to sit on officer discharge Boards.

Officer discharge boards are "Show Cause" proceedings. 10 U.S.C. 1182 (active duty) and 14902 (reserves). Upon determination by a Show Cause Authority (SCA) that an officer should be discharged because of substandard duty performance, misconduct, professional dereliction, or conflict with national security interests, the SCA directs the officer to show cause for his retention. Typically, the SCA is a general officer. *See* DoDI 1332.30 (glossary definition of "Show Cause Authority"). Typically, the respondent is an officer who has lost the confidence of his commander, peers, and subordinates -- hence the direction that he show cause for his retention.

The proposed amendments will permit more rapid and efficient processing of officer discharge actions by expanding the pool of officers eligible to serve as discharge Board members and presidents. This will assist in eliminating a significant drain upon unit effectiveness, resources, and morale, as well as the stressors upon the respondent, caused by the respondent's continuing and unresolved Show Cause status while awaiting a Board hearing. Additionally, it will more properly align Board member eligibility requirements with court-martial member eligibility requirements, recognizing that the former need not and should not be more stringent than the latter.

Changes to Existing Laws: This proposal would make the following changes to sections 1187 and 14906 of title 10, United States Code:

§ 1187. Officers eligible to serve on boards

(a) IN GENERAL.—Except as provided in subsection (b), each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Each member of the board shall be ~~in a grade above major or lieutenant commander, except that at least one member of the board shall be in a grade above lieutenant colonel or commander~~ senior in rank or grade to the officer being required to show cause for retention on active duty and at least one member of the board—

(A) shall be in or above the grade of major or lieutenant commander if the grade of the officer being required to show cause for retention on active duty, is below the grade of major or lieutenant commander; or

(B) shall be in a grade above lieutenant colonel or commander if the grade of the officer being required to show cause for retention on active duty, is major or lieutenant commander or above.

~~(3) Each member of the board shall be senior in grade to any officer to be considered by the board.~~

(b) RETIRED OFFICERS.—If qualified officers are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer meets the grade requirements of subsection (a)(2).

~~(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and~~

~~(2) is senior to the grade of any officer to be considered by the board.~~

(c) INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.—No person may be a member of more than one board convened under this chapter to consider the same officer.

(d) EXCLUSION FROM STRENGTH LIMITATION.—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(e) REGULATIONS.—The Secretary of a military department may prescribe regulations limiting the eligibility of officers to serve as board members to those otherwise qualified officers who, in the opinion of the Secretary, are suited for that duty by reason of age, education, training, experience, length of service, and temperament.

§ 14906. Officers eligible to serve on boards

(a) COMPOSITION OF BOARDS.—Each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

(2) Each member of the board shall ~~hold a grade above major or lieutenant commander, except that at least one member of the board shall hold a grade above lieutenant colonel or commander~~ be senior in rank or grade to the officer being required to show cause for retention in an active status and at least one member of the board—

(A) shall be in or above the grade of major or lieutenant commander if the grade of the officer being required to show cause for retention in an active status is below the grade of major or lieutenant commander; or

(B) shall be in a grade above lieutenant colonel or commander if the grade of the officer being required to show cause for retention in an active status is major or lieutenant commander or above.

~~(3) Each member of the board shall be senior in grade to any officer to be considered by the board.~~

(b) LIMITATION.—A person may not be a member of more than one board convened under this chapter to consider the same officer.

(c) REGULATIONS.—The Secretary of a military department may prescribe regulations limiting the eligibility of officers to serve as board members to those otherwise qualified officers who, in the opinion of the Secretary, are suited for that duty by reason of age, education, training, experience, length of service, and temperament.

Section 504 would amend sections 3911(b), 6323(a)(2), and 8911(b) of title 10, United States Code, to provide the Secretaries of the military departments renewed authority to approve the voluntary retirement at 20 years of service for officers with eight years commissioned service instead of 10 years beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2011 to September 30, 2013.

Before and immediately following September 11, 2001, the Air Force increased total accessions of prior service and non-prior service officers. A high percentage of the prior service officers will be achieving eight years of commissioned service and 20 or more years of total active service in Fiscal Year 2011. For example, approximately 365 officers will achieve eight

years commissioned service and 20 years of total active service in Fiscal Year 2011. Based on historical retention rates, the Air Force estimates a minimum of 25% and a maximum of about 40% of those prior-service officers that become initially eligible will retire in the first year. This could result in between 90 and 150 individuals retiring in Fiscal Year 2011 under an eight-year commissioned service retirement authority.

The Navy will also consider using this authority for Force Shaping. At this time, the Army does not plan to use this authority.

Budget Implications: No monetary incentives are offered to entice prior-service officers to voluntary apply for retirement using the eight-year commissioned service retirement authority. The DoD Military Retirement Fund operates on an accumulation of funds and accrual accounting system. DoD pays for changes to retirement law/policy as changes take place (not when retirement compensation is actually paid). The charge/cost to the Service is expressed as the Normal Cost Percentage (NCP), which is a factor applied to each Services' annual amount of basic pay. The NCP is only adjusted for changes of one tenth of one percent or more. This would not be achieved based on the projected number personnel affected by a time-in-commissioned service waiver. As such, no costs would be incurred.

Changes to Existing Law: This proposal would make the following changes to title 10, United States Code:

§ 3911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years.

(2) The period specified in this paragraph is the period beginning on ~~January 6, 2006 and ending on December 31, 2008~~ the date of the enactment of the National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013.

* * * *

§ 6323. Officers: 20 years

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(2)(A) The Secretary of Defense may authorize the Secretary of the Navy, during the period specified in subparagraph (B) to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than eight years.

(B) The period specified in this subparagraph is the period beginning on ~~January 6, 2006 and ending on December 31, 2008~~ the date of the enactment of the National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W–1.

(c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay computed under section 6333 of this title.

(f) Officers of the Navy Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485) or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

* * * *

§ 8911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Air Force, during the period specified in paragraph (2) to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Air Force) of not less than eight years.

(2) The period specified in this paragraph is the period beginning on ~~January 6, 2006 and ending on December 31, 2008~~ the date of the enactment of the National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013.

Subtitle B—General Service Authorities

Section 511. Current law, 10 U.S.C. 10216, governs dual-status technicians and restricts the assignment of technicians hired after December 1, 1995, to a unit of the Selected Reserve by which the individual is employed as a military technician or a unit of the Selected Reserve that the individual is employed as a military technician to support. A strict interpretation of the law precludes the option of assigning military technicians anywhere outside of the reserve unit

program.

Under 10 U.S.C. 10216(d)(2), the Army Reserve has an exemption to the statute's "unit of the Selected Reserve" membership requirement and is permitted to assign Reservists to positions outside of the unit program. As is the case with the Army Reserve, the Air Force Reserve has a requirement to have Reservists assigned in positions and to units that support the Air Force Reserve. These units, by definition, are not units of the Selected Reserve (traditional Reserve units).

The Air Force Reserve's dual-status technician program (also known as the Air Reserve Technician Program) is the largest of the Air Force Reserve's full-time support programs. Consistent with the relevant Department of Defense Instruction (DoDI 1205.18), the Reserve Components must have the ability to develop enlisted and officer senior leaders with the knowledge and depth to "supply support to the RCs, Armed forces on active duty, members of foreign military forces, DoD contractor personnel, and DoD civilian employees." The Reserve Components have a responsibility to "[e]nsure FTS [Full-time Support] personnel are provided career opportunities applicable to the category of employment for promotion, career progression, retention, education, and professional development . . ." This cannot be accomplished if these members are restricted to unit programs.

Accordingly, this proposal would amend section 10216 to permit the Air Force Reserve to assign select reservists outside of the unit program.

Budget Implications: Dual-status military technicians are full time federal civil service employee serving in a position that requires an active Reserve assignment. Because the subject positions are already funded, there are no additional funding requirements for this proposal. This proposal should have no budgetary impact.

AFR Comptroller has verified that any budgetary impact that this initiative creates will be addressed with appropriations identified in the table below:

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Line Item**
USAFR	2,157.147	2,094.242	2,205.501	2,258.662	2,322.402	Operation and Maintenance, Air Force	01	011A
	116.661	115.912	117.711	121.294	124.437			011G
	282.365	278.192	285.833	296.298	306.729			011Z
	80.703	77.088	74.130	74.767	76.720			042A
	19.836	19.205	19.745	20.303	20.790			042K
	.727	.719	.728	.749	.770			042M

Changes to Existing Law: This proposal would amend section 10216 of title 10, United States Code, as follows:

§ 10216. Military technicians (dual status).

(a) * * *

* * * * * * *

(d) UNIT MEMBERSHIP REQUIREMENT.—(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in—

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program or by the Air Force Reserve in an area other than the Air Force Reserve unit program.

Subtitle C—Education and Training

Section 521 would amend sections 2171 and 16301 of title 10, United States Code, by making payments made under those sections susceptible to the same repayment provisions currently in place for other bonus and incentive programs under section 303a of title 37, United States Code.

The military departments use student loan repayment as a recruiting incentive. The National Defense Authorization Act for Fiscal Year 2006 extended the types of loans eligible for repayment under section 2171 to include those education loans made by a lender under pension plans, State and commercial loans and other similar sources which are not federally insured in case of death or serious injury; the National Defense Authorization Act for Fiscal Year 2008 amended section 16301 to allow repayment of the same educational loans eligible for repayment under section 2171. The burden of repaying any uninsured loans likely will fall on the family of the deceased or injured service member.

This legislative proposal aims to strengthen the educational loan repayment program by providing a mechanism by which the Secretary concerned can disburse final loan repayments with the settlement of Service member's final military pay account. Currently, when a service member whose enlistment agreement provides for repayment of loans is later unable to fulfill the conditions of the agreement (regardless of the reason), the unearned portion of the benefit may not be paid. Because service members can now contract to have non-insured loans repaid, family members are left repaying a deceased or seriously injured Service member's educational

debt since the Department of Defense lacks authority to disburse unpaid loan repayment benefits to deceased service members in the settlement of their final pay account, or to a service member whose combat related injuries require disability separation.

This proposal will align final loan payments with other cash bonus incentives for members killed or seriously injured in the line of duty, and incorporate the educational loan repayment program into the regulations required under section 303a(e) of title 37. That section authorizes the Secretary concerned to determine the circumstances under which an exception to the required repayment may be granted. The implementing regulations currently include an exception to the repayment provision when the reason a service member is unable to fulfill his or her service obligation stems from death or serious injury, not the result of a member's misconduct. If enacted, this legislative proposal would extend the exception authority of 37 U.S.C. 303a(e) to the education loan repayment programs under title 10.

Budgetary Implications: There will be no start-up or additional costs. Currently, loans for the active component are paid (under 10 U.S.C. 2171) in three installments, after each year of service completed; reserve component loans are repaid (under 10 U.S.C. 16301) up to 15 percent per year over a six-year period. The loans are obligated up front and costs would be the same whether paid out as a final settlement or if extended over the course of an enlistment contract.

Changes to Existing Law: This proposal would make the following changes to sections 2171 and 16301 of title 10, United States Code:

§ 2171. Education loan repayment program: enlisted members on active duty in specified military specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.);

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.); or

(D) any loan incurred for educational purposes made by a lender that is—

(i) an agency or instrumentality of a State;

(ii) a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;

(iii) a pension fund approved by the Secretary for purposes of this section; or

(iv) a non-profit private entity designated by a State, regulated by such State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed on active duty as a member in an officer program or military specialty specified by the Secretary.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 33 1/3 percent or $ 1,500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 16301 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 16301(a) of this title.

(g) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 16301 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) or title 37.

(h) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.

§ 16301. Education loan repayment program: members of Selected Reserve

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.);

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.); or

(D) any loan incurred for educational purposes made by a lender that is—

(i) an agency or instrumentality of a State;

(ii) a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;

(iii) a pension fund approved by the Secretary for purposes of this section; or

(iv) a nonprofit private entity designated by a State, regulated by that State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary of Defense may repay loans described in paragraph (1) in the case of any person for service performed as a member of the Selected Reserve of the Ready Reserve of

an armed force in a reserve component and in an officer program or military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(3) [Deleted]

(b) The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or $ 500, whichever is greater, for each year of service, plus the amount of any interest that may accrue during the current year.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required. For the purposes of this section, any interest that has accrued on the loan for periods before the current year shall be considered as within the total loan amount that shall be repaid.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(g) The Secretary of Homeland Security may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(h) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 2171 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) or title 37.

(i) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.

Section 522 would expand the pool of eligible participants for the Active Duty Health Professions Loan Repayment Program (ADHPLRP). Currently, the Department of Defense (DoD) can only use the Armed Forces Health Professions Scholarship and Financial Assistance Program, commonly referred to as the Health Professions Scholarship Program (HPSP), to pay for a student's remaining educational training. Students who are near the end of their educational program do not receive much benefit from HPSP participation and are therefore less likely to accept an HPSP offer. This proposal would enable DoD to attract into Active Duty service medical students who are near the end of their training by offering to pay not only the remainder of their training under the HPSP, but also repay their existing educational loans through the ADHPLRP. For example, a newly recruited medical school student in their third year of school

could now not only participate in HPSP (to pay for the last two years of medical school), but also be eligible to participate in ADHPLRP (to repay the previously incurred student loans used to paid for his first two years of medical school).

Currently, section 2173 of title 10, United States Code, restricts participation in ADHPLRP to those who are already fully-qualified or are in their last year of study or specialty training. Although section 2173 was amended by section 573 of the Bob Stump National Defense Authorization Act for Fiscal Year (FY) 2003 (Public Law 107-314) to make HPSP participants eligible to receive ADHPLRP assistance, the statute continues to restrict participation to those who are fully-qualified or in their last year of study or specialty training.

This legislative proposal would allow HPSP participants to be offered assistance with repayment of their educational loans prior to entering the last year of study or specialty training (non-HPSP personnel would still be required to be either fully qualified or in their last year of study or specialty training). By specifically authorizing participation in both HPSP and the ADHPLRP, this legislative proposal would authorize the military departments to defray the costs incurred by potential physicians who enroll in the HPSP. The Dental Corps is already eligible to participate in both.

HPSP is currently the primary source of active duty physician and dentists. It is also a useful tool in the recruitment of other medical professionals required by the force. The ability for the Department's recruiting force to also offer prospective recruits immediate participation in ADHPLRP following active duty entry, coupled with HPSP for less than the full length of time required to complete their study or specialty training, has the potential to increase the pool of prospective recruits. By defraying both future costs and previously incurred debts for new recruits, this legislative proposal enhances the effectiveness of both HPSP and ADHPLRP as recruiting tools.

HPSP recruitment missions are focused on output necessary each year to sustain the force. In FY 2005, 2006 and 2007, U.S. Army Recruiting Command (USAREC) did not achieve the number of recruitments into the medical program necessary to provide the appropriate number of outputs. Their success as a percentage of the achieved versus mission was 77 percent, 76 percent and 80 percent, respectively. While it is relatively easy for USAREC to recruit for the four- and three-year scholarships, the one- and two-year scholarships are difficult. This lack of success in "early" years means that the number required to be recruited in "later" years increases and subsequently becomes more of a challenge. In FY 2009 the recruitment mission for Medical Corps HPSP was 20 one-year, 40 two-year, 60 three-year and 245 four-year scholarships. As of the summer of 2009, it appears that USAREC will not achieve the one- and two-year mission (currently there is only 1 one-year scholarship committed). So, it could be argued, since USAREC will not be able to recruit to 100 percent of the 60 scholarships (the sum of the one-and two-year scholarships), these programmed allocations supported by funding will be reprogrammed for other uses, but the allocation and student accession shortfall remains.

Providing USAREC the tool to offer ADHPLRP for the portion of the education costs for which the student is already indebted increases the opportunity for success in meeting the recruitment numbers in the "later" years of education and, in turn, would allow the Department to

meet force requirements more quickly than with the recruitment of all four-year scholarships. The number of "new" ADHPLRP allocations available for use will depend on the execution of previous years with more than one year of participation. In FY 2009, there were 175 entry allocations provided to USAREC to accomplish their recruitment mission. If they had been able to offer ADHPLRP plus a one- or two-year HPSP scholarship, there would have been a greater opportunity to achieve 100 percent of the total HPSP recruitment mission, especially with regard to one- and two-year scholarships. In addition, since the allocations were already programmed for use, there is neither an offset nor an additional cost to the Department. The number of "new" ADHPLRP allocations available for use will depend on the execution of previous years with more than one year of participation.

The intent of this recommended change is to provide the statutory authority to offer a combination of HPSP and loan repayment incentives to assist the recruitment force in accomplishing their mission, especially with regard to recruitment of individuals in the “latter” years. A specific service may elect not to execute these authorities if they are successful with existing programs, but having the authorities in place will allow the service to rapidly and decisively respond to changes in market conditions.

The FY 2011-2015 Program inputs for HPSP (just the Medical Corps) is 295 in FY 2011 and 305 through FY 2015. There are a total of 600 ADHPLRP allocation programmed per year for FY 2011 through FY 2015.

Budgetary Implications: The Department of Defense estimates that this proposal would be budget neutral. The number of participants and the size of the HPSP and ADHPLRP programs remain unchanged. This proposal provides the flexibility to attract medical students who are further along in their educational programs and thereby allow quicker entry to the force. The proposal does not increase the number of scholarships or the amount of funding required; it only expands program eligibility to medical students near the end of their educational programs, to make up for prior year shortfalls. Any costs associated with the use of any combination of ADHPLRP and HPSP will be managed within the existing DHP funding allocation. The table below shows only the Medical Corps funding as the other eligible participants can already use both programs.

PE 0846722 support both HPSP and ADHPLRP funding. FY 2010 Funding is $45,303,000.

RESOURCE REQUIREMENTS ($THOUSANDS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
HPSP and ADHRLRP	48,285	50,699	53,234	55,896	58,691	DHP O&M 0130	106000	
Total	48,285	50,699	53,234	55,896	58,691	-	106000	

Changes to Existing Law: This proposal would make the following changes to section 2173 of title 10, United States Code:

§ 2173. Education loan repayment program: commissioned officers in specified health professions

(a) AUTHORITY TO REPAY EDUCATION LOANS.—For the purpose of maintaining adequate numbers of commissioned officers of the armed forces on active duty who are qualified in the various health professions, the Secretary of a military department may repay, in the case of a person described in subsection (b), a loan that—

(1) was used by the person to finance education regarding a health profession; and

(2) was obtained from a governmental entity, private financial institution, school, or other authorized entity.

(b) ELIGIBLE PERSONS.—To be eligible to obtain a loan repayment under this section, a person must—

(1) satisfy one of the requirements specified in subsection (c);

(2) be fully qualified for, or hold, an appointment as a commissioned officer in one of the health professions; and

(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

(c) ACADEMIC AND PROFESSIONAL REQUIREMENTS.—One of the following academic requirements must be satisfied for purposes of determining the eligibility of a person for a loan repayment under this section:

(1) The person is fully qualified in a health care profession that the Secretary of the military department concerned has determined to be necessary to meet identified skill shortages.

(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution leading to a degree in a health profession other than medicine or osteopathic medicine.

(3) The person is enrolled in the final year of an approved graduate program leading to specialty qualification in medicine, dentistry, osteopathic medicine, or other health profession.

(4) The person is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance Program under subchapter I of chapter 105 of this title for a number of years less than is required to complete the normal length of the course of study required for the specific health profession.

* * * * * * *

Section 523 would repeal the reporting requirement of 10 U.S.C. 983(f) that presently obligates the Secretary of Defense to publish in the Federal Register every 6 months, a list of institutions of higher education that, as determined by the Secretary, are ineligible for contracts or grants due to non-compliance with this section.

When 10 U.S.C. 983 was enacted, the number of schools not compliant with its mandate fluctuated considerably. In order to ensure the accuracy of schools determined to be eligible or ineligible for government contracts and grants, the list needed to be published every six months. Over the last five years, the number of schools determined to be ineligible for government contracts and grants for non-compliance with this Section has decreased considerably. This

change will continue to ensure all updates are made, but will negate the need to staff and publish new Federal Register notices when no changes have occurred.

The requirement to publish new determinations is already codified in 10 U.S.C. 983(e)(2); there is no longer a need to keep subsection (f) to restate this information. This proposal will not remove the requirement to announce in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants. It merely removes the requirement to publish the list every 6 months.

Changes to Existing Law: This section would make the following changes to 10 U.S.C. 983:

§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

* * * *

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education, to the head of each other department and agency the funds of which are subject to the determination, and to Congress; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

~~(f) SEMIANNUAL NOTICE IN FEDERAL REGISTER.— The Secretary of Defense shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).~~

Subtitle D—Military Justice and Legal Matters

Section 531 would provide a means for military judges to directly enforce their orders, and better align military courts procedurally with federal district courts, as contemplated by Article 36 of the Uniform Code of Military Justice (UCMJ). By doing so, this proposal would enhance the ability of military judges to protect the integrity and fairness of courts-martial without unduly penalizing attorneys.

While contempt procedures are rare in the military justice system, courts-martial have occasionally used or threatened the use of contempt procedures for "direct" contempt or contempt committed in the presence or in the immediate proximity of the court-martial. Unlike their Federal (non-military) and State counterparts, military judges lack the authority under the Uniform Code of Military Justice to punish "indirect or constructive" contempt, *e.g.*, non-compliance with court orders. The current statutory approach provides only an extraordinary

measure to deter violation of a military judge's orders by a civilian attorney. Additionally, a military judge has no direct recourse against military attorneys who violate the military judge's orders. While the military judge may ask a commander to punish judge advocates for failing to obey a military judge's order, presently the military judge can do little to punish military or civilian attorneys who violate a military judge's order. Attorneys practicing before courts-martial have occasionally violated military judges' orders and the military judges have been essentially powerless to deter such conduct. At most, the concerned Judge Advocate General can suspend a civilian attorney from practicing before its service courts-martial and in its service Court of Criminal Appeals, and the Court of Appeals for the Armed Forces (CAAF) can disbar a civilian attorney from practicing before CAAF. *See* Rules for Courts-Martial 109. These are extraordinary measures, however, and are disproportionately severe in the majority of cases.

Changes to Existing Law: This proposal would make the following changes to section 848 of title 10, United States Code:

§848. Art. 48. Contempts

~~A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $ 100, or both. This section does not apply to a military commission established under chapter 47A of this title.~~

(a) AUTHORITY TO PUNISH CONTEMPT.—A military judge detailed to any court-martial, a Court of Inquiry, the Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

(1) uses any menacing word, sign, or gesture in its presence;

(2) disturbs its proceedings by any riot or disorder; or

(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of same.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days or a fine of $1,000, or both.

(c) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

Section 532. Under current law, there is no mechanism under the Uniform Code of Military Justice (UCMJ) to compel production of documentary evidence prior to trial. This is problematic in many cases involving banking and similar records, because these institutions face potential civil liability if they release records without a subpoena. In these cases, an investigation is often delayed or obstructed. This proposal would alleviate this problem by providing military counsel representing the United States and Article 32(b) investigating officers the authority to issue subpoenas duces tecum in order to allow review of documentary evidence prior to trial.

Under 10 U.S.C. 836(a) (Article 36(a) of the UCMJ), military practice is to conform to Federal criminal court practice. Both Federal prosecutors and grand juries have subpoena powers. The Federal Rules of Criminal Procedure permit the prosecutor to obtain a blank

subpoena from the clerk of court and use it to order the production of any books, papers, documents, data or other objects designated by the prosecutor before trial or before they are to be offered into evidence. This amendment would better conform military practice to Federal practice by allowing military prosecutors and Article 32 investigating officers to issue subpoenas, while allowing for the difference in the military justice system that there are no standing courts, and therefore no clerk of court, until a charge has been referred. This amendment would increase the availability of documentary evidence during the criminal investigation and Article 32, UCMJ, investigation stages of a case, resulting in more efficient use of investigative and military justice resources, and a more just trial process.

In addition, the Department of Defense proposes deleting the requirement to first tender fees and mileage to witnesses in advance because it is impracticable to project with a degree of accuracy that avoids subsequent adjustments, thereby creating an unnecessary administrative burden. Fees and mileage should instead be tendered when total expenses can be determined. Invitational travel orders are typically issued to help witnesses travel and file travel vouchers for the payment of expenses associated with the travel. Additionally, separate appropriations for the compensation of witnesses are not available and the convening authority's other funds are used.

Changes to Existing Law: This proposal would make the following changes to section 847 of title 10, United States Code:

§ 847. Art 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been duly ~~subpenaed~~ subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board or has been duly issued a subpoena duces tecum for an investigation, including an investigation pursuant to section 832(b) of this title (article 32(b)); and

~~(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and~~

~~(3)~~ (2) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally ~~subpenaed~~ subpoenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, ~~or~~ board, trial counsel, or convening authority, file

an information against and prosecute any person violating this article.

~~(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.~~

Subtitle E—Decorations and Awards

Section 541 would modify section 1133 of title 10, United States Code, to allow award of the Bronze Star to members of the military forces of friendly foreign nations. Section 1133 has precluded, since October 30, 2000, award of the Bronze Star to members of foreign military services. Prior to the enactment of section 1133 on October 30, 2000, the Bronze Star medal was awarded according to Executive Order (E.O.) 11046, which authorized award to "any person who, while serving in any capacity" with the U.S. Armed Forces distinguishes, or has distinguished, himself by heroic or meritorious achievement or service not involving participation in aerial flight. The wording of E.O. 11046 allowed the Secretaries concerned to award the Bronze Star to a Service member of a friendly foreign nation. Additionally, DoD 1348.33-M, *Manual of Military Decorations and Awards*, section C8.2.1., allowed award of the Bronze Star (for valorous action or meritorious service) to foreign military personnel engaged in direct support of operations. Section 1133 restricts award of the Bronze Star to members of the United States Armed Forces.

