

# Section-by-Section Analysis

## TITLE I—PROCUREMENT

**Sections 101 through 108** provide procurement authorization for the military departments and for Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2010.

## TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

**Section 201** provides for the authorization of Military Departments and Defense-wide research, development, test, and evaluation appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2010.

## TITLE III—OPERATION AND MAINTENANCE

### Subtitle A—Authorization of Appropriations

**Section 301** provides for authorization of the Operation and Maintenance appropriations of the military departments and Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2010.

### Subtitle B—Environmental Provisions

**Section 311** would authorize the Secretary of Defense to reimburse the Nansemond Ordnance Depot Site Special Account within the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 for costs incurred by the United States Environmental Protection Agency (EPA) in overseeing a time critical removal action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) being performed by the Department of Defense (DoD) under the Defense Environmental Restoration Program at the Nansemond Ordnance Depot Site, Suffolk, VA.

The Army and the EPA entered into an interagency agreement (IAG) on 29, 1999 and submitted to the U.S. Army Corps of Engineers by letter dated January 3, 2000 covering performance by the U.S. Army Corps of Engineers (USACE) of a remedial time critical removal action at the Nansemond Ordnance Depot Site under the Formerly Used Defense Sites (FUDS) program. Under the terms of the agreement, the Army agreed to make two formal requests for authorization and appropriations to provide for reimbursement of EPA's oversight costs (including interest). The first such request was to be made soon after the effective date of the agreement. To date, initial costs of \$84,153.16 have been provided pursuant to section 316 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year (FY) 2001 (P.L. 106-398; 114 Stat. 1654A-56). The second request was to be made at the completion of work under the agreement for the final remaining total costs incurred by EPA.

Pursuant to the terms of the IAG, EPA presented six bills dated each year beginning in 2002 and ending in 2007 to USACE for its oversight costs to be consolidated and totaled as the final request for payment. The USACE validated EPA costs in the amount of \$68,622.38, incurred from January 1, 2001 to 31, 2006, as being remaining total costs incurred by EPA for oversight of the IAG Time Critical Removal Action (TCRA) conducted by the Army at this FUDS. Individual bills note that interest accrues at various rates, if the bill is not paid within 60 days of various dates. This is not consistent with the IAG. The IAG only allows for the Army to make a request to Congress to be authorized to make a payment to EPA on two occasions, the first being the aforementioned payment in 2000. The second request was only to be made at the completion of the work under the IAG and to account for the remaining total of EPA's oversight costs. This proposal satisfies that second request for payment. The Army may only make payments to EPA if specifically authorized in law as mentioned above in the 2001 Defense Authorization Act. As such, it is impossible for the Army to pay a bill within 60 days of presentment. The IAG clearly contemplates that interest would only accrue if Army does not make a timely payment after Congress has authorized it to do so and only if there are adequate funds available at the time. That has not yet occurred; any request for interest by EPA is in error and inconsistent with the agreement.

Congress was explicit in its desire and agreement that under the law DoD must seek specific authorization before making such payments to EPA. In the Conference Report accompanying the National Defense Authorization Act for FY 2001 (H.R. CONF. REP. NO. 106-945, at 761 (2000)), the Committee directed "the DoD and the military departments to continue to seek congressional authorization prior to reimbursing EPA for any oversight costs incurred at environmental restoration sites where DoD or the military departments have incurred liability under CERCLA."

### **BUDGETARY IMPLICATIONS**

This is a one-time payment of \$68,622.23 to EPA without start up or sustainment costs. There are no savings to be generated.

Funds will come from the Environmental Restoration, Formerly Used Defense Sites (ER, FUDS) appropriation to the ER, FUDS Transfer account. The Budget Activity is 5. The Dash-1 Line Item is 0811D. Once funds are appropriated to the ER, FUDS transfer account, a DD Form 1415-3 Internal Reprogramming Action is prepared for DoD Comptroller to authorize the movement of funds from the transfer account and an Obligation Authority memorandum actually moves funds. There is no offset, and no offset is required; the Army has known about the requirement and will include the requirement in the FUDS annual work plan that allocates funds to individual sites/projects.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
Defense- wide	0.068	-	-	-	-	-	O&M, Environmental	05	0811D

							Restoration Formerly Used Defense Sites		
Total	0.068	-	-	-	-	-			

### Subtitle C—Other Provisions

**Section 321.** Due to the difficulties in forecasting volatile fuel prices ten to 10 to 22 months in advance of the fiscal year, the Department of Defense is requesting an indefinite appropriation to finance 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. For example, had the Department had this transfer authority in fiscal year (FY) 2009 and if current fuel prices continue, the Department would be returning over a billion dollars to the Treasury.

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.

**Budget Implications:** For fiscal year 2010, the President’s budget contains funding to purchase up to 111 million barrels of refined petroleum products, based on a crude oil equivalent to a West Texas Intermediate cost of \$84.01 a barrel and an average refined petroleum product cost of \$109.21 a barrel. The cost for specific petroleum products and specific quantities purchased is specified in the Budget Justification Materials for the Defense Logistics Agency (DLA) portion of the Defense-Wide Working Capital Fund and in the DLA Defense customer budget justifications books. For each subsequent year, this information would be provided in the President’s Budget Appendix and the appropriate Defense Justification Materials.

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

## **TITLE IV—OTHER AUTHORIZATIONS**

### **Subtitle A—Military Programs**

**Section 401** authorizes appropriations for the Defense Working Capital Funds in an amount equal to the budget authority included in the President’s Budget for fiscal year 2010.

**Section 402** authorizes appropriations for the National Defense Sealift Fund in an amount equal to the budget authority included in the President’s Budget for fiscal year 2010.

**Section 403** authorizes appropriations for the Defense Health Program in amounts equal to the budget authority included in the President’s Budget for fiscal year 2010.

**Section 404** authorizes appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority included in the President’s Budget for fiscal year 2010.

**Section 405** authorizes appropriations for Drug Interdiction and Counter-Drug Activities, Defense-Wide in an amount equal to the budget authority included in the President’s Budget for fiscal year 2010.

**Section 406** authorizes appropriations for the Defense Inspector General in amounts equal to the budget authority included in the President’s Budget for fiscal year 2010.

**Section 407** authorizes appropriations for the Defense Coalition Support Fund in an amount equal to the budget authority included in the President’s Budget for fiscal year 2010.

### **Subtitle B—Armed Forces Retirement Home**

**Section 411** authorizes appropriations for fiscal year 2010 for the Armed Forces Retirement Home in an amount equal to the budget authority included in the President’s Budget for fiscal year 2010.

### **Subtitle C—Military Personnel**

**Section 421** authorizes appropriations for fiscal year 2010 for military personnel.

## **TITLE V—MILITARY PERSONNEL POLICY**

### **Subtitle A—Personnel Strength Authorizations**

**Section 501** prescribes 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 2010.

**Section 502** prescribes 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 2010.

**Section 503** prescribes 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 2010.

**Section 504** prescribes the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2010.

**Section 505** prescribes the maximum end strengths for non-dual status technicians of the reserve components of the Army and Air Force for fiscal year 2010.

**Section 506** prescribes the maximum number of reserve component personnel who may be on active duty or full-time National Guard duty under section 115(b) of title 10, United States Code, during fiscal year 2010 to provide operational support.

### **Subtitle B—Military Personnel Policy Generally**

**Section 511.** Section 516 of the Fiscal Year 2007 National Defense Authorization Act for authorized sweeping changes to Department of Defense (DoD) joint officer management, establishing joint qualification levels. The purpose of establishing such qualification levels was to ensure systematic, progressive, career-long development of officers in joint matters.

The proposed modifications to section 667 of title 10 United States Code aligns reporting requirements with the new Joint programs and policies developed and implemented by DoD. Specifically, the proposed changes delete requirements to report on Critical Occupational Specialty (COS) officers. The new DoD policy aligns minimum requirements for all officers designated as a joint qualified officer to include education and tour lengths; we no longer process COS designations under different rules. Additionally, subsection (6) is deleted as Joint Qualified Officer (JQO) designation is not aligned with assignment cycles. Relevant to JQO designation, is the reporting of JQOs filling level 3 (critical positions on the Joint Duty Assignment List), which requires a waiver if not filled by JQO officers. This information will be reported under

subsection (7), which requires the Secretary of Defense to report all joint officer waivers exercised throughout the fiscal year

Additionally, we have amended Joint Professional Military Education (JPME) reporting requirements to align with expanded JMPE II opportunities. JPME II credit is no longer authorized until completion of JPME I. Therefore, JMPE out-of-phase reports are no longer relevant to Joint Officer Management.

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. 667:

### § 667. Annual report to Congress

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

(1)(A) The number of officers designated as a joint qualified officer ~~and their education and experience.~~

(B) The number of officers who meet the criteria for designation as a joint qualified officer, but were not selected, together with the reasons why.

(C) A comparison of the number of officers who were designated as a joint qualified officer who had served in a Joint Duty Assignment List billet and completed Joint Professional Military Education Phase II, with the number designated as a joint qualified officer based on their aggregated joint experiences and completion of Joint Professional Military Education Phase II.

(2) The number of officers designated as a joint qualified officer, shown by grade and branch or specialty and by education.

~~(3) The number of officers on the active-duty list with a military occupational specialty designated under section 668(d) of this title as a critical occupational specialty who—~~

~~————— (A) have been designated as a joint qualified officer;~~

~~————— (B) have been designated as a joint qualified officer and are serving in a joint duty assignment;~~

~~————— (C) have completed a joint duty assignment and are attending an appropriate program at a joint professional military education school;~~

~~————— (D) have completed an appropriate program at a joint professional military education school; and~~

~~————— (E) have served, or are serving in, a second joint duty assignment after being designated as a joint qualified officer, with the number of such officers who have served, or are serving, in a critical joint duty assignment shown separately for general and flag officers, and for all other officers.~~

~~————— (4) For each fiscal year—~~

~~(A) the number of officers designated as a joint qualified officer and, of those, the number who have a military occupational specialty designated as a critical occupational specialty; and~~

~~———(B) a comparison of the number of officers who were designated as a joint qualified officer who had served in a Joint Duty Assignment List billet and completed Joint Professional Military Education Phase II, with the number designated as a joint qualified officer based on their aggregated joint experiences and completion of Joint Professional Military Education Phase II.~~

(53) The promotion rate for officers designated as a joint qualified officer, compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade and the same competitive category. A similar comparison will be made for officers both below the promotion zone and above the promotion zone.

~~(6) An analysis of assignments of officers after their designation as a joint qualified officer.~~

(74) The average length of tours of duty in joint duty assignments—

(A) for general and flag officers, shown separately for assignments to the Joint Staff and other joint duty assignments; and

(B) for other officers, shown separately for assignments to the Joint Staff and other joint duty assignments.

(85) The number of times, in the case of each category of exclusion, that service in a joint duty assignment was excluded in computing the average length of joint duty assignments.

(96)(A) An analysis of the extent to which the Secretary of each military department is providing officers to fill that department's share (as determined by law or by the Secretary of Defense) of Joint Staff and other joint duty assignments, including the reason for any significant failure by a military department to fill its share of such positions and a discussion of the actions being taken to correct the shortfall.

(B) An assessment of the extent to which the Secretary of each military department is assigning personnel to joint duty assignments in accordance with this chapter and the policies, procedures, and practices established by the Secretary of Defense under section 661(a) of this title.

(407) The number of times a waiver authority was exercised under this chapter (or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments) and in the case of each such authority—

(A) whether the authority was exercised for a general or flag officer;

(B) an analysis of the reasons for exercising the authority; and

(C) the number of times in which action was taken without exercise of the waiver authority compared with the number of times waiver authority was exercised (in the case of each waiver authority under this chapter or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments).

(448) The number of officers in the grade of captain (or in the case of the Navy, lieutenant) and above certified at each level of joint qualification as established in regulation and policy by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. Such numbers shall be reported by service and grade of the officer.

(429) With regard to ~~each time the principal courses of instruction at the Joint Forces Staff College is offered~~ the principal course of instruction for Joint Professional

Military Education Level II, the number of officers graduating from each of the following:

(A) The Joint Forces Staff College;

(B) The National Defense University;

(C) Senior Service Schools.

~~—— (A) the number of officers selected to attend that course who did not first complete while in residence at a professional military education school operated by a military department the principal course of instruction offered at that school;~~

~~—— (B) the number of those officers as a percentage of all officers who attended that course of instruction at the Joint Forces Staff College;~~

~~—— (C) a description of the different reasons why officers were selected to attend that course without first attending the principal course of instruction offered at a professional military education school operated by a military department; and~~

~~—— (D) the number of officers so selected for each such reason.~~

(4310) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

**Section 512.** Section 974 of title 10, United States Code, enacted by section 590 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), prohibits the use of military musical units in official military events that are supported wholly or in part by non-appropriated funds. This prohibition inhibits military musical units in executing one of their core missions for the military departments: to increase troop morale, esprit de corps and retention. It also restricts the military departments in utilizing their musicians in support of a number of traditional military functions not supported solely by appropriated funds, yet deemed necessary for the benefit of military personnel.

This proposal allows military musicians to provide all musical requirements (i) for official military events, held on or off military installations, (ii) at events that foster cooperative relationships with other nations, and (iii) for events sponsored by the military relief societies. The unique and active partnership between these entities and the respective military departments remains vital to ensuring the morale and welfare of active duty and veteran service members. In addition, this proposal includes language that makes it clear this statute would not apply to performances on foreign soil.

In addition to proposing new and modified language, this submission reorganizes 10 U.S.C. § 974 in order to group related subsections and paragraphs together, facilitate logic flow and allow easier readability.

The section title is reworded to more aptly reflect the content and intent of the section: defining restrictions on performances by military musicians in competition with local civilian musicians.

Paragraph (a)(1) combines and rewords current subsection (a) and paragraph (a)(1).



Paragraph (a)(2) combines and rewords current subsection (d) and paragraph (d)(1).

Subparagraph (a)(2)(A) replaces and modifies current subparagraph (d)(1)(A). Striking “solely by appropriated” and inserting “in whole or in part, by United States Government” clarifies the statutory prohibition on military musicians supporting events not funded, in whole or in part, by either appropriated or non-appropriated (*e.g.*, Morale, Welfare and Recreation) funds.

