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APR 25 2005

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2006.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration of the Congress.

Sincerely,

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William J. Haynes II

Enclosure:
As Stated





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The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

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**SEC. ____ . INCREASE IN SPECIAL PAY AND BONUSES FOR NUCLEAR-
QUALIFIED OFFICERS.**

1 Section 312(a) of title 37, United States Code, is amended by striking "\$25,000" and
2 inserting "\$30,000".

Section-by Section Analysis

This section would increase from \$25,000 to \$30,000 the maximum annual installment rate the Secretary of the Navy may pay to nuclear-qualified officers agreeing to extend their period of active service. This incentive program, known as Continuation Pay (COPAY), is a component of Nuclear Officer Incentive Pay (NOIP). This increase would allow the Secretary to combat poor retention and restructure the submarine and nuclear surface forces to meet mission requirements.

The Department of the Navy (DoN) met its submarine nuclear junior officer retention goal only once from Fiscal Year (FY) 1998-2003 and is projected to miss it again in FY 2004. The shortage of 312 control grade officers (O-4 through O-6) indicates a senior officer retention shortfall as well. These shortfalls jeopardize DoN's ability to meet critical manning requirements. In addition, the retention rate of nuclear-trained surface warfare officers continues to be the lowest among the Navy's Unrestricted Line officer communities.

To overcome these challenges, the Secretary has approved several successive increases in COPAY; it is now at the current legislative ceiling of \$25,000. An independent analysis indicates that DoN will have to increase COPAY substantially in the near future to fully address retention shortfalls. Multiple independent studies have shown that NOIP is the most cost-effective means to attract and retain the right quantity and quality of nuclear-trained officers. NOIP has one of the highest returns on investment of any special pay.

The Defense Advisory Committee for Military Compensation (DACMC) and the Quadrennial Review of Military Compensation (QRMC) will review COPAY and all other forms of military compensation and report their recommendations sometime in 2006. However, because of current retention shortfalls in submarine and surface nuclear forces, DoN cannot wait for DACMC and QRMC to complete their work. DoN will have to increase the maximum rate of COPAY by October 2006 to address existing retention shortfalls.

Cost Implications: This section would not require additional funding for FY 2006. Based on historical trends and retention shortfalls, the Secretary will have to adjust COPAY rates above the current legislative limit no later than the start of FY 2007 at a projected annual cost of \$3.8 million.

	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>
Navy	0	\$3.8M	\$3.8M	\$3.8M	\$3.8M	\$3.8M

**SEC. ____ . INCREASE IN SPECIAL PAY AND BONUSES FOR NUCLEAR-
QUALIFIED LIMITED DUTY OFFICERS.**

1 Section 312c(b)(1) of title 37, United States Code, is amended by striking "\$10,000" and
2 inserting "\$14,000".

Section-by Section Analysis

This section would increase from \$10,000 to \$14,000 the maximum amount of the Nuclear Career Annual Incentive Bonus (AIB) that the Secretary of the Navy may pay nuclear-trained Limited Duty Officers (LDOs). This would provide the Navy with sufficient flexibility to develop, shape and align the future nuclear-trained LDO community to meet mission requirements. Maintaining the existing ceiling would constrain any future rate increases necessary to address accession and retention shortfalls.

Nuclear-trained LDOs often serve in fleet and shipyard billets, providing necessary technical oversight of nuclear maintenance and repair. The demand for nuclear-trained surface warfare LDOs continues to grow as the Navy completes its transition to an all-nuclear carrier force. Recent decisions to convert four Fleet Ballistic Missile Submarines to Guided Missile Submarines and to refuel a significant number of attack submarines have placed additional demands on nuclear-trained submarine LDOs, who are an integral part of the nuclear refueling process. These same officers also play a key role in the new Virginia class submarine construction program.

Newly accessed nuclear-trained LDOs quickly become an integral part of many different nuclear platforms. The contribution of junior and senior LDOs is critical to the Naval Nuclear Propulsion Program. Unfortunately, many nuclear-trained LDOs leave the service after completing the minimum required 10 years of commissioned service. As a result, there is a shortfall of 56 nuclear-trained lieutenants (O-3s) and lieutenant commanders (O-4s). Increasing the maximum bonus would combat this chronic retention problem.

In addition, as the demand for nuclear-trained LDOs has increased, the number of nuclear force enlisted members applying for the LDO program has declined consistently since 2000. The largest decline occurred in Fiscal Year (FY) 2004, representing a 58 percent decrease since 2001. Applications for the FY 2005 LDO board also were unacceptably low. Continuation of this trend would lead to insufficient numbers of nuclear-trained LDOs and/or the lowering of standards to meet LDO manning requirements. LDO AIB is an integral part of the nuclear-trained LDO compensation package. Increasing the bonus, coupled with increased compensation, would directly improve the number and quality of senior enlisted personnel who apply for the nuclear-trained LDO program.

The Defense Advisory Committee for Military Compensation (DACMC) and the Quadrennial Review of Military Compensation (QRMC) will review LDO AIB and all other

forms of military compensation and report their recommendations sometime in 2006. However, because of the current application and retention shortfalls in nuclear-trained LDOs, DoN cannot wait for DACMC and QRMC to complete their work. DoN projects that the Secretary will have to adjust LDO AIB above the current limit no later than October 2006.

Cost Implications: Navy does not plan to increase the AIB in FY 2006. However, based on historical trends and to address retention shortfalls, the Secretary of the Navy would increase the AIB above the current limit by the start of Fiscal Year 2007 at a projected annual cost of \$1.4 million.

	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>
Navy	0	\$1.4M	\$1.4M	\$1.4M	\$1.4M	\$1.4M

SEC. ____ . NON-DISCLOSURE OF SELECTION BOARD PROCEEDINGS.

1 (a) EXTENSION TO ALL ACTIVE DUTY SELECTION BOARDS.—Section 618(f) of title 10,
2 United States Code, is amended to read as follows:

3 "(f)(1) Proceedings of a selection board convened under section 611 of this title shall not
4 be disclosed to any person not a member of the board.

5 "(2) Board discussions and deliberations shall—

6 "(A) be immune from legal process;

7 "(B) not be admitted as evidence; and

8 "(C) not be used for any purpose in any action, suit, or judicial or administrative
9 proceeding without the consent of the Secretary of the military department concerned."

10 (b) RESERVE SELECTION BOARD PROCEEDINGS.—(1) Section 14104 of such title is
11 amended to read as follows:

12 **"§ 14104. Non-disclosure of board proceedings**

13 "(a) The proceedings of a selection board convened under section 14101 of this title shall
14 not be disclosed to any person not a member of the board.

15 "(b) Board discussions and deliberations shall—

16 "(1) be immune from legal process;

17 "(2) not be admitted as evidence; and

18 "(3) not be used for any purpose in any action, suit, or judicial or administrative
19 proceeding without the consent of the Secretary of the military department concerned."

20 (2) The table of sections at the beginning of chapter 1403 of such title is amended by
21 striking the item relating to section 14104 and inserting the following new item:

22 "14104. Non-disclosure of board proceedings."

Section-by-Section Analysis

This section would make all active duty and Reserve selection board proceedings absolutely privileged against disclosure, including disclosure in civil litigation, without the consent of the Secretary of the military department concerned. The current privilege against disclosure only applies to active duty promotion boards. This section would extend the privilege to all proceedings of selection boards (including retirement boards and continuation boards). This section does not define the term "proceedings" because selection board proceedings can differ somewhat from one military department to another. However, all such proceedings are intended to be included within this section.

Selection boards ensure the selection of the best-qualified officers for promotion. An absolute privilege would encourage the confidential, free, uninhibited, and candid deliberations necessary to make difficult decisions among highly-qualified officers. Allowing non-selected officers to use the court system to gain access to board deliberations undermines the confidentiality of these deliberations and chills the deliberations of future boards.

Three recent Federal district court decisions have held that the current privilege is not absolute and may be overcome by a plaintiff's discovery requests in civil litigation. Although the D.C. Circuit Court of Appeals overturned one of these decisions in the consolidated *In re England*, 375 F.3d 1169 (D.C. Cir. 2004), the other decisions provide precedents for courts to rule that the current language in section 618 of title 10, United States Code, does not support an absolute privilege against discovery. This section would prevent courts from extending this reasoning to Reserve selection board deliberations.