The Department of Defense believes it is vitally important to appropriately recognize the valorous and meritorious acts of the Service members of friendly foreign nations who serve alongside members of the U.S. Armed Forces. The proposed modification to section 1133 would still limit award of the Bronze Star to U.S. service members who are in receipt of imminent danger pay, as specified by Congress in that section, but would restore authority to award the Bronze Star to members of the military forces of friendly foreign nations.

Changes to Existing Law: This section would make the following changes to 10 U.S.C. 1133:

§ 1133. Bronze Star: limitation to members receiving imminent danger pay and members of military services of friendly foreign nations in imminent-danger-pay areas

The decoration known as the "Bronze Star" may only be awarded to—

(1) a member of the armed forces who is in receipt of special pay under section 310 of title 37 at the time of the events for which the decoration is to be awarded or who receives such pay as a result of those events**; or**

(2) a member of the military forces of a friendly foreign nation whose action leading to a recommendation for award of the Bronze Star occurred in a geographic area for which members of the armed forces are authorized special pay under section 310 of title 37.

Subtitle F—Military Family Readiness Matters

Section 551 would add the spouse of an active duty general or admiral to the Department of Defense Military Family Readiness Council.

Experience shows that the spouse of a four star officer will bring a wealth of expertise and insight and a record of consistent service to families of military and civilian members of the Armed Forces to the Military Family Readiness Council (MFRC). The four-star officer's spouse will contribute a unique perspective to any discussions about families and family support. Many four-star officer spouses have raised a family, resolved family support issues, and contributed to installation-level family support programs and services.

In many cases, four-star officer spouses have made great personal sacrifices and had a tremendous impact on military families through decades of tireless contributions. With the optimal diversity of membership on the MFRC, the council can function as an effective vehicle dedicated to matching the selfless service and sacrifice of military families through unfailing commitment to continuous improvements in the programs and services provided to the military family.

Changes to Existing Law: This section would make the following changes to section 1781a of title 10, United States Code:

§ 1781a. Department of Defense Military Family Readiness Council

(a) IN GENERAL.—There is in the Department of Defense the Department of Defense Military Family Readiness Council (in this section referred to as the "Council").

(b) MEMBERS.—(1) The Council shall consist of the following members:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall serve as chair of the Council.

(B) One representative of each of the Army, Navy, Marine Corps, and Air Force, who shall be appointed by the Secretary of Defense.

(C) In addition to the representatives appointed under subparagraph (B)—

(i) one representative from the Army National Guard or Air National Guard, who shall be appointed by the Secretary of Defense; and

(ii) one representative from the Army Reserve, Navy Reserve, Marine Corps Reserve, or Air Force Reserve, who shall be appointed by the Secretary of Defense; and

(D) Three individuals appointed by the Secretary of Defense from among representatives of military family organizations, including military family organizations of families of members of the regular components and of families of members of the reserve components **and in addition one individual appointed by the Secretary who is the spouse of an officer serving in the grade of general or admiral.**

(E) In addition to the representatives appointed under subparagraphs (B) and (C), ~~the senior enlisted advisors of the Army, Navy, Marine Corps, and Air Force, or the spouse of a senior enlisted member~~ **the senior enlisted advisor, or the spouse of a senior enlisted member**, from each of the Army, Navy, Marine Corps, and Air Force.

(2) The term on the Council of the members appointed under subparagraphs (C) and (D) of paragraph (1) shall be three years. Representation on the Council required by clause (i) of paragraph (1)(C) shall rotate between the Army National Guard and Air National Guard. Representation required by clause (ii) of such paragraph shall rotate among the reserve components specified in such clause.'

(c) MEETINGS.—The Council shall meet not less often than twice each year.

(d) DUTIES.—The duties of the Council shall include the following:

(1) To review and make recommendations to the Secretary of Defense regarding the policy and plans required under section 1781b of this title.

(2) To monitor requirements for the support of military family readiness by the Department of Defense.

(3) To evaluate and assess the effectiveness of the military family readiness programs and activities of the Department of Defense.

(e) ANNUAL REPORTS.—(1) Not later than February 1 each year, the Council shall submit to the Secretary of Defense and the congressional defense committees a report on military family readiness.

(2) Each report under this subsection shall include the following:

(A) An assessment of the adequacy and effectiveness of the military family readiness programs and activities of the Department of Defense during the preceding fiscal year in meeting the needs and requirements of military families.

(B) Recommendations on actions to be taken to improve the capability of the military family readiness programs and activities of the Department of Defense to meet the needs and requirements of military families, including actions relating to the allocation of funding and other resources to and among such programs and activities.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would repeal a currently-suspended requirement to pay High Deployment Allowance (HDA) (37 U.S.C. 436). Section 436 of title 37, United States Code, authorizes a servicemember to receive a monthly HDA if the member at any time during the month: (1) has been deployed for over a threshold of 191 consecutive days; (2) has been deployed for over an established threshold during the previous 730 days; or (3) in the case of a Reserve component member, is on active duty under specified conditions and periods of time. The monthly rate of this allowance cannot exceed $1,000 and is in addition to all other pays and allowances a service member may be entitled to.

10 U.S.C. 991 and 37 U.S.C. 436 put forth a pre-war construct (enacted before September 11, 2001) to manage individual operational tempo, and do not allow the flexibility the Department of Defense (DoD) or the Services need to compensate, establish deployment and dwell expectations, and influence retention behavior for servicemembers who are deployed in support of the Global War on Terrorism. These provisions of law were enacted within the context of the conditions at the time - primarily a peacetime and contingency operations environment. Additionally, the definition of “deployment” in the statute is much broader in scope than would be expected in today’s wartime environment. For example, the definition currently includes routine training exercises and staff organizational meetings at other military installations where the individual’s quality of life remains relatively high. The intent of this law was to limit individual member operational tempo and to levy monetary punishment on the member’s organization should the leadership choose to violate those limits of operational tempo.

As such, the law mandated that the HDA would be paid from Operation and Maintenance (O&M) funds for the military department in which the member serves. The view at the time was that control of individual operational tempo would improve quality of life and therefore benefit the Nation's military with stronger individual member retention.

While the requirement to pay HDA is presently suspended, the requirement to track HDA days is not. HDA will take effect upon termination of the National Security Waiver Authority. Any implementation of HDA during the current wartime environment would be a tremendous drain on unit funds leaving the military with critical budgetary shortfalls during a period when operations and regenerating equipment remain and would be critical expenses for years to come.

The Department believes that 10 U.S.C. 991 and 37 U.S.C. 436 are no longer needed. Since the introduction of HDA in the FY 2000 National Defense Authorization Act (NDAA) on October 5, 1999, the Services and OSD have developed or improved a number of programs to compensate the member for periods of high deployment. Foremost, the Secretary of Defense set expectations and a balance of dwell expected for active component and reserve component members. These deployment-to-dwell ratios (1:2 for active component and 1:5 for reserve component) have been institutionalized in the Department and shape compensation and personnel policies. Personnel programs developed to ameliorate the individual operational tempo include Post Deployment/Mobilization Respite Absence which grants additional respite time off following deployments to qualifying service members, more accompanied tours, less cumbersome hardship separation programs, more non-chargeable leave categories for members, improved flexible and targeted retention bonus authorities, more family support and advocacy programs, the New GI Bill, robust child care and youth development programs, and strong Morale Welfare and Recreation programs at home and deployed locations. In the area of compensation, the Department worked an increase in Family Separation Allowance from $100 to $250 per month; an increase in Hostile Fire Pay/Imminent Danger Pay from $150 to $225 per month; an increase in Basic Pay of approximately 35 percent, the establishment of the Thrift Savings Program (which allows for additional contributions while in a Combat Zone), and attained a huge improvement in Regular Military Compensation to slightly above the 70 percentile for enlisted and officer personnel. These are only a few examples of the many personnel, family and compensation programs that address operational tempo, retention and quality of life that did not exist in their current forms when 10 U.S.C 991 and 37 U.S.C 436 were enacted.

The Department believes the issues associated with enactment of HDA have been addressed over the long years of lessons learned from the war. Most important is that HDA was established at a time when deployment expectations and security concerns were different than they are today. Any implementation of HDA would be unnecessary and detrimental to organizational readiness.

Budget Implications: If the current HDA suspension under 10 U.S.C. 991(d) were to be lifted and payments resumed without restarting personnel tempo counters, it would create a significant bill, for the Department at a time when O&M funds are desperately needed to repair equipment and weaponry stressed by on-going contingency operations in Iraq and Afghanistan.

Changes to Existing Law: This proposal would repeal section 446 of title 37 and section 991 of title 10, United States Code, as follows:

~~§ 436. High-deployment allowance: lengthy or numerous deployments; frequent mobilizations~~

~~(a) Monthly Allowance. - The Secretary of the military department concerned shall pay a high-deployment allowance to a member of the armed forces under the Secretary's jurisdiction for each month during which the member -~~

~~(1) is deployed; and~~

~~(2) at any time during that month -~~

~~(A) has been deployed for 191 or more consecutive days (or a lower number of consecutive days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness);~~

~~(B) has been deployed, out of the preceding 730 days, for a total of 401 or more days (or a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness); or~~

~~(C) in the case of a member of a reserve component, is on active duty -~~

~~(i) under a call or order to active duty for a period of more than 30 days that is the second (or later) such call or order to active duty (whether voluntary or involuntary) for that member in support of the same contingency operation; or~~

~~(ii) for a period of more than 30 days under a provision of law referred to in section 101(a)(13)(B) of title 10, if such period begins within one year after the date on which the member was released from previous service on active duty for a period of more than 30 days under a call or order issued under such a provision of law.~~

~~(b) Definition of Deployed. - In this section, the term "deployed", with respect to a member, means that the member is deployed or in a deployment within the meaning of section 991(b) of title 10 (including any definition of "deployment" prescribed under paragraph (4) of that section).~~

~~(c) Rate. - The monthly rate of the allowance payable to a member under this section shall be determined by the Secretary concerned, not to exceed $1,000 per month.~~

~~(d) Payment of Claims. - A claim of a member for payment of the high-deployment allowance that is not fully substantiated by the recordkeeping system applicable to the member under section 991(c) of title 10 shall be paid if the member furnishes the Secretary concerned with other evidence determined by the Secretary as being sufficient to substantiate the claim.~~

~~(e) Relationship to Other Allowances. - A high-deployment allowance payable to a member under this section is in addition to any other pay or allowance payable to the member under any other provision of law.~~

~~(f) National Security Waiver. - No allowance may be paid under this section to a member for any month during which the applicability of section 991 of title 10 to the member is suspended under subsection (d) of that section.~~

~~(g) Authority to Exclude Certain Duty Assignments. - The Secretary concerned may exclude members serving in specified duty assignments from eligibility for the high-deployment allowance while serving in those assignments. Any such specification of duty assignments may only be made with the approval of the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness. Specification of a particular duty assignment for~~

purposes of this subsection may not be implemented so as to apply to the member serving in that position at the time of such specification.

(h) Payment From Operation and Maintenance Funds. - The monthly allowance payable to a member under this section shall be paid from appropriations available for operation and maintenance for the armed force in which the member serves.

§ 991. Management of deployments of members

(a) Management Responsibilities. - (1) The deployment (or potential deployment) of a member of the armed forces shall be managed to ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed –

(A) out of the preceding 365 days would exceed the one-year high-deployment threshold; or

(B) out of the preceding 730 days would exceed the two-year high-deployment threshold.

(2) In this subsection:

(A) The term "one-year high-deployment threshold" means –

(i) 220 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(B) The term "two-year high-deployment threshold" means –

(i) 400 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(3) A member may be deployed, or continued in a deployment, without regard to paragraph (1) if the deployment, or continued deployment, is approved by the Secretary of Defense. The authority of the Secretary under the preceding sentence may only be delegated to –

(A) a civilian officer of the Department of Defense appointed by the President, by and with the advise and consent of the Senate, or a member of the Senior Executive Service; or

(B) a general or flag officer in that member's chain of command (including an officer in the grade of colonel, or in the case of the Navy, captain, serving in a general or flag officer position who has been selected for promotion to the grade of brigadier general or rear admiral (lower half) in a report of a selection board convened under section 611(a) or 14101(a) of this title that has been approved by the President).

(b) Deployment Defined. –

(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(2) In the case of a member of a reserve component who is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to in paragraph (1) is any housing (which may include the member's residence) that the member

~~usually occupies for use during off-duty time when on garrison duty at the member's permanent duty station or homeport, as the case may be.~~

~~(3) For the purposes of this section, a member is not deployed or in a deployment when the member is -~~

~~(A) performing service as a student or trainee at a school (including any Government school);~~

~~(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or~~

~~(C) unavailable solely because of -~~

~~(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or~~

~~(ii) a disciplinary action taken against the member.~~

~~(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.~~

~~(c) Recordkeeping. - The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.~~

~~(d) National Security Waiver Authority. - The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.~~

~~(e) Inapplicability to Coast Guard. - This section does not apply to a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.~~

Subtitle B—Bonuses and Special and Incentive Pays

Section 611 would extend for one year, until December 31, 2011, accession and retention incentives for certain nurses, psychologists, and medical, dental and pharmacy officers. Experience shows that manning levels in these health care professional fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and development of replacements. The Department of Defense and Congress have long recognized the prudence of these incentives in supporting effective personnel levels within these specialized fields.

This section also would extend two critical recruitment and retention incentive programs for Reserve component health care professionals. The Reserve components historically have found it challenging to meet the required manning in the health care professions. The incentive that targets health care professionals who possess a critically short skill is essential to meet required manning levels. In addition, the health professions loan repayment program has proven to be one of our most powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is

critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Budgetary Implications: This section would merely extend for another year critical accession and retention incentive programs the military departments fund each year. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of $68.3 million each year from fiscal year (FY) 2011 through 2015 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

NUMBER OF PERSONNEL AFFECTED								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army*	628	628	628	628	628	MILPERS, Army	01	40
Army* Res	596	596	596	596	596	RESPERS, Army	01	120
Navy*	368	368	368	368	368	MILPERS, Navy;	01	40
Navy Res*	267	267	267	267	267	RESPERS, Navy	01	120
Marine Corps	0	0	0	0	0	N/A	N/A	N/A
Air* Force	521	521	521	521	521	MILPERS, AF	01	40
AF Res*	696	696	696	696	696	RESPERS, AF	01	120
Total	3,076	3,076	3,076	3,076	3,076			

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army*	$40.5	$40.5	$40.5	$40.5	$40.5	MILPERS, Army;	01	40
Army* Res	$9.4	$9.4	$9.4	$9.4	$9.4	RESPERS, Army	01	120
Navy*	$12.2	$12.2	$12.2	$12.2	$12.2	MILPERS, Navy;	01	40
Navy Res*	$7.0	$7.0	$7.0	$7.0	$7.0	RESPERS, Navy	01	120
Marine Corps	$0	$0	$0	$0	$0	N/A	N/A	N/A
Air* Force	$21.9	$21.9	$21.9	$21.9	$21.9	MILPERS, Air Force	01	40
AF	$9.6	$9.6	$9.6	$9.6	$9.6	RESPERS, AF	01	120

Res*								
Total	$100.6	$100.6	$100.6	$100.6	$100.6			

*** Numbers reflect FY10 column of PB10 budget as FY11 and out have not been determined at this time.**

Changes to Existing Law: This section would make the following changes to sections in Titles 10 and 37, United States Code:

10 U.S.C. § 2130a
Sec. 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2010~~ December 31, 2011, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

* * * * * * *

10 U.S.C. § 16302(d)
§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

* * * * * * *

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2010~~ December 31, 2011.

37 U.S.C. § 302c-1
§ 302c-1. Special pay: accession and retention bonuses for psychologists

* * * * * * *

(f) TERMINATION OF AUTHORITY.—No agreement under subsection (a) or (b) may be entered into after ~~December 31, 2010~~ December 31, 2011.

37 U.S.C. § 302d

§ 302d. Special pay: accession bonus for registered nurses

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a registered nurse and who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2010~~ December 31, 2011, executes a written agreement described in subsection (c) to accept a commission as an officer and remain on active duty for a period of not less than three years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $30,000.

* * * * * * *

37 U.S.C. § 302e

§ 302e. Special pay: nurse anesthetists

(a) SPECIAL PAY AUTHORIZED.—(1) An officer described in subsection (b)(1) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2010~~ December 31, 2011, executes a written agreement to remain on active duty for a period of one year or more may, upon the acceptance of the agreement by the Secretary concerned, be paid incentive special pay in an amount not to exceed $50,000 for any 12-month period.

(2) The Secretary concerned shall determine the amount of incentive special pay to be paid to an officer under paragraph (1). In determining that amount, the Secretary concerned shall consider the period of obligated service provided for in the agreement under that paragraph.

* * * * * * *

37 U.S.C. § 302g

§ 302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties

* * * * * * *

(e) TERMINATION OF AGREEMENT AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~ December 31, 2011.

37 U.S.C. § 302h

§ 302h. Special pay: accession bonus for dental officers

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a graduate of an accredited dental school and who, during the period beginning on September 23, 1996, and ending on ~~December 31, 2010~~ December 31, 2011, executes a written agreement described in subsection (c) to accept a commission as an officer of the armed forces and remain on active duty for a period of not less than four years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $200,000.

* * * * * * *

37 U.S.C. § 302j

§ 302j. Special pay: accession bonus for pharmacy officers

(a) ACCESSION BONUS AUTHORIZED.—A person who is a graduate of an accredited pharmacy school and who, during the period beginning on October 30, 2000, and ending on ~~December 31, 2010~~ December 31, 2011, executes a written agreement described in subsection (d) to accept a commission as an officer of a uniformed service and remain on active duty for a period of not less than 4 years may, upon acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

* * * * * * *

37 U.S.C. § 302k

§ 302k. Special pay: accession bonus for medical officers in critically short wartime specialties

* * * * * * *

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~ December 31, 2011.

37 U.S.C. § 302l

§ 302l. Special pay: accession bonus for dental specialist officers in critically short wartime specialties

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~ December 31, 2011.

37 U.S.C. § 335

§ 335. Special bonus and incentive pay authorities for officers in health professions

* * * * * * *

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~ December 31, 2011.

Section 612 would extend for one year, through December 31, 2011, accession and retention incentives for nuclear-qualified officers. For an occupation that features extremely high training costs, these incentives help retain officers at a distinctly lower cost, which is far more cost-effective than recruiting and training new accessions. The Department of Defense and

Congress have long recognized the prudence of these incentives in supporting effective staffing in this occupational area.

Since 1999, the Department of the Navy has not achieved accession goals for nuclear trained officers in three separate years - FY 2008 (accessed only 457 of the required 474 nuclear officers), FY 2005 (accessed 465 of the required 494) and FY 1999 (accessed 457 of the required 480). The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce. Consequently, nuclear officer retention remains a challenge. We have met submarine officer retention goals only once in the past five years. We do expect to achieve our submarine officer retention target for FY 2009 for the first time in three years. The NNPP retention challenge has contributed to Navy's current shortage of control grade officers (Captains, Commanders, and Lieutenant Commanders) and is the cause of the submarine community's current 374 control grade officer shortfall.

Additionally, the nuclear-trained surface warfare community continues to experience the lowest junior officer retention of any Unrestricted Line (URL) community. We do expect to meet our FY 2009 retention goal for nuclear-trained surface warfare officers.

As of June 2009, statistics for FY 2009, to date, indicate junior officer resignations directly after their initial sea tour are continuing to increase at more than double the rate seen in previous fiscal years. Specifically, an average of 11 junior officers resigned in FY 2003 and 2004; an average of 26 resigned in FY 2005 and 2006; and an average of 73 resigned from sea in FY 2007 and 2008. Nuclear Officer Incentive Pay is the only financial retention incentive for junior officers rotating from the initial sea tour to shore assignments.

The sustained success of the NNPP is a direct result of its superior personnel, rigorous selection and training, and the high standards exceed those of any other nuclear program in the world. Maintaining this unparalleled record of safety and successful operations depends upon attracting and retaining the correct quantity and highest quality of officers.

Budgetary Implications: This section would merely extend for another year the critical accession and retention incentive programs the Navy funds each year. The Navy already has projected expenditures for these incentives and programmed them via budget proposals. The Navy has projected expenditures of $28 million each year, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2011 through 2015. The Army and Air Force are not authorized in the statute to pay these bonuses.

NUMBER OF PERSONNEL AFFECTED								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	0	0	0	0	0	N/A	N/A	N/A
Navy*	1,125	1,125	1,125	1,125	1,125	MILPERS, Navy	01, 02, 03	40 (for 01); 90 (for 02);

								110 (for 03)
Marine Corps	0	0	0	0	0	N/A	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A	N/A
Total	1,125	1,125	1,125	1,125	1,125			

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army	0	0	0	0	0	N/A	N/A	N/A
Navy*	$28.4	$28.4	$28.4	$28.4	$28.4	MILPERS, Navy	01, 02, 03	40 (for 01); 90 (for 02); 110 (for 03)
Marine Corps	0	0	0	0	0	N/A	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A	N/A
Total	$28.4	$28.4	$28.4	$28.4	$28.4			

*** Numbers reflect FY10 column of PB10 budget as budgetary controls for FY11 and out have not been determined at this time.**

Changes to Existing Law: This section would make the following changes to sections in Title 37, United States Code:

37 U.S.C. § 312
§ 312. Special pay: nuclear-qualified officers extending period of active duty

* * * * * * *

(f) DURATION OF AUTHORITY.—The provisions of this section shall be effective only in the case of officers who, on or before ~~December 31, 2010~~December 31, 2011 execute the required written agreement to remain in active service.

37 U.S.C. § 312b
§ 312b. Special pay: nuclear career accession bonus

* * * * * * *

(c) The provisions of this section shall be effective only in the case of officers who, on or before ~~December 31, 2010~~December 31, 2011, have been accepted for training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

37 U.S.C. § 312c
§ 312c. Special pay: nuclear career annual incentive bonus

* * * * * * *

(d) For the purposes of this section, a ''nuclear service year'' is any fiscal year beginning before ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 333
§ 333. Special bonus and incentive pay authorities for nuclear officers

* * * * * * *

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~December 31, 2011.

Section 613 would extend for one year, through December 31, 2011, accession, conversion, and retention bonuses for uniformed personnel possessing or acquiring critical skills or assigned to high priority units. This includes arduous occupations, as well as those that require extremely high training and replacement costs. This section also would extend incentive pay for members in designated assignments and the bonus for transfers between the Armed Forces. Finally, it would extend certain of the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for Fiscal Year (FY) 2008, to which the Department will transition over the next 10 years. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress long have recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Budgetary Implications: This section would merely extend for another year critical recruiting and retention incentive programs the military departments fund each year. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of $2.314 billion each year from FY 2011 through FY 2015 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

NUMBER OF PERSONNEL AFFECTED								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army*	84,363	84,363	84,363	84,363	84,363	MILPERS, Army	01, 02	35 and 40 (for 01), 85 and 90 (for 02)
Navy*	81,125	81,125	81,125	81,125	81,125	MILPERS,	01, 02	35 and 40

						Navy		(for 01); 85 and 90 (for 02)
Marine Corps	28,194	28,130	27,986	28,080	28,113	MILPERS, Marine Corps	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Air Force	17,803	17,803	17,803	17,803	17,803	MILPERS, Air Force	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Total	211,485	211,421	211,277	211,371	211,404			

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army*	$852.4	$852.4	$852.4	$852.4	$852.4	MILPERS, Army	01, 02	35 and 40 (for 01), 85 and 90 (for 02)
Navy*	$440.4	$440.4	$440.4	$440.4	$440.4	MILPERS, Navy	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Marine Corps	$274.2	$277.8	$283.1	$288.9	$294.1	MILPERS, Marine Corps	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Air Force	$746.9	$756.7	$755.2	$763.6	$770.3	MILPERS, Air Force	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Total	$2,313.9	$2,327.3	$2,331.1	$2,345.3	$2,357.2			

*** Numbers reflect FY10 column of PB10 budget as FY11 and out have not been determined at this time.**

Changes to Existing Law: This section would make the following changes to sections in Title 37, United States Code:

37 U.S.C. § 301b

§ 301b. Special pay: aviation career officers extending period of active duty

(a) BONUS AUTHORIZED.—An aviation officer described in subsection (b) who, during the period beginning on January 1, 1989, and ending on ~~December 31, 2010~~December 31, 2011, executes a written agreement to remain on active duty in aviation service for at least one year

may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

* * * * * * *

37 U.S.C. § 307a
§ 307a. Special pay: assignment incentive pay

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 308
§ 308. Special pay: reenlistment bonus

* * * * * * *

(g) No bonus shall be paid under this section with respect to any reenlistment, or voluntary extension of an active-duty reenlistment, in the armed forces entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 309
§ 309. Special pay: enlistment bonus

* * * * * * *

(e) DURATION OF AUTHORITY.—No bonus shall be paid under this section with respect to any enlistment in the armed forces made after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 324
§ 324. Special pay: accession bonus for new officers in critical skills

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 326
§ 326. Incentive bonus: conversion to military occupational specialty to ease personnel shortage

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 327
§ 327. Incentive bonus: transfer between armed forces

* * * * * * *

(h) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 329
§ 329. Incentive bonus: retired members and reserve component members volunteering for high-demand, low-density assignments

* * * * * * *

(j) TERMINATION OF AUTHORITY.—No agreement under subsection (a) or (d) may be entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 330
§ 330. Special pay: accession bonus for officer candidates

* * * * * * *

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 331
§ 331. General bonus authority for enlisted members

* * * * * * *

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 332
§ 332. General bonus authority for officers

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 334
§ 334. Special aviation incentive pay and bonus authorities for officers

* * * * * * *

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 351
§ 351. Hazardous duty pay

* * * * * * *

(i) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 352
§ 352. Assignment pay or special duty pay

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 353
§ 353. Skill incentive pay or proficiency bonus

* * * * * * *

(j) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2010~~December 31, 2011.