Subparagraph (a)(2)(B) replaces and modifies current subparagraph (d)(1)(B). Striking “solely by appropriated” and inserting “in whole or in part, by United States Government” clarifies the statutory prohibition on military musicians supporting events not funded, in whole or in part, by either appropriated or non-appropriated funds. In addition, striking “regardless of location” and inserting “held at a location not on a military installation” further clarifies that background, dinner, dance and other social music performed by military musicians is considered in direct competition with civilian musicians when it occurs outside the gates of a military installation (notwithstanding exceptions listed under paragraph (a)(3)).

Paragraph (a)(3) combines and rewords current subsection (d) and paragraph (d)(2).

Subparagraph (a)(3)(A) replaces and modifies current subparagraph (d)(2)(A). Striking “solely by appropriated” and inserting “in whole or in part, by United States Government” clarifies the statutory allowance for military musicians to support events funded, in whole or in part, by either appropriated or non-appropriated funds. In addition, inserting “(including background, dinner, dance and other social music)” clarifies that military musicians are not in competition with civilian musicians when performing such music at an official event funded, in whole or in part, by either appropriated or non-appropriated funds. For example, military musicians—now limited under current subparagraphs (d)(2)(A) and (d)(2)(C), and accompanying regulations, to an incidental ceremonial opening or closing at a troop morale event on a military installation funded by non-appropriated funds—would be able to support, subject to existing directives and regulations, all musical requirements at a troop morale event on a military installation funded by non-appropriated funds in keeping with their historical role and military mission.

Subparagraph (a)(3)(B) is a reiteration of current subparagraph (d)(2)(B).

Subparagraph (a)(3)(C) replaces and modifies current subparagraph (d)(2)(C). Striking “solely by appropriated funds” and inserting “in whole or in part, by United States Government funds or (ii) is not free to the public” clarifies that military musicians would be able to offer incidental performances in support of events not funded, in whole or in part, by either appropriated or non-appropriated funds, or that are not free to the public. Striking “such as short performances of military or patriotic music to open or close events” more closely aligns the language with current title 10 usage and appropriately allows regulations prescribed under the Secretary of Defense to describe when a performance is “incidental” to the event.

New subparagraph (a)(3)(D) and accompanying clause (i) would, subject to existing directives and regulations, authorize support by military musicians for events sponsored by the three military welfare societies (*i.e.*, The Army Emergency Relief Society, The Navy-Marine

Corps Relief Society, The Air Force Aid Society, Inc.) bearing a unique, historical relationship with the military and identified in section 2566 of title 10. This status comports, in part, with the unique recognition of these entities identified by Department of Defense regulations (*e.g.*, DoD 5500.7-R, Joint Ethics Regulation).

New subparagraph (a)(3)(D) and accompanying clause (ii) would clarify that military musical support for traditional, yet unofficial, military events (*e.g.*, military dinings in and dinings out, awards banquets, holiday parties) where attendees pay for their meals at the door is, subject to existing directives and regulations, appropriate and allowable.

New subparagraph (a)(3)(D) and accompanying clause (iii) would authorize support by military musicians for events that specifically benefit or recognize servicemembers, their family members, veterans (as described in 38 U.S.C 101), and civilian or former civilian employees of the Department of Defense. The inclusion of “to the extent provided in regulations prescribed by the Secretary of Defense” would require the Secretary of Defense to publish guidance to establish the initial parameters and extent of such support. This guidance would most likely be detailed within the existing Department of Defense Directive 5410.18—Public Affairs Community Relations Policy.

New subparagraph (a)(3)(E) and accompanying clauses (i) and (ii) would allow support by military musicians of events in the United States, its commonwealths, or possessions, that may or may not be ORF events but otherwise satisfy the cited purpose (*e.g.*, the annual Military Attaché Ball in the National Capitol Region).

Subsection (b) is a reiteration of and expansion on current paragraph (a)(2). By inserting “other than applicable military pay and allowances,” the statute as amended would ensure that military musicians performing in accordance with this statute are authorized to receive payment from the United States Government for official performances.

Subsection (c) and accompanying paragraphs (1) and (2) is a reiteration of current subsection (c) and accompanying paragraphs (1) and (2).

Subsection (d) is a new subsection that would clarify that new subsection (a) and all its paragraphs, subparagraphs and clauses do not apply to performances by United States military musicians when those performances occur outside the United States, its commonwealths or its possessions. This caveat acknowledges the role and utilization of military musicians outside the United States in support of U.S. Ambassadors, State Department initiatives and Combatant Commanders. In addition, it recognizes the myriad unique circumstances encountered when military musicians are requested by a military commander in support of fostering and sustaining a cooperative relationship with another nation or to uphold the standing and prestige of the United States.

Subsection (e) is a new subsection that defines the term “military musical unit.”

Current subsection (b) is both redundant to and inadvertently more constraining (paragraph (b)(2)) than guidance provided by Department of Defense regulations (*e.g.*, DoD

5500.7-R, Joint Ethics Regulation). Therefore, striking current subsection (b) and its paragraphs (1), (2) and (3) is both appropriate and recommended.

### **BUDGET IMPLICATIONS**

There are no budgetary baseline increases or offsets caused by or associated with this proposal. Appropriated baseline requirements for bands will not be affected, nor will additional costs be incurred.

This proposal eliminates the current statutory restriction on military musicians supporting official events not funded solely by appropriated funds, and clarifies that military musicians may support official events that are funded, in whole or in part, by either appropriated or non-appropriated funds. For example, military musicians—now limited to an incidental ceremonial opening or closing at a troop morale event on a military installation funded by non-appropriated funds—would be able to support, subject to existing directives and regulations, all musical requirements at a troop morale event on a military installation funded by non-appropriated funds in keeping with their historical role and military mission.

Further, since U.S. Army, U.S. Marine Corps and U.S. Air Force musical units currently are (and historically have been) funded by their baseline appropriation to support these events as part of their official duties, they will incur no additional costs in providing full musical support to the events as described. U.S. Navy musical units will incur no additional costs in providing full musical support to official events (versus the current incidental ceremonial limitations) as described in the paragraph above.

Existing legislation provides the Secretaries of the military departments the authority to provide performances by military musicians. Since funds are budgeted for musical support within the Operation and Maintenance appropriation of each Service, and no increases will be incurred as a result of this proposed language, this proposal does not meet the threshold of a budget-related submission.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
<b>(budgeted funding by Service)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
Army	1.6	1.6	1.6	1.6	1.7	1.7	O&M, Army	01	135
Army	9.5	9.7	9.9	10.1	10.2	10.4	O&M, Army	04	434
Marine Corps	2.4	2.5	2.5	2.6	2.6	2.7	O&M, Marine Corps	04	4A2G
Navy	1.6	1.6	1.7	1.8	1.8	1.9	O&M, Navy	04	4A5M
Air Force	11.7	11.7	12.2	12.7	13.2	13.5	O&M, Air Force	04	042A
<b>Total</b>	<b>26.8</b>	<b>27.1</b>	<b>27.9</b>	<b>28.8</b>	<b>29.5</b>	<b>30.2</b>			

**Changes to Existing Law:** This proposal would amend section 974 of title 10, United States Code, in its entirety, as follows:

**§ 974. Uniform performance policies for military bands and other musical units**

~~(a) Restrictions on Competition and Remuneration—Bands, ensembles, choruses, or similar musical units of the armed forces, including individual members of such a unit performing in an official capacity, may not—~~

~~(1) engage in the performance of music in competition with local civilian musicians; or~~

~~(2) receive remuneration for official performances.~~

~~(b) Members Performing in Personal Capacity—A member of a band, ensemble, chorus, or similar musical unit of the armed forces may engage in the performance of music in the member's personal capacity, as an individual or part of a group, for remuneration or otherwise, if the member—~~

~~(1) does not wear a military uniform for the performance;~~

~~(2) does not identify himself or herself as a member of the armed forces in connection with the performance; and~~

~~(3) complies with all other applicable regulations and standards of conduct.~~

~~(c) Recordings—~~

~~(1) When authorized pursuant to regulations prescribed by the Secretary of Defense for purposes of this section, bands, ensembles, choruses, or similar musical units of the armed forces may produce recordings for distribution to the public, at a cost not to exceed production and distribution expenses.~~

~~(2) Amounts received in payment for recordings distributed to the public under this subsection shall be credited to the appropriation or account providing the funds for the production of such recordings. Any amounts so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.~~

~~(d) Performance of Music in Competition With Local Civilian Musicians Defined—~~

~~(1) In this section, the term “performance of music in competition with local civilian musicians” includes performances—~~

~~(A) that are more than incidental to events that are not supported solely by appropriated funds and are not free to the public; and~~

~~(B) of background, dinner, dance, or other social music at events, regardless of location, that are not supported solely by appropriated funds.~~

~~(2) The term does not include performances—~~

~~(A) at official Federal Government events that are supported solely by appropriated funds;~~

~~(B) at concerts, parades, and other events that are patriotic events or celebrations of national holidays and are free to the public; or~~

~~(C) that are incidental, such as short performances of military or patriotic music to open or close events, to events that are not supported solely by appropriated funds, in compliance with applicable rules and regulations.~~

**§ 974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians**

(a) **MILITARY MUSICIANS PERFORMING IN AN OFFICIAL CAPACITY.—**

(1) **RESTRICTION ON PERFORMANCES IN COMPETITION WITH LOCAL CIVILIAN MUSICIANS.—**A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not engage in the performance of music in competition with local civilian musicians.

(2) **PERFORMANCES IN COMPETITION WITH LOCAL CIVILIAN MUSICIANS.—**For purposes of paragraph (1), the following shall, except as provided in paragraph (3), be included among the performances that are considered to be a performance of music in competition with local civilian musicians:

(A) A performance that is more than incidental to an event that (i) is not supported, in whole or in part, by United States Government funds, and (ii) is not free to the public.

(B) A performance of background, dinner, dance, or other social music at an event that (i) is not supported, in whole or in part, by United States Government funds, and (ii) is held at a location not on a military installation.

(3) **PERFORMANCES NOT IN COMPETITION WITH LOCAL CIVILIAN MUSICIANS.—**For purposes of paragraph (1), the following shall not be considered to be a performance of music in competition with local civilian musicians:

(A) A performance (including background, dinner, dance, or other social music) at an official United States Government event that is supported, in whole or in part, by United States Government funds.

(B) A performance at a concert, parade, or other event, that is a patriotic event or a celebration of a national holiday and is free to the public.

(C) A performance that is incidental to an event that (i) is not supported, in whole or in part, by United States Government funds, or (ii) is not free to the public.

(D) A performance (including background, dinner, dance, or other social music) at—

(i) an event that is sponsored by or for a military welfare society, as defined in section 2566 of this title;

(ii) an event that is a traditional military event intended to foster the morale and welfare of members of the armed forces and their families; or

(iii) an event that is specifically for the benefit or recognition of members of the armed forces, their family members, veterans, civilian employees of the Department of Defense, or former civilian employees of the Department of Defense, to the extent provided in regulations prescribed by the Secretary of Defense.

(E) A performance (including background, dinner, dance, or other social music)—

(i) to uphold the standing and prestige of the United States with dignitaries and distinguished or prominent persons or groups of the United States or another nation; or

(ii) in support of fostering and sustaining a cooperative relationship with another nation.

(b) **PROHIBITION OF MILITARY MUSICIANS ACCEPTING ADDITIONAL REMUNERATION FOR OFFICIAL PERFORMANCES.**—A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not receive remuneration for an official performance, other than applicable military pay and allowances.

(c) **RECORDINGS.**—

(1) **AUTHORITY.**—When authorized under regulations prescribed by the Secretary of Defense for purposes of this section, a military musical unit may produce recordings for distribution to the public, at a cost not to exceed expenses of production and distribution.

(2) **CREDITING OF FUNDS.**—Amounts received in payment for a recording distributed to the public under this subsection shall be credited to the appropriation or account providing the funds for the production of the recording. Any amount so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.

(d) **PERFORMANCES AT FOREIGN LOCATIONS.**—Subsection (a) does not apply to a performance outside the United States, its commonwealths, or its possessions.

(e) **MILITARY MUSICAL UNIT DEFINED.**—In this section, the term “military musical unit” means a band, ensemble, chorus, or similar musical unit of the armed forces.

**Section 513** would add a new title VIII to the Servicemembers Civil Relief Act (50 U.S.C. 501 et seq.) to enhance the protections provided under that Act for servicemembers and their dependents.

New section 801 would authorize the Attorney General to commence a civil action in any appropriate United States District Court whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in, or has engaged in a pattern or practice of conduct in violation of any provision of the Servicemembers Civil Relief Act (the Act); or any person or group of persons is denying, or has denied, any person or group of persons any protection afforded by any provision of this Act, and such denial raises an issue of general public importance. It establishes the right of those persons individually protected by the Act to intervene in any action brought by the Attorney General and to receive injunctive and monetary relief, along with reasonable attorneys’ fees and costs.

New section 802 would also clarify that those persons individually protected by the Act have their own personal cause of action, independent of any enforcement action the Attorney General might initiate. Those individually protected who bring their own private action may generally seek and obtain the same remedies available upon intervention in an action brought by the Attorney General.

Although most courts have always recognized this essential implied right of the servicemember to bring a personal cause of action for damages or other appropriate remedies, some courts have not. Decisions that do not recognize the right to a personal cause of action threaten the readiness of our Service members. These amendments to the Act are designed to clarify what was always intended.

This proposal's explicit authorization of attorneys' fees supports the underlying theme of this clarifying amendment to the Act: access to justice. This explicitly stated right will ensure that upon prevailing on the merits, those protected by the Act can indeed be made completely whole. Many claims under the Act will be for relatively small amounts. The ability to recover attorney's fees for the small claims will provide all servicemembers a voice and ensure that their rights are taken seriously.

The right to collect attorneys' fees would likely reduce litigation and induce settlements by those who might have previously refused to pay damages, hoping that the amount was too small to warrant the cost of litigation. The right to collect attorneys' fees would also bring the Act in line with somewhat similarly focused statutes such as the Uniformed Services Employment and Reemployment Rights Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Truth in Lending Act, 42 U.S.C. 1983, title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, and virtually every state unfair and deceptive trade practices and consumer protection statute.

New section 802 would also make explicit that in addition to attorneys' fees, consequential and punitive damages may be awarded for violations of the Act. Although some courts have found such damages to be implied, others have not. This disparity will now be eliminated.