This section also would clarify Congress' original intent that all selection board proceedings shall be exempt from disclosure under section 552 of title 5, United States Code.

The active duty provision would mirror current regulations by the Secretary of the Navy.

**SEC. ____ . ADDITIONAL PILOT PROJECT FOR ACQUISITION OR
CONSTRUCTION OF MILITARY UNACCOMPANIED HOUSING.**

1 (a) ADDITIONAL PILOT PROJECT.—Subsection (a) of section 2881a of title 10, United
2 States Code, is amended by striking "three" and inserting "four".

3 (b) REPORTING REQUIREMENTS.—Subsections (d)(2) and (e)(2) of such section are
4 amended by striking "90 days" and inserting "30 days".

5 (c) EXTENSION OF AUTHORITY.—Subsection (f) of such section is amended by striking
6 "September 30, 2007" and inserting "September 30, 2008".

Section-by-Section Analysis

This section would increase from three to four the number of pilot projects the Secretary of the Navy may execute for the privatization of military unaccompanied housing. It also would reduce the Congressional notification period before which the Secretary could solicit contracts for housing or offer a conveyance or lease of property or facilities.

Currently, the Department of the Navy (DoN) is pursuing its three authorized military housing privatization pilot projects to quickly provide homes for single, junior enlisted members. DoN has notified Congress of its intent to issue a solicitation for the first pilot project at San Diego; has submitted a second project to the Office of the Secretary of Defense for approval; and is developing a concept for a third pilot project in the Pacific Northwest. DoN also has identified a candidate for a potential fourth pilot project at Naval Amphibious Base, Coronado/Naval Air Station, North Island. Authorizing this additional project would help DoN to implement its Homeport Ashore initiative to provide living accommodations ashore for unaccompanied junior enlisted members who currently live aboard ship even while in homeport. Since DoN already is pursuing privatization at San Diego, this fourth project also would enable DoN to expand the scope of its planned privatization activities within the region.

Existing law requires the Secretary of the Navy to notify Congress 90 days before he issues a solicitation, or offers a conveyance or a lease, under a pilot project. This is three times the 30-day notification period required for military family housing privatization projects by section 2883 of title 10, United States Code. Section 120 of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (Public Law 108-324) requires the Secretary of Defense to notify Congress 30 days before he transfers military unaccompanied housing funds. This section would align the notification period in section 2881a of title 10 with these other housing privatization provisions. It also would expedite the execution of the pilot projects and reduce their exposure to market risk (*e.g.*, interest rate changes).

In addition, this section would extend military unaccompanied housing privatization authority by one year to September 30, 2008, to provide adequate time for the Secretary of the Navy to execute a fourth pilot project.

**SEC. ____ . CONSOLIDATION OF AUTHORITIES RELATING TO DEPARTMENT
OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES.**

1 (a) IN GENERAL.—(1) Section 184 of title 10, United States Code, is amended to read as
2 follows:

3 **"§ 184. Regional Centers for Security Studies**

4 "(a) IN GENERAL.—The Secretary of Defense may administer, and, with the concurrence
5 of the Secretary of State, establish Regional Centers for security studies as international venues
6 for education, research, communication, and exchange of ideas, pursuant to regulations that he
7 may prescribe. Notwithstanding any other provision of law, Regional Centers may participate in
8 programs including but not limited to programs co-sponsored with other U.S. federal agencies,
9 foreign governments, public and private international organizations, nongovernmental
10 organizations and other information exchanges concerning nations in the region. Such Regional
11 Centers shall provide military education and training, civilian defense education and training,
12 and related academic and other activities, as the Secretary deems appropriate.

13 "(b) REGIONAL CENTERS.—The existing five Department of Defense Regional Centers
14 for security studies are:

15 "(1) the Africa Center for Strategic Studies;

16 "(2) the Asia-Pacific Center for Security Studies;

17 "(3) the Center for Hemispheric Defense Studies;

18 "(4) the George C. Marshall European Center for Security Studies; and

19 "(5) the Near East South Asia Center for Strategic Studies.

20 "(c) PARTICIPATION.—Participants in Regional Centers activities include U.S. military
21 and civilian personnel, governmental and nongovernmental personnel; and foreign military and

1 civilian, governmental and nongovernmental personnel.

2 "(d) PARTICIPATION OF FOREIGN NATIONALS OTHERWISE PROHIBITED.—Notwithstanding
3 any other provision of law that would otherwise prevent the participation of persons from a
4 foreign nation in the educational activities of a Regional Center, the Secretary of Defense may
5 authorize participation of foreign nationals otherwise prohibited if the Secretary determines, with
6 the concurrence of the Secretary of State, that participation of such foreign nationals is in the
7 national security interest of the United States.

8 "(e) ADMINISTRATION.—The Secretary may take the following actions in furtherance of
9 the mission of the Regional Centers operated under this section:

10 "(1) EMPLOYMENT AND COMPENSATION OF FACULTY AND
11 STAFF.—Notwithstanding the provisions of title 5 regarding appointment, pay and
12 classification, the Secretary of Defense may employ such civilian directors, faculty and
13 staff members for Regional Centers operated under this section as the Secretary
14 determines necessary. The compensation of persons employed under this section shall
15 be as prescribed by the Secretary.

16 "(2) PAYMENT OF COSTS.—

17 "(A) Participation in Regional Centers activities shall be on a
18 reimbursable basis (or by payment in advance), except where reimbursement has
19 been waived in accordance with paragraph (e)(3).

20 "(B) For foreign national participants, payment of these costs may be
21 made by the participants' own governments, U.S. Federal Agencies, or by any of
22 the sources from which the Secretary of Defense is authorized to accept gifts,
23 donations, and contributions on behalf of one or more Regional Centers under

1 section 2611 of this title on behalf of these participants' own governments.

2 "(C) The Directors of the Regional Centers may enter into agreements
3 with the heads of federal agencies, the Military Departments, and Defense
4 Agencies to provide services under this section. Participating agencies shall
5 transfer to the Regional Centers funds to pay the full costs of such services.

6 "(D) Funds accepted for the payment of costs shall be credited to the
7 appropriations available to the Department of Defense for the Regional Center
8 that incurred the costs. Funds so credited shall be merged with the appropriations
9 to which credited and shall be available to the Regional Center for the same
10 purposes and same period as the appropriations with which merged.

11 "(E) Funds available for the payment of personnel expenses under the
12 Latin American cooperation authority set forth in section 1050 of this title are
13 also available for the costs of the operation of the Center for Hemispheric
14 Defense Studies.

15 "(3) WAIVER OF COSTS.—The Secretary of Defense may waive reimbursement of
16 the cost of conferences, seminars, courses of instruction, professional military education
17 and training, civilian defense education and training, and related academic and other
18 activities of such Regional Centers for foreign participants if the Secretary determines
19 that attendance of such personnel without reimbursement is in the national security
20 interest of the United States. Costs for which reimbursement is waived pursuant to this
21 paragraph shall be paid from appropriations available to the Regional Centers, other
22 authorized training programs, or the 'Regional Centers for Security Studies Account.'

23 "(4) PAYMENT OF OTHER EXPENSES.—In addition to waiver of reimbursement of

1 costs described in paragraph (3) of this subsection, the Secretary of Defense may pay the
2 travel, subsistence, and similar personal expenses of U.S. participants, including persons
3 not employed by the Department of Defense, and of foreign participants in connection
4 with the attendance of such personnel at conferences, seminars, courses of instruction,
5 professional military education and training, civilian defense education and training, and
6 related academic and other activities of the Regional Centers if the Secretary determines
7 that payment of such expenses is in the national security interest of the United States.

8 "(f) REGIONAL CENTER FOR SECURITY STUDIES DEFINED.—A Regional Center for
9 security studies is any Department of Defense international venue that—

10 "(1) is operated, and designated as such, by the Secretary of Defense for the study
11 of security issues relating to a specified geographic region of the world; and

12 "(2) is an international venue for education, research, communication, and
13 exchange of ideas."

14 (2) The table of sections at the beginning of chapter 7 of such title is amended by striking
15 the item relating to section 184 and inserting the following new item:

16 "184. Regional Centers for Security Studies."