37 U.S.C. § 355
§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

* * * * * * *

(i) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2010~~December 31, 2011, and no agreement under this section may be entered into after that date.

Section 614 would extend for one year, through December 31, 2011, two referral bonuses. The statutory authorities for these referral bonuses provide the Secretary of Defense a flexible management tool with which to target critical skills. For example, the Army referral bonus allows the Secretary to pay a bonus to eligible individuals who refer a person who has never before served in an armed force to an Army recruiter, with payment of the bonus contingent upon the enlistment of the referred individual. In fiscal year (FY) 2007, this bonus generated 24,619 referrals and 5,497 enlistments in the three Army components. In FY 2008, the

bonus resulted in over 36,000 referrals and nearly 6,000 enlistment contracts across all three Army components. It is highly effective at integrating the entire Army into the recruiting process. The program should result in an increased number of referrals in FY 2011.

Budgetary Implications: This section would merely extend for another year these two referral bonuses. The Army is the only military department currently using a referral bonus and it has projected expenditures for the program via its budget proposal. Specifically, the Army projects expenditures of $18 million each year from FY 2011 through FY 2015 for the referral program, to be funded from the Military Personnel and Operations account.

NUMBER OF PERSONNEL AFFECTED								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	9,000	9,000	9,000	9,000	9,000	MILPERS, O&M	02; 03	90; 140
Navy	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Marine Corps	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Air Force	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	9,000	9,000	9,000	9,000	9,000			

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army	$18.0	$18.0	$18.0	$18.0	$18.0	MILPERS, O&M	02; 03	90; 140
Navy	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Marine Corps	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Air Force	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	$18.0	$18.0	$18.0	$18.0	$18.0			

Changes to Existing Law: This section would make the following changes to sections in Title 10, United States Code:

10 U.S.C. § 1030

§ 1030. Bonus to encourage Department of Defense personnel to refer persons for appointment as officers to serve in health professions

* * * * * * *

(i) DURATION OF AUTHORITY.—A bonus may not be paid under subsection (a) with respect to any referral that occurs after ~~December 31, 2010~~December 31, 2011.

10 U.S.C. § 3252(h)
§ 3252. Bonus to encourage Army personnel to refer persons for enlistment in the Army

* * * * * * *

(h) DURATION OF AUTHORITY.—A bonus may not be paid under subsection (a) with respect to any referral that occurs after ~~December 31, 2010~~December 31, 2011.

Subtitle C—Travel and Transportation Allowances

Section 621 would authorize travel and transportation for designated persons to travel to qualifying Yellow Ribbon events. Currently, the Department of Defense is subject to limitations of sections 5703 and 5706 of title 5, United States Code. This constraint adversely affects Yellow Ribbon event participation of uniformed Services members who do not have dependents. This may be especially true for junior soldiers, sailors, airmen, or Marines who may be less likely to be married. The Yellow Ribbon Program is considered a personnel readiness program for which there should be full accessibility for all uniformed Services members. Increased participation at Yellow Ribbon events by Reserve Component personnel has a direct correlation to greater military and family readiness. The Reserve Component Service Chiefs identified this as their top Yellow Ribbon issue that requires resolution.

For example, a twenty two-year-old Marine returns after a year in Afghanistan. His parents have not been a part of his life for many years. His emotional support while deployed was his paternal grandmother. Under the current rules, the Marine may attend a Yellow Ribbon Event, but must pay to bring his grandmother.

Most Yellow Ribbon events have numerous sessions tailored to maintain relationship stability. Without the proposed authority to support participation of designated person, attendance at Yellow Ribbon events may continue to lag for uniformed Services members without dependents.

Budget Implications: The Department of Defense provides the following cost estimate using current Service-specific program of record with added change to allow “Designated Representatives”.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Air Force Reserve	0.131					OMAFR (OCO)	BA1	11Z
Navy Reserve	0.151					OMNR (OCO)	BA1	170
Marine Corps Reserve	0.900					OMMCR (OCO)	BA1	050
Army Reserve	2.500					OMAR (OCO)	BA1	135
Army Guard	2.494					OMARNG (OCO)	BA1	135
Air Guard	0.544					OMANG (OCO)	BA1	11G
TOTAL	6.720							

Air Force Reserve Cost Methodology: Estimate approximately $350 for travel, lodging, and per diem for a two day event. Currently based on past actual attendance at Yellow Ribbon events, only 5 percent would bring a designated representative which may exceed their current Air Force Reserve limit of two attendees for single reservists. Married reservists already capped out the total number authorized to attend the events at 3 per reservist. A maximum of 375 designated representatives per year would require Invitational Travel Authorizations (ITAs). (Project 1,510 deployed to Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) in fiscal year (FY) 2011)

Navy Reserve Cost Methodology: Estimate approximately $500 for travel, lodging, and per diem for a two day event. Currently, 88 percent of Navy Reserve post-deployment event participants bring a designated representative. If the additional 12 percent of participants are not bringing a designated representative due to the lack of authority to issue ITAs and all 12 percent would bring a designated representative if the authority were implemented, a maximum of 300 designated representatives per year would require ITAs. (Project 3,296 deployed to OEF/OIF in FY 2011)

Marine Corps Reserve Cost Methodology: Estimate approximately $500 for travel, lodging, and per diem for a two day event. The calculations are based the number of single Marines deployed (66 percent) and 40 percent of the designated representatives will travel in excess of 50 miles. The estimate allows for one designated representative per single Marine. Total additional cost for the designated representatives is approximately $900,000 for four separate events. (Project 1,706 deployed to OEF/OIF in FY 2011)

Army Reserve Cost Methodology: Estimate approximately $200 for travel, and $110 per person for lodging, and per diem for a two day event, total $310 per person. Currently, USAR allows each soldier 2 representatives. USAR anticipates 75,000 family member and designated representatives to attend all 6 events; 60 percent of them will be additional with the proposed JTR changes. (Project 6,827 deployed to OEF/OIF in FY 2011)

Army National Guard (ARNG) Cost Methodology: The calculation was determined based upon the delta between actual attendees (~1.2 / Soldier currently) and the true 2:1 ratio for two events. The ARNG then utilized an estimated travel cost per family member of $154.00. (Project 20,245 deployed to OEF/OIF in FY 2011)

Air National Guard Cost Methodology: Out of the 3,065 members projected to deploy, we project 40 percent are single (1,226). That figure times 2 is 2,452; out of that figure, project many of them will bring their parents (which are already authorized to bring). Project 3,360 designated representatives that are affected by this proposal. Figures based off Army projections--comes to an average of $162.00 spent per person. (Project 3,065 deployed to OEF/OIF in FY 2011)

Changes to Existing Law: This proposal would add a new section to title 37, United States Code, which is shown in the legislative text above.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Health Care Administration

Section 701. Section 1094 of title 10, United States Code, currently requires doctors and health care providers for the Department of Defense to be licensed to practice their profession. It also authorizes them to practice their profession in any location authorized by the Secretary of Defense regardless of local licensing restrictions. While active duty and activated National Guard personnel in title 10, United States Code, status enjoy protection from state licensing issues, service in title 32, United States Code, status often precedes or is in lieu of activation and federal response for disaster response under the Stafford Act. National Guard personnel not on active duty are not always considered within the scope of their employment if providing medical care to civilians not otherwise entitled to military medical care. With the expansion of authority under title 32, United States Code, section 502(f), the National Guard may be authorized by the Governor, with concurrence of the Secretary of Defense, to evacuate hospitals and nursing homes in advance of a major hurricane while in section 502(f) status, but current law may not protect the National Guard medical care providers from licensing issues. This proposal would provide that protection. The proposal would clarify this requirement in regards to National Guard personnel while in title 32, United States Code, status while responding to actual or potential disasters. Currently, this lack of license protection adversely impacts the ability of the states to obtain necessary support for these operations, increasing the likelihood that the federal government, through FEMA and the Department of Defense in a title 10 role, will have to respond. The proposal would eliminate any cause of action against National Guard personnel for practicing in a state other than where licensed during disaster response actions.

Changes to Existing Law: This section would make the following changes to 10 U.S.C. 986:

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection -

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph

(2) **or (3)** may practice the health profession or professions of the health-care professional in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or any other location authorized by the Secretary of Defense.

(2) A health-care professional referred to in paragraph (1) **as being described in this paragraph** is a member of the armed forces who -

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

"(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing training or duty under title 32 in response to an actual or potential disaster.".

(e) In this section:

(1) The term "license" -

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term "health-care professional" means a physician, dentist, clinical psychologist, marriage and family therapist certified as such by a certification recognized by the Secretary

of Defense, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

Subtitle B—Other Matters

Section 711 would update section 3068 of title 10, U.S. Code, to ensure the statutory description of the Army Medical Service Corps (MSC) accurately reflects the current structure and organization of the Corps. Currently, the U.S. Code reflects the original language of 1947 when the Army Medical Service Corps was formed. In the subsequent 62 years, the organization and the nomenclature of the Corps have changed considerably. The goal of this legislative proposal is to update the U.S. Code to reflect the current MSC structure and organization that corresponds to the advances in and reorganization of military medicine that have occurred the end of World War II.

The current Corps description is outdated and poorly reflects the MSC of today. This legislative proposal would update three subparagraphs in section 3068(a)(5):

—Subparagraph (A),"Pharmacy, Supply and Administration", no longer contains Pharmacy Officers as they were moved to what the statute currently calls the "Optometry Section." Thus, it is appropriate that "Pharmacy, Supply and Administration" should yield to a more appropriate "Administrative Health Services Section".

—Subparagraph (C) should be changed from "Sanitary Engineering Section" to reflect the more commonly used phrase "Preventive Medicine Sciences Section." This modern vernacular more accurately reflects the role of these officers in the MSC.

—Subparagraph (D) was accurate in 1947 when it only contained optometry officers. Today, however, this grouping of officers also consists of four other clinical health science groups – podiatry, pharmacy, social work and clinical psychology. As such, "Optometry Section" should be changed to "Clinical Health Sciences Section" to accurately reflect the component clinical health science providers.

These changes will not only align the U.S. Code with the MSC structure, but will ensure that working documents and publications currently in use accurately reflect the statutory framework of the MSC

Updating the language of the section 3068 will modernize statutory description of the MSC. The officers of the Medical Service Corps, both active and reserve, have objected to the antiquated language and outdated structure represented in the U.S. Code. This is the only legislative step necessary to align the section 3068 with the modern Medical Service Corps.

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. § 3068:

§ 3068. Medical Service Corps: organization; Chief and assistant chiefs

There is a Medical Service Corps in the Army. The Medical Service Corps consists of—

(1) the Chief of the Medical Service Corps, who shall be appointed by the Secretary of the Army from among the officers of the Medical Service Corps whose regular grade is above captain;

(2) the assistant chiefs of the Medical Service Corps, who shall be designated by the Surgeon General from officers in that Corps and who shall be his consultants on activities relating to their sections;

(3) commissioned officers of the Regular Army appointed therein;

(4) other members of the Army assigned thereto by the Secretary of the Army; and

(5) the following sections—

(A) the ~~Pharmacy, Supply, and Administration~~ Administrative Health Services Section;

(B) the Medical Allied Sciences Section;

(C) the ~~Sanitary Engineering~~ Preventive Medicine Science Section;

(D) the ~~Optometry~~ Clinical Health Sciences Section; and

(E) other sections considered necessary by the Secretary of the Army.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Amendments to General Contracting Authorities, Procedures, and Limitation

Section 801. Large businesses have inherent competitive advantages in the marketplace. Small business set-asides are a proven way of ensuring the fair distribution of contracting opportunities for large and small business in Federal procurement. Yet, the Small Business Competitiveness Program Demonstration Act (Comp Demo) suspends the use of small business set-asides for Federal procurements in five designated industry groups in which there are many small businesses. In an acquisition environment that is dominated by large business it is counter-productive to eliminate any potential competitive advantage for small business.

Repeal of Comp Demo will result in cost savings for the Department of Defense (DoD). The program is time-consuming both in terms of the efforts expended by contracting officers to develop the solicitations issued under Comp Demo and, more significantly, the man hours required to monitor the program and make the necessary annual policy adjustments required by the governing regulation. Repeal of Comp Demo will improve small business prime and subcontracting opportunities through re-establishment of small business set-aside procedures in the designated industry groups currently under the scrutiny of this statute. Repealing this legislation will simplify contract data collection and reporting requirements and eliminate the administrative burden necessary to carry out the statute.

The repeal of Comp Demo applies to the small business reserve for Emerging Small Businesses (ESB). Comp Demo has not demonstrated any effectiveness in increasing ESB contracting opportunities in the five designated industry categories. Small business specialists

and other acquisition officials will continue to use innovative acquisition strategies and outreach to promote ESB's in DoD procurement.

The repeal also applies to the use of targeted industry categories. Under the provisions of Comp Demo, the head of each participating agency is required to implement a program to expand small business participation in the agency's acquisition of selected products and services in ten targeted industry categories which have historically demonstrated low rates of small business participation. Section 15(g)(2) of the Small Business Act already requires agency heads to make consistent efforts to expand annual participation by small business concerns in all industry categories. Repeal of Comp Demo would allow the Government to apply the personnel resources required for monitoring attainment of the targeted industry category goals towards developing strategies to promote small business participation in Federal procurement.

The proposed repeal of Comp Demo is consistent with the declared policy of the Congress as expressed in section 2(a) of the Small Business Act that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, and to maintain and strengthen the industrial base and overall economy of the Nation.

Budget Implications: The proposal to repeal the Comp Demo legislation is fully funded in the Fiscal Year (FY) 2010 Presidential Budget as demonstrated in the exhibit below. This would support personnel within the Office of Small Business Programs to execute the legislation within the Department of Defense.

RESOURCE REQUIREMENTS ($MILLIONS)*								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Total*	$2.054	$2.076	$2.153	$2.196	$2.241	Defense-wide O&M	04	4GTN

***** No offsets are required in support of this small business program. The required resources are reflected in the PR-2011 submission.

NUMBER OF PERSONNEL AFFECTED*						
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Personnel Type**
Yearly Total	1	1	1	1	1	CIVPERS

Costing Methodology: The costs reflect existing manpower that will be used to execute the proposed legislation.

Changes to Existing Law: This proposal would repeal sections 702 through 722 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note):

SEC. 701. SHORT TITLE.

This title may be cited as the "Small Business Competitiveness Demonstration Program Act of 1988".

~~SEC. 702. FINDINGS.~~

~~The Congress finds that--~~

~~(1) many small business concerns have repeatedly demonstrated their ability to fulfill a broad range of Government requirements for products, services (including research, development, technical, and professional services), and construction, through the Federal procurement process;~~

~~(2) various Congressional mandated reforms to the Federal procurement process, including the Competition in Contracting Act of 1984, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, were designed to eliminate obstacles to competition and thereby to broaden small business participation; and~~

~~(3) traditional agency efforts to implement the mandate for small business participation in a fair proportion of Federal procurements as required by section 15(a) of the Small Business Act have resulted in--~~

~~(A) a concentration of procurement contract awards in a limited number of industry categories, often dominated by small business concerns, through the use of set-asides, for the purpose of assuring the attainment of the agency's overall small business contracting goals; and~~

~~(B) inadequate efforts to expand small business participation in agency procurements of products or services which have historically demonstrated low rates of small business participation despite substantial potential for expanded small business participation.~~

~~PART B -- DEMONSTRATION PROGRAM~~

~~SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION POGRAM.~~

~~(a) Establishment.--There is established a Small Business Competitiveness Demonstration Program (hereafter referred to in this title as "the Program") pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413) to provide for the testing of innovative procurement methods and procedures. The Administrator of Federal Procurement Policy shall designate the Administrator of the Small Business Administration as the executive agent responsible for conducting the test.~~

~~(b) Purposes.--The purposes of the Program are to demonstrate whether--~~

~~(1) the competitive capabilities of small business firms in certain industry categories will enable them to successfully compete on an unrestricted basis for Federal contracting opportunities,~~

~~(2) the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration, can expand small business participation in Federal contracting opportunities which have been historically~~

low, despite adequate numbers of qualified small business contractors in the economy, and

(3) expanded use of full and open competition, as specified by the Competition in Contracting Act of 1984 (10 U.S.C. 2302(3) and 41 U.S.C. 403(7)), adversely affects small business participation in certain industry categories, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

(c) Program Term.--The Program shall commence on January 1, 1989.

(d) Application.--The Program shall apply to contract solicitations for the procurement of services in industry groups designated in section 717.

SEC. 712. ENHANCED SMALL BUSINESS PARTICIPATION GOALS.

(a) Enhanced Goals for Designated Industry Groups.--Each participating agency shall establish an annual small business participation goal that is 40 percent of the dollar value of the contract awards for each of the designated industry groups. In attaining its small business participation goal for contract awards for each of the designated industry groups, each participating agency shall make a good faith effort to assure that emerging small business concerns are awarded not less than 15 percent of the dollar value of the contract awards for each of the designated industry groups.

(b) Special Assistance for Emerging Small Business Concerns.--

(1) Small business reserve.--During the term of the Program, all contract opportunities in the industry groups designated in section 717 shall be reserved for exclusive competition among emerging small business concerns in accordance with the competition standard specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)), if the estimated award value of the contract is equal to or less than the greater of:

(A) $25,000, or

(B) such larger dollar amount established pursuant to paragraph (2).

(2) Adjustments to the small business reserve.--If the goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry category is determined not to have been attained, upon the review of award data conducted in accordance with subsection (d)(1) of this section, the Administrator for Federal Procurement Policy, to ensure attainment of such goal, shall prescribe, on a semiannual basis, appropriate adjustments to the dollar threshold for contract opportunities in such designated industry category below which competition shall be conducted exclusively among emerging small business concerns.

(3) Small business small purchase reserve.--The requirements of this subsection dealing with the reserve amount shall apply notwithstanding the amount specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)).

(4) Exclusion of modifications to existing contracts above the small purchase threshold.--Any modification or follow-on award to a contract having an initial award value in excess of $25,000 shall not be subject to the limitations on competition required by this subsection.

(c) Targeting Industry Categories With Limited Small Business Participation.--(1) Concurrent with the term of the Small Business Competitiveness Demonstration Program, the head of each participating agency shall implement a program to expand small business participation in the agency's acquisition of selected products and services in 10 industry

categories which have historically demonstrated low rates of small business participation. The products and services to be targeted for the small business participation expansion program and the special goals for such program, shall be developed in conjunction with the Administrator of the Small Business Administration, and shall be subject to the requirements of section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

(2) The products or services selected for the small business participation expansion program shall be drawn from industry categories that:

(A) are the recipients of substantial purchases by the Federal Government;

(B) have less than 10 percent of such annual purchases made from small business concerns; and

(C) have significant amounts of small business productive capacity that have not been utilized by the Government.

(3) In developing its small business participation expansion program, each participating agency shall:

(A) prepare, and furnish to the Administration, a detailed, time-phased strategy (with incremental numerical goals); and

(B) encourage and promote joint ventures, teaming agreements and other similar arrangements, which permit small business concerns to effectively compete for contract solicitations for which an individual small business concern would lack the requisite capacity or capability needed to establish responsibility for the award of a contract.

(d) Monitoring Agency Performance.--

(1) Participating agencies shall monitor the attainment of their small business participation goals on an annual basis. An annual review by each participating agency shall be completed not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30.

(2) All awards to small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) shall be counted toward attainment of the goals specified in subsection (a) of this section.

(3) Modifications to a participating agency's solicitation practices, pursuant to section 713(b), shall be made at the beginning of the fiscal year quarter following each review, if the rate of small business participation is less than 40 percent of the contract awards.

SEC. 713. PROCUREMENT PROCEDURES.

(a) Full and Open Competition.--Except as provided in subsections (b) and (c), each contract opportunity with an anticipated value of more than $25,000 for the procurement of services from firms in the designated industry groups (unless set aside pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 2323 of title 10,
United States Code) shall be solicited on an unrestricted basis during the term of the Program, if the participating agency has attained its small business participation goal pursuant to section 712(a). Any regulatory requirements which are inconsistent with this provision shall be waived.

(b) Restricted Competition.--If a participating agency has failed to attain its small business participation goal under section 712(a), subsequent contracting opportunities, which are in excess of the reserve thresholds specified pursuant to section 712(b) shall be solicited through a competition restricted to eligible small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) only at those buying activities of the participating agency that

failed to attain the small business participation goal required by section 712(a). Upon determining that its contract awards to small business concerns again meet the goals required by section 712(a), a participating agency shall promptly resume the use of unrestricted solicitations pursuant to subsection (a). Such modifications in the participating agency's solicitation practices shall be made as soon as practicable, but not later than the beginning of the quarter following completion of the review made pursuant to section 712(d) indicating that changes to solicitation practices are required.

(c) Relationship With the Competition in Contracting Act of 1984.--Subsections (a) and (b) shall not be construed to supersede the application of the Competition in Contracting Act of 1984 (98 Stat. 1175).

(d) Relationship to Other Applicable Law.--Solicitations for the award of contracts for architectural and engineering services (including surveying and mapping) issued by a Military Department or a Defense agency shall comply with the requirements of subsections (a) and (b) of section 2855 of title 10, United States Code.

SEC. 714. REPORTING.

(a) Awards of $25,000 or Less.--During the term of the Small Business Competitiveness Demonstration Program, each award of $25,000 or less made by a participating agency for the procurement of a service in any of the designated industry categories shall be reported to the Federal Procurement Data Center in the same manner as if the purchase were in excess of $25,000.

(b) Subcontracting Activity.--

(1) Simplified data collection system.--The Administrator for Federal Procurement Policy shall develop and implement a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors.

(2) Participating industries.--The system established under paragraph (1) shall be used to collect data regarding contracts for architectural and engineering services (including surveying and mapping). The Administrator for Federal Procurement Policy may expand such system to collect data regarding such other designated industry groups as deemed appropriate.

(3) Participating agencies.--As part of the system established under paragraph (1) data shall be collected from--

(A) the Environmental Protection Agency;

(B) the National Aeronautics and Space Administration;

(C) the United States Army Corps of Engineers (Civil Works); and

(D) the Department of Energy.

The Administrator for Federal Procurement Policy may require the participation of additional departments or agencies from the list of participating agencies designated in section 718.

(4) Determining small business participation rates.--The value of other than prime contract awards to small business concerns furnishing architectural and engineering services (including surveying and mapping) or other services in support of such contracts (or other services provided by small business concerns in other designated industry groups as may be designated for participation by the Administrator

for Federal Procurement) shall be counted towards determining whether the small business participation goal required by section 712(a) has been attained.

(5) Duration.--The system described in subsection (a) shall be established not later than October 1, 1996 (or as soon as practicable thereafter on the first day of a subsequent quarter of fiscal year 1997), and shall terminate on September 30, 1997.

(c) Size and Status of Small Business Concerns.--During the term of the Program, each participating agency shall collect data pertaining to the size of the small business concern and the status of the small business concern (as a small business concern owned and controlled by socially and economically disadvantaged individuals) receiving any award for the procurement of--

(1) services in each of the designated industry groups; and

(2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(c).

SEC. 715. TEST PLAN AND POLICY DIRECTION.

(a) Test Plan.--The Administrator for Federal Procurement Policy may further specify the manner and conduct of the test activities required by this title through a test plan issued pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).

(b) Policy Direction.--The Administrator for Federal Procurement Policy, in cooperation with the Administrator of the Small Business Administration, shall issue a policy directive (which shall be binding on all participating agencies) to ensure consistent Government-wide implementation of this title in the Federal Acquisition Regulation, title 48 of the Code of Federal Regulations, issued pursuant to the Office of Federal Procurement Policy Act.

SEC. 716. REPORTS TO CONGRESS.

(a) In General.--Within 180 days after data for each of fiscal years 1991 through 2000 are available from the Federal Procurement Data Center, the Administrator of the Small Business Administration shall report the results of the Small Business Competitiveness Demonstration Program to the Committees on Small Business of the Senate and House of Representatives, to the Committee on Governmental Affairs of the Senate, and to the Committee on Government Reform and Oversight of the House of Representatives. The views of the Administrator of the Small Business Administration shall be included in the report.

(b) Analysis of Program.--The report shall include a section prepared by the Administrator of the Small Business Administration specifying the cumulative results of the intensive goaling and management program conducted to expand small business participation in agency acquisitions of selected products and services.

(c) Recommendations.--To the extent the results of the Program demonstrate sufficiently high small business participation based on unrestricted contract competition in the designated industry groups, the report to be submitted during calendar year 1997 shall include recommendations (if appropriate) for changes in legislation or modifications of procurement regulations aimed at increasing reliance on unrestricted competition if high rates of small business participation in the Federal procurement market can be maintained.

SEC. 717. DESIGNATED INDUSTRY GROUPS.