New section 803 consolidates references to the preservation of remedies found in several other provisions in the Act and expands the specific references in current sections 301(c), 302(d), 303(d), 305(h), 306(e), and 307(c) beyond conversion to include any other causes of action available under Federal or State law. It also recognizes that consequential and punitive damages that might flow from those causes of action could also be awarded.

**Changes to Existing Law:** This proposal would amend the Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*) as follows:

SERVICEMEMBERS CIVIL RELIEF ACT  
Public Law 108-189 (December 19, 2003)  
As amended  
(50 U.S.C. App. 501-596)

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

- (a) SHORT TITLE.—This Act may be cited as the “Servicemembers Civil Relief Act”.
- (b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Purpose.

TITLE I—GENERAL PROVISIONS

Sec. 101. Definitions.

\* \* \* \* \*

TITLE VIII—CIVIL LIABILITY FOR NONCOMPLIANCE

Sec. 801. Enforcement by the Attorney General.

Sec. 802. Private Causes of Action.

Sec. 803. Preservation of Other Remedies.

\* \* \* \* \*

**SEC. 202. STAY OF PROCEEDINGS WHEN SERVICEMEMBER HAS NOTICE.**

(a) \* \* \*

\* \* \* \* \*

(d) ADDITIONAL STAY.—

(1) APPLICATION.—A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material ~~affect~~ effect of military duty on the servicemember’s ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

\* \* \* \* \*

**SEC. 204. STAY OR VACATION OF EXECUTION OF JUDGMENTS, ATTACHMENTS, AND GARNISHMENTS.**

(a) COURT ACTION UPON MATERIAL ~~AFFECT~~ EFFECT DETERMINATION.— \* \* \*

\* \* \* \* \*

**SEC. 207. MAXIMUM RATE OF INTEREST ON DEBTS INCURRED BEFORE MILITARY SERVICE.**

(a) \* \* \*

\* \* \* \* \*

~~(f) PRESERVATION OF OTHER REMEDIES.—The penalties provided under subsection (e) are in addition to and do not preclude any other remedy available under law to a person claiming relief under this section, including any award for consequential or punitive damages.~~



\* \* \* \* \*

**SEC. 301. EVICTIONS AND DISTRESS.**

(a) \* \* \*

\* \* \* \* \*

(c) ~~PENALTIES.—~~

~~(1) MISDEMEANOR.—~~Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

~~(2) Preservation of other remedies and rights. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.~~

\* \* \* \* \*

**SEC. 302. PROTECTION UNDER INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE.**

(a) \* \* \*

\* \* \* \* \*

(b) ~~PENALTIES.—~~

~~(1) MISDEMEANOR.—~~A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

~~(2) Preservation of other remedies and rights. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.~~

\* \* \* \* \*

**SEC. 303. MORTGAGES AND TRUST DEEDS.**

(a) \* \* \*

\* \* \* \* \*

(d) ~~PENALTIES.~~—

~~(1) MISDEMEANOR.—A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.~~

~~(2) Preservation of other remedies. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.~~

\* \* \* \* \*

**SEC. 305. TERMINATION OF RESIDENTIAL OR MOTOR VEHICLE LEASES.**

(a) \* \* \*

\* \* \* \* \*

(h) ~~PENALTIES.~~—

~~(1) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember’s dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.~~

~~(2) Preservation of other remedies. The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.~~

\* \* \* \* \*

**SEC. 306. PROTECTION OF LIFE INSURANCE POLICY.**

(a) \* \* \*

\* \* \* \* \*

(c) **ORDER REFUSED BECAUSE OF MATERIAL ~~AFFECT~~ EFFECT.**—A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

\* \* \* \* \*

(e) ~~PENALTIES.~~—

(1) ~~MISDEMEANOR.~~—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) ~~Preservation of other remedies.~~ The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

**SEC. 307. ENFORCEMENT OF STORAGE LIENS.**

(a) \* \* \*

\* \* \* \* \*

(c) ~~PENALTIES.~~—

(1) ~~MISDEMEANOR.~~—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) ~~Preservation of other remedies.~~ The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

\* \* \* \* \*

**SEC. 701. ANTICIPATORY RELIEF.**

(a) \* \* \*

\* \* \* \* \*

(c) ~~AFFECT~~ EFFECT OF STAY ON FINE OR PENALTY.—\* \* \*

\* \* \* \* \*

**TITLE VIII—CIVIL LIABILITY FOR NONCOMPLIANCE**

**SEC. 801. ENFORCEMENT BY THE ATTORNEY GENERAL.**

(a) ENFORCEMENT BY THE ATTORNEY GENERAL.—The Attorney General may commence a civil action in any appropriate United States District Court whenever the Attorney General has reasonable cause to believe—

(1) that any person or group of persons is engaging in, or has engaged in, a pattern

or practice of conduct in violation of any provision of this Act; or

(2) that any person or group of persons is denying, or has denied, any person or group of persons any protection afforded by any provision of this Act and that such denial raises an issue of general public importance.

(b) RELIEF THAT MAY BE GRANTED IN CIVIL ACTIONS.—In a civil action under subsection (a), the court—

(1) may enter any temporary restraining order, temporary or permanent injunction, or other order as may be appropriate;

(2) may award monetary damages to a servicemember, dependent, or other person protected by any provision of this Act who is harmed by the failure to comply with any provision of this Act, including consequential and punitive damages; and

(3) may, to vindicate the public interest, assess a civil penalty against each defendant—

(A) in an amount not exceeding \$55,000 for a first violation; and

(B) in an amount not exceeding \$110,000 for any subsequent violation.

(c) INTERVENTION IN CIVIL ACTIONS.—Upon timely application, a servicemember, dependent, or other person protected by any provision of this Act may intervene in a civil action commenced by the Attorney General that involves an alleged violation of any provision of this Act or a denial of any protection afforded by any provision of this Act with respect to which such person claims to be harmed. The court may grant to any such intervening party appropriate relief as is authorized under subsection (b)(1) or (b)(2). The court may also, in its discretion, grant a prevailing intervening party reasonable attorneys' fees and costs.

## **SEC. 802. PRIVATE CAUSES OF ACTION.**

A servicemember, dependent, or other person protected by any provision of this Act may commence an action in any appropriate United States District Court or in a State court of competent jurisdiction to enforce any requirement imposed or protection afforded by any provision of this Act. The court may grant to any such servicemember, dependent, or person such appropriate relief as is authorized under section 801(b)(1) or (b)(2). The court may also, in its discretion, grant a prevailing party reasonable attorneys' fees and costs.

## **SEC. 803. PRESERVATION OF OTHER REMEDIES.**

The remedies provided under sections 801 and 802 are in addition to and do not preclude any other causes of action available under Federal or State law or any other remedies otherwise available under Federal or State law, including any award for consequential and punitive damages.

# **TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS**

## **Subtitle A—Pay and Allowances**

**Section 601** would extend for one year, through December 31, 2010, authority for income replacement for Reserve component members experiencing extended and frequent mobilization for active duty service. While the number of members who qualify for income

replacement is not significant, this compensation is important to those members who experience lengthy or frequent involuntary mobilizations and experience a loss of income.

### **BUDGET IMPLICATIONS**

Costs for this section are not budgeted by the military departments since the cost is directly tied to service for a contingency operation, it will be funded by supplemental funds.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
Army	\$0.8	--	--	--	--	--	MILPERS, Army	6	212
Total	\$0.8								

**Changes to Existing Law:** This section would make the following changes to 37 U.S.C. 910:

**§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service**

\* \* \* \* \*

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2009~~ December 31, 2010, unless the entitlement of the member to payments under this section commenced on or before that date.

### **Subtitle B—Extension of Certain Bonuses and Special and Incentive Pays**

**Section 611** would extend for one year, through December 31, 2009, critical recruiting and retention incentive programs for the Reserve components. Absent these incentives, the Reserve components may experience more difficulty in meeting skilled manning and strength requirements.

The Reserve components rely heavily on their ability to recruit individuals with prior military service; approximately half of all accessions are former Service members or members who are separating from active duty. This is a high-priority recruiting market for the Reserve components because accessing individuals with prior military experience reduces training costs and retains a valuable, trained military asset. The Selected Reserve affiliation bonus and the prior service enlistment bonus provide important incentives to individuals with prior military service to serve in the Reserve components.

The special pay for enlisted members assigned to high priority units is an even more focused incentive because it specifically targets manning in units that have historically been understaffed.

The Selected Reserve reenlistment bonus is necessary to help the Reserve components



ARNG	\$225	\$225	\$225	\$225	\$225	\$225	National Guard Personnel, Army	01	90
USAR	\$228	\$228	\$228	\$228	\$228	\$228	Reserve Personnel, Army	01	90
USNR	\$23	\$23	\$23	\$23	\$23	\$23	Reserve Personnel, Navy	01	90
USMCR	\$3.6	\$3.6	\$3.6	\$3.6	\$3.6	\$3.6	Reserve Personnel, Marine Corps	01	90
ANG	\$73	\$73	\$73	\$73	\$73	\$73	National Guard Personnel, Air Force	01	90
USAFR	\$53.2	\$53.2	\$53.2	\$53.2	\$53.2	\$53.2	Reserve Personnel, Air Force	01	90
Total	\$605.8	\$605.8	\$605.8	\$605.8	\$605.8	\$605.8			

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

**§ 308b. Special pay: reenlistment bonus for members of the Selected Reserve**

\* \* \* \* \*

(g) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any enlisted member who, after ~~December 31, 2009~~December 31, 2010, reenlists or voluntarily extends his enlistment in a reserve component.

**§ 308c. Special pay: bonus for affiliation or enlistment in the Selected Reserve**

\* \* \* \* \*

(i) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any agreement entered into under subsection (a) or (c) after ~~December 31, 2009~~December 31, 2010.

**§ 308d. Special pay: members of the Selected Reserve assigned to certain high priority units**

\* \* \* \* \*

(c) Additional compensation may not be paid under this section for inactive duty performed after ~~December 31, 2009~~December 31, 2010.

**§ 308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve**

\* \* \* \* \*

(f) A bonus may not be paid under this section to any person for an enlistment—  
(1) during the period beginning on October 1, 1992, and ending on September 30, 2005; or  
(2) after ~~December 31, 2009~~December 31, 2010.

**§ 308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve**

\* \* \* \* \*

(e) TERMINATION OF AUTHORITY.—A bonus may not be paid under this section to any person for a reenlistment, enlistment, or voluntary extension of an enlistment after ~~December 31, 2009~~December 31, 2010.

**§ 308i. Special pay: prior service enlistment bonus**

\* \* \* \* \*

(f) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any person for an enlistment after ~~December 31, 2009~~December 31, 2010.

**Section 612** would extend for one year, until December 31, 2010, 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. Finally, this section would extend one of the consolidated special and incentive pay authorities (Special Bonus and Incentive Pay Authorities for Officers in Health Professions) 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.

### **BUDGET 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) 2010 through 2015 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

<b>NUMBER OF PERSONNEL AFFECTED</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	538	538	538	538	538	538	MILPERS, Army; RESPERS, Army	01; 01	40 (for 01); 120
Navy	268	268	268	268	268	268	MILPERS, Navy; RESPERS, Navy	01; 01	40 (for 01); 120
Marine Corps	0	0	0	0	0	0	N/A	N/A	N/A
Air Force	475	475	475	475	475	475	MILPERS, Air Force	01	40 (for 01)
<b>Total</b>	<b>1,281</b>	<b>1,281</b>	<b>1,281</b>	<b>1,281</b>	<b>1,281</b>	<b>1,281</b>			

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	\$12.5	\$12.5	\$12.5	\$12.5	\$12.5	\$12.5	MILPERS, Army; RESPERS, Army	01; 01	40 (for 01); 120
Navy	\$37.9	\$37.9	\$37.9	\$37.9	\$37.9	\$37.9	MILPERS, Navy; RESPERS, Navy	01; 01	40 (for 01); 120
Marine Corps	\$0	\$0	\$0	\$0	\$0	\$0	N/A	N/A	N/A
Air Force	\$17.9	\$17.9	\$17.9	\$17.9	\$17.9	\$17.0	MILPERS, Air Force	01	40 (for 01)
<b>Total</b>	<b>\$68.3</b>	<b>\$68.3</b>	<b>\$68.3</b>	<b>\$68.3</b>	<b>\$68.3</b>	<b>\$68.3</b>			

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

10 U.S.C. § 2130a

**§ 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, 2009~~December 31, 2010, 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 \$10,000. 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 \$5,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend of not more than \$1,000 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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010, 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, 2009~~December 31, 2010, 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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010, 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, 2009~~December 31, 2010, 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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

**Section 613** would extend for one year, through December 31, 2010, 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 experienced a steady decline in submarine officer retention, meeting their goal only once in the past five years, and expects to fall four percent short of their goal again in fiscal year (FY) 2009. This decline has contributed to the current control grade officer (officers with greater than 9 years of commissioned service) shortage. The submarine force is currently 452 officers short of the requirements to man critical billets force-wide. These two shortfalls place at risk the community's ability to meet critical manning requirements.

As of January 2009, statistics for FY 2009, to date, indicate that 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 civilian job market for nuclear-trained officers remains strong. Nuclear-trained officers possess special skills as a result of expensive and lengthy Navy training. These officers come predominantly from the very top of their classes at many of the nation's best colleges and universities. As a result, these officers are highly sought for positions in career fields, both in and out of the nuclear power industry, primarily due to their educational background and management experience.

The sustained success of the Naval Nuclear Propulsion Program is a direct result of its superior personnel, rigorous selection and training, and the high standards that 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.

### **BUDGET 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 \$22 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 2010 through 2015. The Army and Air Force are not authorized in the statute to pay these bonuses.

<b>NUMBER OF PERSONNEL AFFECTED</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	0	0	0	0	0	0	N/A	N/A	N/A
Navy	1,443	1,443	1,443	1,443	1,443	1,443	MILPERS, Navy	01, 02, 03	40 (for 01); 90 (for 02); 110 (for 03)
Marine Corps	0	0	0	0	0	0	N/A	N/A	N/A
Air Force	0	0	0	0	0	0	N/A	N/A	N/A
Total	1,443	1,443	1,443	1,443	1,443	1,443			

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	0	0	0	0	0	0	N/A	N/A	N/A
Navy	\$22.1	\$22.1	\$22.1	\$22.1	\$22.1	\$22.1	MILPERS, Navy	01, 02, 03	40 (for 01); 90 (for 02);

									110 (for 03)
Marine Corps	0	0	0	0	0	0	N/A	N/A	N/A
Air Force	0	0	0	0	0	0	N/A	N/A	N/A
Total	\$22.1	\$22.1	\$22.1	\$22.1	\$22.1	\$22.1			

**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, 2009~~December 31, 2010 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, 2009~~December 31, 2010, 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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

**Section 614** would extend for one year, through December 31, 2010, 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.