17 (b) CONFORMING AMENDMENTS.—(1) Section 1306 of the National Defense
18 Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2892), is repealed.

19 (2) Section 1065 of the National Defense Authorization Act for Fiscal Year 1997 (Public
20 Law 104-201; 110 Stat. 2653; 10 U.S.C. § 113 (George C. Marshall European Center for
21 Strategic Security Studies)), is amended—

22 (A) by striking subsections (a) and (b); and

23 (B) by striking "(c)" in subsection (c).

24 (3) Section 1595 of title 10, United States Code, is amended—

1 (A) in subsection (c)—

2 (i) by striking paragraphs (3) and (5); and

3 (ii) by redesignating paragraphs (4) and (6) as paragraphs (3) and (4),

4 respectively; and

5 (B) by striking subsection (e).

6 (4) Section 2165 of title 10, United States Code, is amended—

7 (A) in subsection (b)—

8 (i) by striking paragraph (6); and

9 (ii) by redesignating paragraph (7) as paragraph (6);

10 (B) by striking subsection (c); and

11 (C) by redesignating subsection (d) as subsection (c).

Section-by-Section Analysis

This section streamlines the management of the Department of Defense's (DoD's) five Regional Centers for Security Studies. The centers have operated autonomously under different administrative and policy chains. The Department is consolidating the management of the centers to strengthen their contribution to the global war on terrorism. As part of this initiative, we are consolidating authority for: hiring, compensation, participation, payment of costs, waiver of costs, and funding.

The Department is transforming the five Regional Centers into a more consistent, unified program, recognizing that the value of a collaborative set of centers with a coherent message exceeds the sum of their individual contributions. The Secretary needs more discretion in educational initiatives to create a cadre of foreign defense and security professionals who are prepared to join the United States in combating ideological support for terrorism. The nature of this conflict is global—it does not lend itself to state or regional borders—and our response to terrorism must be global—not constrained by regional boundaries, funding restrictions, or limits on participation. This legislation will give the Secretary greater flexibility to manage and improve the Regional Centers. As this new management approach for the Regional Centers matures, the Department plans to strengthen the centers' capabilities to promote U.S. national security goals.

The Regional Centers have served as fora for addressing strategic challenges since their inception with the Marshall Center in Europe at the end of the Cold War in the early 1990s. In

this post-9/11 world, the Regional Centers have a key role in strengthening U.S. national security by harmonizing views on the nature of common security challenges, combating ideological support for terrorism, and educating our allies, partners, and friends on the role of the defense-military establishment in civil society and, in particular, civilian control of the military.

The Regional Centers are DoD's strategic communication tool to explain United States Government security policy in the world and to obtain feedback on U.S. policies from allies and partners. The interaction between senior members of the United States Government and foreign civil and military leadership supports the ongoing effort to counter ideological support for terrorism and supports our strategic objectives in the Global War on Terrorism. It is at the Regional Centers that civilian and military leaders from allied and partner nations gain an appreciation of democracy, the free exchange of shared ideas, and new concepts for improving security in the 21st Century. Once these civilian and military leaders return home, many to emerging democracies around the world, they are at the forefront of their countries' efforts to eliminate the ideological extremism that serves as a basis for terrorism, and they serve as valued partners in fighting the Global War on Terrorism.

The Regional Centers' activities include education, research, and outreach. The centers' educational efforts consist of multilateral in-residence courses, in-region seminars, and conferences that address both global security challenges—such as terrorism and proliferation—and current regional security issues—like small arms and light weapons and stability in the Caucasus. The Regional Centers also host bilateral workshops on strategic planning and defense resource management. The centers conduct timely research on the most salient security issues in their respective regions, and they have an aggressive program that maintains contact with their alumni through websites, e-mail, newsletters, and events held at national Regional Center alumni chapters. The centers are creating and sustaining an invaluable network of foreign security professionals who have an increased understanding appreciation of U.S. policies and a willingness to address security challenges cooperatively.

**SEC. ____ . EXPANSION OF COOPERATIVE THREAT REDUCTION AUTHORITIES
TO SUPPORT INTERDICTION OF WEAPONS OF MASS
DESTRUCTION.**

1 Section 1308 of the National Defense Authorization Act for 2004 (Public Law 108-136;
2 117 Stat. 1662; 22 U.S.C. 5963) is amended—

3 (1) in subsection (a)—

4 (A) by striking "President" each place it appears and inserting "Secretary
5 of Defense, with the concurrence of the Secretary of State,";

6 (B) by striking paragraph (2); and

7 (C) by striking "each of the following" and all that follows through the
8 end and inserting the following: "that such project or activity will—

9 "(1) assist the United States in the resolution of a critical emerging proliferation
10 threat; or

11 "(2) permit the United States to take advantage of opportunities to achieve long-
12 standing nonproliferation goals.";

13 (2) by striking subsection (c);

14 (3) by redesignating subsections (d) and (e) as subsections (c) and (d),
15 respectively; and

16 (4) in subsection (c), as redesignated by paragraph (3)—

17 (A) by striking "President" the first place it appears and inserting
18 "Secretary of Defense"; and

19 (B) by striking "President" the second and third place it appears and
20 inserting "Secretary of Defense, with the concurrence of the Secretary of State,".

Section-by-Section Analysis

This section would permit obligation and expenditure of Cooperative Threat Reduction (CTR) program funds in states other than those of the Former Soviet Union (FSU) for emergency and non-emergency purposes. It would amend an authority enacted in fiscal year 2004 that required a Presidential determination before not more than \$50 million of CTR funds could be obligated for limited purposes outside the FSU in a single year. This section also would remove the \$50 million limitation; the requirement that the determination find that the Department of Defense is the department "most capable of carrying such project or activity"; and the requirement that the project or activity will be completed "in a short period of time." In addition, this section would replace the President with the Secretary of Defense as the determining authority with the concurrence of the Secretary of State.

**SEC. ____ . USE OF FUNDS FOR COUNTER -DRUG AND COUNTER TERRORISM
OPERATIONS.**

1 (a) **AUTHORITY.**— Funds available to the Department of Defense for drug interdiction
2 and counter-drug activities in fiscal years 2006 and 2007 may be used by the Secretary of
3 Defense for detecting, monitoring, interdicting terrorists, and other related transnational threats,
4 provided such use of these funds does not materially diminish the detection and monitoring of
5 aerial and maritime transit of illegal drugs into the United States by the Department of Defense
6 as required by section 124 of title 10, United States Code.

7 (b) **COMPLEMENTARY AUTHORITY.**—The authority provided by subsection (a) is in
8 addition to any other authority as specified in section 124 of title 10, United States Code.

Section-by-Section Analysis

After the attacks on the United States on September 11, 2001, the intelligence community and the Department of Defense focused on the connection between illicit drug trafficking and terrorism and discovered several connections. Over time, it became apparent that narcotics traffickers smuggle money, people, information, weapons, and substances the same way terrorists do. Sometimes, narcotics traffickers and terrorists are one and the same. Terrorist groups and narcotics traffickers sometimes depend on each other for money and security. The Department's detection and monitoring activities, by their nature, disrupt narcotics traffickers and terrorist groups by helping to reduce revenues, seize assets, and capture criminals.

Congress recognized this when it passed section 1022 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) which provided that a joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities. This formulation left intact the requirement of 31 U.S.C. 1301 that appropriations shall be applied only to the objects for which the appropriations were made. This limitation precludes the use of Department of Defense resources funded by counter-drug appropriations for counter-terrorism activities.

This new authority would allow the Department, the necessary flexibility to use resources, capabilities, and structures funded for the purpose of addressing the drug threat for the purpose of detecting, monitoring, and interdicting terrorist threats. The intent of this provision is to remove an impediment to the U.S. Government making more efficient and effective use of its

monitoring and detection capabilities to respond to the full spectrum of threats facing the Nation in the post-September 11th world.

The Department of Defense remains firmly committed to robustly supporting the National Drug Control Strategy's goal of disrupting the market for illegal drugs, but seeks greater leeway in employing the Department's assets against transnational threats which seek to exploit the same seams in our security as drug traffickers. While the Administration seeks this flexibility, it fully intends to maintain the essential balance between the activities of the Department of Defense, law enforcement and the intelligence community, which work together to collectively stem the flow of drugs into the United States.