(a) In General.--For the purposes of participation in this Program, the designated industry groups are--

(1) construction (excluding dredging);

(2) refuse systems and related services;

(3) architectural and engineering services (including surveying and mapping);

~~(4) non-nuclear ship repair; and~~

~~(5) landscaping and pest control services.~~

~~(b) Construction.--Construction shall include contract awards assigned one of the standard industrial classification codes or North American Industrial Classification Codes that comprise--~~

~~(1) Major Group 15 (Building Construction--General Contractors and Operative Builders),~~

~~(2) Major Group 16 (Heavy Construction Other Than Building Construction--Contractors) (excluding dredging);~~

~~(3) Major Group 17 (Construction--Special Trade Contractors).~~

~~(c) Refuse.--Refuse systems and related services shall include contract awards assigned to standard industrial classification code or North American Industrial Classification Code 4212 or 4953.~~

~~(d) Architectural and Engineering.--Architectural and engineering services (including surveying and mapping) shall include contract awards assigned to standard industrial classification code or North American Industrial Classification Code 7389 (if identified as pertaining to mapping services), 8711, 8712, or 8713, and such contract was awarded under the qualification-based selection procedures required by title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).~~

~~(e) Landscaping and Pest Control Services.--Landscaping and pest control services shall include contract awards assigned to North American Industrial Classification Code 561710 (relating to exterminating and pest control services) or 561730 (relating to landscaping services).~~

~~(f) Alternative Data.--In the event that standard industrial classification codes or North American Industrial Classification Codes are not assigned to individual contract awards reported to the Federal Procurement Data Center by January 1, 1989, the Program may be conducted on the basis of the product and service codes used to report data pertaining to such contract awards, related to the maximum practicable extent to the standard industrial classification code or North American Industrial Classification Code for the service being provided by the contractor.~~

~~SEC. 718. DEFINITIONS.~~

~~(a) Designated Industry Groups.--"Designated industry groups" means the groups specified in section 717 for participation in the Small Business Competitiveness Demonstration Program.~~

~~(b) Emerging Small Business Concern.--"Emerging small business concern" means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.~~

~~(c) Participating Agency.--"Participating agency" shall have the same meaning as the term "executive agency" in section (4)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)). The Administrator for Federal Procurement Policy is authorized to specify as part of the Program test plan the list of executive agencies designated to participate in the Program, which shall include:~~

~~(1) the Department of Agriculture,~~

~~(2) the Department of Defense (with the Department of the Army, the Department of the Navy, the Department of the Air Force, and the defense agencies reporting separately),~~

~~(3) the Department of Energy,~~

~~(4) the Department of Health and Human Services,~~

(5) the Department of the Interior,

(6) the Department of Transportation,

(7) the Environmental Protection Agency,

(8) the General Services Administration (with the Public Building Service reporting separately),

(9) the National Aeronautics and Space Administration, and

(10) the Department of Veterans Affairs.

The Administrator for Federal Procurement Policy is authorized to require any participating agencies to report separately in any manner deemed appropriate to enhance the attainment of the test activities authorized by this title.

(d) Small Business Participation.—"Small business participation" shall include the aggregate dollar value of every procurement contract award made to a small business concern, without regard to whether such award was based on restricted or unrestricted competition, or was made on a sole source basis.

(e) Standard Industrial Classification Code.—"Standard industrial classification code" means a four digit code assigned to an industry category in the Standard Industrial Classification Manual published by the Office of Management and Budget in effect on the date of enactment of this Act.

PART C—ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES

SEC. 721. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.

(a) Establishment.--Subject to the requirements of subsection (b), of the total dollar amount of contracts for each standard industrial classification code for clothing and textiles awarded by the Defense Logistics Agency for each of the fiscal years 1989, 1990, and 1991:

(1) To the maximum extent practicable, 50 percent shall not be restricted by the size status of the competing business concerns.

(2) To the maximum extent practicable, 50 percent shall be made available for award pursuant to--

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(B) section 2323 of title 10, United States Code; and

(C) section 15(a) of the Small Business Act (15 U.S.C. 644(a)), if the criteria for such awards are met pursuant to part 19.5 (Set-Asides for Small Business) of title 48, Code of Federal Regulations, as in effect on September 1, 1988.

(b) Computation.--In order to calculate the percent limitation established pursuant to subsection (a), the Department may establish, after consultation with the Small Business Administration, major groupings of standard industrial classification codes that are closely related and apply such limitations to such groupings.

(c) Program Term.--The Program shall commence on January 1, 1989, and terminate on September 30, 1996.

(d) Report.--The Secretary of Defense shall issue reports to the Congress on the operations of the program established pursuant to this section. Such reports shall detail the effects of the program on the mobilization base and on small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

Interim reports shall be submitted every 6 months during the term of the program to the Committees on Armed Services and Small Business of the House of Representatives and the Senate.

SEC. 722. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.

(a) Establishment.--The Secretary of the Army (hereafter in this section referred to as the "Secretary") shall conduct a program to expand the participation of small business concerns and emerging small business concerns in contracting opportunities for dredging solicited on or after January 1, 1989, commencing on October 1, 1989.

(b) Enhanced Goals.--Of the aggregate value of all suitable contracts for dredging, the Department of the Army (hereafter in this section referred to as the "Department") shall make every reasonable effort to award to small business concerns:

(1) 20 percent during fiscal year 1989, including 5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(2) 25 percent during fiscal year 1990, including 7.5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(3) 30 percent during fiscal year 1991, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(4) 30 percent during fiscal year 1992, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns; and

(5) not less than 20 percent during fiscal year 1993, and each subsequent year during the term of the program, including not less than 5 percent of the dollar value of suitable contracts that shall be reserved for emerging small business concerns. The total value of contracts to be performed exclusively through the use of so-called dustpan dredges or seagoing hopper dredges is deemed to be generally unsuitable for performance by small business concerns and is to be excluded in calculating whether the rates of small business participation specified in subsection (b) have been attained.

(c) Contract Award Procedures.--(1) Except as provided in paragraphs (3) and (4), the Department shall solicit and award contracts for dredging through full and open competition in conformity with section 2304 of title 10, United States Code, section 15 of the Small Business Act (15 U.S.C. 644), and the implementing procurement regulations promulgated in conformity with section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405). Nothing herein shall impair the award of contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 2323 of title 10, United States Code.

(2) Prior to making a determination to restrict a solicitation for the performance of a dredging contract for exclusive competition among 2 or more eligible small business concerns in accordance with section 19.5 of the Government wide Federal Procurement Regulation (48 C.F.R. 19.5, or any successor thereto), the contracting officer shall make a determination that each anticipated offeror is a responsible source (as defined under section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)) and has (or can demonstrate the capability to obtain) the specialized dredging equipment deemed necessary to perform the work to be required in accordance with the schedule to be specified in the solicitation.

(3) Contracting opportunities for dredging shall be reserved for competition among emerging small business concerns if their estimated award value is below an amount to be specified by the Administrator for Federal Procurement Policy (hereafter in this section referred to as the "Administrator"), upon the recommendation of the Secretary. Such reserve amount shall be established by the Administrator at the start of the program at a level which can reasonably be

~~expected to result in the Department attaining the applicable participation goal for emerging small business concerns. Such reserve threshold shall be reviewed by the Secretary and adjusted by the Administrator to the extent necessary on a semiannual basis beginning after the end of the second quarter of fiscal year 1989 on the basis of the aggregate of contract awards for the four fiscal year quarters preceding the date of the review.~~

~~(4) The Secretary shall restrict for competition among all eligible small business concerns such additional contracting opportunities for dredging in such numbers and at such estimated award values as can reasonably be expected to result in the Department exceeding the applicable participation goal for small business concerns generally.~~

~~(d) Acquisition Strategies To Foster Small Business Participation.--(1) In attaining the goals for participation by small business concerns and emerging small business concerns, the Secretary is encouraged to:~~

~~(A) specify contract requirements and contractual terms and conditions that are conducive to competition by small business concerns and emerging small business concerns, consistent with the mission or program requirements of the Department;~~

~~(B) foster joint ventures, teaming agreements, and other similar arrangements, which permit small business concerns to effectively compete for contract opportunities for which an individual firm would lack the requisite capacity or capability needed to establish responsibility for the award of a contract; and~~

~~(C) foster subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or solicitation requirements specifying minimum percentages of subcontracting for the purpose of determining the responsiveness of an offer.~~

~~(2) During the term of the program, data shall be collected pertaining to the actual size of the firm receiving an award as a small business concern or an emerging small business concern.~~

~~(e) Size Standard.--For the purposes of the program established by subsection (a), the size standard pertaining to standard industrial classification code 1629 (Dredging and Surface Cleanup Activities) in effect on October 1, 1988 shall remain in effect until September 30, 1990.~~

~~(f) Reports.--~~

~~(1) The Secretary shall furnish a report to the Committees on Small Business of the Senate and House of Representatives, the Administrator of the Small Business Administration, and the Administrator for Federal Procurement Policy within 120 days after September 30, 1995, regarding compliance with this section.~~

~~(2) Interim reports shall be submitted annually within 90 days after the close of each fiscal year during the term of the program established under subsection (a). The Secretary may include recommendations regarding adjustments to the Department's participation goals for small business concerns and emerging small business concerns and to the applicable size standard, if the Secretary determines that such goals cannot reasonably be attained from the pool of firms meeting the current size standard.~~

Section 802 would amend section 2359b of title 10, United States Code, to make permanent the authority to carry out the Defense Acquisition Challenge Program, which provides opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense. Congress previously extended this authority once (through September 30, 2012). This proposal also would eliminate the requirement for the

Under Secretary of Defense for Acquisition, Technology, and Logistics to submit an annual report on the Challenge Program to Congress. The Defense Acquisition Challenge Program Annual Report to Congress has been submitted since program inception without negative response from the Congress.

Changes to Existing Law: This proposal would amend section 2359b of title 10, United States Code, as follows:

§ 2359b. Defense Acquisition Challenge Program

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the "Challenge Program"), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.

* * * * * * * * * *

~~(j) ANNUAL REPORT.—The Under Secretary shall submit an annual report on the Challenge Program to Congress. The report shall be submitted at the same time as the President submits the budget for a fiscal year to Congress under section 1105 (a) of title 31, and shall cover the conduct of the Challenge Program for the preceding fiscal year. The report shall include the number and scope of challenge proposals submitted, preliminarily evaluated, subjected to full review and evaluation, and adopted. The report shall also include a list of each challenge proposal that was determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but was not determined under a full review and evaluation to satisfy such criteria, together with a detailed rationale for the Department's determination that such criteria were not satisfied.~~

~~(k) TERMINATION OF AUTHORITY.—The Secretary may not carry out the Challenge Program under this section after September 30, 2012.~~

* * * * * * * * * *

Section 803. Existing law requires Phase II award recipients to purchase technical assistance services individually. With generally over 1,000 Phase II contracts issued per year, this mechanism is impractical. This proposal would increase the amount of funding participating Federal agencies are allowed to apply toward technical assistance for Small Business Innovation Research (SBIR) Program Phase I and Phase II award recipients and allow participating Federal agencies to pay for this discretionary technical assistance during Phase II directly through one or more competitively selected service providers for assistance provided during Phase I. The proposal will allow efficient acquisition and employment of a variety of technical assistance services to deploy as needed or appropriate to support firm development. It will also increase the

amount of funds permitted for this use to a figure more consistent with current market levels.

Experience with such programs indicates that effective transition assistance can be an important enabler of technology commercialization, which is a very high priority of the Department and Congress. This statement is supported by the National Research Council's 2008 study of the DoD SBIR Program which cites employment of discretionary technical assistance, in this case through the Navy's Transition Assistance Program (TAP), as a best practice across the Federal Government. The proposal enables easier and more effective use of the discretionary technical assistance authority, not necessarily to provide the same service provided by the Navy through TAP, but to enable participating DoD components to tailor support to meet the needs of their awardees.

Budgetary Implications: The proposal to increase the amount of discretionary technical assistance from $4,000 to $5,000 is fully funded in the Fiscal Year (FY) 2010 Presidential Budget. The SBIR program is funded as a set-aside calculated as 2.5 percent of the extramural RDT&E budget for Components having a budget in excess of $100M, and the STTR program is funded as a set-aside calculated as 0.3 percent of the extramural RDT&E budget for Components having a budget in excess of $1 billion.

RESOURCE REQUIREMENTS ($MILLIONS)*								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army*	$9.658	$8.843	$8.221	$8.132	$7.658	RDT&E, A	04	Various
Navy*	$16.944	$16.161	$14.784	$13.994	$12.419	RDT&E, N	04	Various
Air Force*	$26.440	$26.731	$24.882	$23.273	$23.712	RDT&E, AF	04	Various
DW*	$20.688	$20.463	$20.944	$21.021	$21.207	RDT&E, DW	04	Various
Total *	$73.730	$72.197	$68.832	$66.419	$64.996			

***** The SBIR program is funded as a set-aside calculated as 2.5 percent of the extramural RDT&E budget for Components having a budget in excess of $100 million, and the STTR program is funded as a set-aside calculated as 0.3 percent of the extramural RDT&E budget for Components having a budget in excess of $1 billion. No offsets are required in support of this proposal. The required resources are contained within the SBIR budget.

NUMBER OF PERSONNEL AFFECTED*						
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Personnel Type**
Yearly Total	40	40	40	40	40	CIVPERS

Costing Methodology: The SBIR program is funded as a set-aside calculated as 2.5 percent of the extramural RDT&E budget for Components having a budget in excess of $100 million, and

the STTR program is funded as a set-aside calculated as 0.3 percent of the extramural RDT&E budget for Components having a budget in excess of $1 billion.

Changes to Existing Law: This proposal will amend section 9(q) of the Small Business Act (15 U.S.C. 638(q)) as follows:

(q) DISCRETIONARY TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—Each Federal agency required by this section to conduct an SBIR program may enter into an agreement with a vendor selected under paragraph (2) to provide small business concerns engaged in SBIR projects with technical assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies, or access to technical and business literature available through on-line data bases, for the purpose of assisting such concerns in—

(A) making better technical decisions concerning such projects;

(B) solving technical problems which arise during the conduct of such projects;

(C) minimizing technical risks associated with such projects; and

(D) developing and commercializing new commercial products and processes resulting from such projects.

(2) VENDOR SELECTION.—Each agency may select a ~~vendor~~ **or vendors** to assist small business concerns to meet the goals listed in paragraph (1) for a term not to exceed 3 years. Such selection shall be competitive and shall utilize merit-based criteria.

(3) ADDITIONAL TECHNICAL ASSISTANCE.—

(A) FIRST PHASE.—Each agency referred to in paragraph (1) may provide services described in paragraph (1) to first phase SBIR award recipients in an amount equal to not more than ~~$4,000~~ **$5,000**, which shall be in addition to the amount of the recipient's award.

(B) SECOND PHASE.—Each agency referred to in paragraph (1) may ~~authorize any second phase SBIR award recipient to purchase, with funds available from their SBIR awards, services described in paragraph (1), in an amount equal to not more than $4,000 per year.~~ **directly provide to any second phase SBIR award recipient services described in paragraph (1), or may authorize any such recipient to purchase such services with funds available from their SBIR awards, in an amount equal to not more than $5,000 per year, per award.**

Section 804. Existing law prohibits the use of Small Business Innovation Research

(SBIR) and Small Business Technology Transfer (STTR) funds to cover program administrative costs, including cost associated with salaries and expenses of individuals involved in the administration, management, or technical oversight of the program. This prohibition forces the Department of Defense (DoD) to pay for these costs with core, non-SBIR/STTR Program funds. Increased SBIR and STTR funding has enabled the DoD to make more individual awards. However, it also has increased the administrative and management burden at the expense of core programs.

This proposal would allow participating Federal agencies to spend up to 3.0 percent of their SBIR and STTR Program budgets to cover the administrative and program management costs, including commercialization assistance, technical assistance, contracting, program evaluation, and other program administrative costs. A 2007 study by the RAND Corporation determined that the administrative overhead of the SBIR and STTR Programs, not including commercialization assistance, is at least 6 percent. Further, a study by the National Research Council of the National Academies published in 2008 recommends that additional resources be made available. Additionally, the DoD Inspector General, in a January 30, 2009 final audit report on the SBIR Program, recommended the Department establish a consistent process to provide funding for the administration of the SBIR Program.

If enacted, this proposed amendment would ensure the SBIR and STTR programs have resources to support program execution, and free valuable Departmental resources to help meet other mission objectives. In addition, requiring the SBIR and STTR programs to fund their administrative and management cost from within would allow for more effective program management and improve program outcomes. The 3.0 percent figure would also allow the Department to maintain more robust databases and directly support new efforts to increase SBIR Phase III and other commercialization to address DoD's technology needs.

Budgetary Implications: The proposal to allow participating Federal agencies to spend up to 3.0 percent of their SBIR and STTR Program budgets to cover the administrative and program management costs, including commercialization assistance, technical assistance, contracting, program evaluation, and other program administrative costs is fully funded in the Fiscal Year (FY) 2010 Presidential Budget. The SBIR program is funded as a set-aside calculated as 2.5 percent of the extramural RDT&E budget for Components having a budget in excess of $100 million, and the STTR program is funded as a set-aside calculated as 0.3 percent of the extramural RDT&E budget for Components having a budget in excess of $1 billion.

RESOURCE REQUIREMENTS ($MILLIONS)*								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army*	$9.658	$8.843	$8.221	$8.132	$7.658	RDT&E, A	04	Various
Navy*	$16.944	$16.161	$14.784	$13.994	$12.419	RDT&E, N	04	Various
Air Force*	$26.440	$26.731	$24.882	$23.273	$23.712	RDT&E, AF	04	Various
DW*	$20.688	$20.463	$20.944	$21.021	$21.207	RDT&E, DW	04	Various

Total *	$73.730	$72.197	$68.832	$66.419	$64.996			

*** Note:** The SBIR program is funded as a set-aside calculated as 2.5 percent of the extramural RDT&E budget for Components having a budget in excess of $100 million, and the STTR program is funded as a set-aside calculated as 0.3 percent of the extramural RDT&E budget for Components having a budget in excess of $1 billion. No offsets are required in support of this proposal. The required resources are contained within the SBIR and STTR budgets.

NUMBER OF PERSONNEL AFFECTED*						
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Personnel Type**
Yearly Total	40	40	40	40	40	CIVPERS

Costing Methodology: The SBIR program is funded as a set-aside calculated as 2.5 percent of the extramural RDT&E budget for Components having a budget in excess of $100 million, and the STTR program is funded as a set-aside calculated as 0.3 percent of the extramural RDT&E budget for Components having a budget in excess of $1 billion.

Changes to Existing Law: This proposal would amend subsections (f) and (n) of section 9 of the Small Business Act (15 U.S.C. 638) as follows:

(f) FEDERAL AGENCY EXPENDITURES FOR THE SBIR PROGRAM.—

(1) REQUIRED EXPENDITURE AMOUNTS.—Each Federal agency which has an extramural budget for research or research and development in excess of $100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns—

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996; and

(C) not less than 2.5 percent of such budget in each fiscal year thereafter,

specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(2) LIMITATIONS.—A Federal agency shall not—

(A) use ~~any~~ **more than 3.0 percent** of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

and,

(n) REQUIRED EXPENDITURES FOR STTR BY FEDERAL AGENCIES.—

(1) REQUIRED EXPENDITURE AMOUNTS.—

(A) IN GENERAL.—With respect to each fiscal year through fiscal year 2009, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

(B) EXPENDITURE AMOUNTS.—The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

(i) 0.15 percent for each fiscal year through fiscal year 2003; and

(ii) 0.3 percent for fiscal year 2004 and each fiscal year thereafter.

(2) LIMITATIONS.—A Federal agency shall not—

(A) use ~~any~~ **more than 3.0 percent** of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the government wide Federal Acquisition Regulation issued in accordance with section 25(c)(1) of the Office of Federal Procurement Policy Act); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

Subtitle B—Other Matters

Section 811. The Department of Defense (DoD) Mentor-Protégé Program (MPP) was established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510). The purpose of this program is to develop the technical capabilities of small disadvantaged businesses (SDB), including organizations employing the severely disabled as defined in section 831(m) [NOTE: Section 8064A of the DoD Appropriations Act, 1992, merely amends section 831(m) of the FY91 NDAA, so I'm not sure why AT&L didn't just reference section 831(m) in the first place.], women-owned small businesses (WOSB), service-disabled veteran-owned small businesses (SDVOSB), and historically underutilized business zone (HUBZone) small businesses. The program enables major prime contractors (mentors) to transfer and/or develop technology that is critical to the national defense to SDB, WOSB, SDVOSB, and HUBZone small businesses (protégés). In so doing, the DoD MPP helps to increase supplier diversity in DoD's industrial base.

The DoD MPP has expanded the number of qualified SDBs able to support DoD contracts, strengthening competition potential and the industrial base. Historically, 12 percent of all SDB prime contract awards made by DoD were to former or current protégés. Extending the MPP to 2015 would continue to contribute substantially to the Department's continued progress in meeting these and other small business statutory goals.

Budgetary Implications: The proposal to extend the DoD Mentor Protégé Program is fully funded in the Fiscal Year (FY) 2010 Presidential Budget. Subject to the appropriation, this section would require $27.9 million in FY 2011, increasing to $33.9 million by FY 2015, as demonstrated in the exhibit below. This would support an increasing number of Mentor-Protégé Program agreements from 120 in FY 2011 to more than an estimated 200 in FY 2015. This proposal would be funded from the Defense-wide Procurement account to support activities in the Army, Navy, Air Force, Defense Intelligence Systems Agency, Missile Defense Agency, National Geospatial Intelligence Agency, Special Operations Command, Joint Robotics Initiative, National Security Agency, and the Department of Defense Office of Small Business Programs.

NUMBER OF PERSONNEL AFFECTED*						
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Personnel Type**
	51	51	51	51	51	CIVPERS

RESOURCE REQUIREMENTS ($MILLIONS)*								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Total	27.966	30.370	31.360	31.500	33.869	Procurement, Defense-wide	01 (Major Equipment)	47 (P-1/Mentor Protégé Program)

***Positive and negative resource requirements described above are in relation to the FY 2009 base.** No offsets are required in support of this small business program. The required resources are reflected in the PR-2011 submission.

Costing Methodology: The Department of Defense calculated the projected programmatic requirement increases based on prior year successes and current trends, and future year requests from the military departments. These future year requirements are reflected in the FY 2011 President's Budget. In projecting program growth, added value to the warfighter was prioritized with the consideration that funds will be used to invest in near-term delivery of cost effective and proven technologies to protect and empower the warfighter, reduce injuries, and enhance security.

Changes to Existing Law: This proposal will amend section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, as follows:

(j) EXPIRATION AUTHORITY.—(1) No mentor-protégé agreement may be entered into under subsection (e) after September 30, ~~2010~~ 2015.

(2) No reimbursement may be paid, and no credit toward the attainment of a subcontract goal may be granted, under subsection (g) for any cost incurred after September 30, ~~2013~~ 2018.

and,

(l) REPORTS AND REVIEWS.—(1) The mentor firm and protégé firm under a mentor-protégé agreement shall submit to the Secretary of Defense an annual report on the progress made by the protégé firm in employment, revenues, and participation in Department of Defense contracts during the fiscal year covered by the report. The requirement for submission of an annual report applies with respect to each fiscal year covered by the program participation term under the agreement and each of the two fiscal years following the expiration of the program participation term. The Secretary shall prescribe the timing and form of the annual report.

(2)(A) The Secretary shall conduct an annual performance review of each mentor-protégé agreement that provides for reimbursement of costs. The Secretary shall determine on the basis of the review whether—

(i) all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protégé firm in accordance with the requirements of this section and applicable regulations; and

(ii) the mentor firm and protégé firm accurately reported progress made by the protégé firm in employment, revenues, and participation in Department of Defense contracts during the program participation term covered by the mentor-protégé agreement and the two fiscal years following the expiration of the program participation term.

(B) The Secretary shall act through the Commander of the Defense Contract Management Command in carrying out the reviews and making determinations under subparagraph (A).

(3) Not later than 6 months after the end of each of fiscal years 2000 through ~~2010~~ 2015, the Secretary of Defense shall submit to Congress an annual report on the Mentor-Protégé Program for that fiscal year.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Section 901. Section 191 of title 10, United States Code, provides that whenever the Secretary of Defense determines such action would be more effective, economical, or efficient, the Secretary may provide for the performance of a supply or service activity that is common to more than one military department by a single agency of the Department of Defense (DoD). Organizations created to be defense-wide providers of combined support are called Defense Agencies and DoD Field Activities. Section 194 of title 10 limits the overall personnel performing these activities to the number performing them in 1989. The Department over the last 20 years has been moving to a more joint and integrated model for operations and support. The 20-year old limit on the number of personnel that are in these integrated support organizations is counterproductive to the ongoing efforts to consolidate and merge functions when effective, economical, or efficient. This proposal would eliminate the limit on the overall size of the Defense Agencies and DoD Field Activities (10 U.S.C. 194).

Section 601 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433) directed a 10 percent reduction and an ongoing 90 percent limit from the 1986 levels of personnel in the unified and specified combatant commands and the military departments' component commands. Since 1986, the Department has stood up four new combatant commands (United States Special Operations Command (SOCOM), United States Transportation Command (TRANSCOM), United States Northern Command (NORTHCOM), and United States Africa Command (AFRICOM)) and the supporting component commands; transformed United States Atlantic Command (LANTCOM) into United States Joint Forces Command (JFCOM) and United States Space Command (SPACECOM) into United States Strategic Command (STRATCOM); and seen a dramatic expansion of the SOCOM mission. These organizations represent the "tip of the spear" for the Department and cannot be limited to the number of personnel that were assigned in 1986. The Department's priorities have changed too significantly in the last 20 years to function effectively with such a limitation.