### **BUDGET 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 \$1.541 billion each year from FY 2010 through FY 2015 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

<b>NUMBER OF PERSONNEL AFFECTED</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	59,866	59,866	59,866	59,866	59,866	59,866	MILPERS, Army; RESPERS, Army; NGPA	01, 02; 01; 01	35 and 40 (for 01), 85 and 90 (for 02); 90; 90
Navy	34,450	34,450	34,450	34,450	34,450	34,450	MILPERS, Navy	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Marine Corps	23,453	23,453	23,453	23,453	23,453	23,453	MILPERS, Marine Corps	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Air Force	5,266	5,266	5,266	5,266	5,266	5,266	MILPERS, Air Force	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
<b>Total</b>	<b>123,035</b>	<b>123,035</b>	<b>123,035</b>	<b>123,035</b>	<b>123,035</b>	<b>123,035</b>			

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	\$565.6	\$565.6	\$565.6	\$565.6	\$565.6	\$565.6	MILPERS,	01, 02;	35 and 40

							Army; Reserve Personnel, Army; NGPA	01; 01	(for 01), 85 and 90 (for 02); 90; 90
Navy	\$319.6	\$319.6	\$319.6	\$319.6	\$319.6	\$319.6	MILPERS, Navy	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Marine Corps	\$462.9	\$462.9	\$462.9	\$462.9	\$462.9	\$462.9	MILPERS, Marine Corps	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Air Force	\$179.6	\$179.6	\$179.6	\$179.6	\$179.6	\$179.6	MILPERS, Air Force	01, 02	35 and 40 (for 01); 85 and 90 (for 02)
Total	\$1,527.7	\$1,527.7	\$1,527.7	\$1,527.7	\$1,527.7	\$1,527.7			

**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, 2009~~ December 31, 2010, 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, 2009~~ December 31, 2010.

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, 2009~~ December 31, 2010.



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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

37 U.S.C. § 327

**§ 327. Incentive bonus: transfer between armed forces**

\* \* \* \* \*

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~December 31, 2010.

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, 2009~~ December 31, 2010, and no agreement under this section may be entered into after that date.

**Section 615** would extend for one year, through December 31, 2010, 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 2009.

**BUDGET 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 \$14 million each year from FY 2010 through FY 2015 for the referral program, to be funded from the Military Personnel account.

<b>NUMBER OF PERSONNEL AFFECTED</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	7,000	7,000	7,000	7,000	7,000	7,000	MILPERS, Army; RESPERS, Army; NGPA	01; 01; 01	90; 90; 90
Navy	N/A	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	N/A
Air Force	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	7,000	7,000	7,000	7,000	7,000	7,000			

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Line Item</b>
Army	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	MILPERS, Army;	01; 01; 01	90; 90; 90



Treasury	\$194	\$318	\$419	\$521	\$574	\$607	\$640	\$673	\$710	\$749	\$5,405
	\$194	\$318	\$419	\$521	\$574	\$607	\$640	\$673	\$710	\$749	\$5,405

This proposal would have no implications to the DoD budget.

**Changes to Existing Law:** This section would make the following changes to section 1414 of title 10, United States Code:

**~~§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation~~**

**§ 1414. Concurrent payment of retired pay and veterans' disability compensation**

(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

(1) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a "qualified retiree") is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38.

(A) During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to such a qualified retiree is subject to subsection (c), except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:

(A*i*) A qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent.

(B*ii*) A qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployment.

"(B) Notwithstanding the provisions of subsection (c), on or after January 1, 2010, a qualified retiree described in subparagraph (2)(B) or (2)(C) is entitled to payment of both retired pay and compensation under this subsection, subject to subsection (b).

(2) QUALIFYING SERVICE-CONNECTED DISABILITY.—In this section, the term "qualifying service-connected disability" means—

(A) in the case of a member or former member receiving retired pay under any provision of law other than chapter 61 of this title or under chapter 61 with 20 years or more of service otherwise creditable under section 1405 or computed under section 12732 of this title, a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs;

(B) in the case of a member or former member receiving retired pay under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 or computed under section 12732 of this title, a service-connected disability or combination of service-connected disabilities that is rated

at the disabling level specified by the Secretary of Veterans Affairs and is effective on or after the following dates:

(i) January 1, 2010, rated 100 percent, or a rate payable at 100 percent by reason of individual unemployability or rated 90 percent;

(ii) January 1, 2011, rated 80 percent or 70 percent; and

(iii) January 1, 2012, rated 60 percent or 50 percent; and

(C) in the case of a member or former member receiving retired pay under chapter 61 regardless of years of service, a service-connected disability or combination of service-connected disabilities that is rated at the disabling level specified by the Secretary of Veterans Affairs and is effective on or after the following dates:

(i) January 1, 2013, rated 40 percent or 30 percent; and

(ii) January 1, 2014, any rating.

(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(1) ~~CAREER RETIREES—GENERAL RULE.~~—The retired pay of a member retired under chapter 61 of this title ~~with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member's retirement~~ is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(2) ~~DISABILITY SPECIAL RULE FOR RETIREES WITH LESS FEWER THAN 20 YEARS OF SERVICE.~~—~~Subsection (a) does not apply to~~ The retired pay of a member retired under chapter 61 of this title with less fewer than 20 years of creditable service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

(c) PHASE-IN OF FULL CONCURRENT RECEIPT.—During the period beginning on January 1, 2004, and ending on December 31, 2013, retired pay payable to a qualified retiree that pursuant to ~~the second sentence subparagraph (A)~~ of subsection (a)(1) is subject to this subsection shall be determined as follows:

(1) CALENDAR YEAR 2004.—For a month during 2004, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

(A) For a month for which the retiree receives veterans' disability compensation for a disability rated as total, \$ 750.

(B) For a month for which the retiree receives veterans' disability compensation for a disability rated as 90 percent, \$ 500.

(C) For a month for which the retiree receives veterans' disability compensation for a disability rated as 80 percent, \$ 350.

(D) For a month for which the retiree receives veterans' disability compensation for a disability rated as 70 percent, \$ 250.

(E) For a month for which the retiree receives veterans' disability compensation for a disability rated as 60 percent, \$ 125.

(F) For a month for which the retiree receives veterans' disability compensation for a disability rated as 50 percent, \$ 100.

(2) CALENDAR YEAR 2005.—For a month during 2005, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount specified in paragraph (1) for that qualified retiree; and

(B) 10 percent of the difference between (i) the current baseline offset, and

(ii) the amount specified in paragraph (1) for that member's disability.

(3) CALENDAR YEAR 2006.—For a month during 2006, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (2) for that qualified retiree;

and

(B) 20 percent of the difference between (i) the current baseline offset, and

(ii) the amount determined under paragraph (2) for that qualified retiree.

(4) CALENDAR YEAR 2007.—For a month during 2007, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (3) for that qualified retiree;

and

(B) 30 percent of the difference between (i) the current baseline offset, and

(ii) the amount determined under paragraph (3) for that qualified retiree.

(5) CALENDAR YEAR 2008.—For a month during 2008, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (4) for that qualified retiree;

and

(B) 40 percent of the difference between (i) the current baseline offset, and

(ii) the amount determined under paragraph (4) for that qualified retiree.

(6) CALENDAR YEAR 2009.—For a month during 2009, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (5) for that qualified retiree;

and

(B) 50 percent of the difference between (i) the current baseline offset, and

(ii) the amount determined under paragraph (5) for that qualified retiree.

(7) CALENDAR YEAR 2010.—For a month during 2010, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (6) for that qualified retiree;

and

(B) 60 percent of the difference between (i) the current baseline offset, and

(ii) the amount determined under paragraph (6) for that qualified retiree.

(8) CALENDAR YEAR 2011.—For a month during 2011, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (7) for that qualified retiree;

and

(B) 70 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (7) for that qualified retiree.

(9) CALENDAR YEAR 2012.—For a month during 2012, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (8) for that qualified retiree; and

(B) 80 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (8) for that qualified retiree.

(10) CALENDAR YEAR 2013.—For a month during 2013, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (9) for that qualified retiree; and

(B) 90 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (9) for that qualified retiree.

(11) GENERAL LIMITATION.—Retired pay determined under this subsection for a qualified retiree, if greater than the amount of retired pay otherwise applicable to that qualified retiree, shall be reduced to the amount of retired pay otherwise applicable to that qualified retiree.

(d) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) IN GENERAL.—A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both.

(2) ANNUAL OPEN SEASON.—The Secretary concerned shall provide for an annual period (referred to as an “open season”) during which a person described in paragraph (1) shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this title to receipt of retired pay in accordance with this section, or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned. Such regulations shall provide for the form and manner for making such an election and shall provide for the date as of when such an election shall become effective. In the case of the Secretary of a military department, such regulations shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) RETIRED PAY.—The term “retired pay” includes retainer pay, emergency officers’ retirement pay, and naval pension.

(2) VETERANS’ DISABILITY COMPENSATION.—The term “veterans’ disability compensation” has the meaning given the term “compensation” in section 101(13) of title 38.

(3) DISABILITY RATED AS TOTAL.—The term “disability rated as total” means—

(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially



gainful occupation as a result of disabilities for which veterans' disability compensation may be paid.

(4) CURRENT BASELINE OFFSET.—

(A) IN GENERAL.—The term “current baseline offset” for any qualified retiree means the amount for any month that is the lesser of—

(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

(ii) the amount of monthly veterans' disability compensation to which the qualified retiree is entitled for that month.

(B) APPLICABLE RETIRED PAY.—In subparagraph (A), the term “applicable retired pay” for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38, except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

## TITLE VII—WOUNDED WARRIOR PROVISIONS

**Section 701** would authorize the payment of a special monthly compensation to catastrophically injured Service members who require regular aid and attendance during and after hospitalization as a result of injuries sustained in combat or in a combat-related event. The special monthly compensation is intended to be used to compensate designated family caregivers for the dedicated time and assistance they provide to the catastrophically injured Service members. The need for a special monthly compensation is based on the definition of catastrophic injury and on the recommendation of the attending physician.

The definition adopted by the Department of Defense (DoD) and the Department of Veterans Affairs for wounded warrior initiatives is, “A permanent, severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that a Service member or Veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.”

Special monthly compensation will be based on the average compensation paid to home health aides within the private sector. Based on a report from the Center for Naval Analyses, which used data from the Bureau of Labor Statistics and findings from surveys of recovering Service members, the national average compensation for home health aides is approximately \$1,800 per month.

Entitlement for special monthly compensation will be based on the physician certification that the injured Service member is so helpless so as to require the aid and assistance of another person to perform the personal functions required in everyday living.

Special monthly compensation will be paid by the Secretary until the catastrophically injured Service member is medically retired through the expedited disability evaluation system

and transitioned to veteran status. At that time, the special monthly compensation DoD will cease.

### **BUDGET IMPLICATIONS**

The requirements contained herein are assessed as a subset of identified requirements within the Wounded Ill and Injured Senior Oversight Committee. The Office of Transition Policy and Care Coordination have identified resources for special monthly compensation requirements within Defense-wide operation and maintenance (O&M) in program element 0807708D8Z and have coordinated this information to DoD Comptroller.

Number of personnel affected is consistent with drawdown assumptions for other wounded Service member programs (Invitational Travel Orders and Non-Medical Attendants) which assume drawdown of forces in Operation Iraqi Freedom by December 2011.

<b>PROJECTED NUMBER OF PERSONNEL AFFECTED</b>						
<b>Service</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
Air Force	4	4	3	3	3	2
Navy	5	4	4	4	3	3
Marine Corps	22	20	18	16	15	13
Army	125	112	101	90	82	74
Total	156	140	126	113	103	92

\* numbers may not add due to rounding

**Cost Methodology:** Based on the assumptions that catastrophically injured Service members will elect the expedited disability evaluation system processes, the average length of time Service members with catastrophic injuries will remain in an active status is 120 days, or four months. Special monthly compensation is based on the average monthly income of a health care aide, which is approximately \$1,800. Assuming four months of special monthly compensation at \$1,800 per month for 156 Service members totals \$1.05 million in fiscal year (FY) 2010. This proposal uses an inflation factor of three percent.

Service military personnel accounts would reflect the following figures re-programmed from Defense-Wide O&M as identified above.

<b>RESOURCE REQUIREMENTS (\$M)</b>							
<b>Service</b>	<b>FY2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Total</b>
Air Force	+\$0.028	+\$0.028	+\$0.026	+\$0.024	+\$0.022	+\$0.021	+\$0.149
Navy	+\$0.033	+\$0.033	+\$0.030	+\$0.028	+\$0.026	+\$0.024	+\$0.173
Marine Corps	+\$0.150	+\$0.149	+\$0.138	+\$0.127	+\$0.120	+\$0.110	+\$0.793
Army	+\$0.842	+\$0.837	+\$0.775	+\$0.716	+\$0.673	+\$0.619	+\$4.461
Total	+\$1.053	+\$1.046	+\$0.968	+\$0.895	+\$0.841	+\$0.774	+\$5.577

\* numbers may not add due to rounding

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>
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<b>(offset to fund legislative proposal and incorporated in President's budget submission)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation To</b>	<b>Budget Activity</b>	<b>Dash- 1 Line Item</b>
Defense- wide	-\$1.053	-\$1.046	-\$0.968	-\$0.895	-\$0.841	-\$0.774	O&M, D-W	04	280
Air Force	+\$0.028	+\$0.028	+\$0.026	+\$0.024	+\$0.022	+\$0.021	MILPERS, AF	02	95
Navy	+\$0.033	+\$0.033	+\$0.030	+\$0.028	+\$0.026	+\$0.024	MILPERS, Navy	02	95
Marine Corps	+\$0.150	+\$0.149	+\$0.138	+\$0.127	+\$0.120	+\$0.110	MILPERS, MC	02	95
Army	+\$0.842	+\$0.837	+\$0.775	+\$0.716	+\$0.673	+\$0.619	MILPERS, Army	02	95
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>			

**Changes to Existing Law:** This proposal would add new section 439 to title 37, United States Code.

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

**Section 801.** By striking subsection (e) of section 4202 of the Clinger-Cohen Act of 1996 (10 U.S.C. 2304 note), the proposal would make permanent the authority provided under that section. That section provides authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures. Section 4202 established this authority for an initial period of three years. Congress has extended this authority six times, most recently by section. 822 of Pub. L. 110-181 until January 1, 2010.