**SEC. ____ . EXPANSION AND EXTENSION OF AUTHORITY TO PROVIDE
ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF
PERU AND COLOMBIA.**

1 (a) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997.—Section 1033 of
2 the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat.
3 1881), as amended by section 1021 of the National Defense Authorization Act for Fiscal Year
4 2004 (Public Law 108-136; 117 Stat. 1593), is further amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1), by striking "shall consult with" and inserting "will
7 seek concurrence of "; and

8 (B) in paragraph (2), by striking "2006" and inserting "2011";

9 (2) in subsection (b), by adding at the end the following new paragraph:

10 "(10) The Government of Azerbaijan.";

11 (3) in subsection (c)(2), by inserting ", vehicles, aircraft, and detection,
12 interception, monitoring and testing equipment" after "boats"; and

13 (4) in subsection (e)(2)—

14 (A) by striking "\$40,000,000" and inserting "\$80,000,000"; and

15 (B) by striking "2006" and inserting "2011".

16 (b) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997.—Subsection
17 1031(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201;
18 110 Stat. 2637) is amended—

19 (1) by amending paragraph (3) to read as follows:

20 "(3) The transfer of nonlethal components, accessories, attachments, parts

1 (including ground support equipment), firmware, and software, and related repair
2 equipment related to the equipment in paragraph (2)."; and

3 (2) by adding at the end the following new paragraphs:

4 "(5) The sustainment, including ammunition, of counterdrug security forces.

5 "(6) The transfer of foreign made small arms to developing governments when
6 the use of United States weapons would be inconsistent with local practice,
7 unsustainable, or United States weapons would be impracticable to maintain."

Section-by-Section Analysis

This section would extend current authority for five more years. The current authority expires at the end of Fiscal Year 2006. It also expands the nature of support to include additional types of equipment and supplies that are essential for operating and that will sustain and reinforce previously provided training and other support, enabling these countries to successfully engage drug traffickers.

Current law authorized the Department of Defense (DoD) to provide specific types of support, not to exceed \$40.0 million during fiscal years 2004 through 2006. It has proved to be a responsive and effective authority for supporting interdiction efforts in Colombia and Peru and in bolstering nascent security efforts in Afghanistan. The expanded authority doubles dollar authority to accommodate Afghanistan's acute requirements for equipment and maintenance, and adds Azerbaijan, a country situated in one of the key drug smuggling routes in the region.

This section recognizes that DoD supports countries that are key in our national drug strategy and Defense security cooperation goals. Enhanced interdiction capabilities for the nine countries listed in section 1033 of the National Defense Authorization Act for Fiscal Year 1998 are critical to our combined efforts to stem the flow of illicit drugs, and reduce the threat to struggling democracies.

**SEC. ____ . FLEXIBILITY IN CONTRACTS RESULTING FROM UTILITY
PRIVATIZATION.**

1 Subsection (c) of section 2688 of title 10, United States Code, is amended by adding at
2 the end the following new paragraph:

3 "(4) In any contract described in paragraph (3), the Secretary concerned may
4 include provisions to ensure that the contractor will recover capitalization costs for the
5 utility system."

Section-by-Section Analysis

This section clarifies that contracts for utility services entered into as a consequence of privatization under 10 U.S.C. § 2688 may authorize a contractor to recoup capitalization costs. Those costs will generally include the cost of acquiring a utility system to provide the utility service and of completing required upgrades of that system.

This proposal has no discernable budget implications.

SEC. ____ . AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS

FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.

1 (a) IN GENERAL.—Chapter 169 of title 10, United States Code, is amended by inserting
2 after section 2809 the following new section:

3 **"§ 2810. Authority to use operation and maintenance funds for construction projects**
4 **outside the United States**

5 "(a) IN GENERAL.—The Secretary of Defense may obligate appropriated funds available
6 for operation and maintenance to carry out a construction project outside the United States that
7 the Secretary determines meets each of the following conditions:

8 "(1) The construction is necessary to meet urgent military operational
9 requirements involving the use of the armed forces in support of a declaration of war, the
10 declaration by the President of a national emergency under section 201 of the National
11 Emergencies Act (50 U.S.C. 1621), or a contingency operation.

12 "(2) The requirement is of a temporary nature, such that there is no intention of
13 using the construction after the operational requirements have been satisfied.

14 "(3) The level of construction is the minimum necessary to meet the temporary
15 operational requirements.

16 "(b) LIMITATION ON USE OF AUTHORITY.—(1) The total cost of the construction projects
17 carried out under this section shall not exceed \$200,000,000 in any fiscal year.

18 "(2) The Secretary of Defense may waive the limitation imposed by paragraph (1) if the
19 Secretary determines that the obligation of operation and maintenance funds for construction
20 projects in excess of the amount specified in such paragraph is vital to the national security.

21 "(3) Upon use of the waiver authority granted by paragraph (2), the Secretary shall notify

1 the Office of Management and Budget of the amounts of operation and maintenance funds
2 obligated in excess of \$200,000,000 along with a description of the projects so funded.

3 "(c) RELATION TO OTHER AUTHORITIES.—The authority provided by this section, and the
4 limited authority provided by section 2805(c) of this title, are the only authorities available to the
5 Secretary of Defense and the Secretaries of the military departments to use appropriated funds
6 available for operation and maintenance to carry out construction projects."

7 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
8 amended by inserting after the item relating to section 2809 the following new item:

9 "2810. Authority to use operation and maintenance funds for construction projects outside the United States."

Section-by-Section Analysis

This section would allow the Secretary of Defense to use funds appropriated for operation and maintenance for construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation. During times of emergency, time and flexibility are of the essence. This authority would provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects.

Currently, section 2805 of title 10 limits the size of projects executed with funds appropriated for operation and maintenance to \$1.5 million for projects correcting life, health, or safety threatening situations, and \$750,000 for other construction requirements. By not limiting individual project size, this legislation would allow the Department to directly meet our forces' temporary operational needs regardless of project scope. This legislation will provide continuous, needed support to our commanders and troops during all ongoing and future contingency operations.

Sections 2803, 2804, and 2808 of title 10 limit funding for temporary construction during times of declared war, national emergency, or contingency operation to unobligated military construction and family housing appropriations. This section would enhance options for Commanders by providing an additional source of funds to meet their urgent temporary operational requirements.

The proposed authority is limited to meeting only those temporary operational needs generated specifically by a war, emergency, or contingency situation. The intent is to provide the minimal construction necessary to meet the operational need; there is no intention to use the construction after the specific operation is complete.

When operational requirements exceed \$200 million during a fiscal year, this section would allow the Secretary of Defense to waive this limit under certain circumstances.

**SEC. ____ . PERMANENT AUTHORITY FOR COMMANDER'S EMERGENCY
RESPONSE PROGRAM.**

1 (a) IN GENERAL.—Chapter 6 of title 10, United States Code, is amended by inserting
2 after section 166b the following new section:

3 **"§166c. Commander's emergency response program**

4 "(a) AUTHORITY.—From funds made available to the Department of Defense, not to
5 exceed \$500,000,000 may be used each fiscal year, notwithstanding any provision of law
6 governing any appropriation account from which funds are derived, by the Secretary of Defense,
7 with the concurrence of the Secretary of State, to provide funds to the commander of a
8 combatant command for the purpose of enabling military commanders engaged in a contingency
9 operation in a foreign country to respond immediately to urgent humanitarian relief and
10 reconstruction requirements within their areas of responsibility to benefit the local populace.

11 "(b) SCOPE OF ASSISTANCE.—Assistance under the authority of subsection (a) may
12 include the construction, reconstruction, and repair of municipal, educational, cultural, or other
13 local facilities, reconstitution or improvement of utilities or other local infrastructure, or the
14 provision of any other goods, services, or funds needed to improve the living conditions of the
15 people in the area. Such assistance may be provided notwithstanding the requirements of
16 chapter 137 of this title or any other provision of law.

17 "(c) LIMITATIONS.—Individual projects undertaken pursuant to the authority in
18 subsection (a) may not exceed \$500,000 without the approval of the combatant commander
19 concerned."