This proposal also seeks to amend the complicated Office of the Secretary of Defense (OSD) limit (10 U.S.C. 143) which includes a portion of a DoD Field Activity (the Washington Headquarters Service (WHS)) and a non-standard definition of what personnel are included in the limit. This proposal would remove WHS from the limit (and the associated 397 personnel), conform the inclusion of personnel to the terminology used in the Military Department Headquarters limits (e.g., 10 U.S.C. 3014), and like the Military Department Headquarters limits, add a provision for a waiver during national emergencies. This proposal will NOT eliminate the OSD Major DoD Headquarters Activities (MHA) limit.

These changes are necessary to ensure that defense-wide support organizations are free from outdated personnel limits. It will remove the limits that do not address the 20 years of history within the Department of Defense and changes within the global military and political environment.

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

TITLE 10, UNITED STATES CODE

§ 143. Office of the Secretary of Defense personnel: limitation

(a) PERMANENT LIMITATION ON OSD PERSONNEL.—The number of OSD personnel may not exceed ~~3,767~~ 3,370.

~~(b) OSD PERSONNEL DEFINED. For purposes of this section, the term "OSD personnel" means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in the Office of the Secretary of Defense (including Direct Support Activities of that Office and the Washington Headquarters Services of the Department of Defense).~~

(b) OSD PERSONNEL DEFINED.—In this section, the term "OSD personnel" means members of the armed forces and civilian employees of the Department of Defense who are assigned or detailed to permanent duty in the Office of the Secretary of Defense.

(c) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, the Office of the Secretary of Defense in order to comply with this section, the Secretary of Defense may not reassign functions solely in order to evade the requirements contained in this section.

(d) EXEMPTION DURING TIME OF WAR OR NATIONAL EMERGENCY.—The limitation in subsection (a) does not apply in time of war or during national emergency declared by the President or Congress.

* * * * * * *

~~**§ 194. Limitations on personnel.**~~

~~(a) Cap on Headquarters Management Personnel. The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.~~

~~(b) Cap on Other Personnel. The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management headquarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.~~

(c) Prohibition Against Certain Actions to Exceed Limitations.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.

(d) Exclusion of NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.

(e) Waiver.—The limitations in this section do not apply—

(1) in time of war; or

(2) during a national emergency declared by the President or Congress.

(f) Definitions.—In this section, the terms "management headquarters activities" and "management headquarters support activities" have the meanings given those terms in Department of Defense Directive 5100.73, entitled "Department of Defense Management Headquarters and Headquarters Support Activities" and dated January 7, 1985.

Section 601 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433, Oct. 1, 1986; 10 U.S.C. 194 note), As Amended

SEC. 601. REDUCTION IN PERSONNEL ASSIGNED TO MANAGEMENT HEADQUARTERS ACTIVITIES AND CERTAIN OTHER ACTIVITIES.

(a) Military Departments and Combatant Commands.—

(1) The total number of members of the Armed Forces and civilian employees assigned or detailed to duty described in paragraph (2) may not exceed the number equal to 90 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

(2) Duty referred to in paragraph (1) is permanent duty in the military departments and in the unified and specified combatant commands to perform management headquarters activities or management headquarters support activities.

(3) In computing and implementing the limitation in paragraph (1), the Secretary of Defense shall exclude members and employees who are assigned or detailed to permanent duty to perform management headquarters activities or management headquarters support activities in the following:

(A) The Office of the Secretary of the Army and the Army Staff.

(B) The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.

(C) The Office of the Secretary of the Air Force and the Air Staff.

(D) The immediate headquarters staff of the commander of each unified or specified combatant command.

(4) If the Secretary of Defense applies any reduction in personnel required by the limitation in paragraph (1) to a unified or specified combatant command, the commander of that command, after consulting with his directly subordinate commanders, shall determine the manner in which the reduction shall be accomplished.

(b) Defense Agencies and DOD Field Activities.—

(1)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities and management headquarters support activities in the Defense Agencies and Department of Defense Field Activities by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 10 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

(C) If the number of members and employees reduced under subparagraph (A) or (B) is in excess of the reduction required to be made by that subparagraph, such excess number may be applied to the number required to be reduced under paragraph (2).

(2)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned or detailed to duty in management headquarters activities or management headquarters support activities, by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 5 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

(3) If after the date of the enactment of this Act and before October 1, 1988, the total number of members and employees described in paragraph (1)(A) or (2)(A) is reduced by a number that is in excess of the number required to be reduced under that paragraph, the Secretary may, in meeting the additional reduction required by paragraph (1)(B) or (2)(B), as the case may be, offset such additional reduction by that excess number.

(4) The National Security Agency shall be excluded in computing and making reductions under this subsection.

~~(c) Prohibition Against Certain Actions to Achieve Reductions.—Compliance with the limitations and reductions required by subsections (a) and (b) may not be accomplished by recategorizing or redefining duties, functions, offices, or organizations.~~

~~(d) Allocations to Be Made by Secretary of Defense.—~~

~~(1) The Secretary of Defense shall allocate the reductions required to comply with the limitations in subsections (a) and (b) in a manner consistent with the efficient operation of the Department of Defense. If the Secretary determines that national security requirements dictate that a reduction (or any portion of a reduction) required by subsection (b) not be made from the Defense Agencies and Department of Defense Field Activities, the Secretary may allocate such reduction (or any portion of such reduction) (A) to personnel assigned or detailed to permanent duty in management headquarters activities or management headquarters support activities, or (B) to personnel assigned or detailed to permanent duty in other than management headquarters activities or management headquarters support activities, as the case may be, of the Department of Defense other than the Defense Agencies and Department of Defense Field Activities.~~

~~(2) Among the actions that are taken to carry out the reductions required by subsections (a) and (b), the Secretary shall consolidate and eliminate unnecessary management headquarters activities and management headquarters support activities.~~

~~(e) Total Reductions.—Reductions in personnel required to be made under this section are in addition to any reductions required to be made under other provisions of this Act or any amendment made by this Act.~~

~~(f) Exclusion.—In computing and making reductions under this section, there shall be excluded not more than 1,600 personnel transferred during fiscal year 1988 from the General Services Administration to the Department of Defense for the purpose of having the Department of Defense assume responsibility for the management, operation, and administration of certain real property under the jurisdiction of that Department.~~

~~(g) Definitions.—For purposes of this section, the terms "management headquarters activities" and "management headquarters support activities" have the meanings given those terms in Department of Defense Directive 5100.73, entitled "Department of Defense Management Headquarters and Headquarters Support Activities" and dated January 7, 1985.~~

Section 1111 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P. L. 110-417, Oct. 14, 2008; 10 U.S.C. 143 note), as amended by section 1109 of the National Defense Authorization Act for Fiscal Year 2010 (P. L. 111-84, Oct. 28, 2009)

SEC. 1111. EXCEPTIONS AND ADJUSTMENTS TO LIMITATIONS ON PERSONNEL AND REPORTS ON SUCH EXCEPTIONS AND ADJUSTMENTS,

(a) EXCEPTION TO LIMITATIONS ON PERSONNEL.—For ~~fiscal year 2009 and fiscal years thereafter~~ any fiscal year, the baseline personnel limitations in sections 143, ~~194,~~ 3014, 5014, and 8014 of title 10, United States Code (as adjusted pursuant to subsection (b)), shall not apply to—

(1) acquisition personnel hired pursuant to the expedited hiring authority provided in section 1705(h) of title 10, United States Code, ~~as amended by section 821 of this Act,~~ or otherwise hired with funds in the Department of Defense Acquisition Workforce Development Fund established in accordance with section 1705(a) of such title; or

(2) personnel hired pursuant to a shortage category designation by the Secretary of Defense or the Director of the Office of Personnel Management.

(b) AUTHORITY TO ADJUST LIMITATIONS ON PERSONNEL.—For ~~fiscal year 2009 and fiscal years thereafter~~ any fiscal year, the Secretary of Defense or a secretary of a military department may adjust the baseline personnel limitations in sections 143, ~~194,~~ 3014, 5014 and 8014 of title 10, United States Code, to—

(1) fill a gap in the civilian workforce of the Department of Defense identified by the Secretary of Defense in a strategic human capital plan submitted to Congress in accordance with ~~the~~ the requirements of section 115b of this title; or

(2) accommodate increases in workload or modify the type of personnel required to accomplish work, for ~~any~~ any of the following purposes:

(A) Performance of inherently governmental functions.

(B) Performance of work pursuant to section 2463 of title 10, United States Code.

(C) Ability to maintain sufficient organic expertise and technical capability.

(D) Performance of work that, while the position may not exercise an inherently governmental function, nevertheless should be performed only by officers or employees of the Federal Government or members of the Armed Forces because of the critical nature of the work.

Section 902 would reinstitute the authority to conduct a program similar to the Department of Defense's most successful pilot program to streamline the processing of equal employment opportunity complaints.

Section 1111 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year (FY) 2001 (Public Law 106-398) required the Department of Defense (DoD) to implement three pilot programs to streamline the processing of EEO complaints. The programs were authorized for a three-year period from the date of commencement. The law required the then-General Accounting Office (GAO), now the Government Accountability Office, to study and report to Congress on the results of the pilot program during, and at the conclusion of, the program. The law specifically allowed deviations from EEOC-promulgated regulations, which otherwise must be followed since they are considered to have the force of law.

The Air Force pilot program stressed the aggressive and early use of alternate dispute resolution and deviated from EEOC regulations by consolidating the investigative and hearing phases into a single stage using a Fact Finding Conference (FFC). The agency set a goal of 127 days to reach a final decision, as compared to the 400 days allowed in the traditional (CFR 1614) system. The DOD report submitted to GAO in June 2008 indicated the program was highly successful in reducing case processing times for CORE cases. Specifically, it stated "During the pilot project period the average processing time for the 844 complaints closed by Air Force through the traditional process was 216 days. For the same period, the Air Force completed 182 cases through CORE with an average processing time of 109 days. The process also reduces duplication of effort and develops a record nearly as complete as that produced by an administrative judge presiding over a hearing, with less waiting time and fewer resources. Moreover, it has been shown that resolving complaints when the facts are fresh in witnesses' minds is a plus and there is a definite benefit to morale from getting issues addressed so that the members involved in the situation can return to focusing on the mission. In addition, allegations against senior Air Force leaders are resolved more expeditiously so that appropriate assignment, award and promotion decisions can be made, not delayed.

The legislative authority to deviate from EEOC regulations expired on October 1, 2007. This section would ensure that Department of Defense components could use an alternative system with safeguards (including appeals to EEOC for all agency decisions) beginning in FY 2011, but only as a supplement to the traditional system and, even then, only on a voluntary basis on the complainant's part. The complainant also has the right to opt out and return to the traditional (1614) system any time before a department's final agency decision. In coordinating on the previous submission representatives of the EEOC supported this legislation as an interim measure while it studied and evaluated (and in fact proposed in its pending instruction revision) several changes to complaint processing.

Budget Implications: The alternative program uses the same or similar agency funds dedicated to processing the traditional EEO complaints. In fact, many cases in the pilot program save funds through their early resolution and cost avoidance (for EEO hearings).

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
TBD	+.14	.1	.1	.1	.1	O&M-AF	04	450
Total	+.14	.1	.1	.1	.1			

The above budget figures are estimates based upon cost experience from the three year pilot program which was virtually identical to that proposed. The funds will be from base level O&M funds normally used for the same purposes (specifically dispute resolution TDY costs and hearing transcripts) with the exception of a single $40,000 estimated training conference costs (estimate again based upon training costs for previous pilot)

Changes to Existing Law: This proposal would not amend any existing laws.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 would allow military claims offices to pay full replacement value, instead of fair market value, on claims that fall outside the current contractual arrangements for providing full replacement value for the household goods of service members and civilian employees moved at the expense of the Department of Defense.

In section 363 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), Congress mandated that full replacement value be provided by contract for the household-goods shipments of service members and civilian employees no later than March 1, 2008. However, the Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 3721, limits recovery on household goods claims to fair market value. Discussions among the several claims services identified situations where service members would not receive full replacement value compensation even though a loss was supposed to be covered for full replacement value. Under limited circumstances it may be in the best interest of the Department of Defense (DoD), and to ensure the equitable treatment of all personnel shipping household goods, for military claims offices to pay full replacement value on some claims.

Under the current contracts implementing the Defense Personal Property Program, transportation service providers may be excused from liability for some losses, for example, when the losses are due to an Act of God (e.g., a catastrophic weather event destroys a warehouse or sinks a ship) or to hostile or war-like actions. Some shipments of household goods are carried on a government vessel or government aircraft for part of the journey. The most common are unaccompanied baggage shipments, which are transported over the ocean on Air Mobility Command aircraft. If evidence indicates the goods were lost or damaged while in the custody of the United States, the transportation service provider is not liable for the loss and, thus, full replacement value is not payable. Some carrier bankruptcy situations also can lead to the inequitable treatment of claimants. For instance, if the military department is unable to pay full replacement value (FRV), the claimant may have to wait years to resolve the bankruptcy. While Department of Defense contracts require cargo liability insurance to cover losses in the event of bankruptcy, certain proceedings in the bankruptcy court often must be exhausted before a claim can be made against the cargo insurance. New subsection (1) of section 2740 of title 10, United States Code, would address this problem by authorizing the payment of full replacement value.

In addition, when more than one service provider is involved in the shipment, sometimes no one can determine when the damage to the household goods occurred. For example, when a transportation service provider, other than the warehouse that stored the goods, delivers goods out of long-term storage, there is often a dispute between the transportation service providers and the storage facility as to which of them is liable for the damage. Our members should not have to pursue separate claims against two different contractors, each of which blames the other for all or part of the loss. The military department claims offices are better situated and have greater leverage to deal with carrier disputes than the individual service member. New subsection (3)

would address this problem by authorizing the Secretary concerned to pay the member the full replacement value for any losses; then the military claims offices could obtain reimbursement from the various contractors, using the same process they currently use to recover from the transportation service providers.

Overall, this proposal would authorize the Secretary of Defense and the Secretaries of the military departments to provide claims coverage for full replacement value in those limited instances where coverage cannot be provided pursuant to the contract with a transportation service provider due to intervening causes that excuse payment; where multiple transportation or service providers make liability determinations difficult; or where use of Department of Defense assets or contracts for part of the transportation would negate such coverage.

Budget Implications:

NUMBER OF PERSONNEL AFFECTED								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation To**	**Personnel Type (Officer, Enlisted, or Civilian)**
Army	0	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	0	N/A	N/A
*Marine Corps	0	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0	0		

RESOURCE REQUIREMENTS ($THOUSANDS)									
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	+247	+247	+247	+247	+247	+247	O&M, Army – 2020A	04	431
Navy	+246	+246	+246	+246	+246	+246	O&M, Navy – 1804N	04	4A1M
*Marine Corps	*	*	*	*	*	*	*	*	*

Coast Guard	+0	+0	+0	+0	+0	+0			
Air Force	+120	+120	+120	+120	+120	+120	O&M, Air Force – 3400	04	042A
Total	+613	+613	+613	+613	+613	+613			

* Marine Corps claims costs are paid out of Navy.

Costing Methodology (USTRANSCOM): All Service Claims Chiefs indicate this item is fully funded in their budgets should the proposal be enacted. The most likely occurrence of a sealift loss that would trigger Service payment of household goods claims is during a hurricane. The only relevant figures the Services could provide related to Hurricane Katrina damages. The delta between amount claimed versus amount paid does not reflect what would be paid under Full Replacement Value, but we have used the larger numbers from the Services averaged over the last three years to arrive at the figures in the chart. Army could not provide accurate data, so the Navy experience with Hurricane Katrina, being the larger amount paid to claimants, was used. Because of the small number of Coast Guard shipments, it was given a value of $1K per year as a placeholder. As Hurricane Katrina was a rare occurrence, DoD believes the actual annual amounts will be de minimus. As the potential for an entire shipload to be lost is always present, it cannot be said there will be no cost. However, budget scoring is not normally applied to potential catastrophic losses.

In those instances where there is a dispute between transportation service providers and other service providers as to who is responsible for the damages to a shipment, the increased claims costs to allowing the military departments to pay the member and recover from the carriers should be negligible as the Service claims offices should be able to recover the entire amount paid to the member of the Full Replacement Value claim.

Changes to Existing Law: This section would add a new section 2740 to title 10, United States Code:

§ 2740. Property loss: reimbursement of members and civilian employees for full replacement value of household effects when contractor reimbursement not available

The Secretary of Defense and the Secretaries of the military departments, in paying a claim under section 3721 of title 31 arising from loss or damage to household goods stored or transported at the expense of the Department of Defense, may pay the claim on the basis of full replacement value in any of the following cases in which reimbursement for the full replacement value for the loss or damage is not available directly from a carrier under section 2636a of this title:

(1) A case in which—

(A) the lost or damaged goods were stored or transported under a contract, tender, or solicitation in accordance with section 2636a of this title that requires

the transportation service provider to settle claims on the basis of full replacement value; but

(B) the loss or damage occurred under circumstances that exclude the transportation service provider from liability.

(2) A case in which—

(A) the loss or damage occurred while the lost or damaged goods were in the possession of an ocean carrier that was transporting, loading, or unloading the goods under a Department of Defense contract for ocean carriage; and

(B) the land-based portions of the transportation were under contracts, in accordance with section 2636a of this title, that require the land carriers to settle claims on the basis of full replacement value.

(3) A case in which—

(A) the lost or damaged goods were transported or stored under a contract or solicitation that requires at least one of the transportation service providers or carriers that handled the shipment to settle claims on the basis of full replacement value pursuant to section 2636a of this title;

(B) the lost or damaged goods have been in the custody of more than one independent contractor or transportation service provider; and

(C) a claim submitted to the delivering transportation service provider or carrier is denied in whole or in part because the loss or damage occurred while the lost or damaged goods were in the custody of a prior transportation service provider or carrier or government entity.

Section 1002 would amend section 2208(r)(1) of title 10, United States Code, by deleting provisions which effectively require the submission of a prior approval reprogramming action to Congress before funds may be transferred from or between working capital funds. Instead, this proposal would provide that a simple notification of a proposed transfer of funds could be made prior to transferring funds from a working capital fund. This would make title 10 provisions governing transfers of funds from or between working capital funds consistent with the annual recurring Department of Defense Appropriations Act general provision, which provides the authority for making such transfers.

The authority for making transfers from and between working capital funds is contained in an annual recurring general provision of the appropriations act. Under the general provision such transfers "may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer." This is a simple notification requirement, which does not require the use of extensive and lengthy prior approval reprogramming procedures. Until the enactment of the amendment to section 2208, which was made by section 1009 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005, such notification normally provided 5

days notice of a transfer. Under the current version of subsection (r) of section 2208 transfers may not be made unless the Secretary of Defense submits an advance notification "in accordance with customary procedures." The history of the general provision indicates that these customary procedures are to be "prior approval reprogramming requests...to the congressional defense committees."

The FY 2005 Authorization Act amendment to section 2208 of title 10 effectively requiring the use of prior approval reprogramming requests before a transfer could be made from or between working capital funds removed an essential tool that fund managers had used to respond to changing cash balances in "real time" when necessary. Such "real time" responses are no longer possible because, instead of the approximate 5-day time frame that existed previously for the processing of simple notifications under the Appropriations Act general provision, a prior approval reprogramming can take several months to process. This effectively makes it impossible to use an important emergency tool of defense cash management.

Defense working capital funds must maintain positive cash balances to avoid violating the Anti-Deficiency Act. At the same time, the cash balances in such funds may not exceed the amounts necessary at any time for cash disbursements to be made from such funds. As a result, working capital funds do not have large surplus funds available to meet unanticipated requirements. For instance, fuel volatility in recent years has threatened cash solvency. Possible future decreases in the level of wartime operations unrelated to fuel may also stress cash balances. This did occur after the first Gulf War and the effective response was managed through prompt fund transfers under the then-existing law, which, as indicated, required only simple notification to the congressional defense committees. Such a response would not be possible under the current provisions of section 2208.

The need to occasionally adjust cash balances between funds within the Defense Working Capital Funds is long recognized. Prompt action, as was authorized before this legislation became effective, can be essential to solvency. Solvency is important to smooth operation of these funds that directly support military readiness. If a fund were to go insolvent, it would be required to stop operations and logistics operations that are currently directly involved in supporting the warfighter.

This proposal would return an element of flexibility to the operation of working capital funds so that they could respond quickly, as required, to emergency cash situations that might arise in the military departments and Defense Agencies. All businesses must have the ability to respond quickly and effectively to unanticipated demands with respect to solvency and this proposal would enhance this ability for the working capital funds of the Department of Defense. At the same time it would not have an adverse effect on congressional oversight of the use of funds. As indicated, prior to FY 2005 the Department provided notification of funds transfers from working capital funds to the congressional defense committees; however, it was not necessary to utilize a prior approval reprogramming in order to do so.

The working capital funds must be flexible and responsive both to customer demands within a business-like structure and to unanticipated financial demands. Recent volatile prices for fuel and other working capital fund commodities can demand quick fixes as problems present

themselves. In addition, the Operation and Maintenance accounts of the Army and Marine Corps are spread thin by the continuing Global War on Terror, and working capital funds are an avenue available to the Department for temporary resolution of their problems. It is in no way anticipated that this authority would be used except very occasionally in rare circumstances; however, it is quite possible to anticipate situations where the authority to quickly adjust cash balances would become very important. It is for this reason that the amendment is being proposed.

Changes to Existing Law: The proposal would amend section 2208 of title 10, United States Code, as follows:

§ 2208. Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

* * * * * * *

(r) NOTIFICATION OF TRANSFERS.—(1) ~~Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.~~ Whenever the Secretary of Defense proposes to exercise authority provided by law to transfer funds from a working-capital fund, including a transfer to another working-capital fund, such transfer may be made only after the Secretary submits to Congress notice of the proposed transfer and a period of five days has passed from the date of the notification.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

Section 1003 would repeal section 226 of title 10, United States Code. That section requires the Director of the Office of Management and Budget (OMB) and the Director of the Congressional Budget Office (CBO) to provide Congress with a joint report, no later than April 1 of each year, containing an agreed-upon resolution of all differences between the technical assumptions used by OMB and CBO in preparing the estimates with respect to all accounts in function 050 (national defense) for the budget to be submitted to Congress in the following year. If the two Directors are unable to agree upon any technical assumption, the report reflects the use of averages of the relevant account rates used by the two offices.

This report is unnecessary because it largely duplicates information already provided in the President's Budget. Furthermore, OMB and CBO already work together to reconcile outlay estimates and regularly alert Congress to where outlay estimates differ.

Subtitle B—Naval Vessels and Shipyards

Section 1011 would amend section 7307 of title 10, United States Code (section 7307), by increasing, from 3,000 to 6,000 tons, the displacement criterion that requires legislative authority to transfer former United States naval vessels to allied and friendly navies. The age criterion (less than twenty years of age) remains intact and is not changed by this proposal. Raising the displacement threshold to 6,000 tons will allow for the transfer of the OLIVER HAZARD PERRY Class (FFG 7) frigates and the NEWPORT Class (LST) amphibious tank landing ships. This change would still preserve the requirement for specific legislation to transfer submarines and larger surface ships. Since 1994, with specific Congressional approval for each ship, the Navy has transferred 16 FFG 7 class frigates and 13 LST 1179 class amphibious ships. Authorizing a higher tonnage threshold would obviate the need for separate Congressional approvals, would reduce Navy resources needed to support this annual legislative process, and would facilitate the timely, cost-effective transfer of 29 FFG 7 class frigates and up to four LST 1179 class ships to as many as 10 allied and friendly navies.

Public Law 94-457, enacted Oct. 5, 1976, amended section 7307 by increasing the displacement threshold from 2,000 to 3,000 tons. The supporting rationale provided by then-Secretary of the Navy Middendorf was that most of the older U.S. Navy ships that would be "useful to foreign countries" were in the range of 2,000 to 3,000 tons, and that raising the threshold would therefore facilitate more efficient transfers. Raising the displacement threshold now to 6,000 tons will preserve the requirement for specific legislation to transfer submarines and larger surface ships, including aircraft carriers and heavier amphibious ships, while streamlining the process for the prospective transfer of 29 FFG 7 class frigates between 2012 and 2019 and four LST 1179 class amphibious ships. The continued requirement to obtain legislative authority to transfer larger ships and those less than twenty years of age maintains important safeguards with respect to the most valuable and sensitive ships in the Fleet. The transfer of vessels not subject to subsection (a) of section 7307 – i.e., ships twenty years of age or older and ships with a displacement of 6,000 tons or less – will continue to require written notification to the Senate and House Armed Services Committees thirty days in advance, pursuant to subsection (b). The notification process occurs just prior to the ship being formally offered to the prospective purchaser and thus provides a more timely basis for consideration than the annual legislation, which is typically introduced years prior. In addition to the 30-day notification, Congress will continue to receive pertinent information through the Report to Congress on the Annual Long Range Plan for Construction of Naval Vessels and other program-specific notification requirements.

This proposal provides for a more efficient process, and will result in increased FFG 7 class transfer opportunities that will generate significant revenue, provide strategic interoperability with allies, and further foreign-policy initiatives of the United States. Of

particular importance is the ability to effectively plan and execute "hot" ship transfers, whereby title transfer occurs coincident with decommissioning by the U.S. Navy.