In response to a reporting requirement under section 822 of Pub. L. 110-181, the Department of Defense submitted a report to the congressional armed services committees on December 3, 2008, regarding use of the authority under section 4202 by the Department of Defense. The report recommended that Congress should extend the referenced authority beyond January 1, 2010.

While the true extent of the test program could not be identified because of the unreliable data found to be contained in the Federal Procurement Data System, the report relayed feedback provided by the Army, Navy, Air Force, and Defense Logistics Agency on the potential benefits and costs of extending the authority after January 1, 2010.

Given favorable reviews of the test program, Department of Defense buying activities want to retain this authority. The primary benefit of Federal Acquisition Regulation Subpart 13.5, which implements the authority, is the ability to award a contract more efficiently. It provides flexibility and allows larger dollar value acquisitions to be handled in the streamlined manner of simplified acquisitions when the acquisition is for commercial items and marketplace

competition determines pricing. The Department prefers the authority be made permanent.

**Changes to Existing Law:** The proposed provision would amend section 4202 of the Clinger-Cohen Act of 1996 (division D of Public Law 104-106; 110 Stat. 652; 10 U.S.C. 2304 note) by striking subsection (e):

**SEC. 4202. APPLICATION OF SIMPLIFIED PROCEDURES TO CERTAIN COMMERCIAL ITEMS.**

(a) \* \* \*

\* \* \* \* \*

~~(e) EFFECTIVE DATE.—The authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 303(g)(1) of the Federal Property and Administrative Services Act of 1949, and section 31(a) of the Office of Federal Procurement Policy Act, as amended by this section, shall expire January 1, 2008. Contracts may be awarded pursuant to solicitations that have been issued before such authority expires, notwithstanding the expiration of such authority.~~

**Section 802.** Interest has been intensifying in ensuring contractor performance, to include subcontractor performance, under the Government’s contracting actions. To implement the requirements of section 2455 of Public Law 103-355, Contracting officers presently are required to insert the clause at Federal Acquisition Regulation (FAR) 52.209-6, “Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment,” in solicitations and contracts where the contract value exceeds \$30,000. Presently, there is no requirement that mandates this clause to be included in contracts awarded by subcontractor(s) under the Government’s contracting actions. Although contractors debarred, suspended, or proposed for debarment are ineligible for the award of prime contracts and first tier subcontracts over which the government holds the power of consent (and, in other circumstances, their use in first tier subcontracts is subject to a justification requirement), as a result of this loophole, these contractors remain eligible for the award of lower tier subcontracts. To protect the Government’s interest, this loophole in the law should be eliminated, enabling the clause at FAR 52.209-6 to be flowed down to all tiers of the supply chain.

**Changes to Existing Law:** This section would make the following change to section 2455 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 31 U.S.C. 6101 note):

**SEC. 2455. UNIFORM SUSPENSION AND DEBARMENT.**

(a) REQUIREMENT FOR REGULATIONS.—Regulations shall be issued providing that provisions for the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order No. 12549, shall have government-wide effect. No agency shall allow a party to participate in any procurement or nonprocurement activity at

any level, including subcontracts at any tier, if any agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a procurement or nonprocurement activity.

(b) **AUTHORITY TO GRANT EXCEPTION.**—The regulations issued pursuant to subsection (a) shall provide that an agency may grant an exception permitting a debarred, suspended, or otherwise excluded party to participate in procurement activities of that agency to the extent exceptions are authorized under the Federal Acquisition Regulation, or to participate in nonprocurement activities of that agency to the extent exceptions are authorized under regulations issued pursuant to Executive Order No. 12549.

(c) **DEFINITIONS.**—In this section:

(1) The term “procurement activities” means all acquisition programs and activities of the Federal Government, as defined in the Federal Acquisition Regulation.

(2) The term “nonprocurement activities” means all programs and activities involving Federal financial and nonfinancial assistance and benefits, as covered by Executive Order No. 12549 and the Office of Management and Budget guidelines implementing that order.

(3) The term “agency” means an Executive agency as defined in section 103 of title 5, United States Code.

**Section 803.** Congress authorized the Commercialization Pilot Program (CPP) in January, 2006, through section 252 of Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006. The purpose of the CPP is to enhance commercialization of Small Business Innovation Research (SBIR) projects identified to meet high priority military requirements via transition to Phase III and into the acquisition process. The Secretary of Defense and the Secretaries of the military departments are authorized to use up to 1 percent of the SBIR set-aside budget to fund expenses incurred to administer the CPP.

This proposal seeks (1) to extend CPP authority to the Small Business Technology Transfer (STTR) Program, and (2) to remove the sunset provision terminating CPP authority at the end of fiscal year (FY) 2009. This proposal does not request a new termination date, but rather aligns CPP with overall SBIR and STTR Program authority by assigning no independent expiration date. It is anticipated that Congress will extend both SBIR and STTR Program authority this year, whether comprehensively or provisionally.

The Army, Navy, and Air Force have implemented CPP authority since FY 2006, and the results are positive. The CPP facilitates interaction among the component laboratories product centers/systems commands, industry, and SBIR Phase II contract award recipients focused on enhancing SBIR technology commercialization in the marketplace, with emphasis on military systems and applications. To date, SBIR projects receiving CPP assistance are attracting defense-oriented follow-on (Phase III) funding at a much higher rate than the broader pool of comparable SBIR projects not receiving support. The Department views this authority as very important to improve the overall success of the SBIR Program through enhancing access to advanced technologies developed by participating small businesses.

**Changes to Existing Law:** This proposal would make the following changes to section 9(y) of the Small Business Act (15 U.S.C. 638(y)):

## SMALL BUSINESS ACT

SEC. 9. (a) \* \* \*

\* \* \* \* \*

(y) COMMERCIALIZATION ~~PILOT~~ PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense and the Secretary of each military department is authorized to create and administer a “Commercialization ~~Pilot~~ Program” to accelerate the transition of technologies, products, and services developed under the Small Business Innovation Research Program and Small Business Technology Transfer Program to Phase III, including the acquisition process.

(2) IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED TRANSITION TO ACQUISITION PROCESS.—In carrying out the Commercialization ~~Pilot~~ Program, the Secretary of Defense and the Secretary of each military department shall identify research programs of the Small Business Innovation Research Program and Small Business Technology Transfer Program that have the potential for rapid transitioning to Phase III and into the acquisition process.

(3) LIMITATION.—No research program may be identified under paragraph (2) unless the Secretary of the military department concerned certifies in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

(4) FUNDING.—For payment of expenses incurred to administer the Commercialization ~~Pilot~~ Program under this subsection, the Secretary of Defense and each Secretary of a military department is authorized to use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program and Small Business Technology Transfer Program. Such funds—

(A) shall not be subject to the limitations on the use of funds in subsection (f)(2); and

(B) shall not be used to make Phase III awards.

(5) EVALUATIVE REPORT.—At the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Armed Services and the Committee on Small Business of the House of Representatives an evaluative report regarding activities under the Commercialization ~~Pilot~~ Program. The report shall include—

(A) an accounting of the funds used in the Commercialization ~~Pilot~~ Program;

(B) a detailed description of the Commercialization ~~Pilot~~ Program, including incentives and activities undertaken by acquisition program managers, program executive officers, and prime contractors; and

(C) a detailed compilation of results achieved by the Commercialization ~~Pilot~~ Program, including the number of small business concerns assisted and the number of projects commercialized.

~~(6) SUNSET. The pilot program under this subsection shall terminate at the end of fiscal year 2009.~~

**Section 804** would authorize Government support contractors to have access to technical data from prime contractors on Government contractors, while giving prime contractors a private cause of action if a support contractor uses the prime contractor's technical data to compete for other contracts.

The proposed legislation would resolve several problems arising from the Government's increasing reliance upon support contractors and a prime contractor's statutory authorization to protect certain types of proprietary data (by restricting the Government's ability to disclose such proprietary data to third parties including support contractors). The proposed legislative language would authorize a Government support contractor to access another contractor's proprietary data, after being subjected to a statutory nondisclosure agreement that includes civil and criminal liabilities for unauthorized use of such proprietary data.

The Government has become increasingly dependent upon the services of support contractors in all phases and areas of program management and program execution. Those programs usually involve one or more prime contractors. The prime contractor frequently asserts restrictions on the Government's use of technical data. Where such asserted restrictions exist, the Government may not legally furnish such technical data to a support contractor without the written approval of the prime contractor. In addition to the written approval of the prime contractor, before any such disclosure of technical data, the Government support contractor must be covered by a nondisclosure agreement acceptable to the prime contractor. This problem of control and influence by the prime contractor over the Government's selection and use of specific Government support contractors is complicated further by the fact that this issue includes not just the prime contractor but every subcontractor to that prime that asserts restrictions upon data delivered to the Government.

The need for nondisclosure agreements creates a potential conflict between the support contractor and the prime contractor, as the support contractor must depend upon the goodwill of the prime in order to perform its support tasks. In other situations, when there is a system or program with a large number of prime contractors or volumes of data (e.g., maintenance data bases), there are practical problems with obtaining and maintaining current nondisclosure agreements between all possible Government prime contractors and all possible Government support contractors.

In the worst case scenario, situations arise in which the prime contractor or other owners of the technical data are unwilling to authorize any Government support contractor access. Where the necessary authorization from the prime contractor cannot be obtained, the support contractor cannot legally see such proprietary technical data, thereby impeding Government programs.

The proposed change to 10 U.S.C. § 2320(c) would authorize the Secretary of Defense to promulgate regulations to allow a Government support contractor to utilize proprietary data after being subjected to a statutory nondisclosure agreement. This nondisclosure agreement requires

the support contractor to use the proprietary information only for purposes stated in the contract, precludes the contractor from using the information to compete against the prime contractor, and puts the support contractor on notice of potential civil and criminal liabilities in the event of a breach.

The proposed change to 18 U.S.C. § 1905 would subject individual employees of a contractor or subcontractor receiving proprietary data via the statutory nondisclosure agreement authorization to the same criminal sanctions that would apply to a Government employee. Such individual liability is considered an essential element if the prime contractors are to have reasonable assurances that the risks outweigh the potential rewards for employees of Government support contractors who attempt to profit from access to such proprietary data.

By amending both title 10 and title 18, this legislative proposal will assist the Government to effectively use support contractors while at the same time protecting other contractors' technical data.

**Changes to Existing Law:** This proposal would make the following changes to 10 U.S.C. 2320 and 18 U.S.C. 1905:

### 10 U.S.C. § 2320

#### § 2320. Rights in technical data

(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(2) \* \* \*

\* \* \* \* \*

(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective; ~~or~~

(2) notwithstanding any limitation upon the license rights conveyed under subsection (a), allowing a Government support contractor access to and use of any technical data delivered under a contract covered by this chapter if the Government



support contractor accessing or using that technical data executes a contract with the Government agreeing to and acknowledging—

(A) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

(B) that a breach of that contract by a Government support contractor with regard to a third party's ownership or rights in such technical data may subject that Government support contractor—

(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach;

(C) that such technical data provided to a Government support contractor under the authority of this section shall not be used by that Government support contractor to compete against the third party for Government or non-Government contracts; and

(D) that any breach of these nondisclosure obligations may constitute a violation of section 1905 of title 18, United States Code; or

(2) (3) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

\* \* \* \* \*

(f) GOVERNMENT SUPPORT CONTRACTOR DEFINED.—In this section, the term “Government support contractor” means a contractor (and any of its subcontractors) whose primary purpose is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort, rather than to directly furnish an end item or a service to accomplish a program or effort.

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## 18 U.S.C. § 1905

### § 1905. Disclosure of confidential information

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an officer, agent or employee of a private sector organization having a contractual nondisclosure agreement under the authority of section 2320(c)(2) of title 10, or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which

information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

**Section 805** would change reportable schedule events and the five year covered determination to events controlled by the acquisition milestone decision authority.

The rationale for this change is that almost all Major Automated Information System (MAIS) programs produce software-intensive systems that have little to no custom hardware. For these programs, the last acquisition decision is the Full Deployment Decision which occurs after Operational Test and Evaluation determines that the system is operationally effective and suitable. The Full Deployment Decision (FDD) is a more meaningful metric for software intensive programs than Initial Operational Capability (IOC) and Full Operational Capability (FOC) because the user community vice the acquisition community defines and controls IOC and FOC. Evolutionary acquisition programs have a FDD for each increment of functionality. Evolutionary acquisition is the preferred DoD strategy for (do not want to confuse with rapid acquisition authority) acquisition of mature technology for the user. An evolutionary approach delivers capability in increments, recognizing, up front, the need for future capability improvements. The objective is to balance needs and available capability with resources, and to put capability into the hands of the user quickly.

**Changes to Existing Law:** This section would make the following changes to provisions of law included in chapter 144A of title 10, United States Code.:

**§ 2445b. Cost, schedule, and performance information**

(a) \*\*\*

(b) ELEMENTS.—The documents submitted under subsection (a) with respect to a major automated information system program shall include detailed and summarized information with respect to the automated information system to be acquired under the program, and shall specifically include each of the following:

(1) \*\*\*

(2) The implementation schedule, including estimates of milestone dates, ~~initial operational capability, and full operational capability~~ and full deployment decision.

\* \* \* \* \*

**§ 2445c. Reports: quarterly reports; reports on program changes**

(a) \*\*\*

\* \* \* \* \*

(d) \*\*\*

(1) \*\*\*

(2)(A) the automated information system or information technology investment failed to achieve ~~initial operational capability~~ a full deployment decision within five years after funds were first obligated for the program;

\* \* \* \* \*

**Section 806** would eliminate reporting requirements on Pre-MAIS and Other Information Technology Investment Programs added by section 812 of the FY09 National Defense Authorization Act (Public Law 110-417).