20 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
21 amended by inserting after the item relating to section 166b the following new item:

Section-by-Section Analysis

Initially established by the Administrator of the Coalition Provisional Authority in Iraq and funded with former Iraqi-regime assets, the Commander's Emergency Response Program (CERP) was first provided appropriated funds and extended to military operations in Afghanistan under section 1110 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106; 117 Stat. 1215). Section 1201 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 2207) extended the program through Fiscal Year 2005. This section would create permanent authority for the program.

Specifically, this permanent authority would allow the Secretary of Defense, with the concurrence of the Secretary of State, to provide funding for a specific Combatant Commander to use these funds. The intent of this legislation is to allow the Secretary of State to determine that the use of the funds in a particular region or country is warranted, but then allows the military commander on the ground to determine the specific projects and needs for which the funds would be expended. This legislation would limit, to \$500 million per year, the amount of money that the Secretary of Defense can drawdown, from within funds already made available to him, for this purpose.

The CERP has proven to be a high-impact, relatively low-cost program indispensable to security and stabilization efforts in Iraq and Afghanistan. Providing this capability enables military commanders -- who are often the only U.S. government officials with detailed knowledge about local needs -- to respond immediately to small-scale but urgent humanitarian relief and reconstruction requirements. The program builds trust and support at the grassroots level and provides results that people can see.

This program could make significant contributions to a wide range of future contingency operations in foreign countries undertaken by U.S. combatant commands, with the concurrence of the Secretary of State. Establishment of this program in title 10 would enable institutional training for commanders and their staffs on the effective uses of the fund and on how to plan and execute CERP projects, decreasing the lead time necessary to make an impact in the opening hours and days of a contingency operation.

**SEC. ____ . MORE FLEXIBLE COMPUTATION OF RETIRED PAY FOR OFFICERS
AND SENIOR ENLISTED MEMBERS.**

1 (a) MODIFICATION OF RETIRED PAY FORMULAS.—(1) Chapter 71 of title 10, United
2 States Code, is amended by inserting after section 1401a the following new section:

3 **"§ 1401b. Maximum multiplier in the computation of retired pay**

4 "Notwithstanding any other provision of law that limits retired pay, computed under this
5 chapter or under chapter 1223 of this title, to a maximum of 75 percent of the member's base
6 determined under section 1406 or 1407 of this title, the maximum amount of retired pay as a
7 percentage of such base will be limited as follows:

8 "(1) For members retired before October 1, 2005, use limitations prescribed in
9 other sections of law.

10 "(2) For members retired on or after October 1, 2005, use the limitations
11 prescribed in other sections of law except in the case of—

12 "(A) members retired in the grade O-7 and above with more than 30 years
13 of creditable service in the computation of the multiplier percentage under section
14 1409 of this title, such percentage is not limited to 75 percent for any time served
15 in excess of 30 years otherwise creditable after October 1, 2005; and

16 "(B) members retired in the grades E-8 through O-6, inclusive, with more
17 than 30 years of creditable service in the computation of the multiplier percentage
18 under section 1409 of this title, such percentage is not limited to 75 percent for
19 any time served under conditions authorized such additional credit during a
20 period established by the Secretary of Defense."

21 (2) The table of sections at the beginning of such chapter is amended by inserting after

1 the item relating to section 1401a the following new item:

2 "1401b. Maximum multiplier in the computation of retired pay."

3 (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to
4 the computation of retired or retainer pay of any individual who becomes entitled to that pay on
5 or after the date of enactment of this Act.

Section-by-Section Analysis

This section would allow general and flag officers to receive retired pay that exceeds 75 percent of base pay. This would provide greater incentive and more appropriate compensation for general and flag officers who desire to serve for more than 30 years after October 1, 2005. The same change would be made for grades E-8 through O-6 for service under conditions determined by the Secretary of Defense that such additional credit is in the best interest of personnel management.

While the main purpose of this section is to correct an inequity in the accrual of retired pay, it should have a positive impact on the retention of a very small number of senior officer and enlisted personnel. The numbers would be limited by the active management of this population and existing statutory exceptional authorities for retention beyond normal years of service and age limitations. As a result, the impact of this section on promotion opportunities would be minimal. For example, only 10 officers can be retained in the grades above major general or rear admiral beyond the age of 62; this equates to six percent of the total number of officers authorized in those grades.

These changes correspond with Department of Defense efforts to allow members to serve longer careers.

**SEC. ____ . TRANSFER OF FUNDS TO CORRECT SPECIFIC ACQUISITION
FUNDING PROBLEMS.**

1 Section 2214 of title 10, United States Code, is amended—

2 (1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f),
3 respectively; and

4 (2) by inserting after subsection (a) the following new subsections:

5 "(b) TRANSFER OF FUNDS TO COMPLETE RESEARCH, DEVELOPMENT, TESTING, AND
6 EVALUATION OF MAJOR DEFENSE ACQUISITION SYSTEMS.—In addition to any other transfer
7 authority that may be provided in an appropriations act, upon a determination by the Milestone
8 Decision Authority that such action is necessary to continue development efforts when
9 additional development of an acquisition program is needed before procurement can begin, up to
10 \$30,000,000 per acquisition program and up to a total of \$250,000,000 for a single fiscal year
11 may be transferred from procurement P-1 line items of Acquisition Category I, II, III, and IV of
12 a Procurement appropriation to the corresponding R-1 line items of a Research, Development,
13 Test and Evaluation appropriation for the purpose of continuing development efforts for the
14 same acquisition program. This authority may not be used to initiate new capability
15 enhancements not previously approved by Congress.

16 "(c) TRANSFERS BACK TO PROCUREMENT APPROPRIATIONS.—Upon a determination that
17 all or part of the funds transferred under subsection (b) are not necessary for the purposes
18 provided therein, such amounts may be transferred back to a Procurement Appropriation for the
19 same acquisition program for the purpose of beginning procurement of the acquisition program
20 for which funds were transferred."

Section-by-Section Analysis

This section would provide the service secretaries with additional flexibility to correct certain acquisition funding problems, which occur during the transition from development to procurement. Because funding for each phase of an acquisition program must be appropriated separately, there currently is no management flexibility to resolve quickly last-minute development problems before a program moves into production. This section would allow the transfer of up to \$30,000,000 per acquisition program and up to a total of \$250,000,000 for a single fiscal year from procurement P-1 line items of Acquisition Category I, II, III, and IV to the corresponding R-1 line items of the research, development, test and evaluation appropriation solely for the purpose of continuing development efforts.

Under current law, the Department of Defense (DoD) and the services may not transfer any funds appropriated for procurement to Research, Development, Test and Evaluation (RDTE) without congressional approval, even if the transfer occurs within a single acquisition program. This means program managers cannot fix problems without first going through the often time-consuming process of obtaining congressional permission. For example, the Evolved Expendable Launch Vehicle experienced delays and required increased security measures following September 11, 2001, resulting in a \$13-million RDTE shortfall. Due to a decision to delay a satellite launch, procurement funds became available to correct the RDTE shortfall. DoD identified the requirement and the source in the Fiscal Year 2002 Omnibus reprogramming package, but the request took 168 days to process. The proposed language would allow for a much more timely response to these types of funding challenges. It should be noted that this transfer authority is being requested only in the direction from procurement to research and development. This way, Congress is notified up-front of the intent to proceed to the procurement phase of the acquisition cycle and can block that transition if Congress believes that the conditions for transition have not been met, but if unforeseen problems arise, a small amount of additional R&D is allowed to proceed. The Department is not proposing to use R&D funds to proceed into procurement without Congressional notification.

SEC. ____ . INCREASE IN AUTHORIZED MAXIMUM LEASE TERM FOR FAMILY HOUSING.

1 Section 2828(d)(1) of title 10, United States Code, is amended by striking "10 years, or
2 15 years in the case of leases in Korea" and inserting "15 years".

Section-by-Section Analysis

This provision would increase from 10 years to 15 years the maximum length of lease that the Department may enter for housing facilities. It coincides with the provision in section 2804(a) Public Law 108-136, the National Defense Authorization Act for Fiscal Year 2004, which increased the period for leases in Korea from 10 to 15 years.