"Hot" transfer of the FFG 7 class frigates is estimated to save the U.S. Navy approximately $1.6 million per ship in inactivation costs and $60,000 per ship per year in storage costs. "Hot" ship transfers are advantageous both to the United States and foreign governments, because the U.S. Navy avoids significant ship deactivation and storage costs, and the purchasing navy obtains a ship in better condition. If the opportunity is missed, unprogrammed costs to the U.S. Navy result due to the costs related to inactivating the ship's systems, preparing the ship for storage and maintaining the ship in storage until alternate disposition can be made. Additionally, "hot" ship transfers benefit the foreign crew due to the opportunity to train alongside the U.S. Navy counterparts and learn how to effectively operate the ship prior to the ship transfer. It also promotes interoperability with the U.S. Navy Fleet. While the foreign crew would still receive training as a result of the ship transfer program, if the ship transfer is not immediate, the foreign crew will not get the joint training opportunity that is available with an immediate transfer, which is considered superior training. Additionally, the new foreign owner of the ship is able to avoid the costs related to "un-doing" the U.S. Navy's preparations of the ship for storage required to put the ship into the inactive fleet and to avoid the costs of correcting deterioration that occurs with storage. Adoption of this proposal will allow prospective purchasers to plan, budget, and ensure maximum exploitation of ship transfer opportunities. Also, in situations where ships are declined by the intended recipient country, or cannot be offered due to impediments in the notification process, adoption of this legislative proposal will allow timely reallocation to other prospective purchasers thus preserving "hot" ship transfer opportunities.

At present, should the passage of a ship transfer bill be delayed, the U.S. Navy must either proceed with inactivating the ship in order to maintain the planned decommissioning date, or keep the ship in service longer awaiting the passage of the ship transfer legislation. Either option results in unprogrammed costs that adversely impact the operations and maintenance budgets of the Fleet and cause an inability for prospective customers to plan and budget for purchase of the ships. This can also result in the loss of prospective customers or reduction of the purchase price.

Congressional consideration of this proposal in FY 2011 is necessary to support the "hot" transfer of three FFGs (FFG 28, 29, and 32) in FY 2012 and to save the projected $4.8 million in inactivation costs. Transfers require a two year planning process, including working with the prospective customers to arrange for a "hot" ship transfer. As this proposal is intended to be included in the FY 2011 National Defense Authorization Act (NDAA), the Navy must, in parallel, request that specific authorization to transfer these three ships be granted. Without approval of this legislative proposal, this scenario can be expected to repeat itself and jeopardize hot ship transfer of all remaining FFG-7 class ships.

Budget Implications: From fiscal years (FYs) 2012 through 2019, the Navy expects to retire the remaining 29 PERRY (FFG 7) Class frigates. Given the strong international interest in these vessels, efficient Foreign Military Sales (FMS) transfer of these frigates is likely to generate an additional $1-$2 billion in revenue, the major portion of which will create workload in U.S. industrial facilities (shipyards). Once the ship is transferred, one FFG 7 class frigate would

generate approximately seventy work-years of U.S. shipyard labor and could generate as much as $20-$25 million in receipts to the U.S. Treasury, depending on condition-based ship pricing and the method of transfer (grant or sale). These revenues are anticipated but are too speculative to include in the Navy's budget submission for FY 2011-FY 2016.

Under this proposal, the U.S. Navy expects to maximize the ability to effect "hot" ship transfers of the FFGs, which is estimated to save the U.S. approximately $1.6 million per ship in inactivation costs and $60,000 per ship per year in storage and maintenance costs. These savings are reflected in the Navy's budget submission for FY 2011-FY 2016 in that the budget reflects projected transfers in the planned years, which would result in this cost avoidance and therefore the costs are not budgeted.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
FFG 7 Inact	0	4.80	8.00	12.80	11.20	O&MN	BA2	22G10
FFG 7 Maint	0	0.180	0.48	0.96	1.38	O&MN	BA2	22G30
LST Maint	0.12	0.24	0.24	0.24	0.24	O&MN	BA2	22G30
Total	0.12	5.22	8.72	14.00	12.82			

Changes to Existing Law: This proposal would make the following changes to section 7307 of title 10, United States Code:

§ 7307. Disposal to foreign nations

(a) Larger or newer vessels.—A naval vessel that is in excess of ~~3,000~~ **6,000** tons or that is less than 20 years of age may not be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) unless the disposal of that vessel, or of a vessel of the class of that vessel, is authorized by law enacted after August 5, 1974. A lease or loan of such a vessel under such a law may be made only in accordance with the provisions of chapter 6 of the Arms Export Control Act (*22 U.S.C. 2796* et seq.) or chapter 2 of part II of the Foreign Assistance Act of 1961 (*22 U.S.C. 2311* et seq.). In the case of an authorization by law for the disposal of such a vessel that names a specific vessel as being authorized for such disposal, the Secretary of Defense may substitute another vessel of the same class, if the vessel substituted has virtually identical capabilities as the named vessel. In the case of an authorization by law for the disposal of vessels of a specified class, the Secretary may dispose of vessels of that class pursuant to that authorization only in the number of such vessels specified in that law as being authorized for disposal.

(b) Other vessels.—(1) A naval vessel not subject to subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after--

(A) the Secretary of the Navy notifies the Committee on Armed Services of the Senate and the Committee on

Armed Services of the House of Representatives in writing of the proposed disposition; and

(B) 30 days of continuous session of Congress have expired following the date on which such notice is sent to those committees.

(2) For purposes of paragraph (1)(B), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 30-day period.

Section 1012. As commodity prices for scrap metal have increased substantially in recent years, the scrap value of a ship designated for dismantling may exceed the sum of the contractor's costs of towing, facilities, hazardous material abatement and disposal, structural dismantling, scrap metal processing, and scrap metal sales, resulting in a net positive scrap value of the ship. This proposal would clarify that the authority in section 7305 of title 10 United States Code, to sell vessels stricken from the Naval Vessel Register includes the authority to sell such vessels for dismantling, rather than enter into contracts for dismantling services under section 7305a of title 10. This would allow the Navy to avoid the cost of dismantling such vessels, taking advantage of high scrap-metal commodity prices to attract prospective purchasers.

The proposal also would eliminate the requirement that vessels subject to sale under section 7305 be appraised. Accurately appraising the sales value of a ship to be sold for dismantling is difficult because such transactions are influenced by changing scrap-metal commodity prices, the length and cost of the tow to the successful bidder's facility, and the amount of other work in a contractor's facility to which fixed facility costs can be allocated. Thus, the market is the best mechanism to determine the value of the vessels under competitive sales authorized by section 7305(b)(2)(A).

In addition, this proposal would amend section 7305(b)(3) to replace the requirement to advertise a vessel sale in Commerce Business Daily, which no longer exists, with a requirement to instead advertise a vessel sale in FedBizOpps.com or through another method of public advertising (e.g., the web site of the Defense Reutilization and Marketing Service).

New subsection (b)(4) of section 7305 would clarify the authority of the Navy to retain title and ownership of the ship to be sold for dismantling, while the title to scrap and reusable items may be transferred to the contractor as the material is removed during the dismantling process. This would permit the Secretary of the Navy to allow the dismantling contractor to retain the cash proceeds from the sale of scrap and reusable items generated from ship dismantling to offset the contractor's cost of towing, facilities, hazardous material abatement and disposal, structural dismantling, scrap metal processing, and scrap metal sales. This authority is central to the economic equation that allows contractors to finance an offer under a sales contract to dismantle a Navy vessel.

Under generally applicable provisions of title 31, United States Code, the Navy will be required to deposit the sales proceeds from a sales contract to dismantle a vessel to the miscellaneous receipts account of the U.S. Treasury.

New subsection (d) of section 7305 would define "scrap" and "reusable items" in a way that is similar to how those terms are defined in section 7305a of title 10.

Nothing in this proposal would alter the requirements of 40 U.S.C. 548, which provides that the Maritime Administration is the agency responsible for disposing of surplus merchant vessels, or vessels capable of conversion to merchant use, weighing 1,500 gross tons or more, including such vessels stricken from the Naval Vessel Register.

Finally, it should be noted that the Navy would maintain the authority to choose to dispose of a vessel by any available method that is most advantageous to the Navy and that nothing in section 7305 as amended would establish a preference for the dismantling of a vessel stricken from the Naval Vessel Register in lieu of other authorized uses of such vessel, including the transfer of the vessel for use as an artificial reef, sale, donation, or other disposal of the vessel under chapter 633 of title 10, or other applicable authority

Budget Implications: The Department of Defense expects this proposal to generate $11.5 million in sales proceeds revenue from sales contracts to dismantle AS 33, AS 36, AS 41, CG 48, CG 49, CG 51, CV 62 and CV 64 from fiscal year (FY) 2011 through FY 2015. This revenue would be deposited into the U.S. Treasury as miscellaneous receipts; therefore, this proposal would not generate any resource implications for the Department. The estimate is based on the actual proceeds received by the Maritime Administration in 2008 from the sale for dismantling five former Navy auxiliary ships previously transferred from Navy to the Maritime Administration. However, actual proceeds would depend on the state of the economy and the influence of supply and demand on scrap metal commodity prices. Non-economic factors, such as the length of tow and the cost of compliance with environmental and occupational safety regulations, also would have an impact on the sales price and the amount of proceeds from ship dismantling. Depending on these economic and non-economic factors, the Secretary of the Navy could select the most economic method of ship disposal authorized by law.

Changes to Existing Law: This proposal would make the following changes to section 7305 of title 10, United States Code:

§ 7305. Vessels stricken from Naval Vessel Register: sale

~~(a) APPRAISAL OF VESSELS STRICKEN FROM NAVAL VESSEL REGISTER.—The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register under section 7304 of this title.~~

~~(b)~~(a) AUTHORITY TO SELL VESSEL.—If the Secretary of the Navy considers that the sale of ~~the~~ a vessel stricken from the Naval Vessel Register under section 7304 of this title is in the national interest, the Secretary may sell the vessel. Any such sale shall be in accordance with regulations prescribed by the Secretary for the purposes of this section. This sales authority includes the authority to enter into a sales contract for dismantling the vessel.

~~(c)~~(b) PROCEDURES FOR SALE.—(1) A vessel stricken from the Naval Vessel Register ~~and not subject to disposal under any other law~~, unless another method of disposal is required by law, may be sold under this section.

(2) In such a case, the Secretary may—

(A) sell the vessel to the highest acceptable bidder~~, regardless of the appraised value of the vessel,~~ after publicly advertising the sale of the vessel for a period of not less than 30 days; or

(B) subject to paragraph (3), sell the vessel by competitive negotiation to the acceptable offeror who submits the offer that is most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(3) Before entering into negotiations to sell a vessel under paragraph (2)(B), the Secretary shall publish notice of the intention to do so in ~~Commerce Business Daily~~ the FedBizOpps.com or through another method of public advertising sufficiently in advance of initiating the negotiations that all interested parties are given a reasonable opportunity to prepare and submit proposals. The Secretary shall afford an opportunity to participate in the negotiations to all acceptable offerors submitting proposals that the Secretary considers as having the potential to be the most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(4) When the Secretary enters into a sales contract for the dismantling of a vessel, the United States shall retain title and ownership of the vessel, but may transfer title to scrap and reusable items to the contractor upon their removal from the vessel as part of the dismantling process.

~~(d)~~(c) APPLICABILITY.—This section does not apply to a vessel the disposal of which is authorized by subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), if it is to be disposed of under subtitle I of title 40 and such title III.

(d) DEFINITIONS.—In this section:

(1) The term "scrap" means personal property that has no value except for its basic material content.

(2) The term "reusable items" means demilitarized components or removable portions of a vessel or equipment that the Secretary of the Navy has identified as excess to the needs of the Navy, but which have potential resale value on the open market.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 has been a recurring provision for the last several years and is an extension for one additional year of the authority currently provided through calendar year 2010 in section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year (FY) 2009 (NDAA), as amended by section 1106 of the FY 2010 NDAA. The authority under that section is similar to that provided in the NDAAs for FY 2006, 2007, 2008 and 2009. It would continue to provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in an overseas location that is in the area of responsibility (AOR) of the Commander of the United States Central Command (USCENTCOM) or an overseas location formerly in the area of responsibility of the Commander, USCENTCOM AOR but has been moved to the AOR of the Commander, United States Africa Command, and is in direct support of, or directly related to, a military operation or an operation in response to a national emergency as declared by the President.

Under current law (section 5547 of title 5, United States Code (U.S.C.)) premium pay may be paid to a Federal civilian employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. As an exception to this limitation, an employee who performs work in connection with an emergency that involves a direct threat to life or property, or work that is critical to the mission of an agency, may be paid premium pay to the extent that the aggregate of basic pay and premium pay would not, in any calendar year, exceed the greater of the maximum rate of basic pay payable for GS-15 (as adjusted for locality), or the rate payable for Level V of the Executive Schedule, in effect at the end of such calendar year.

Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2011, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

Budget Implications: The Department estimates this proposal would cost $4.3 million for FY 2011. This would be funded from the Component and Defense Activity operation and maintenance fund accounts.

This annual limitation language goes with the base budget since the baseline civilian funding and personnel go with that budget. However, the limitation relief is for those people who are deployed with regard to the Overseas Contingency Operations (OCO) in Iraq and Afghanistan. Therefore, there are no funding offsets for this proposal because it has no effect on the baseline budget. The funding is requested in the military departments' Operation and Maintenance OCO budgets by cost breakdown structure category. The number affected of personnel affected in FY 2009 was 5,101. The number of affected personnel Defense-wide in FY 2011 is estimated to be the same.

RESOURCE REQUIREMENTS ($MILLIONS)				
	FY 2011	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army	$1.2	O&M, Army	BA1	OCO-Civ Pay
Navy	$1.0	O&M, Navy	BA1	OCO-Civ Pay
USMC	$0.6	O&M, MC	BA1	OCO-Civ Pay
Air Force	$1.0	O&M, Air Force	BA1	OCO-Civ Pay
Defense Wide	$0.5	O&M, DW	BA3	OCO-Civ Pay
Total	$4.3	-	-	

Cost Methodology: The cost of this proposal will be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for

eligible employees in 2009, the additional cost for overtime in excess of the annual premium pay limitation was approximately $4.3 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs three years from now, but the above scenario illustrates the potential impact.

Changes to Existing Law: This proposal would amend section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615) as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERALCIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During ~~calendar years 2009 and 2010~~calendar year 2011, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

(1) a military operation, including a contingency operation; or

(2) an operation in response to a national emergency declared by the President.

* * * * *

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Section 1201. For almost 50 years, the North Atlantic Treaty Organization (NATO) Codification System (NSC), which is based on United States standards for naming, describing, and numbering items of supply, has served as the cornerstone for interoperability between the U.S. and its NATO Allies. As well, many non-NATO countries that participate in joint exercises and deployments with the U.S. have adopted the NCS system. Facilitating the provision of U.S. cataloging data for materials produced in the U.S. has been and continues to be in the U.S. strategic interest. This especially is true in light of contingency operations that have been and may be initiated in the global war on terrorism.

Currently, the U.S. may provide cataloging data and services to NATO and the member governments on a reciprocal basis. As to non-NATO countries, the U.S. may provide such services on a no-cost, reciprocal basis to Australia, Japan, Israel, and New Zealand. This proposal would extend the President's authority to provide no-cost, reciprocal cataloging services to the non-NATO countries of Austria, Brazil, Finland, and Singapore.

Austria, Brazil, Finland, and Singapore are sponsored non-NATO nations that have a codification system that has been certified by NATO as fully compliant with NCS procedures.

By NATO policy, these countries must provide the same cataloging of data and services to NATO member nations without charge. The United States, however, must charge for these same services. Enactment of the proposal would place these countries on an equal basis with our other Allies.

Providing these services on a no-cost, reciprocal basis to the additional countries also would facilitate the adoption and growth of NCS standards, enhance development of a common language for logistics, and further interoperability of parts.

Budget Implications: The proposal has no budgetary impact as the activities authorized by this section are conducted on a reciprocal basis.

Changes to Existing Law: This proposal would make the following changes to section 21 of the Arms Export Control Act (22 U.S.C. 2761):

SALES FROM STOCKS

Sec. 21. (a)(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(A) in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;

(B) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

(C) in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 or to any high-income foreign country (as described in that chapter), only those additional costs that are incurred by the United States Government in furnishing such assistance.

(2) For purposes of subparagraph (A) of paragraph (1), the actual value of a naval vessel of 3,000 tons or less and 20 years or more of age shall be considered to be not less than the greater of the scrap value or fair value (including conversion costs) of such vessel, as determined by the Secretary of Defense.

* * * * * * * * *

(h)(1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services, and contract audit defense services under this section—

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after October 29, 1979, by, or under this chapter on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization or the

Governments of Australia, New Zealand, Japan, or Israel, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

(B) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services pursuant to the North Atlantic Treaty Organization Security Investment program in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.

(2) In carrying out the objectives of this section, the President is authorized to provide cataloging data and cataloging services, without charge, to the North Atlantic Treaty Organization, to any member of that Organization, or to the Governments of Australia, New Zealand, Japan, **Austria, Brazil, Finland, Singapore,** or Israel if that Organization, member government, or the Governments of Australia, New Zealand, Japan, **Austria, Brazil, Finland, Singapore,** or Israel provides such data and services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government.

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TITLE XIII—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

Section 1301 would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President's Budget for fiscal year 2011.

Section 1302 would authorize appropriations for the National Defense Sealift Fund in the amount equal to the budget authority requested in the President's Budget for fiscal year 2011.

Section 1303 would authorize appropriations for the Defense Coalition Acquisition Fund in the amount equal to the budget authority requested in the President's Budget for fiscal year 2011.

Section 1304 would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011.

Section 1305 would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-Wide in the amount equal to the budget authority requested in the President's Budget for fiscal year 2011.

Section 1306 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011.

Section 1307 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011. In accordance with the provisions of section 1704 of the National Defense Authorization Act for Fiscal Year 2010, within the funds authorized for operation and maintenance under section 404(a)(1), subsection (b) of this section would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

Subtitle B—National Defense Stockpile

Section 1311 would update the text of section 1412 of the National Defense Authorization Act of 1986, codified at 50 U.S.C. 1512, by incorporating into it the several provisions of law that address section 1412 without having actually amended it. Those provisions of law are currently included in the notes to 50 U.S.C. 1521. In addition, this proposal updates the provision to use consistent terminology and reflect updated program management organization. Only "housekeeping" to update this section based on Congressional direction since 1987 has been included; no substantive changes are included.

Most of the subsections are reordered to better organize them.

Subsection (b) of section 1412 is updated to include the most recent Congressional stockpile elimination deadline and eliminate pre-treaty references.

A new subsection (c) on initiation of demilitarization operations is added to incorporate section 152 of P.L. 104-106.

Subsection (d) of section 1412 is slightly modified, also based on section 152 of P.L. 104-106.

Subsection (e) of section 1412 is reformatted to separate the grants and cooperative agreement provisions from the environmental protection provisions in subsection (d).

Subsection (g) of section 1412 is updated to reflect the differences in responsibility for the Army versus the DoD's Assembled Chemical Weapons Alternative (ACWA) Program in Kentucky and Colorado. These updates incorporate section 142 of P.L. 105-261, as amended by P.L. 106-398, and section 8122 of P.L. 107-248.

The original subsection (i) concerning first use of chemical weapons is deleted as inconsistent with the Chemical Weapons Convention to "never under any circumstances" use chemical weapons.

Subsection (j) is added to section 1412 to reflect recent requirements for a semiannual report on the acceleration options for the program as directed by section 922 of P.L. 110-181 and section 8119 of P.L. 110-116. This section also consolidates these two reporting requirements.

The original subsection (k) concerning operational verification at Johnston Atoll is deleted as this operational verification has already occurred.

A new subsection (l) is added to section 1412 to incorporate the surveillance and assessment program requirements for the stockpile provided for in section 125 of P.L. 100-180.

A new subsection (m) is added to section 1412 on the chemical demilitarization citizens advisory commissions. This provision is based on section 172 of P.L. 102-484, as amended. Slight modifications are made to merge the Army and DoD/ACWA responsibilities and to avoid duplication of similar provisions.

A new subsection (n) is added to section 1412 on the incentive clauses in chemical demilitarization contracts identified in section 923 of P.L. 109-364.

A new definition is added to subsection (o) to define the term "Chemical Weapons Convention". The definition is incorporated from section 8119 of P.L. 110-116.

Changes to Existing Law: Changes to existing law that would be made by this proposal are shown below.

SEC. 1412. DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a**)** IN GENERAL**.**—Notwithstanding any other provision of law, the Secretary of Defense (hereinafter in this section referred to as the "Secretary") shall, in accordance with the provisions of this section, carry out the destruction of the United States' stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

(b) DATE FOR COMPLETION.—(1) Except as provided by ~~paragraphs (2) and (3)~~ paragraph (2), the destruction of such stockpile, including those agents and munitions stored at Blue Grass Army Depot, Kentucky, and Pueblo Chemical Depot, Colorado, shall be completed by the stockpile elimination deadline.

~~(2) If a treaty banning the possession of chemical agents and munitions is ratified by the United States, the date for completing the destruction of the United States' stockpile of such agents and munitions shall be the date established by such treaty.~~

(~~3~~2) (A) In the event of a declaration of war by the Congress or of a national emergency by the President or the Congress or if the Secretary of Defense determines that there has been a significant delay in the acquisition of an adequate number of binary chemical weapons to meet the requirements of the Armed Forces (as defined by the Joint Chiefs of Staff as of September 30, 1985), the Secretary may defer, beyond the stockpile elimination deadline, the destruction of not more than 10 percent of the stockpile described in subsection (a)(1).

(B) The Secretary shall transmit written notice to the Congress of any deferral made under subparagraph (A) not later than the earlier of (A) 30 days after the date on which the decision to defer is made, or (B) 30 days before the stockpile elimination deadline.

(43) If the Secretary determines at any time that there will be a delay in meeting the requirement in paragraph (1) for the completion of the destruction of chemical weapons by the stockpile elimination deadline, the Secretary shall immediately notify the Committee on Armed

Services of the Senate and the Committee on Armed Services of the House of Representatives of that projected delay.

(~~5~~4) For purposes of this section, the term "stockpile elimination deadline" means ~~December 31, 2004~~ the deadline established by the Chemical Weapons Convention, and in no circumstances later than December 31, 2017.

(c) INITIATION OF DEMILITARIZATION OPERATIONS.—The Secretary of Defense may not initiate destruction of the chemical munitions stockpile stored at a site until the following support measures are in place:

(1) Support measures that are required by Department of Defense and Army chemical surety and security program regulations.

(2) Support measures that are required by the general and site chemical munitions demilitarization plans specific to that installation.

(3) Support measures that are required by the permits required by the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.) for chemical munitions demilitarization operations at that installation, as approved by the appropriate State regulatory agencies.

(~~c~~d) ENVIRONMENTAL PROTECTION AND USE OF FACILITIES.—(1) In carrying out the requirement of subsection (a), the Secretary shall provide for—

(A) maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions referred to in subsection (a), including but not limited to the use of technologies and procedures that will minimize the risk to the public at each site; and

(B) adequate and safe facilities designed solely for the destruction of lethal chemical agents and munitions.

(2) Facilities constructed to carry out this section shall, when no longer needed for the purposes for which they were constructed, be disposed of in accordance with applicable laws and regulations and mutual agreements between the Secretary of the Army and the Governor of the State in which the facility is located.

(3) (A) Facilities constructed to carry out this section may not be used for a purpose other than the destruction of the stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

(B) The prohibition in subparagraph (A) shall not apply with respect to items designated by the Secretary of Defense as lethal chemical agents, munitions, or related materials after November 8, 1985, if the State in which a destruction facility is located issues the appropriate permit or permits for the destruction of such items at the facility.

(e) GRANTS AND COOPERATIVE AGREEMENTS.~~—~~

(~~4~~1)(A) In order to carry out ~~subparagraph (A) of paragraph (1)~~ subsection (d)(1)(A), the Secretary may make grants to State and local governments and to tribal organizations (either directly or through the Federal Emergency Management Agency) to assist those governments and tribal organizations in carrying out functions relating to emergency preparedness and response in connection with the disposal of the lethal chemical agents and munitions referred to in subsection (a). Funds available to the Department of Defense for the purpose of carrying out this section may be used for such grants.

(B) Additionally, the Secretary may provide funds through cooperative agreements with State and local governments, and with tribal organizations, for the purpose of assisting them in processing, approving, and overseeing permits and licenses necessary for the construction and

operation of facilities to carry out this section. The Secretary shall ensure that funds provided through such a cooperative agreement are used only for the purpose set forth in the preceding sentence.

(C) In this paragraph, the term "tribal organization" has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

(~~5~~2)(A) In coordination with the Secretary of the Army and in accordance with agreements between the Secretary of the Army and the ~~Director~~ Administrator of the Federal Emergency Management Agency, the ~~Director~~ Administrator shall carry out a program to provide assistance to State and local governments in developing capabilities to respond to emergencies involving risks to the public health or safety within their jurisdictions that are identified by the Secretary as being risks resulting from—

(i) the storage of lethal chemical agents and munitions referred to in subsection (a) at military installations in the continental United States; or

(ii) the destruction of such agents and munitions at facilities referred to in ~~paragraph (1)(B)~~ subsection (d)(1)(B).

(B) Assistance may be provided under this paragraph for capabilities to respond to emergencies involving an installation or facility as described in subparagraph (A) until the earlier of the following:

(i) The date of the completion of all grants and cooperative agreements with respect to the installation or facility for purposes of this paragraph between the Federal Emergency Management Agency and the State and local governments concerned.