The rationale for this change is that prior to Milestone B, pre-MAIS information technology (IT) investments have no Department of Defense-approved performance, schedule, and cost baseline to report, as required by Chapter 144A. Pre -MAIS IT investments are focused on planning vice acquisition activities such as process reengineering, defining requirements, analysis of alternatives, estimating acquisition and life-cycle costs, developing a program schedule, and the like. These investments are not baselined until Milestone B. Detailed information on major IT investments is already required by section 351 of the FY03 National Defense Authorization Act (Public Law 110-314; 116 Stat. 2516), and delivered annually to the congressional defense committees. This budget exhibit, called the Select Capital Investment Report (SCIR), already provides the congressional defense committees significantly more information than will be contained in a pre-MAIS Annual Report.

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. Chapter 144A:

#### **CHAPTER 144A—MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS**

Sec.

2445a. Definitions

2445b. Cost, schedule, and performance information.

2445c. Reports: quarterly reports; reports on program changes.

2445d. Construction with other reporting requirements.

#### **§ 2445a. Definitions**

(a) MAJOR AUTOMATED INFORMATION SYSTEM PROGRAM.—In this chapter, the term ‘major automated information system program’ means a Department of Defense program for the acquisition of an automated information system (either as a product or a service) if—

(1) the program is designated by the Secretary of Defense, or a designee of the Secretary, as a major automated information system program; or

(2) the dollar value of the program is estimated to exceed—

(A) \$32,000,000 in fiscal year 2000 constant dollars for all program costs in a single fiscal year;

(B) \$126,000,000 in fiscal year 2000 constant dollars for all program acquisition costs for the entire program; or

(C) \$378,000,000 in fiscal year 2000 constant dollars for the total life-cycle costs of the program (including operation and maintenance costs).

(b) ADJUSTMENT.—The Secretary of Defense may adjust the amounts (and base fiscal year) set forth in subsection (a) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the congressional defense committees.

(c) INCREMENTS.—In the event any increment of a major automated information system program separately meets the requirements for treatment as a major automated information system program, the provisions of this chapter shall apply to such increment as well as to the overall major automated information system program of which such increment is a part.

~~—(d) OTHER MAJOR INFORMATION TECHNOLOGY INVESTMENT PROGRAM.—In this chapter, the term ‘other major information technology investment program’ means the following:~~

~~(1) An investment that is designated by the Secretary of Defense, or a designee of the Secretary, as a ‘pre Major Automated Information System’ or ‘pre MAIS’ program.~~

~~(2) Any other investment in automated information system products or services that is expected to exceed the thresholds established in subsection (a), as adjusted under subsection (b), but is not considered to be a major automated information system program because a formal acquisition decision has not yet been made with respect to such investment.~~

#### **§ 2445b. Cost, schedule, and performance information**

(a) SUBMITTAL OF COST, SCHEDULE, AND PERFORMANCE INFORMATION.—The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits to Congress the budget for a fiscal year under section 1105 of title 31, budget justification documents regarding cost, schedule, and performance for each major automated information system program ~~and each other major information technology investment program~~ for which funds are requested by the President in the budget.

(b) ELEMENTS REGARDING MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.—The documents submitted under subsection (a) with respect to a major automated information system program shall include detailed and summarized information with respect to the automated information system to be acquired under the program, and shall specifically include each of the following:

- (1) The development schedule, including major milestones.
- (2) The implementation schedule, including estimates of milestone dates, initial operational capability, and full operational capability.
- (3) Estimates of development costs and full life-cycle costs.
- (4) A summary of key performance parameters.

(c) BASELINE.—(1) For purposes of this chapter, the initial submittal to Congress of the documents required by subsection (a) with respect to a major automated information system program shall constitute the original estimate or information originally submitted on such program for purposes of the reports and determinations on program changes in section 2445c of this title.

(2) An adjustment or revision of the original estimate or information originally submitted on a program may be treated as the original estimate or information originally submitted on the program if the adjustment or revision is the result of a critical change in the program covered by section 2445c(d) of this title.

(3) In the event of an adjustment or revision to the original estimate or information originally submitted on a program under paragraph (2), the Secretary of Defense shall include in

the next budget justification documents submitted under subsection (a) after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

~~—(d) ELEMENTS REGARDING OTHER MAJOR INFORMATION TECHNOLOGY INVESTMENT PROGRAMS.—With respect to each other major information technology investment program, the information required by subsection (a) may be provided in the format that is most appropriate to the current status of the program.~~

**§ 2445c. Reports: quarterly reports; reports on program changes**

(a) QUARTERLY REPORTS BY PROGRAM MANAGERS.—The program manager of a major automated information system program ~~or other major information technology investment program~~ shall, on a quarterly basis, submit to the senior Department of Defense official responsible for the program a written report identifying any variance in the projected development schedule, implementation schedule, life-cycle costs, or key performance parameters for the major automated information system ~~or information technology investment~~ to be acquired under the program from such information as originally submitted to Congress under section 2445b of this title.

(b) SENIOR OFFICIALS RESPONSIBLE FOR PROGRAMS.—For purposes of this section, the senior Department of Defense official responsible for a major automated information system program ~~or other major information technology investment program~~ is—

(1) in the case of an automated information system ~~or information technology investment~~ to be acquired for a military department, the senior acquisition executive for the military department; or

(2) in the case of any other automated information system ~~or information technology investment~~ to be acquired for the Department of Defense or any component of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(c) REPORT ON SIGNIFICANT CHANGES IN PROGRAM.—

(1) IN GENERAL.—If, based on a quarterly report submitted by the program manager of a major automated information system program pursuant to subsection (a), the senior Department of Defense official responsible for the program makes a determination described in paragraph (2), the official shall, not later than 45 days after receiving such report, notify the congressional defense committees in writing of such determination.

(2) COVERED DETERMINATION.—A determination described in this paragraph with respect to a major automated information system program is a determination that—

(A) there has been a schedule change that will cause a delay of more than six months but less than a year in any program schedule milestone or significant event from the schedule originally submitted to Congress under paragraph (1) or (2) of section 2445b(b) of this title;

(B) the estimated program development cost or full life-cycle cost for the program has increased by at least 15 percent, but less than 25 percent, over the original estimate submitted to Congress under paragraph (3) of section 2445b(b) of this title; or

(C) there has been a significant, adverse change in the expected performance of the major automated information system to be acquired under the

program from the parameters originally submitted to Congress under paragraph (4) of section 2445b(b) of this title.

(d) REPORT ON CRITICAL CHANGES IN PROGRAM.—

(1) IN GENERAL.—If, based on a quarterly report submitted by the program manager of a major automated information system program ~~or other major information technology investment program~~ pursuant to subsection (a), the senior Department of Defense official responsible for the program makes a determination described in paragraph (2), the official shall, not later than 60 days after receiving such report—

(A) carry out an evaluation of the program under subsection (e); and

(B) submit, through the Secretary of Defense, to the congressional defense committees a report meeting the requirements of subsection (f).

(2) COVERED DETERMINATION.—A determination described in this paragraph with respect to a major automated information system program ~~or other major information technology investment program~~ is a determination that—

(A) the automated information system ~~or information technology investment~~ failed to achieve initial operational capability within five years after funds were first obligated for the program;

(B) there has been a schedule change that will cause a delay of one year or more in any program schedule milestone or significant event from the schedule originally submitted to Congress under paragraph (1) or (2) of section 2445b(b) of this title ~~or section 2445b(d) of this title~~, as applicable;

(C) the estimated program development cost or full life-cycle cost for the program has increased by 25 percent or more over the original estimate submitted to Congress under paragraph (3) of section 2445b(b) of this title ~~or section 2445b(d) of this title~~, as applicable; or

(D) there has been a change in the expected performance of the major automated information system ~~or major information technology investment~~ to be acquired under the program that will undermine the ability of the system to perform the functions anticipated at the time information on the program was originally submitted to Congress under section 2445b(b) of this title ~~or section 2445b(d) of this title~~, as applicable.

(e) PROGRAM EVALUATION.—The evaluation of a major automated information system program ~~or other major information technology investment program~~ conducted under this subsection for purposes of subsection (d)(1)(A) shall include an assessment of—

(1) the projected cost and schedule for completing the program if current requirements are not modified;

(2) the projected cost and schedule for completing the program based on reasonable modification of such requirements; and

(3) the rough order of magnitude of the cost and schedule for any reasonable alternative system or capability.

(f) REPORT ON CRITICAL PROGRAM CHANGES.—A report on a major automated information system program ~~or other major information technology investment program~~ conducted under this subsection for purposes of subsection (d)(1)(B) shall include a written certification (with supporting explanation) stating that—

(1) the automated information system ~~or information technology investment~~ to be acquired under the program is essential to the national security or to the efficient

management of the Department of Defense;

(2) there is no alternative to the system ~~or information technology investment~~ which will provide equal or greater capability at less cost;

(3) the new estimates of the costs, schedule, and performance parameters with respect to the program and system ~~or information technology investment, as applicable,~~ are reasonable; and

(4) the management structure for the program is adequate to manage and control program costs.

(g) PROHIBITION ON OBLIGATION OF FUNDS.—

(1) If the determination of a critical change to a program is made by the senior Department official responsible for the program under subsection (d)(2) and a report is not submitted to Congress within the 60-day period provided by subsection (d)(1), appropriated funds may not be obligated for any major contract under the program.

(2) The prohibition on the obligation of funds for a program under paragraph (1) shall cease to apply on the date on which Congress has received a report in compliance with the requirements of subsection (d)(2).

#### **§ 2445d. Construction with other reporting requirements**

In the case of a major automated information system program covered by this chapter that is also treatable as a major defense acquisition program for which reports would be required under chapter 144 of this title, no reports on the program are required under such chapter if the requirements of this chapter with respect to the program are met.

**Section 807.** The proposed adjustment of the annual report date will ensure adequate time for the incorporation of the requirements outlined in the Presidents Budget and determine the impact to the current and ensuing year's expenditures are reflected in the annual report.

**Changes to Existing Law:** This section would make the following changes to section 2466(d) of title 10, United States Code:

(d) ANNUAL REPORT.—(1) Not later than ~~April 1~~ of 90 days after the date on which the President's Budget for the next fiscal year is submitted to Congress each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended during the current fiscal year and the ensuing fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

**Section 808** would revise the definition of “major defense acquisition program” for purpose of chapter 144 of title 10, United States Code, and the definition of “major automated information system” for purpose of chapter 144A of that title.

The amendment made by subsection (a) of the proposal to 10 U.S.C. 2430 would resolve conflicting congressional requirements defined in chapter 144 of title 10 and chapter 144A of title 10 for Major Automated Information Systems that also meet the definition of a Major Defense Acquisition Program.

The rationale for this change is driven by the nature of Major Defense Acquisition Programs (MDAPs). MDAPs are, in general, weapons system programs that produce custom hardware (e.g., ships, planes, tanks) with emphasis on designing, developing and producing weapons systems that are managed to unit cost. Major Automated Information Systems are, in general, software intensive systems that tend to adopt, buy and integrate commercially available hardware and software where custom hardware/software development and production is less likely and the unit(s) to be acquired is one. This change will focus legislative requirements on appropriate acquisition programs: chapter 144 of title 10 on major defense acquisition programs that develop custom weapons systems hardware, and chapter 144A of title 10 on major automated information systems that develop major software-intensive systems using commercial hardware.

The amendment made by subsection (b) of the proposal to 10 U.S.C. 2445a would exclude from coverage under chapter 144A, relating to major automated information system, any highly sensitive classified program. The exclusion would be made using words identical to those in 10 U.S.C. 2430, by which such programs are excluded from coverage under chapter 144, relating to major defense acquisition programs.

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

## TITLE 10, UNITED STATES CODE

### CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

\* \* \* \* \*

#### § 2430. Major defense acquisition program defined

(a) In this chapter, the term “major defense acquisition program” means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement of more than \$1,800,000,000 (based on fiscal year 190 constant dollars).

(b) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in subsection (a)(2) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In the case of a Department of Defense acquisition program that, by reason of paragraph (2) of section 2445a(a) of this title, is a major automated information system program under chapter 144A of this title and that, by reason of paragraph (2) of subsection (a), is a major defense acquisition program under this chapter, the Secretary of Defense may designate that



program to be treated only as a major automated information system program or to be treated only as a major defense acquisition program.

\* \* \* \* \*

## CHAPTER 144A—MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS

\* \* \* \* \*

### § 2445a. Major automated information system program defined

(a) IN GENERAL.—In this chapter, the term ‘major automated information system program’ means a Department of Defense program for the acquisition of an automated information system (either as a product or a service) that is not a highly sensitive classified program (as determined by the Secretary of Defense) if—

(1) the program is designated by the Secretary of Defense, or a designee of the Secretary, as a major automated information system program; or

(2) the dollar value of the program is estimated to exceed—

(A) \$32,000,000 in fiscal year 2000 constant dollars for all program costs in a single fiscal year;

(B) \$126,000,000 in fiscal year 2000 constant dollars for all program acquisition costs for the entire program; or

(C) \$378,000,000 in fiscal year 2000 constant dollars for the total life-cycle costs of the program (including operation and maintenance costs).

(b) ADJUSTMENT.—The Secretary of Defense may adjust the amounts (and base fiscal year) set forth in subsection (a) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the congressional defense committees.

(c) INCREMENTS.—In the event any increment of a major automated information system program separately meets the requirements for treatment as a major automated information system program, the provisions of this chapter shall apply to such increment as well as to the overall major automated information system program of which such increment is a part.

\* \* \* \* \*

**Section 809** would replace the two exceptions presently at subsection (d)(1) of section 2533a of title 10, United States Code, for procurements in support of “combat operations” and “contingency operations” with a single exception for procurements in support of “emergency operations”. This section would retain the fundamental requirements of the law; yet, it would provide appropriate flexibility for the Department of Defense (DoD) and its suppliers to better respond to fulfill the needs that arise during emergencies by enabling defense procurement offices to render the necessary support regardless of physical location.

The proposed definition for “emergency operations” fully conforms to the definition prescribed in the Federal Acquisition Regulation at Part 18, and is consistent with the special emergency procurement authority prescribed by section 1443 of Public Law 108-136, the

National Defense Authorization Act for Fiscal Year 2004, as amended. Finally, it also includes combat operations. Examples of operative scenarios include: support of a contingency operation; operations to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; operations in response to an incident of national significance, emergency declaration, national emergency, or major disaster declared by the President (such as, Hurricane Katrina-type relief operations); and combat operations.

This proposal also is advocated by the Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations that was chaired by the Honorable Jacques Gansler, and it is consistent with the objectives of section 849(b) of Public Law 110-181 (the National Defense Authorization Act for Fiscal Year 2008).