This authority is necessary for the Department to be able to fully exploit "build to lease" initiatives, particularly in overseas locations. This authority has special relevance as the Department transforms its overseas presence. Although there will eventually be a reduced overseas presence, there will continue to be a need for quality family housing. Build-to-lease housing is an option that provides quality housing with no capital investment and no acquisition of land from the host nation.

Recently, for example, United States Army, Europe (USAREUR), determined it needed more than 800 units in Grafenwoehr, Germany. In order to reduce present costs, USAREUR sought build-to-lease bids, but could not receive a suitable offer because the bidders-German businesses-failed to obtain necessary financing. That failure was in turn the result of the fact that financial institutions considered the obligation remaining at the end of the 10-year firm term too high. These financial institutions sought higher rent rate, and/or longer terms. Given the current statute, the US Forces could not provide sufficient inducements to mitigate financial institution concerns. Increasing the lease term from 10 years to 15 years would mitigate financial institution concerns and make this option available.

This option is fiscally prudent, and allows combatant commanders to focus military construction priorities on operational requirements, while knowing families will still receive improved quality of life in their housing.

SEC. ____ . AMENDMENTS TO THE DEFENSE PRODUCTION ACT.

1 The Defense Production Act of 1950 is amended as follows:

2 (1) in section 301 (50 U.S.C. App. 2091)—

3 (A) in subsection (a)(1), by adding at the end the following new sentence:

4 "This authority includes, but is not limited to, the modification or expansion of
5 privately-owned facilities or the modification or improvement of production
6 processes."; and

7 (B) in subsection (e)(1)—

8 (i) by amending subparagraph (A) to read as follows:

9 "(1)(A) Except as provided in subparagraph (D), a guarantee may
10 be made under this section only if the industrial resource or critical
11 technology item shortfall which such guarantee is intended to correct has
12 been identified in writing and transmitted to the Committee on Banking,
13 Housing and Urban Affairs of the Senate and the Committee on Financial
14 Services of the House of Representatives. Such notification shall be
15 accompanied by a statement from the President demonstrating that the
16 notification is in accordance with the provisions of subsection (a)(3) of
17 this section.";

18 (ii) in subparagraph (B), by striking "60 days" and inserting "30
19 days"; and

20 (iii) in subparagraph (C), by striking "\$50,000,000" and inserting
21 "\$200,000,000";

22 (2) in section 302 (50 U.S.C. App. 2092)—

1 (A) in subsection (a), by adding at the end the following new sentence:

2 "This authority includes, but is not limited to, the modification or expansion of
3 privately-owned facilities or the modification or improvement of production
4 processes."; and

5 (B) in subsection (c)—

6 (i) by amending paragraph (1) to read as follows:

7 "(1) Except as provided in paragraph (4), no loans may be made
8 under this section, unless the industrial resource shortfall which such loan
9 is intended to correct has been identified in writing and transmitted to the
10 Committee on Banking, Housing and Urban Affairs of the Senate and the
11 Committee on Financial Services of the House of Representatives. Such
12 notification shall be accompanied by a statement from the President
13 demonstrating that the notification is in accordance with the provisions of
14 subsection (b)(2) of this section.";

15 (ii) in paragraph (2), by striking "60 days" and inserting "30 days";

16 and

17 (iii) in paragraph (3), by striking "\$50,000,000" and inserting

18 "\$200,000,000";

19 (3) in section 303 (50 U.S.C. App. 2093)—

20 (A) in subsection (a)(6)—

21 (i) by amending subparagraph (A) to read as follows:

22 "(A) IN GENERAL.—Except as provided in paragraph (7), the
23 President shall take no action under this section unless the industrial

1 resource shortfall which such action is intended to correct has been
2 identified in writing and transmitted to the Committee on Banking,
3 Housing and Urban Affairs of the Senate and the Committee on Financial
4 Services of the House of Representatives. Such notification shall be
5 accompanied by a statement from the President demonstrating that the
6 notification is in accordance with the provisions of paragraph (5).";

7 (ii) in subparagraph (B), by striking "60 days" and inserting "30
8 days";

9 (iii) in subparagraph (C), by striking "\$50,000,000" and inserting
10 "\$200,000,000"; and

11 (B) in subsection (e), by adding at the end the following new sentences:

12 "The President may also provide for the modification or expansion of facilities in
13 which such equipment will be installed. This authority includes, but is not limited
14 to, the modification or expansion of privately-owned facilities or the modification
15 or improvement of production processes."; and

16 (4) in section 304(b)(2) (50 U.S.C. App. 2094(b)(2)), by striking "Fund" and
17 inserting "Federal Government".

Section-by-Section Analysis

This section would ensure that legal authorities can be applied in an efficient and timely manner to address domestic industrial base issues for technologies and materials essential for national security needs. The proposed language amends the process for notifying Congress of proposed Title III actions, reduces the waiting period after such notification to 30 days from 60 days, increases the authorization for projects from \$50 million to \$200 million, clarifies that funds received by the Government pursuant to Title III actions under section 303 of the Defense Production Act (DPA) are returned to the DPA Fund, and specifically provides for the expansion or modernization of privately owned facilities.

In section 301, a sentence is added at the end of subsection (a)(1) to clarify that this authority includes, but is not limited to, the modification and expansion of privately-owned facilities and modification and improvement of production processes.

Paragraph 301(e) requires: (1) the President to identify proposed Title III action either in the Budget or a Budget amendment submitted to Congress; (2) that no assistance under this section may be provided until 60 days have elapsed after notification has been made; and (3) that specific authorization, in law, be obtained for any assistance that would create an outstanding Government obligation exceeding \$50,000,000.

This process is inefficient, cumbersome, and time-consuming, and is a barrier to the timely application of Title III authorities to address industrial base issues that affect national defense. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation on actions under Title III from \$50,000,000 to \$200,000,000 before specific congressional authorization is required. The process for obtaining specific authorization in law for projects exceeding \$50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. Adequate opportunity for Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

In section 302, sentence is added at the end of subsection (a) to clarify that this authority includes, but is not limited to, the modification and expansion of privately-owned facilities and modification and improvement of production processes

Paragraph 302(c) requires: (1) the President to identify proposed Title III action either in the Budget or a Budget amendment submitted to Congress; (2) that no assistance under this section may be provided until 60 days have elapsed after notification has been made; and (3) that specific authorization, in law, be obtained for any assistance that would create an outstanding Government obligation exceeding \$50,000,000.

This process is inefficient, cumbersome, and time-consuming, and is a barrier to the timely application of Title III authorities to address industrial base issues that affect national defense. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation on actions under Title III from \$50,000,000 to \$200,000,000 before specific congressional authorization is required. The process for obtaining specific authorization in law for projects exceeding \$50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. Adequate opportunity for Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

Paragraph 303(a)(6) requires: (1) the President to identify proposed Title III action in the Budget or Budget amendment submitted to Congress; (2) that such notification to Congress be made at least 60 days in advance of such assistance; and (3) obtain authorization, in law, for any assistance that would create an outstanding Government obligation exceeding \$50,000,000. This process is inefficient, cumbersome, and time-consuming, and is a barrier to the timely application of Title III authorities to address industrial base issues that affect national defense.

This process is inefficient, cumbersome, and time-consuming, and is a barrier to the timely application of Title III authorities to address industrial base issues that affect national defense. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation on actions under Title III from \$50,000,000 to \$200,000,000 before specific congressional authorization is required. The process for obtaining specific authorization in law for projects exceeding \$50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. Adequate opportunity for Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

Subsection 303(e) authorizes the President to install equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities to aid the national defense. Two sentences are added at the end of this subsection to clarify that this authority includes, but is not limited to, the modification and expansion of privately-owned facilities and modification and improvement of production processes.

Subsection 304(b) is amended to clarify that all moneys received by the Government in connection with Title III actions shall be credited to the DPA Fund. Current law is unclear whether funds appropriated for Title III activities can be credited back to the Fund. The proposed language would enable obligated funds that are not expended during the course of a Title III project to be credited back to the Fund for use for other Title III projects.

**SEC. ____ . EXPANSION OF THE WHITE HOUSE COMMUNICATIONS AGENCY
MISSION TO ENCOMPASS AUDIOVISUAL SUPPORT SERVICES.**

1 Section 912 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law
2 104-201; 110 Stat. 2623) is amended—

3 (1) in subsection (a)—

4 (A) by striking "The Secretary" and inserting "Hereafter, the Secretary";

5 and

6 (B) by inserting "and audiovisual support services" after "provision of
7 telecommunications support";

8 (2) in subsection (b), by inserting "and audiovisual" after "other than
9 telecommunications"; and

10 (3) by striking subsections (d) through (f).