(ii) The date that is 180 days after the date of the completion of the destruction of lethal chemical agents and munitions at the installation or facility.

(C) Not later than December 15 of each year, the ~~Director~~ Administrator shall transmit a report to Congress on the activities carried out under this paragraph during the fiscal year preceding the fiscal year in which the report is submitted.

(~~d~~f) REQUIREMENT FOR STRATEGIC PLAN.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of the Army shall jointly prepare, and from time to time shall update as appropriate, a strategic plan for future activities for destruction of the United States' stockpile of lethal chemical agents and munitions.

(2) The plan shall include, at a minimum, the following considerations:

(A) Realistic budgeting for stockpile destruction and related support programs.

(B) Contingency planning for foreseeable or anticipated problems.

(C) A management approach and associated actions that address compliance with the obligations of the United States under the Chemical Weapons Convention treaty and that take full advantage of opportunities to accelerate destruction of the stockpile.

(3) The Secretary of Defense shall each year submit to the Committee on the Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the strategic plan as most recently prepared and updated under paragraph (1). Such submission shall be made each year at the time of the submission to the Congress that year of the President's budget for the next fiscal year.

(~~e~~g) MANAGEMENT ORGANIZATION.—(1) In carrying out this section, the Secretary shall provide for the establishment~~, not later than May 1, 1986,~~ of a management organization within the Department of the Army. ~~(2) Such organization~~ The Secretary of the Army shall be responsible for management of the destruction of agents and munitions ~~under this section~~ at all sites except Blue Grass Army Depot, Kentucky, and Pueblo Chemical Depot, Colorado.

(2) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY, AND PUEBLO DEPOT, COLORADO.—The program manager for the Assembled Chemical Weapons Alternative Program shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Bluegrass Army Depot, Kentucky, and Pueblo Army Depot, Colorado, including management of the pilot-scale facility phase of the alternative technology selected for the destruction of lethal chemical munitions. In performing such management, the program manager shall act independently of the Army program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(3) The Secretary shall designate a general officer or civilian equivalent as the director of the management organization established under paragraph (1). Such officer shall have—

(A) experience in the acquisition, storage, and destruction of chemical agents and munitions; and

(B) outstanding qualifications regarding safety in handling chemical agents and munitions.

(~~f~~h) IDENTIFICATION OF FUNDS.—(1) Funds for carrying out this section, including funds for military construction projects necessary to carry out this section, shall be set forth in the budget of the Department of Defense for any fiscal year as a separate account. Such funds shall not be included in the budget accounts for any military department.

(2) Amounts appropriated to the Secretary for the purpose of carrying out subsection ~~(c)(5)~~ (e) shall be promptly made available to the ~~Director~~ Administrator of the Federal Emergency Management Agency.

(~~g~~i) ~~PERIODIC REPORTS~~ ANNUAL REPORT.—(1) Except as provided by paragraph (3), the Secretary shall transmit, by December 15 of each year, a report to the Congress on the activities carried out under this section during the fiscal year ending on September 30 of the calendar year in which the report is to be made.

(2) Each annual report shall include the following:

(A) A site-by-site description of the construction, equipment, operation, and dismantling of facilities (during the fiscal year for which the report is made) used to carry out the destruction of agents and munitions under this section, including any accidents or other unplanned occurrences associated with such construction and operation.

(B) A site-by-site description of actions taken to assist State and local governments (either directly or through the Federal Emergency Management Agency) in carrying out functions relating to emergency preparedness and response in accordance with subsection ~~(c)(4)~~(e).

(C) An accounting of all funds expended (during such fiscal year) for activities carried out under this section, with a separate accounting for amounts expended for—

(i) the construction of and equipment for facilities used for the destruction of agents and munitions;

(ii) the operation of such facilities;

(iii) the dismantling or other closure of such facilities;

(iv) research and development;

(v) program management;

(vi) travel and associated travel costs for Citizens' Advisory Commissioners under ~~section 172(g) of Public Law 102-484 (50 U.S.C. 1521 note)~~subsection (m)(7); and

(vii) grants to State and local governments to assist those governments in carrying out functions relating to emergency preparedness and response in accordance with subsection ~~(c)(4)~~(e).

(D) An assessment of the safety status and the integrity of the stockpile of lethal chemical agents and munitions subject to this section, including—

(i) an estimate on how much longer that stockpile can continue to be stored safely;

(ii) a site-by-site assessment of the safety of those agents and munitions; and

(iii) a description of the steps taken (to the date of the report) to monitor the safety status of the stockpile and to mitigate any further deterioration of that status.

(3) The Secretary shall transmit the final report under paragraph (1) not later than 120 days following the completion of activities under this section.

(j) SEMIANNUAL REPORTS.—(1) By March 1st and September 1st each year until the year in which the United States completes the destruction of its entire stockpile of chemical weapons under the terms of the Chemical Weapons Convention, the Secretary of Defense shall submit to the members and committees of Congress referred to in paragraph (3) a report on the implementation by the United States of its chemical weapons destruction obligations under the Chemical Weapons Convention.

(2) Each report under paragraph (1) shall include the following:

(A) The anticipated schedule at the time of such report for the completion of destruction of chemical agents, munitions, and material at each chemical weapons demilitarization facility in the United States.

(B) A description of the options and alternatives for accelerating the completion of chemical weapons destruction at each such facility, particularly in time to meet the stockpile elimination deadline.

(C) A description of the funding required to achieve each of the options for destruction described under subparagraph (B), and a detailed life-cycle cost estimate for each of the affected facilities included in each such funding profile.

(D) A description of all actions being taken by the United States to accelerate the destruction of its entire stockpile of chemical weapons, agents, and materiel in order to meet the current destruction deadline under the Chemical Weapons Convention of April 29, 2012, or as soon thereafter as possible.

(3) The members and committees of Congress referred to in this paragraph are—

(A) the majority leader and the minority leader of the Senate, and the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Speaker of the House of Representatives, the majority leader and the minority leader of the House of Representatives, and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(~~h~~k) PROHIBITION ON ACQUIRING CERTAIN LETHAL CHEMICAL AGENTS AND MUNITIONS.—(1) Except as provided in paragraph (2), no agency of the Federal Government may, after November 8, 1985, develop or acquire lethal chemical agents or munitions other than binary chemical weapons.

(2) (A) The Secretary of Defense may acquire any chemical agent or munition at any time for purposes of intelligence analysis.

(B) Chemical agents and munitions may be acquired for research, development, test, and evaluation purposes at any time, but only in quantities needed for such purposes and not in production quantities.

~~(i) REAFFIRMATION OF UNITED STATES POSITION ON FIRST USE OF CHEMICAL AGENTS AND MUNITIONS.~~

~~It is the sense of Congress that the President should publicly reaffirm the position of the United States as set out in the Geneva Protocol of 1925, which the United States ratified with reservations in 1975.~~

(l) SURVEILLANCE AND ASSESSMENT PROGRAM.—The Secretary of Defense shall conduct an ongoing comprehensive program of—

(1) surveillance of the existing United States stockpile of chemical weapons; and

(2) assessment of the condition of the stockpile.

(m) CHEMICAL DEMILITARIZATION CITIZENS' ADVISORY COMMISSIONS.—

(1) ESTABLISHMENT.—(A) The Secretary of the Army shall establish a citizens' commission for each State in which there is a chemical demilitarization facility under Army management.

(B) The Assistant to the Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall establish a chemical demilitarization citizens' commission in Colorado and in Kentucky.

(C) Each such commission shall be known as the "Chemical Demilitarization Citizens' Advisory Commission" for that State.

(2) FUNCTIONS.—(A) The Secretary of the Army, or Department of Defense in Colorado and Kentucky, shall provide for a representative to meet with each commission established under this subsection to receive citizen and State concerns regarding the ongoing program for the disposal of the lethal chemical agents and munitions in the stockpile referred to in subsection (a) at each of the sites with respect to which a commission is established pursuant to paragraph (1).

(B) The Secretary of the Army shall provide for a representative from the Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) to meet with each commission under Army management.

(C) The Assistant to the Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall provide for a representative from the Assistant to meet with the commissions in Colorado and Kentucky.

(3) MEMBERSHIP.—(A) Each commission shall be composed of nine members appointed by the Governor of the State. Seven of such members shall be citizens from the local affected areas in the State; the other two shall be representatives of State government who have direct responsibilities related to the chemical demilitarization program.

(B) For purposes of subsection (a), affected areas are those areas located within a 50-mile radius of a chemical weapons storage site.

(4) CONFLICTS OF INTEREST.—For a period of five years after the termination of any commission, no corporation, partnership, or other organization in which a member of that commission, a spouse of a member of that commission, or a natural or adopted child of a member of that commission has an ownership interest may be awarded—

(A) a contract related to the disposal of lethal chemical agents or munitions in the stockpile referred to in subsection (a); or

(B) a subcontract under such a contract.

(5) CHAIRMAN.—The members of each commission shall designate the chairman of the commission from among the members of the commission.

(6) MEETINGS.—Each commission shall meet with a representative from the Army, or the Office of the Secretary of Defense for the Colorado and Kentucky commissions, upon joint

agreement between the chairman of the commission and that representative. The two parties shall meet not less often than twice a year and may meet more often at their discretion.

(7) PAY AND EXPENSES.—Members of each commission shall receive no pay for their involvement in the activities of their commissions. Funds appropriated for the Chemical Stockpile Demilitarization Program may be used for travel and associated travel costs for Citizens' Advisory Commissioners, when such travel is conducted at the invitation of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) or the invitation of the Deputy Assistant to the Secretary of Defense for Chemical and Biological Defense and Chemical Demilitarization for the Colorado and Kentucky commissions.

(8) TERMINATION OF COMMISSIONS.—Each commission shall be terminated after the closure activities required pursuant to regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) have been completed for the chemical agent destruction facility in the commission's State, or upon the request of the Governor of the commission's State, whichever occurs first.

(n) INCENTIVE CLAUSES IN CHEMICAL DEMILITARIZATION CONTRACTS. —

(1) AUTHORITY TO INCLUDE CLAUSES IN CONTRACTS.—(A) The Secretary of Defense may, for the purpose specified in paragraph (B), authorize the inclusion of an incentives clause in any contract for the destruction of the United States stockpile of lethal chemical agents and munitions carried out pursuant to section (a).

(B) The purpose of a clause referred to in subparagraph (A) is to provide the contractor for a chemical demilitarization facility an incentive to accelerate the safe elimination of the United States chemical weapons stockpile and to reduce the total cost of the Chemical Demilitarization Program by providing incentive payments for the early completion of destruction operations and the closure of such facility.

(2) INCENTIVES CLAUSES.—(A) An incentives clause under this section shall permit the contractor for the chemical demilitarization facility concerned the opportunity to earn incentive payments for the completion of destruction operations and facility closure activities within target incentive ranges specified in such clause.

(B) The maximum incentive payment under an incentives clause with respect to a chemical demilitarization facility may not exceed the following amounts:

(i) In the case of an incentive payment for the completion of destruction operations within the target incentive range specified in such clause, $ 110,000,000.

(ii) In the case of an incentive payment for the completion of facility closure activities within the target incentive range specified in such clause, $ 55,000,000.

(C) An incentives clause in a contract under this section shall specify the target incentive ranges of costs for completion of destruction operations and facility closure activities, respectively, as jointly agreed upon by the contracting officer and the contractor concerned. An incentives clause shall require a proportionate reduction in the maximum incentive payment amounts in the event that the contractor exceeds an agreed-upon target cost if such excess costs are the responsibility of the contractor.

(D) The amount of the incentive payment earned by a contractor for a chemical demilitarization facility under an incentives clause under this section shall be based upon a determination by the Secretary on how early in the target incentive range specified in such clause destruction operations or facility closure activities, as the case may be, are completed.

(E) The provisions of any incentives clause under this subsection shall be consistent with the obligation of the Secretary of Defense under subsection (d)(1)(A), to provide for maximum

protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions.

(F) In negotiating the inclusion of an incentives clause in a contract under this section, the Secretary may include in such clause such additional terms and conditions as the Secretary considers appropriate.

(3) ADDITIONAL LIMITATION ON PAYMENTS.—(A) No payment may be made under an incentives clause under this section unless the Secretary determines that the contractor concerned has satisfactorily performed its duties under such incentives clause.

(B) An incentives clause under this section shall specify that the obligation of the Government to make payment under such incentives clause is subject to the availability of appropriations for that purpose. Amounts appropriated for Chemical Agents and Munitions Destruction, Defense, shall be available for payments under incentives clauses under this subsection.

(~~j~~o) DEFINITIONS**.—**For purposes of this section:

(1) The term "chemical agent and munition" means an agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke and other obscuration materials.

(2) The term "lethal chemical agent and munition" means a chemical agent or munition that is designed to cause death, through its chemical properties, to human beings in field concentrations.

(3) The term "destruction" means, with respect to chemical munitions or agents—

(A) the demolishment of such munitions or agents by incineration or by any other means; or

(B) the dismantling or other disposal of such munitions or agents so as to make them useless for military purposes and harmless to human beings under normal circumstances.

(4) The term "Chemical Weapons Convention" means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, with annexes, done at Paris, January 13, 1993, and entered into force April 29, 1997 (T. Doc. 103-21).

~~(k) OPERATIONAL VERIFICATION.—~~

~~(1) Until the Secretary of the Army successfully completes (through the prove-out work to be conducted at Johnston Atoll) operational verification of the technology to be used for the destruction of live chemical agents and munitions under this section, the Secretary may not conduct any activity for equipment prove out and systems test before live chemical agents are introduced at a facility (other than the Johnston Atoll facility) at which the destruction of chemical agent [agents] and munitions weapons is to take place under this section. The limitation in the preceding sentence shall not apply with respect to the Chemical Agent Munition Disposal System in Tooele, Utah.~~

~~(2) Upon the successful completion of the prove out of the equipment and facility at Johnston Atoll, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report certifying that the prove out is completed.~~

~~(3) If the Secretary determines at any time that there will be a delay in meeting the deadline of December 31, 1990, scheduled by the Department of Defense for completion of the operational verification at Johnston Atoll referred to in paragraph (1), the Secretary shall immediately notify the Committees of that projected delay.~~

Section 125 of the National Defense Authorization Act for Fiscal Years 1988 and 1989

~~SEC. 125. REVISION OF CHEMICAL DEMILITARIZATION PROGRAM~~

~~(a) DEFINITION.—For purposes of this section, the term "chemical stockpile demilitarization program" means the program established by section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), to provide for the destruction of the United States' stockpile of lethal chemical agents and munitions.~~

~~(b) ENVIRONMENTAL PACT STATEMENT.—The Secretary of Defense shall issue the final Programmatic Environmental Impact Statement on the chemical stockpile demilitarization program by January 1, 1988. The Environmental Impact Statement shall be prepared in accordance with all applicable laws.~~

~~(c) DISPOSAL TECHNOLOGIES.—(1) Funds appropriated pursuant to this Act or otherwise made available for fiscal year 1988 for the chemical stockpile demilitarization program may not be obligated for procurement or for an Army military construction project at a military installation or facility inside the continental United States until the Secretary of Defense certifies to Congress in writing that the concept plan under the program includes the following:~~

~~(A) Evaluation of alternate technologies for disposal of the existing stockpile and selection of the technology or technologies to be used for such purpose.~~

~~(B) Full-scale operational verification of the technology or technologies selected for such disposal.~~

~~(C) Maximum protection for public health and the environment.~~

~~(2) The limitation in paragraph (1) shall not apply with respect to the obligation of funds for the technology evaluation or development program.~~

~~(d) ALTERNATIVE CONCEPTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an alternative concept plan for the chemical stockpile demilitarization program. The alternative concept plan shall—~~

~~(1) incorporate the requirements of subsections (b) and (c); and~~

~~(2) specify any revised schedule or revised funding requirement necessary to enable the Secretary to meet the requirements of subsections (b) and (c).~~

~~The alternative concept plan shall be submitted by March 15, 1988.~~

~~(e) SURVEILLANCE AND ASSESSMENT PROGRAM.—The Secretary of Defense shall conduct an ongoing comprehensive program of—~~

~~(1) surveillance of the existing United States stockpile of chemical weapons; and~~

~~(2) assessment of the condition of the stockpile.~~

Sections 172, 174, 175, and 180 of the National Defense Authorization Act for Fiscal Year 1993, as amended

~~SEC. 172. CHEMICAL DEMILITARIZATION CITIZENS ADVISORY COMMISSIONS.~~

~~(a) ESTABLISHMENT.—(1) The Secretary of the Army shall establish a citizens' commission for each State in which there is a low-volume site (as defined in section 180). Each such commission shall be known as the "Chemical Demilitarization Citizens' Advisory Commission" for that State.~~

~~(2) The Secretary shall also establish a Chemical Demilitarization Citizens' Advisory Commission for any State in which there is located a chemical weapons storage site other than a low-volume site, if the establishment of such a commission for such State is requested by the Governor of that State.~~

~~(b) FUNCTIONS.—The Secretary of the Army shall provide for a representative from the Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) to meet with each commission under this section to receive citizen and State concerns regarding the ongoing program of the Army for the disposal of the lethal chemical agents and munitions in the stockpile referred to in section 1412(a)(l) of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521(a)(l)) at each of the sites with respect to which a commission is established pursuant to subsection (a).~~

~~(c) MEMBERSHIP.—Each commission established for a State pursuant to subsection (a) shall be composed of nine members appointed by the Governor of the State. Seven of such members shall be citizens from the local affected areas in the State; the other two shall be representatives of State government who have direct responsibilities related to the chemical demilitarization program.~~

~~(2) For purposes of paragraph (1), affected areas are those areas located within a 50-mile radius of a chemical weapons storage site.~~

~~(d) CONFLICTS OF INTEREST.—For a period of five years after the termination of any commission, no corporation, partnership, or other organization in which a member of that commission, a spouse of a member of that commission, or a natural or adopted child of a member of that commission has an ownership interest may be awarded—~~

~~(1) a contract related to the disposal of lethal chemical agents or munitions in the stockpile referred to in section 1412(a)(1) of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521(a)(l)); or~~

~~(2) a subcontract under such a contract.~~

~~(e) CHAIRMAN.—The members of each commission shall designate the chairman of the commission from among the members of the commission.~~

~~(f) COLORADO AND KENTUCKY CHEMICAL DEMILITARIZATION CITIZENS' ADVISORY COMMISSIONS.—(1) Notwithstanding subsections (b), (g), and (h), and consistent with section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1521 note) and section 8122 of the Department of Defense Appropriations Act, 2003 (Public Law 107–248; 116 Stat. 1566; 50 U.S.C. 1521 note), the Secretary of the Army shall transfer responsibilities for the Chemical Demilitarization Citizens' Advisory Commissions in Colorado and Kentucky to the Program Manager for Assembled Chemical Weapons Alternatives.~~

~~(2) In carrying out the responsibilities transferred under paragraph (1), the Program Manager for Assembled Chemical Weapons Alternatives shall take appropriate actions to ensure that each Commission referred to in paragraph (1) retains the capacity to receive citizen and State concerns regarding the ongoing chemical demilitarization program in the State concerned.~~

(3) A representative of the Office of the Assistant to the Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall meet with each Commission referred to in paragraph (1) not less often than twice a year.

(4) Funds appropriated for the Assembled Chemical Weapons Alternatives Program shall be available for travel and associated travel costs for Commissioners on the Commissions referred to in paragraph (1) when such travel is conducted at the invitation of the Special Assistant for Chemical and Biological Defense and Chemical Demilitarization Programs of the Department of Defense.

(g) MEETINGS.—Each Commission shall meet with a representative from the Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) upon joint agreement between the chairman of the commission and that representative. The two parties shall meet not less often than twice a year and may meet more often at their discretion.

(h) PAY AND EXPENSES.—Members of each commission shall receive no pay for their involvement in the activities of their commissions. Funds appropriated for the Chemical Stockpile Demilitarization Program may be used for travel and associated travel costs for Citizens' Advisory Commissioners, when such travel is conducted at the invitation of the Assistant Secretary of the
Army (Research, Development, and Acquisition).

(h) TERMINATION OF COMISSIONS—Each commission shall be terminated after the closure activities required pursuant to regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) have been completed for the chemical agent destruction facility in the commission's State, or upon the request of the Governor of the commission's State, whichever occurs first.

SEC. 174. ALTERNATIVE DISPOSAL PROCESS FOR LOW-VOLUME SITES.

(a) REQUIREMENT FOR ALTERNATIVE PROCESS.—If the date by which chemical weapons destruction and demilitarization operations can be completed at a low-volume site using an alternative technology process evaluated by the Secretary of the Army falls within the deadline established by the amendment made by section 171 and the Secretary determines that the use of that alternative technology process for the destruction of chemical weapons at that site is significantly safer and equally or more cost-effective than the use of the baseline disassembly and incineration process, then the Secretary of the Army, as part of the requirement of section 1412(a) of Public Law 99-145, shall carry out the disposal of chemical weapons at that site using such alternative technology process. In addition, the Secretary may carry out the disposal of chemical weapons at sites other than low-volume sites using an alternative technology process (rather than the baseline process) after notifying Congress of the Secretary's intent to do so.

(b) APPLICABILITY OF CERTAIN PROVISIONS OF SECTION 1412.—Subsections (c), (e), (f), and (g) of section 1412 of Public Law 99-145 (50 U.S.C. 1521) shall apply to this section and to activities under this section in the same manner as if this section were part of that section 1412.

SEC. 175. REVISED CHEMICAL WEAPONS DISPOSAL CONCEPT PLAN.

(a) REVISED PLAN.—If, pursuant to section 174, the Secretary of the Army is required to implement an alternative technology process for destruction of chemical weapons at any low-volume site, the Secretary shall submit to Congress a revised chemical weapons disposal concept plan incorporating the alternative technology reflecting the revised stockpile disposal schedule section 1412(b) of Public Law 99-145 (50 U.S.C. 1521(b)), as amended by section 171. In

developing the revised plan, the Secretary should consider, to the maximum extent revisions to the program and program schedule that the changes to the chemical demilitarization schedule resulting from the revised stockpile elimination deadline by reducing cost and decreasing program risk.

(b) MATTERS TO BE INCLUDED.—A revised concept plan should include—

(1) life-cycle cost estimates and schedules; and

(2) a description of the facilities and operating procedures to be employed using the alternative technology process.

(c) APPLICABILITY OF CERTAIN PROVISIONS OF SECTION 1412.—Subsection (c) of section 1412 of Public Law 99-145 (50 U.S.C. 1521) shall apply to the revised concept plan in the same manner as if this section were part of that section 1412.

(d) SUBMISSION OF REVISED PLAN.—If the Secretary is required to submit a revised concept plan under this section, the Secretary shall submit the revised concept plan during the 120-day period beginning at the end of the 60-day period following the submission of the report of the Secretary required under section 173.

(e) LIMITATION.—If the Secretary is required to submit a revised concept plan under this section, no funds may be obligated for procurement of equipment or for facilities planning and design activities (other than for those preliminary planning and design activities required to comply with subsection (b)(2)) for a chemical weapons disposal facility at any low-volume site at which the Secretary intends to implement an alternative technology process until the Secretary submits the revised concept plan.

SEC. 180. DEFINITION OF LOW-VOLUME SITE.

For purposes of this subtitle, the term "low-volume site" means one of the three chemical weapons storage sites in the United States at which there is stored 5 percent or less of the total United States stockpile of unitary chemical weapons.

Section 152 of the National Defense Authorization Act for Fiscal Year 1996, as amended

SEC. 152. DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) IN GENERAL.—The Secretary of Defense shall proceed with the program for destruction of the chemical munitions stockpile of the Department of Defense while maintaining the maximum protection of the environment, the general public, and the personnel involved in the actual destruction of the munitions. In carrying out such program, the Secretary shall use technologies and procedures that will minimize the risk to the public at each site.

(b) INITIATION OF DEMILITARIZATION OPERATIONS.—The Secretary of Defense may not initiate destruction of the chemical munitions stockpile stored at a site until the following support measures are in place:

(1) Support measures that are required by Department of Defense and Army chemical surety and security program regulations.