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. 2533a:

**§ 2533a. Requirement to buy certain articles from American sources; exceptions**

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

(1) Procurements ~~outside the United States~~ in support of ~~combat operations or procurements of any item listed in subsection (b)(1)(A), (b)(2), or (b)(3) in support of contingency operations.~~ emergency operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by, or for, an establishment located outside the United States for the personnel attached to such establishment.

(4) Procurements of any item listed in subsection (b)(1)(A), (b)(2), or (b)(3) for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(e) EXCEPTION FOR CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary--

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

(1) Foods manufactured or processed in the United States;

(2) Waste and byproducts of cotton and wool fiber for use in the production of propellants and explosives.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(j) ~~GEOGRAPHIC COVERAGE.—DEFINITIONS.—~~(1) In this section, the term “United States” includes the possessions of the United States.

(2) In this section, the term “emergency operations” means any of the following:

(A) Contingency operations.

(B) Operations in defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

(C) Operations in response to an incident of national significance, emergency declaration, national emergency, or major disaster declared by the President.

(D) Combat operations.

(k) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subparagraph (B), (C), (D), or (E) of subsection (b)(1), if the Secretary of Defense or of the military department concerned applies an exception set forth in subsection (c) or (e) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOps.gov (or any successor site).

**Section 810** would provide for a “bridge” between the end of the Science and Technology portion of a contract awarded under a Federal Acquisition Regulation’s (FAR’s) Broad Agency Announcement (BAA) and the award of a contract under a new acquisition for advanced component development or production. BAAs are the FAR terminology for a “general solicitation” as defined by 10 U.S.C. 2302(2)(B). By allowing the BAA-based contract to include a separate contract line item or an option for potential work that crosses the divide between the Science and Technology (S&T) community and the advanced component development or procurement conducted by Systems Commands or other procurement agencies, contracts can be issued based on BAAs that can carry the most promising work through to integrated component evaluation, demonstration, and validation without having to re-start the acquisition process. The proposed limits on the separate contract line item or option are meant to be the minimum allowable to continue work on the project through the “bridge period” necessary to conduct the follow-on acquisition. The overall goal of this section is to speed the transition of S&T into fielded systems pursuant to the goals of DoDI 5000.2, “Operation of the Defense Acquisition System.”

The Competition in Contracting Act and the Department of Defense (DoD) statute on competition, 10 U.S.C. 2302, define “competition” to include the general solicitation technique used to obtain proposals through the BAA. In the fundamental scientific or engineering research area where a requirement is incapable of specific definition, BAAs offer a considerable advantage over traditional Request for Proposals in that they afford offerors the maximum opportunity to propose specific tasks and a corresponding technical approach of their own choosing in response to a broadly-defined area of Government interest. Each proposal is evaluated on its individual merits rather than on a comparative basis, and the Government has considerable latitude in determining which of the submitted proposals it will fund. However, the BAA solicitation technique is restricted to only basic and applied research and that portion of development not related to a specific system or hardware program. In the DoD this restricts the use of BAAs to projects funded under the Research, Development, Test, and Evaluation (RDT&E) appropriations’ S&T budget categories 6.1 (Basic), 6.2 (Applied), and 6.3 (Advanced Technology Development).

In a number of instances, the outcome from the contract resulting from a BAA leads to advanced or applied levels of development funded by budget categories 6.4 or 6.5 or directly to the development of a prototype, further production of which may eventually be considered Low Rate Initial Production (LRIP) of an item. LRIP is funded with advanced RDT&E funds or procurement funds, depending on the use to which the LRIP item will be put. In such a situation, a new, separate contract for advanced research and development or for procurement of the items developed must be drafted and a new competition must be undertaken prior to the award as the

use of a BAA is restricted to the award of contracts for Science and Technology only. This causes a “break” in the development program that may last up to 12 months while the new competitive acquisition is conducted.

**Changes to Existing Law:** This proposal would add the following new section, § 2302e, to chapter 137 of title 10, United States Code:

**§ 2302e. Contract authority for advanced development of initial or additional prototype units**

(a) **AUTHORITY.**—A contract initially awarded from the competitive selection of a proposal resulting from a general solicitation as defined in section 2302(2)(B) may contain a contract line item or an option for—

(1) the delivery of initial or additional prototype items if the item or a prototype thereof is created as the result of work performed under the initial competed research contract; or

(2) the provision of advanced component development, or prototype of technology developed in the initial underlying contract.

(b) **DELIVERY.**—A contract line item or option as described in subsection (a)(1) shall require the delivery of the minimal amount of initial or additional prototype items to allow for the timely solicitation and award of a production contract for those items. Such contract option may have a value only up to three times the value of the initial contract and any subsequent development or procurement must be subject to the terms of section 2304 of this title.

(c) **TERM.**—A contract line item or option as described in subsection (a)(2) shall be for a term of not more than 12 months.

“(d) **LIMITATIONS.**—Each military department may use this authority up to four times per year and the Secretary of Defense may approve up to an additional four options per year for projects supported by agencies of the Department of Defense.

**TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT**

**Section 901** would remove conflicting provisions of law which force the Department into a position where compliance with one statute means noncompliance with another. Further, this provision consolidates and clarifies the reporting requirement which will enable relevant reporting of data aligned with the original intent of the statutes.

Although 10 U.S.C. 130a (i.e., the overall limit) was repealed, the personnel limitations in sections 143, 194, 3014(f), 5014(f), and 8014(f) of title 10 and section 601 of Public Law 99-433 remain and prevent the Department from managing its workforce based upon workload and on the most cost-effective workforce, as required by section 129a of title 10, United States Code. They also contradict sections 129 and 2463 of title 10, United States Code, which direct that consideration be given to using civilian employees and prohibit numeric limitations.

- The Department may not create in guidelines or procedures “any specific limitations or restrictions on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.” (10 U.S.C. 2463)

- The management of civilians “shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees.” (10 U.S.C. 129)
- “The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department.” (10 U.S.C. 129a)

The reports required by section 901 of the 2008 NDAA and section 1111 of the 2009 NDAA are complicated, duplicative, and will not provide meaningful information. For example, the section 901 report requires reporting the “average number” and “number” of military personnel and civilian employees. This data by its nature is incongruent; one figure is an execution average while the other is a “headcount.” And, by comparison, it will not provide germane information. The section 1111 report requires information on acquisition workforce hiring and contracts for services which would be better aligned with reports specific to those subjects, i.e., the annual report on the DoD Acquisition Workforce Development Fund (10 U.S.C. 1705) and the annual inventory of Contracts for Services (10 U.S.C. 2330a). The Department’s proposal retains a consolidated reporting requirement. However, the report has been clarified to provide programmed workforce for military and civilian personnel commensurate with the overall Defense budget material and showing relevant trend information. The program data will show the previous fiscal year actual execution, the current fiscal year planned execution, and the requested budget year plan.

**Changes to Existing Law:** The proposal makes the following changes to existing law:

#### TITLE 10, UNITED STATES CODE

##### **§ 115a. Annual defense manpower requirements report**

(a) The Secretary of Defense shall submit to Congress an annual defense manpower requirements report. The report, which shall be in writing, shall be submitted each year not later than 45 days after the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31. The report shall contain the Secretary’s recommendations for—

- (1) the annual active-duty end-strength level for each component of the armed forces for the next fiscal year; and
- (2) the annual civilian personnel end-strength level for each component of the Department of Defense for the next fiscal year.

\* \* \* \* \*

(f) The Secretary shall also include in each such report the following information with respect to personnel assigned to or supporting major Department of Defense headquarters activities:

- (1) The military end strength and civilian full-time equivalents assigned to major Department of Defense headquarters activities for the preceding fiscal year and estimates of such numbers for the current fiscal year and the budget fiscal year.

(2) A summary of the replacement during the preceding fiscal year of contract workyears providing support to major Department of Defense headquarters activities with military end strength or civilian full-time equivalents, including an estimate of the number associated with the replacement of contracts performing inherently governmental or exempt functions.

(3) The plan for the continued review of contract personnel supporting major Department of Defense headquarters activities for possible conversion to military or civilian performance in accordance with section 2463 of this title.

\* \* \* \* \*

### **~~§ 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.~~

~~(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).~~

~~(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.~~

\* \* \* \* \*

### **~~§ 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 re-categorizing 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.~~

\* \* \* \* \*

**§ 3014. Office of the Secretary of the Army**

(a) \*\*\*

\* \* \* \* \*

~~(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Army assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 3,105.~~

~~(2) Not more than 1,865 officers of the Army on the active duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff.~~

~~(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 67.~~

~~(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Army or on the Army Staff.~~

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**§ 5014. Office of the Secretary of the Navy**

(a) \*\*\*

\* \* \* \* \*

~~(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Navy assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 2,866.~~



~~(2) Not more than 1,720 officers of the Navy and Marine Corps on the active duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.~~

~~(3) The total number of general and flag officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 74.~~

~~(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, or the Headquarters, Marine Corps.~~

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#### **§ 8014. Office of the Secretary of the Air Force**

(a) \*\*\*

\* \* \* \* \*

~~(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 2,639.~~

~~(2) Not more than 1,585 officers of the Air Force on the active duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff.~~

~~(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 60.~~

~~(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force or on the Air Staff.~~

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### **Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433, Oct. 1, 1986)**

#### **~~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.~~

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**National Defense Authorization Act for Fiscal Year 2008  
(Public Law 110-181, Jan. 28, 2008)**

**SEC 901. REPEAL OF LIMITATION ON MAJOR DEPARTMENT OF DEFENSE  
HEADQUARTERS ACTIVITIES PERSONNEL AND RELATED  
REPORT.**

(a) REPEAL OF LIMITATION.—

(1) REPEAL.—Section 130a of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by striking the item relating to section 130a.

~~————(b) REPORT REQUIRED.——The Secretary of Defense shall include a report with the defense budget materials for each fiscal year that includes the following information:~~

~~————(1) The average number of military personnel and civilian employees of the Department of Defense assigned to major Department of Defense headquarters activities for each component of the Department of Defense during the preceding fiscal year.~~

~~————(2) The total increase in personnel assigned to major headquarters activities, if any, during the preceding fiscal year——~~

~~————(A) attributable to the replacement of contract personnel with military personnel or civilian employees of the Department of Defense, including the number of positions associated with the replacement of contract personnel performing inherently governmental functions; and~~

~~————(B) attributable to reasons other than the replacement of contract personnel with military personnel or civilian employees of the Department, such as workload or operational demand increases.~~

~~————(3) An estimate of the cost savings, if any, associated with the elimination of contracts for the performance of major headquarters activities.~~

~~————(4) The number of military personnel and civilian employees of the Department of Defense assigned to major headquarters activities for each component of the Department of Defense as of October 1 of the preceding fiscal year.~~

~~————(c) DEFINITIONS.——In this section:~~

~~————(1) DEFENSE BUDGET MATERIALS.——The term “defense budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year that is submitted to Congress by the President under section 1105 of title 31, United States Code.~~

~~————(2) CONTRACT PERSONNEL.——The term “contract personnel” means persons hired under a contract with the Department of Defense for the performance of major Department of Defense headquarters activities.~~

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**Duncan Hunter National Defense Authorization Act for Fiscal Year 2009  
(Public Law 110-417, Oct. 14, 2008)**

**~~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, 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 for four fiscal years thereafter, 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 requirements of —~~

~~— (A) section 1122 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 10 U.S.C. prec. 1580 note);~~

~~— (B) section 1102 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2407); or~~

~~— (C) section 851 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. note prec. 1580); or~~

~~— (2) accommodate increases in workload or modify the type of personnel required to accomplish work, for any purpose described in paragraphs (1) through (4) of subsection (c).~~

~~— (c) LIMITATION ON AUTHORITY TO ADJUST LIMITATIONS ON PERSONNEL. — The Secretary of Defense or the secretary of a military department may not increase a baseline personnel limitation under paragraph (2) of subsection (b) by more than 5 percent in a fiscal year. An increase in a baseline personnel limitation under such paragraph may be made for any of the following purposes:~~

~~— (1) Performance of inherently governmental functions.~~

~~— (2) Performance of work pursuant to section 2463 of title 10 United States Code.~~

~~— (3) Ability to maintain sufficient organic expertise and technical capability.~~

~~— (4) 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.~~

~~— (d) REPORT REQUIRED. — The Secretary of Defense shall submit a report to the congressional defense committees on the implementation of this section at the same time that the defense budget materials for each of the four fiscal years after fiscal year 2009 are presented to Congress. The report shall include the following information regarding the implementation of this section during the preceding fiscal year:~~

~~— (1) The average number of military personnel, civilian employees of the Department of Defense, and contractor employees assigned to or detailed to permanent duty in —~~

~~— (A) the Office of the Secretary of Defense;~~

~~— (B) the management headquarters activities and management headquarters support activities in the Defense Agencies and Department of Defense Field Activities;~~

~~— (C) the Office of the Secretary of the Army and the Army Staff;~~

~~— (D) the Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps; and~~

~~— (E) the Office of the Secretary of the Air Force and the Air Staff.~~

~~— (2) An estimate of the number of personnel hired pursuant to an exception in subsection (a) in each office described in subparagraphs (A) through (E) of paragraph (1).~~

~~\_\_\_\_\_ (3) The amount of any adjustment in the limitation on personnel made by the Secretary of Defense or the secretary of a military department, and, for each adjustment made pursuant to subsection (b)(2), the purpose of the adjustment.~~

**Section 902.** Section 1605 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 22 U.S.C. 2751 note) does not include new organizations and new responsibilities of existing organizations relevant to counterproliferation. In addition, the report the law requires does not cover the activities that have emerged in related Combating Weapons of Mass Destruction (WMD) areas. The report has been overtaken by events, and the benefit of the annual report does not justify the cost of its production.

**Budget Implications:** The managing office within the Office of the Secretary of Defense (OSD) provides one senior Government person and four contractors support with over half their time. Coordination is done with at least 20 organizations within Department of Defense, Department of Energy, Department of State, Department of Homeland Security, and the National Counterproliferation Center helping to provide information for the report, reviewing the first draft and helping to review and obtain their organizations' coordination for the final draft. OSD prints the report. Some of this activity will still be needed in support of the Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism once it is established. The amount of support depends on any agreements that are made with Department of Defense for the amount of support requested from us as the experienced organization. Cost savings are expected, but the amount depends on how this function is executed by the new office.