Section-by-Section Analysis

This amendment of section 912 of Public Law 104-201 would clarify the mission of the White House Communications Agency (WHCA) to encompass audiovisual support services and expressly would authorize funds appropriated to the Department of Defense (DoD) to be used for that purpose.

Since 1997, WHCA routinely has provided audiovisual support services to the Executive Office of the President on a reimbursable basis. The proposed change would clarify WHCA's mission of providing comprehensive communications support for the President. Inclusion of audiovisual support services would ensure WHCA continues to assist the President in communicating with the American people and the world.

This amendment would be consistent with an increase in appropriated funds for audiovisual support services to the DoD Defense Information Service Agency's appropriation proposed in the President's fiscal year 2006 budget submission.

**SEC. ____ . APPOINTMENT PREFERENCE FOR SPOUSE OF VETERAN OR
MILITARY MEMBER WITH A SEVERE COMBAT-RELATED INJURY.**

1 (a) IN GENERAL.—Chapter 88 of title 10, United States Code, is amended by inserting
2 after section 1789 the following new section:

3 **"§ 1790. Preference for spouse of veteran or military member who received a severe
4 combat-related injury**

5 "(a) INJURY DETERMINATION AND CERTIFICATION.—The Secretary of Defense may
6 determine and certify that a military member or veteran received a severe combat-related injury
7 on or after September 11, 2001.

8 "(b) PREFERENCE.—Upon such certification, and notwithstanding the provisions of title 5
9 regarding appointments into the competitive or excepted services or positions in any
10 nonappropriated fund activity, the Secretary may establish a preference in the appointment of the
11 spouse of such veteran or military member to a position within the Department of Defense for
12 which the spouse qualifies.

13 "(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to
14 provide a spouse covered by this section with preference in hiring over an individual who
15 qualifies as a preference eligible under section 2108(3) of title 5.

16 "(d) DEFINITIONS.—For purposes of this section—

17 "(1) 'Veteran' means a person who served on active duty in the Army, Air Force,
18 Navy, or Marine Corps, or the Coast Guard when operating as a service in the Navy, and
19 who was discharged or released therefrom under conditions other than dishonorable.

20 "(2) 'Military member' means an officer or enlisted member (as such terms are
21 defined in section 101 of title 32), serving in the Army, Air Force, Navy or Marine

1 Corps, or the Coast Guard when operating as a service in the Navy.

2 "(e) REGULATIONS.—The Secretary of Defense shall issue regulations to implement this
3 section."

4 (b) CLERICAL AND COMFORMING AMENDMENTS.—(1) Section 1784(c) of such title is
5 amended by inserting "or a spouse covered by section 1790 of this title" after "eligible".

6 (2) The table of sections at the beginning of such chapter is amended by inserting after
7 the item relating to section 1789 the following new item:

8 "1790. Preference for spouse of veteran or military member who received a severe combat-related injury."

Section-by-Section Analysis

This section would provide the Secretary of Defense with the authority to provide a hiring preference to the spouse of a veteran or military member who has been certified to have sustained a severe combat-related injury on or after September 11, 2001, to a Department of Defense (DoD) position in the competitive or excepted services, or in any nonappropriated fund activity, for which the spouse qualifies. The preference would not affect the rights of preference-eligible veterans to appointments in the competitive service. The Secretary would prescribe regulations to implement this section.

The United States has an obligation to assist spouses of certain military members and veterans in readjusting to family circumstances following combat operations. Spouses of veterans and military members with severe combat-related injuries often must seek employment to sustain their standard of living. This is particularly true when the member or veteran faces diminished employment opportunities because of combat injuries, the military member's status changes, or the member is discharged due to combat injuries. The DoD accepts this obligation to help ease the burden of the spouse's search for gainful employment because the need for such employment arises from the veteran's service to the nation.

This preference would increase the potential for employment opportunities that previously were unavailable to spouses of severely disabled veterans and military personnel.

SEC. ____ . TARGETED SEPARATION INCENTIVE PROGRAM.

1 (a) IN GENERAL.—(1) Chapter 59 of title 10, United States Code, is amended by adding
2 at the end the following new section:

3 **"§ 1179. Voluntary separation pay**

4 "(a) ESTABLISHMENT OF VOLUNTARY SEPARATION PROGRAM.—Under regulations
5 approved by the Secretary of Defense, the Secretary of a military department may establish a
6 program to offer special pay and benefits under this section to eligible members of the armed
7 forces.

8 "(b) BENEFITS.—(1) An eligible member shall be entitled to voluntary separation pay
9 under this section in an amount determined by the Secretary concerned pursuant to subsection
10 (d).

11 "(2) Members who will not be entitled to retired or retainer pay upon separation shall be
12 entitled to the benefits and services provided under—

13 "(A) chapter 58 of this title, notwithstanding any termination date that may appear
14 in any of the sections therein, for 180 days beginning on the date the member is separated
15 from active duty; and

16 "(B) sections 404 and 406 of title 37.

17 "(c) ELIGIBILITY.—(1) A member is eligible for voluntary separation pay if the
18 member—

19 "(A) has not been approved for payment of a voluntary separation incentive under
20 section 1175 of this title;

21 "(B) has served on active duty for more than 6 years;

22 "(C) has served at least 5 years of continuous active duty immediately preceding

1 the date of the member's separation from active duty;

2 "(D) requests separation from active duty and is separated pursuant to that
3 request; and

4 "(E) meets such other requirements as the Secretary concerned may prescribe,
5 which may include requirements relating to:

6 "(i) years of service, skill, rating, military specialty, or competitive
7 category;

8 "(ii) grade or rank;

9 "(iii) remaining period of obligated service; or

10 "(iv) any combination of these factors.

11 "(2) Each year the Secretary concerned shall determine the number of members to be
12 separated under the program in the next fiscal year. Of this number, no more than 20 percent
13 may be members who have completed 20 or more years of active duty.

14 "(3) Of the number determined in paragraph (2), each year the Secretary concerned also
15 shall determine the number of members in specified skill and grade combinations who shall have
16 to serve in the Ready Reserve for a time period not to exceed 3 years.

17 "(4) A member who—

18 "(A) is discharged with disability severance pay under section 1212 of this title;

19 "(B) is transferred to the temporary disability retired list under section 1202 or
20 1205 of this title;

21 "(C) is being evaluated for disability retirement under chapter 61 of this title; or

22 "(D) has been previously discharged with voluntary separation pay,
23 "is not eligible for voluntary separation pay under this section.

1 "(d) COMPUTATION AND PAYMENT.—

2 "(1) COMPUTATION.—(A) The Secretary concerned shall specify the amount of
3 voluntary separation pay that members of a defined group may receive under this section.
4 No member may receive an amount greater than four times the full amount of separation
5 pay for a member of the same pay grade and years of service who is involuntarily
6 separated under section 1174 of this title.

7 "(B) A member who is eligible to retire or transfer to the Fleet Reserve or the
8 Fleet Marine Corps Reserve after completing 20 or more years of active service may not
9 receive voluntary separation pay in an amount greater than six times the monthly basic
10 pay to which the member was entitled on the day before the date of the member's
11 retirement or transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

12 "(2) PAYMENT.—(A) Voluntary separation pay under this section may be paid in
13 a single lump sum.

14 "(B) In the case of members who, at the time of separation, have completed at
15 least 15, but less than 20 years of active service, voluntary separation pay may be paid in
16 a single lump sum or installments over a period not to exceed ten years, or in a
17 combination of lump sum and installments as determined by the Secretary concerned.

18 "(e) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY
19 COMPENSATION.—(1) A member who has received voluntary separation pay under this section
20 and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted
21 from each payment of such retired or retainer pay so much of such pay as is based on the service
22 for which he received voluntary separation pay under this section until the total amount deducted
23 is equal to the total amount of voluntary separation pay received.