~~(2) Support measures that are required by the general and site chemical munitions demilitarization plans specific to that installation.~~

~~(3) Support measures that are required by the permits required by the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.) for chemical munitions demilitarization operations at that installation, as approved by the appropriate State regulatory agencies.~~

~~(c) ASSESSMENT OF ALTERNATIVES.—(1) The Secretary of Defense shall conduct an assessment of the current chemical demilitarization program and of measures that could be taken to reduce significantly the total cost of the program, while ensuring maximum protection of the general public, the personnel involved in the demilitarization program, and the environment. The measures considered shall be limited to those that would minimize the risk to the public. The assessment shall be conducted without regard to any limitation that would otherwise apply to the conduct of such an assessment under any provision of law.~~

~~(2) The assessment shall be conducted in coordination with the National Research Council.~~

~~(3) Based on the results of the assessment, the Secretary shall develop appropriate recommendations for revision of the chemical demilitarization program.~~

~~(4) Not later than March 1, 1996, the Secretary of Defense shall submit to the congressional defense committees an interim report assessing the current status of the chemical stockpile demilitarization program, including the results of the Army's analysis of the physical and chemical integrity of the stockpile and implications for the chemical demilitarization program, and providing recommendations for revisions to that program that have been included in the budget request of the Department of Defense for fiscal year 1997. The Secretary shall submit to the congressional defense committees with the submission of the budget request of the Department of Defense for fiscal year 1998 a final report on the assessment conducted in accordance with paragraph (1) and recommendations for revision to the program, including an assessment of alternative demilitarization technologies and processes to the baseline incineration process and potential reconfiguration of the stockpile that should be incorporated in the program.~~

~~(d) ASSISTANCE FOR CHEMICAL WEAPONS STOCKPILE COMMUNITIES AFFECTED BY BASE CLOSURE.—(1) The Secretary of Defense shall review and evaluate issues associated with closure and reutilization of Department of Defense facilities co-located with continuing chemical stockpile and chemical demilitarization operations.~~

~~(2) The review shall include the following:~~

~~(A) An analysis of the economic impacts on these communities and the unique reuse problems facing local communities associated with ongoing chemical weapons programs.~~

~~(B) Recommendations of the Secretary on methods for expeditious and cost-effective transfer or lease of these facilities to local communities for reuse by those communities.~~

~~(3) The Secretary shall submit to the congressional defense committees a report on the review and evaluation under this subsection.~~

~~The report shall be submitted not later than 90 days after the date of the enactment of this Act.~~

Section 8065 of the Omnibus Consolidated Appropriations Act, 1997

SEC. 8065. Notwithstanding section 142 of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, as passed by the Senate on September 10, 1996, of the funds provided in title VI of this Act, under the heading "Chemical Agents and Munitions Destruction, Defense", $40,000,000 shall only be available for the conduct of a pilot program to identify and demonstrate not less than two alternatives to the baseline incineration process for the demilitarization of assembled chemical munitions: *Provided*, That the Under Secretary of Defense for Acquisition and Technology shall, not later than December 1, 1996, designate a program manager who is not, nor has been, in direct or immediate control of the baseline reverse assembly incineration demilitarization program to carry out the pilot program: *Provided further*, That the Under Secretary of Defense for Acquisition and Technology shall evaluate the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program to demilitarize munitions and assembled chemical munitions while meeting all applicable Federal and State environmental and safety requirements: *Provided further*, That the Under Secretary of Defense for Acquisition and Technology shall transmit, by December 15 of each year, a report to the congressional defense committees on the activities carried out under the pilot program during the preceding fiscal year in which the report is to be made: *Provided further*, That section 142(f)(3) of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, as passed by the Senate on September 10, 1996, is repealed: *Provided further*, That no funds may be obligated for the construction of a baseline incineration facility at the Lexington Blue Grass Army Depot or the Pueblo Depot activity until 180 days after the Secretary of Defense has submitted to the congressional defense committees a report detailing the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program and its ability to meet the applicable safety and environmental requirements: *Provided further*, That none of the funds in this or any other Act may be obligated for the preparation of studies, assessments, or planning of the removal and transportation of stockpile assembled unitary chemical weapons or neutralized chemical agent to any of the eight chemical weapons storage sites within the continental United States.

Section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, as amended

SEC. 142. ALTERNATIVE TECHNOLOGIES FOR DESTRUCTION OF ASSEMBLED CHEMICAL WEAPONS.

(a) PROGRAM MANAGEMENT.—The program manager for the Assembled Chemical Weapons Assessment shall continue to manage the development and testing (including demonstration and pilotscale testing) of technologies for the destruction of lethal chemical munitions that are potential or demonstrated alternatives to the baseline incineration program. In performing such management, the program manager shall act independently of the program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition and Technology.

(b) POST-DEMONSTRATION ACTIVITIES.—(1) The program manager for the Assembled Chemical Weapons Assessment may carry out those activities necessary to ensure

~~that an alternative technology for the destruction of lethal chemical munitions can be implemented immediately after—~~

~~(A) the technology has been demonstrated to be successful; and~~

~~(B) the Under Secretary of Defense for Acquisition and Technology has submitted a report on the demonstration to Congress that includes a decision to proceed with the pilotscale facility phase for an alternative technology.~~

~~(2) To prepare for the immediate implementation of any such technology, the program manager may, during fiscal years 1998 and 1999, take the following actions:~~

~~(A) Establish program requirements.~~

~~(B) Prepare procurement documentation.~~

~~(C) Develop environmental documentation.~~

~~(D) Identify and prepare to meet public outreach and public participation requirements.~~

~~(E) Prepare to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999.~~

~~(c) INDEPENDENT EVALUATION.—The Under Secretary of Defense for Acquisition and Technology shall provide for an independent evaluation of the cost and schedule of the Assembled Chemical Weapons Assessment, which shall be performed and submitted to the Under Secretary not later than September 30, 1999. The evaluation shall be performed by a nongovernmental organization qualified to make such an evaluation.~~

~~(d) PILOT FACILITIES CONTRACTS.—(1) The Under Secretary of Defense for Acquisition and Technology shall determine whether to proceed with pilot-scale testing of a technology referred to in paragraph (2) in time to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999. If the Under Secretary determines to proceed with such testing, the Under Secretary shall (exercising the acquisition authority of the Secretary of Defense) so award a contract not later than such date.~~

~~(2) Paragraph (1) applies to an alternative technology for the destruction of lethal chemical munitions, other than incineration, that the Under Secretary—~~

~~(A) certifies in writing to Congress is—~~

~~(i) as safe and cost effective for disposing of assembled chemical munitions as is incineration of such munitions; and~~

~~(ii) is capable of completing the destruction of such munitions on or before the later of the date by which the destruction of the munitions would be completed if incineration were used or the deadline date for completing the destruction of the munitions under the Chemical Weapons Convention; and~~

~~(B) determines as satisfying the Federal and State environmental and safety laws that are applicable to the use of the technology and to the design, construction, and operation of a pilot facility for use of the technology.~~

~~(3) The Under Secretary shall consult with the National Research Council in making determinations and certifications for the purpose of paragraph (2).~~

~~(4) In this subsection, the term "Chemical Weapons Convention" means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature on January 13, 1993, together with related annexes and associated documents.~~

(e) PLAN FOR PILOT PROGRAM.—If the Secretary of Defense proceeds with a pilot program under section 152(f) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 214; 50 U.S.C. 1521 note), the Secretary shall prepare a plan for the pilot program and shall submit to Congress a report on such plan (including information on the cost of, and schedule
for, implementing the pilot program).

(f) FUNDING.—(1) Of the amount authorized to be appropriated under section 107, funds shall be available for the program manager for the Assembled Chemical Weapons Assessment for the following:

(A) Demonstrations of alternative technologies under the Assembled Chemical Weapons Assessment.

(B) Planning and preparation to proceed from demonstration of an alternative technology immediately into the development of a pilot-scale facility for the technology, including planning and preparation for—

(i) continued development of the technology leading to deployment of the technology for use;

(ii) satisfaction of requirements for environmental permits;

(iii) demonstration, testing, and evaluation;

(iv) initiation of actions to design a pilot plant;

(v) provision of support at the field office or depot level for deployment of the technology for use; and

(vi) educational outreach to the public to engender support for the deployment.

(C) The independent evaluation of cost and schedule required under subsection (c).

(2) Funds authorized to be appropriated under section 107(1) are authorized to be used for awarding contracts in accordance with subsection (d) and for taking any other action authorized in this section.

(g) ASSEMBLED CHEMICAL WEAPONS ASSESSMENT DEFINED.—In this section, the term "Assembled Chemical Weapons Assessment" means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).

Section 141 of the National Defense Authorization Act for Fiscal Year 2000

SEC. 141. DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) PROGRAM ASSESSMENT.—(1) The Secretary of Defense shall conduct an assessment of the current program for destruction of the United States' stockpile of chemical agents and munitions, including the Assembled Chemical Weapons Assessment, for the purpose of reducing significantly the cost of such program and ensuring completion of such program in accordance with the obligations of the United States under the Chemical Weapons Convention while maintaining maximum protection of the general public, the personnel involved in the demilitarization program, and the environment.

(2) Based on the results of the assessment conducted under paragraph (1), the Secretary may take those actions identified in the assessment that may be accomplished under existing law to achieve the purposes of such assessment and the chemical agents and munitions stockpile destruction program.

(3) Not later than March 1, 2000, the Secretary shall submit to Congress a report on—

(A) those actions taken, or planned to be taken, under paragraph (2); and

(B) any recommendations for additional legislation that may be required to achieve the purposes of the assessment conducted under paragraph (1) and of the chemical agents and munitions stockpile destruction program.

(b) CHANGES AND CLARIFICATIONS REGARDING PROGRAM.—Section 1412 of the Department of Defense Authorization Act, 1986 (Public Law 99–145; 50 U.S.C. 1521) is amended—

(1) in subsection (c)—

(A) by striking paragraph (2) and inserting the following new paragraph:

"(2) Facilities constructed to carry out this section shall, when no longer needed for the purposes for which they were constructed, be disposed of in accordance with applicable laws and regulations and mutual agreements between the Secretary of the Army and the Governor of the State in which the facility is located.";

(B) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(C) by inserting after paragraph (2) (as amended by subparagraph (A)) the following new paragraph:

"(3)(A) Facilities constructed to carry out this section may not be used for a purpose other than the destruction of the stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

"(B) The prohibition in subparagraph (A) shall not apply with respect to items designated by the Secretary of Defense as lethal chemical agents, munitions, or related materials after November 8, 1985, if the State in which a destruction facility is located issues the appropriate permit or permits for the destruction of such items at the facility.";

(2) in subsection (f)(2), by striking "(c)(4)" and inserting "(c)(5)"; and

(3) in subsection (g)(2)(B), by striking "(c)(3)" and inserting "(c)(4)".

(c) COMPTROLLER GENERAL ASSESSMENT AND REPORT.—(1) Not later than March 1, 2000, the Comptroller General of the United States shall review and assess the program for destruction of the United States stockpile of chemical agents and munitions and report the results of the assessment to the congressional defense committees.

(2) The assessment conducted under paragraph (1) shall include a review of the program execution and financial management of each of the elements of the program, including—

(A) the chemical stockpile disposal project;

(B) the nonstockpile chemical materiel project;

(C) the alternative technologies and approaches project;

(D) the chemical stockpile emergency preparedness program; and

(E) the assembled chemical weapons assessment program.

(d) DEFINITIONS.—As used in this section:

(1) The term "Assembled Chemical Weapons Assessment" means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).

(2) The term "Chemical Weapons Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, ratified by the United States on April 25, 1997, and entered into force on April 29, 1997.

Section 8122 of the Department of Defense Appropriations Act, 2003

SEC. 8122. (a) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY.—If a technology other than the baseline incineration program is selected for the destruction of lethal chemical munitions pursuant to section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 1521 note), the program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Bluegrass Army Depot, Kentucky, including management of the pilot-scale facility phase of the alternative technology.

(b) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT PUEBLO DEPOT, COLORADO.—The program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Pueblo Army Depot, Colorado, including management of the pilot-scale facility phase of the alternative technology selected for the destruction of lethal chemical munitions.

Section 923 of the John Warner National Defense Authorization Act for Fiscal Year 2007

SEC. 923. INCENTIVES CLAUSES IN CHEMICAL DEMILITARIZATION CONTRACTS.

(a) IN GENERAL.—(1) AUTHORITY TO INCLUDE CLAUSES IN CONTRACTS.—The Secretary of Defense may, for the purpose specified in paragraph (2), authorize the inclusion of an incentives clause in any contract for the destruction of the United States stockpile of lethal chemical agents and munitions carried out pursuant to section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521).

(2) PURPOSE.—The purpose of a clause referred to in paragraph (1) is to provide the contractor for a chemical demilitarization facility an incentive to accelerate the safe elimination of the United States chemical weapons stockpile and to reduce the total cost of the Chemical Demilitarization Program by providing incentive payments for the early completion of destruction operations and the closure of such facility.

(b) INCENTIVES CLAUSES.—

(1) IN GENERAL.—An incentives clause under this section shall permit the contractor for the chemical demilitarization facility concerned the opportunity to earn incentive payments for the completion of destruction operations and facility closure New Jersey.

~~(2) LIMITATION ON INCENTIVE PAYMENTS.—The maximum incentive payment under an incentives clause with respect to a chemical demilitarization facility may not exceed amounts as follows:~~

~~(A) In the case of an incentive payment for the completion of destruction operations within the target incentive range specified in such clause, $110,000,000.~~

~~(B) In the case of an incentive payment for the completion of facility closure activities within the target incentive range specified in such clause, $55,000,000.~~

~~(3) TARGET RANGES.—An incentives clause in a contract under this section shall specify the target incentive ranges of costs for completion of destruction operations and facility closure activities, respectively, as jointly agreed upon by the contracting officer and the contractor concerned. An incentives clause shall require a proportionate reduction in the maximum incentive payment amounts in the event that the contractor exceeds an agreed-upon target cost if such excess costs are the responsibility of the contractor.~~

~~(4) CALCULATION OF INCENTIVE PAYMENTS.—The amount of the incentive payment earned by a contractor for a chemical demilitarization facility under an incentives clause under this section shall be based upon a determination by the Secretary on how early in the target incentive range specified in such clause destruction operations or facility closure activities, as the case may be, are completed.~~

~~(5) CONSISTENCY WITH EXISTING OBLIGATIONS.—The provisions of any incentives clause under this section shall be consistent with the obligation of the Secretary of Defense under section 1412(c)(1)(A) of the Department of Defense Authorization Act, 1986, to provide for maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions.~~

~~(6) ADDITIONAL TERMS AND CONDITIONS.—In negotiating the inclusion of an incentives clause in a contract under this section, the Secretary may include in such clause such additional terms and conditions as the Secretary considers appropriate.~~

~~(c) ADDITIONAL LIMITATION ON PAYMENTS.—(1) PAYMENT CONDITIONAL ON PERFORMANCE.—No payment may be made under an incentives clause under this section unless the Secretary determines that the contractor concerned has satisfactorily performed its duties under such incentives clause.~~

~~(2) PAYMENT CONTINGENT ON APPROPRIATIONS.—An incentives clause under this section shall specify that the obligation of the Government to make payment under such incentives clause is subject to the availability of appropriations for that purpose. Amounts appropriated for Chemical Agents and Munitions Destruction, Defense, shall be available for payments under incentives clauses under this section.~~

Section 8119 of the Department of Defense Appropriations Act, 2008

~~SEC. 8119. (a) Notwithstanding any other provision of law, the Department of Defense shall complete work on the destruction of the United States stockpile of lethal chemical agents and munitions, including those stored at Blue Grass Army Depot, Kentucky, and Pueblo Chemical Depot, Colorado, by the deadline established by the Chemical Weapons Convention, and in no circumstances later than December 31, 2017.~~

~~(b) REPORT.—(1) Not later than December 31, 2007, and every 180 days thereafter, the Secretary of Defense shall submit to the parties described in paragraph (2) a report on the progress of the Department of Defense toward compliance with this section.~~

~~(2) The parties referred to in paragraph (1) are the Speaker of the House of Representatives, the Majority and Minority Leaders of the House of Representatives, the Majority and Minority Leaders of the Senate, and the congressional defense committees.~~

~~(3) Each report submitted under paragraph (1) shall include the updated and projected annual funding levels necessary to achieve full compliance with this section. The projected funding levels for each report shall include a detailed accounting of the complete life-cycle costs for each of the chemical disposal projects.~~

~~(c) In this section, the term "Chemical Weapons Convention" means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, with annexes, done at Paris, January 13, 1993, and entered into force April 29, 1997 (T. Doc. 103–21).~~

Section 922 of the National Defense Authorization Act for Fiscal Year 2008

SEC. 922.

* * * * * * *

~~(c) REPORTS REQUIRED.—(1) IN GENERAL.—Not later than March 15, 2008, and every 180 days thereafter until the year in which the United States completes the destruction of its entire stockpile of chemical weapons under the terms of the Chemical Weapons Convention, the Secretary of Defense shall submit to the members and committees of Congress referred to in paragraph (3) a report on the implementation by the United States of its chemical weapons destruction obligations under the Chemical Weapons Convention.~~

~~(2) ELEMENTS.—Each report under paragraph (1) shall include the following:~~

~~(A) The anticipated schedule at the time of such report for the completion of destruction of chemical agents, munitions, and materiel at each chemical weapons demilitarization facility in the United States.~~

~~(B) A description of the options and alternatives for accelerating the completion of chemical weapons destruction at each such facility, particularly in time to meet the destruction deadline of April 29, 2012, currently provided by the Chemical Weapons Convention, and by December 31, 2017.~~

~~(C) A description of the funding required to achieve each of the options for destruction described under subparagraph (B), and a detailed life-cycle cost estimate for each of the affected facilities included in each such funding profile.~~

~~(D) A description of all actions being taken by the United States to accelerate the destruction of its entire stockpile of chemical weapons, agents, and materiel in order to meet the current destruction deadline under the Chemical Weapons Convention of April 29, 2012, or as soon thereafter as possible.~~

~~(3) MEMBERS AND COMMITTEES OF CONGRESS.—The members and committees of Congress referred to in this paragraph are—~~

~~(A) the majority leader of the Senate, the minority leader of the Senate, and the Committees on Armed Services and Appropriations of the Senate; and~~

~~(B) the Speaker of the House of Representatives, the majority leader of the House of Representatives, the minority leader of the House of Representatives, and the Committees on Armed Services and Appropriations of the House of Representatives.~~

Subtitle C—Armed Forces Retirement Home

Section 1321 would authorize appropriations for fiscal year 2011 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President's Budget for fiscal year 2011.

TITLE XIV—AUTHORIZATION OF APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS FOR FISCAL YEAR 2011

Sections 1401 through 1414 would authorize appropriations for Overseas Contingency Operations for fiscal year 2011 in amounts equal to the budget authority requested in the President's Budget for fiscal year 2011.

TITLE XV—MILITARY CONSTRUCTION, MILITARY FAMILY HOUSING, AND REAL PROPERTY

Section 1501 would amend 10 U.S.C. 2831 to authorize the transfer of proceeds from the disposal of family housing property into either the Department of Defense (DoD) Family Housing Improvement Fund (FHIF) or the Family Housing Management Account. This will provide the military departments with the flexibility to use the proceeds to address family housing requirements through the housing privatization authorities in addition to the payment of costs associated with Government-owned military family housing (as currently provided under 10 U.S.C. 2831(b)(3)). Similarly, this proposal would amend 10 U.S.C. 2883 to expand the credits to the FHIF to include proceeds from the disposal of family housing property. This proposal also would expand the statutory notification requirement involving transfer of funds into the FHIF to include the proceeds from disposal of family housing property consistent with the above changes.

There are two primary fund sources for DoD family housing -- the family housing appropriation (or the "Military Family Housing Management Account") and the FHIF (which is used for privatization). The family housing appropriation is used for the construction, leasing, operation and maintenance of military family housing. The DoD FHIF account, which is funded through direct appropriations or transfers from funds appropriated to the family housing appropriation for the construction or acquisition of family housing, is used for the DoD's contribution in housing privatization public-private ventures. In recent years, as the housing privatization initiative has matured, the Department has seen increased use of the FHIF account and budget requests for family housing appropriations have correspondingly declined.

Under current law, title 10 U.S.C. 2831 provides that proceeds from the disposal of family housing property go into the Military Family Housing Management Account. Over the past several years, it has required special legislation each time a family housing privatization deal involved the sale of family housing property. The overwhelming majority of family housing in the continental United States has been privatized in the recent past, so there is a growing need for flexibility to transfer proceeds from the sale of family housing property into the FHIF.

Because of the extensive divestiture of military family housing property under the Military Family Housing Privatization Initiative, the operations and maintenance requirements for Government-owned military family housing are greatly diminished. At the same time, the military departments are continuing to privatize military family housing, which often requires use of appropriated funds, which are funded out of the FHIF (which was established by 10 U.S.C. 2883).

Budget Implications: This proposal has budgetary implications because it would change baseline authorities. Specifically, this proposal would change the authority to allow for the proceeds from the sale of family housing to be transferred into the DoD FHIF in addition to the family housing appropriation. For the overall budgetary top line, however, there are no budgetary implications. As a result, it is unnecessary to identify any budgetary offset.

Changes to Existing Law: This proposal would make the following changes to sections 2831 and 2883 of title 10, United States Code:

§ 2831. Military family housing management account

(a) ESTABLISHMENT.—There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the "account"). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) CREDITS TO ACCOUNT.—The account shall be administered as a single account. ~~There~~ Except as provided in subsection (e), there shall be transferred into the account—

(1) appropriations made for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 572(a) of title 40.

(c) AVAILABILITY OF AMOUNTS IN ACCOUNT.—Amounts in the account shall remain available until spent.

(d) USE OF ACCOUNT.—The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(e) TRANSFER OF FUNDS.—The Secretary concerned may transfer funds received under paragraph (3) of subsection (b) to the Department of Defense Family Housing Improvement Fund established under subsection (a) of section 2883 of this title.

(~~e~~f) REPORTS ON GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.—(1) As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall submit a report—

(A) identifying each family housing unit used, or intended for use, as quarters for a general officer or flag officer for which the total operation, maintenance, and repair costs for the unit are anticipated to exceed $35,000 in the next fiscal year;

(B) for each family housing unit identified under subparagraph (A), specifying the total of such anticipated operation, maintenance, and repair costs for the unit;

(C) identifying each family housing unit in excess of 6,000 square feet used, or intended for use, as quarters for a general officer or flag officer;

(D) for each family housing unit identified under subparagraph (C), specifying any alternative and more efficient use to which the unit could be converted (which would include any costs necessary to convert the unit) and containing an explanation of the reasons why the unit is not being converted to the alternative use; and

(E) for each family housing unit identified under subparagraph (C) for which costs under subparagraph (A) or new construction costs are anticipated to exceed $100,000 in the next fiscal year, specifying any alternative use to which the unit could be converted (which would include any costs necessary to convert the unit) and an estimate of the costs to demolish and rebuild the unit to private sector standards.

(2) Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report specifying, for each family housing unit used as quarters for a general officer or flag officer at any time during that fiscal year, the total expenditures for operation and maintenance, utilities, lease, and repairs of the unit during that fiscal year.

(~~f~~g) NOTICE AND WAIT REQUIREMENT.—(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed $35,000, until—

(A) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

(B) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.

(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary environmental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submission of the most recent report under subsection (e).

(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.

§ 2883. Department of Defense Housing Funds

(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition, improvement, or construction of military family housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814 (i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(G) Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.

(H) Subject to subsection (f), any amounts from the proceeds of handling or disposal of family housing of a military department transferred to that Fund pursuant to section 2831(e) of this title.

(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814 (i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(G) Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.

(d) USE OF AMOUNTS IN FUNDS.—(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the

planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) LIMITATION ON OBLIGATIONS.—(1) The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(2) The Funds established under subsection (a) shall be the sole source of funds for activities carried out under this subchapter.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under subparagraph (B) ~~or,~~ (G), or (H) of paragraph (1) or subparagraph (B) or (G) of paragraph (2) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title. In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.

Section 1502 would increase dollar thresholds for unspecified minor construction (UMC) projects. UMC projects are military construction projects below a specified dollar threshold that the Department may undertake without specific project authorization from Congress. At the request of the Office of Management and Budget, the proposal would also establish a reporting requirement for Operation and Maintenance funds used for UMC.

In the FY 2008 NDAA (January 2008), Congress adjusted the basic UMC threshold from $1.5 to $2.0 million in apparent recognition of construction market escalation since the previous adjustment in 1991. However, the four other UMC thresholds specified in section 2805 were unchanged and have remained so. Construction market cost escalation has also impacted these thresholds since their last adjustments (in 1996 and 2002), rendering them obsolete as well. The following table reflects all of the UMC dollar thresholds, the year each was last amended, and the subsequent change in construction market cost as represented by a commonly-accepted industry index of construction market prices, the Engineering News-Record Building Cost Index (BCI).

10 USC 2805 paragraph	current limit	Year last amended	BCI in year last amended	BCI Aug 2009	BCI % chg	adjusted limit	proposed limit
(a)(2)	$2,000,000	2008	4557	4768	+5%	$2,092,605	no change
(a)(2)	$3,000,000	1996	3284	4768	+45%	$4,355,664	$4,000,000

(b)(1)	$750,000	2002	3602	4768	+32%	$992,782	$1,000,000
(c)(1)(A)	$1,500,000	2002	3602	4768	+32%	$1,985,564	$2,000,000
(c)(1)(B)	$750,000	2002	3602	4768	+32%	$992,782	$1,000,000

The BCI has increased 45% since 1996, and 32% since 2002. Without an associated amendment to the thresholds, this cost escalation has significantly degraded the Department's ability to correct life/health/safety-threatening deficiencies and to undertake small, urgent projects using Operation and Maintenance funding.

Budget Implications: An increase to the remaining UMC thresholds does not generate cost implications, but rather recognizes the implications of construction market costs on DoD construction. Increasing the remaining UMC thresholds would allow the Secretary to more effectively respond to urgent mission requirements and critical life/health/safety deficiencies with properly sized and scoped facilities, using available appropriations.

Changes to Existing Law: This proposal would make the following changes to section 2805 of title 10, United States Code:

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $2,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than ~~$3,000,000~~ **$4,000,000**.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than ~~$750,000~~ **$1,000,000** may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—(1) Except as provided in paragraph (2), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than— **$1,000,000, except that such amount shall be**

~~(A)~~ ~~$1,500,000,~~ **$2,000,000** in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening~~; or~~.

~~(B) $750,000, in the case of any other unspecified minor military construction project.~~

(2) The limitations specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(3) Not later than three months after the close of each fiscal year, the Secretary concerned shall submit to the appropriate committees of Congress a report on the use of the authority under paragraph (1) during that fiscal year. Each such report shall set forth with respect to that fiscal year—

(A) the amount of funds available for operation and maintenance that were expended by the Secretary using that authority; and

(B) the number of military construction projects undertaken by the Secretary using that authority.

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