1 "(2)(A) Except as provided in subparagraphs (B) or (C), a member who has received
2 voluntary separation pay under this section based on service in the armed forces shall not be
3 deprived, by reason of his receipt of such pay, of any disability compensation to which he is
4 entitled under the laws administered by the Department of Veterans Affairs, but there shall be
5 deducted from that disability compensation an amount equal to the total amount of voluntary
6 separation pay received, less the amount of Federal income tax withholding for such pay at the
7 rate of withholding applicable to supplemental wages for the purposes of the Internal Revenue
8 Code of 1986.

9 "(B) No deduction shall be made from the disability compensation paid to an eligible
10 disabled uniformed services retiree under section 1413, or to an eligible combat-related disabled
11 uniformed services retiree under section 1413a, of this title who was paid voluntary separation
12 pay under this section.

13 "(C) No deduction may be made from the disability compensation paid to a member for
14 the amount of voluntary separation pay received by the member because of an earlier discharge
15 or release from a period of active duty if the disability which is the basis for that disability
16 compensation was incurred or aggravated during a later period of active duty.

17 "(3) The requirement under this subsection to repay voluntary separation pay following
18 retirement from the armed forces does not apply to a member who was eligible to retire at the
19 time he applied and was accepted for voluntary separation pay.

20 "(4) The Secretary concerned may waive the requirement to repay voluntary separation
21 pay under paragraphs (1) and (2) if the Secretary determines that recovery would be against
22 equity and good conscience or would be contrary to the best interests of the United States.

23 "(f) DEFINITION.—The term 'retirement' includes a transfer to the Fleet Reserve and Fleet

1 Marine Corps Reserve.

2 "(g) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) A member who,
3 after having received all or part of his voluntary separation pay under this section, returns to
4 active duty shall have deducted from each payment of basic pay so much of the pay as is based
5 on the service for which he received the voluntary separation pay until the total amount deducted
6 equals the total amount of voluntary separation pay received.

7 "(2) Members who are involuntarily recalled to active duty or full-time National Guard
8 duty in accordance with sections 12301(a), 12301(b), 12301(g), 12302, 12303, and 12304 of this
9 title or section 502(f)(1) of title 32 shall not be subject to this subsection.

10 "(3) Members who are recalled or perform active duty or full-time National Guard duty
11 in accordance with sections 101(d)(1), 101(d)(2), 101(d)(5), 12301(d) (insofar as the period
12 served is less than 180 consecutive days with the consent of the member), 12319, or 12503 of
13 title 10, or sections 114, 115, or 502(f)(2) of title 32 insofar as the period served is less than 180
14 consecutive days with consent of the member, shall not be subject to this subsection.

15 "(4) The Secretary of Defense may waive, in whole or in part, repayment required under
16 paragraph (1) if the Secretary determines that recovery would be against equity and good
17 conscience or would be contrary to the best interests of the United States. This authority may
18 only be further delegated to the Under Secretary of Defense, or Principal Deputy Under
19 Secretary of Defense, for Personnel and Readiness.

20 "(h) TERMINATION OF VOLUNTARY SEPARATION PAY AUTHORITY.—The authority to
21 separate from the armed forces and qualify for voluntary separation pay under this section shall
22 terminate on December 31, 2011. A member who separates by that date may continue to be paid
23 under this section until the entire amount to which the member is entitled has been paid."

1 (2) The table of sections at the beginning of such chapter is amended by adding at the end
2 the following new item:

3 "1179. Voluntary separation pay."

4 (b) CERTAIN COMBAT ZONE COMPENSATION FOR MEMBERS OF THE ARMED
5 FORCES.—Section 112(c)(4) of the Internal Revenue Code of 1986 is amended to read as
6 follows:

7 "(4) The term 'compensation' does not include pensions, retirement pay, or voluntary
8 separation pay under section 1179 of title 10, United States Code."

9 (c) OFFICER SELECTIVE EARLY RETIREMENT.—Section 638a(a) of title 10, United States
10 Code, is amended by inserting "and during the period beginning on October 1, 2005 and ending
11 on December 31, 2011," after "December 31, 2001,".

12 (d) ALTERNATE LENGTH OF SERVICE LIMITATIONS FOR SENIOR OFFICERS.—(1) Section
13 633 of such title is amended by inserting before the period at the end the following: "or, during
14 the period beginning on October 1, 2005 and ending on December 31, 2011, the month in which
15 he is eligible to retire and completes a lesser number of years of active commissioned service
16 specified by the Secretary concerned for officers in a particular competitive category, year group
17 or specialty, or any combination thereof within that competitive category".

18 (2) Section 634 of such title is amended by inserting before the period at the end the
19 following: "or, during the period beginning on October 1, 2005 and ending on December 31,
20 2011, the month in which he is eligible to retire and completes a lesser number of years of active
21 commissioned service specified by the Secretary concerned for officers in a particular
22 competitive category, year group or specialty, or any combination thereof within that
23 competitive category".

Section-by-Section Analysis

This section would provide the Department of Defense (DoD) with a targetable, voluntary separation incentive to offer service members at various stages in their careers after they have served at least six years. This incentive would help the DoD ensure the force has a proper balance and mix of skills and experience by enabling DoD to reduce excess personnel in overmanned skills without forcing them to leave involuntarily (which would create significant recruiting and retention risks). This tool is of particular importance when the Air Force and Navy are decreasing in size while the Army is increasing operating strength.

The military departments would implement the least expensive tools appropriate to their circumstances, progressing to more expensive tools only as their force shaping requires. First, they would shift personnel from overmanned to undermanned skill areas through retraining and lateral conversion (e.g., Navy's Perform to Serve, Air Force's Career Job Reservation, Marine Corps' "boat space" policy) or with the Lateral Conversion Bonus. When that is not feasible, and if a valid need exists, the military departments would consider transferring active component personnel to the Reserve component. If neither active nor Reserve component retention makes sense, the military departments would evaluate inter-service transfers (e.g., Army's Blue-to-Green initiative) for those personnel possessing the background, education and skills required within Army's active, Reserve or National Guard components. After exhausting all logical retention options, the military departments would offer the most cost-effective and most targeted voluntary separation incentive feasible.

This section would create a voluntary separation pay incentive that would expire in December 2011. The incentive is a lump-sum buy-out (capped at four times involuntary separation pay) accompanied by up to six months of transition benefits for members with less than 20 years of active service; and a combination of the lump-sum buy-out and annual installment payments for ten years, or either separately, accompanied by up to six months of transition benefits for members with at least 15 and less than 20 years of active service. Members who are retirement eligible will be offered a lump sum capped at six months of basic pay.

The Secretary of a Military Department concerned may require separated members, in specified skills, to serve in the Ready Reserve for a period not to exceed three years.

Members who are involuntarily recalled to active duty will not have the voluntary separation pay recouped, nor will members who return to active duty to perform short-term required duty consistent with their reserve status (e.g., annual training, active duty for training, or active duty for special work). Otherwise, if a member returns voluntarily for active duty, the entire voluntary separation pay will be recouped unless waived by the Secretary of Defense.

Force shaping is not limited to those personnel who are not retirement-eligible because the need to properly shape the force can require military departments to look at their retirement-eligible population. To that end, this section offers appropriate voluntary separation incentives for those who are retirement-eligible. However, this section would limit the population who may take the incentive to 20 percent of the separates.

If the military departments do not achieve the appropriate number of voluntary separations, currently authorized involuntary separation measures still could be implemented. This section also would enhance the Selective Early Retirement authority for officers and allow the military departments to set "high year tenure" limits for certain officer skills below the current statutory retirement limits.

The Air Force and Navy have been using the available force shaping tools and are particularly anxious to use what they have learned from this experience to shape their reductions in end strength. The Army and Marine Corps want these new tools because they will have to shape their own force reductions in the not-too-distant future.

Cost Implications: The Navy has estimated the cost of separations through their use of Voluntary Separation Pay at approximately \$104 million for Fiscal Year (FY) 2006. Navy would offset these costs through near- and long-term savings from the avoidance of such costs as the net present value of retirement for members receiving separation pay. The Air Force does not plan to use this authority in FY 2006, but expects to use it in the future.

The DoD cannot predict the costs for FY 2007 and beyond with any accuracy because the number of voluntary separations and the specific populations targeted are subject to the changing dynamics of the force over time.