**Changes to Existing Law:** This proposal would repeal two provisions of law: section 1605 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 22 U.S.C. 2751 note) and section 1503 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 22 U.S.C. 2751 note). The text of those two sections is as follows:

**Section 1605 of the National Defense Authorization Act for Fiscal Year 1994**  
(Public Law 103-160; 22 U.S.C. 2751 note)

**~~SEC. 1605. JOINT COMMITTEE FOR REVIEW OF COUNTERPROLIFERATION PROGRAMS OF THE UNITED STATES.~~**

~~\_\_\_\_\_ (a) ESTABLISHMENT. (1) There is hereby established a Counterproliferation Program Review Committee composed of the following members:~~

~~\_\_\_\_\_ (A) The Secretary of Defense.~~

~~\_\_\_\_\_ (B) The Secretary of Energy.~~

~~\_\_\_\_\_ (C) The Director of National Intelligence.~~

~~\_\_\_\_\_ (D) The Chairman of the Joint Chiefs of Staff.~~

~~\_\_\_\_\_ (E) The Secretary of State.~~

~~\_\_\_\_\_ (F) The Secretary of Homeland Security.~~

~~\_\_\_\_\_ (2) The Secretary of Defense shall chair the committee. The Secretary of Energy shall serve as the Vice Chairman of the committee.~~

~~\_\_\_\_\_ (3) A member of the committee may designate a representative to perform routinely the duties of the member. A representative shall be in a position of Deputy Assistant Secretary or a~~

position equivalent to or above the level of Deputy Assistant Secretary. A representative of the Chairman of the Joint Chiefs of Staff shall be a person in a grade equivalent to that of Deputy Assistant Secretary of Defense.

~~———— (4) The Secretary of Defense may delegate to the Under Secretary of Defense for Acquisition, Technology, and Logistics the performance of the duties of the Chairman of the committee. The Secretary of Energy may delegate to the Under Secretary of Energy responsible for national security programs of the Department of Energy the performance of the duties of the Vice Chairman of the committee.~~

~~———— (5) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs shall serve as executive secretary to the committee, except that during any period during which that position is vacant the Assistant Secretary of Defense for Strategy and Threat Reduction shall serve as the executive secretary.~~

~~———— (b) PURPOSES OF THE COMMITTEE. — The purposes of the committee are as follows:~~

~~———— (1) To optimize funding for, and ensure the development and deployment of —~~

~~———— (A) highly effective technologies and capabilities for the detection, monitoring, collection, processing, analysis, and dissemination of information in support of United States counterproliferation policy and efforts, including efforts to stem the proliferation of weapons of mass destruction and to negate paramilitary and terrorist threats involving weapons of mass destruction; and~~

~~———— (B) disabling technologies in support of such policy.~~

~~———— (2) To identify and eliminate undesirable redundancies uncoordinated efforts in the development and deployment of such technologies and capabilities.~~

~~———— (3) To establish priorities for programs and funding.~~

~~———— (4) To encourage and facilitate interagency and interdepartmental funding of programs in order to ensure necessary levels of funding to develop, operate, and field highly capable systems.~~

~~———— (5) To ensure that Department of Energy programs are integrated with the operational needs of other departments and agencies of the Government.~~

~~———— (6) To ensure that Department of Energy national security programs include technology demonstrations and prototype development of equipment.~~

~~———— (c) DUTIES. — The committee shall —~~

~~———— (1) identify and review existing and proposed capabilities and technologies for support of United States nonproliferation policy and counterproliferation policy with regard to —~~

~~———— (A) intelligence;~~

~~———— (B) battlefield surveillance;~~

~~———— (C) passive defenses;~~

~~———— (D) active defenses; and~~

~~———— (E) counterforce capabilities;~~

~~———— (2) prescribe requirements and priorities for the development and deployment of highly effective capabilities and technologies;~~

~~———— (3) identify deficiencies in existing capabilities and technologies;~~

~~———— (4) formulate near-term, mid-term, and long-term programmatic options for meeting requirements established by the committee and eliminating deficiencies identified by the committee; and~~

— (5) assess each fiscal year the effectiveness of the committee actions during the preceding fiscal year, including, particularly, the status of recommendations made during such preceding fiscal year that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for the fiscal year following the fiscal year in which the assessment is made.

— (d) ACCESS TO INFORMATION. — The committee shall have access to information on all programs, projects, and activities of the Department of Defense, the Department of State, the Department of Energy, the Department of State, the Department of Homeland Security, the intelligence community, and the Arms Control and Disarmament Agency that are pertinent to the purposes and duties of the committee.

— (e) RECOMMENDATIONS. — The committee shall submit to the President and the heads of all appropriate departments and agencies of the Government such programmatic recommendations regarding existing, planned, or new programs as the committee considers appropriate to encourage funding for capabilities and technologies at the level necessary to support United States counterproliferation policy.

— (f) TERMINATION OF COMMITTEE. — The committee shall cease to exist at the end of September 30, 2013.

**Section 1503 of the National Defense Authorization Act for Fiscal Year 1995**  
(Public Law 103-337; 22 U.S.C. 2751 note)

**~~SEC. 1503. REPORTS ON COUNTERPROLIFERATION ACTIVITIES AND PROGRAMS.~~**

— (a) BIENNIAL REPORT REQUIRED. — Not later than May 1 each odd-numbered year, the Secretary of Defense shall submit to Congress a report of the findings of the Counterproliferation Program Review Committee established by subsection (a) of the Review Committee charter.

— (b) CONTENT OF REPORT. — Each report under subsection (a) shall include the following:

— (1) A complete list, by specific program element, of the existing, planned, or newly proposed capabilities and technologies reviewed by the Review Committee pursuant to subsection (c) of the Review Committee charter.

— (2) A complete description of the requirements and priorities established by the Review Committee.

— (3) A comprehensive discussion of the near-term, mid-term, and long-term programmatic options formulated by the Review Committee for meeting requirements prescribed by the Review Committee and for eliminating deficiencies identified by the Review Committee, including the annual funding requirements and completion dates established for each such option.

— (4) An explanation of the recommendations made pursuant to subsection (c) of the Review Committee charter, together with a full discussion of the actions taken to implement such recommendations or otherwise taken on the recommendations.

— (5) A discussion and assessment of the status of each Review Committee recommendation during the two fiscal years preceding the fiscal year in which the report is submitted, including, particularly, the status of recommendations made during such preceding fiscal years that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, in the fiscal year of the report.



~~— (6) Each specific Department of Energy program that the Secretary of Energy plans to develop to initial operating capability and each such program that the Secretary does not plan to develop to initial operating capability.~~

~~— (7) For each technology program scheduled to reach initial operational capability, a recommendation from the Chairman of the Joint Chiefs of Staff that represents the views of the commanders of the unified and specified commands regarding the utility and requirement of the program.~~

~~— (8) A discussion of the limitations and impediments to the biological weapons counterproliferation efforts of the Department of Defense (including legal, policy, and resource constraints) and recommendations for the removal or mitigation of such impediments and for ways to make such efforts more effective.~~

~~— (c) FORMS OF REPORT. Each such report shall be submitted in both unclassified and classified forms, including an annex to the classified report for special compartmented information programs, special access programs, and special activities programs.~~

~~— (d) REVIEW COMMITTEE CHARTER DEFINED. For purposes of this section, the term ‘Review Committee charter’ means section 1605 of the National Defense Authorization Act for Fiscal Year 1994 (22 U.S.C. 2751 note).~~

~~— (e) TERMINATION OF REQUIREMENT. The final report required under subsection (a) is the report for the year following the year in which the Counterproliferation Program Review Committee established under the Review Committee Charter ceases to exist.~~

**Section 903** would allow the Secretary of Defense to transition from temporary authority to provide space surveillance data support to permanent authority to provide space situational awareness (SSA) products and services to non- U.S. Government entities. Chapter 135 of title 10, United States Code, Sec. 2274 provides current legislative authority to conduct a “PILOT PROGRAM FOR PROVISION OF SPACE SURVEILLANCE NETWORK SERVICES TO NON-UNITED STATES GOVERNMENT ENTITIES.”

The revised section 2274 is critical to transitioning from the provision of space surveillance data support to providing SSA products and services in support of the responsibilities assigned to the Secretary of Defense in National Security Presidential Directive – 49, National Space Policy, August 31, 2006. These responsibilities require the Secretary to “[h]ave responsibility for space situational awareness; in this capacity, the Secretary of Defense shall support the space situational awareness requirements of the Director of National Intelligence and conduct space situational awareness for: the United States Government; U.S. commercial space capabilities and services used for national and homeland security purposes; civil space capabilities and operations, particularly human space flight activities; and, as appropriate, commercial and foreign space entities.”

To provide SSA products and services on a continuing basis to commercial and foreign entities, the Secretary of Defense will require legislative authority to enter into agreements with commercial and foreign entities. This legislation provides the necessary legal authority to enable the Secretary of Defense to establish such agreements and describes the basis of the relationship and obligations that the Secretary may pursue. A separate subaccount shall be maintained for each entity from which the Department has received funds for this purpose. The Department shall match the funding from each entity with the specific service provided to that entity.

**Changes to Existing Law:** This section would make the following changes to section 2274 of title 10, United States Code:

**§ 2274. Space ~~surveillance network~~ situational awareness services and information: ~~pilot program for provision of satellite tracking support to entities outside~~ to non-United States Government entities**

~~—(a) PILOT PROGRAM. The Secretary of Defense may carry out a pilot program to determine the feasibility and desirability of providing to non-United States Government entities space surveillance data support described in subsection (b).~~

(a) AUTHORITY.—The Secretary of Defense may provide space situational awareness services and information to, and may obtain space situational awareness data and information from, non-United States Government entities in accordance with this section. Any such action may be taken in the case of any such entity only if the Secretary determines that such action is consistent with the national security interests of the United States.

~~(b) SPACE SURVEILLANCE DATA SUPPORT. Under such a pilot program, the Secretary may provide to a non-United States Government entity, subject to an agreement described in subsection (d), the following:~~

~~—(1) Satellite tracking services from assets owned or controlled by the Department of Defense, but only if the Secretary determines, in the case of any such agreement, that providing such services to that entity is in the national security interests of the United States.~~

~~—(2) Space surveillance data and the analysis of space surveillance data, but only if the Secretary determines, in the case of any such agreement, that providing such data and analysis to that entity is in the national security interests of the United States.~~

~~(c) ELIGIBLE ENTITIES. Under the pilot program, the Secretary may provide space surveillance data support to non-United States Government entities including the following:~~

- ~~—(1) State governments.~~
- ~~—(2) Governments of political subdivisions of States.~~
- ~~—(3) United States commercial entities.~~
- ~~—(4) Governments of foreign countries.~~
- ~~—(5) Foreign commercial entities.~~

(b) ELIGIBLE ENTITIES.—The Secretary may provide services and information under subsection (a) to, and may obtain data and information under subsection (a) from, any non-United States Government entity, including any of the following:

- (1) A State government.
- (2) The government of a political subdivision of a State.
- (3) A United States commercial entity.
- (4) The government of a foreign country.
- (5) A foreign commercial entity.

~~— (d) REQUIRED AGREEMENT. The Secretary may not provide space surveillance data support to a non-United States Government entity under the pilot program unless that entity enters into an agreement with the Secretary under which the entity—~~

~~— (1) agrees to pay an amount that may be charged by the Secretary under subsection (e); and~~

~~— (2) agrees not to transfer any data or technical information received under the agreement, including the analysis of tracking data, to any other entity without the express approval of the Secretary.~~

~~— (c) REQUIRED AGREEMENT.—The Secretary may not provide space situational awareness services and information under subsection (a) to a non-United States Government entity unless that entity enters into an agreement with the Secretary under which the entity—~~

~~— (1) agrees to pay an amount that may be charged by the Secretary under subsection (d);~~

~~— (2) agrees not to transfer any data or technical information received under the agreement, including the analysis of data, to any other entity without the express approval of the Secretary; and~~

~~— (3) agrees to any other terms and conditions considered necessary by the Secretary.~~

~~— (e) RULE OF CONSTRUCTION CONCERNING PROVISION OF INTELLIGENCE ASSETS OR DATA. Nothing in this section shall be considered to authorize the provision of services or information concerning, or derived from, United States intelligence assets or data.~~

~~— (f) CHARGES. (1) As a condition of an agreement under subsection (d), the Secretary may (except as provided in paragraph (2)) require the non-United States Government entity entering into the agreement to pay to the Department of Defense such amounts as the Secretary determines to be necessary to reimburse the Department for the costs of the Department of providing space surveillance data support under the agreement.~~

~~— (2) The Secretary may not require the government of a State or of a political subdivision of a State to pay any amount under paragraph (1).~~

(d) CHARGES.—(1) As a condition of an agreement under subsection (c), the Secretary may (except as provided in paragraph (2)) require the non-United States Government entity entering into the agreement to pay to the Department of Defense such amounts as the Secretary determines to be necessary to reimburse the Department for the costs to the Department of providing space situational awareness service support under the agreement.

(2) The Secretary may not require the government of a State, or of a political subdivision of a State, to pay any amount under paragraph (1).

~~— (g) CREDITING OF FUNDS RECEIVED. Funds received for the provision of space surveillance data support pursuant to an agreement under this section shall be credited to accounts of the Department of Defense that are current when the funds are received and that are available for the same purposes as the accounts originally charged to provide such support. Funds so credited shall merge with and become available for obligation for the same period as the accounts to which they are credited.~~

(e) CREDITING OF FUNDS RECEIVED.—Funds received for the provision of space situational awareness services pursuant to an agreement under this section shall be credited, at

the option of the Secretary, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made. Funds so credited shall be merged with, and remain available for obligation with, the funds in the appropriation, fund, or account to which credited.

~~—(h) PROCEDURES. The Secretary shall establish procedures for the conduct of the pilot program. As part of those procedures, the Secretary may allow space surveillance data and analysis of space surveillance data to be provided through a contractor of the Department of Defense.~~

—(f) PROCEDURES.—The Secretary shall establish procedures by which the authority under this section shall be carried out. As part of those procedures, the Secretary may allow space situational awareness services to be provided through a contractor of the Department of Defense.

—(g) NONDISCLOSURE.—All information received under subsection (a), records of agreements entered into under subsection (c), and analyses or data provided as a part of the services provided in accordance with the authority under this section are exempt from disclosure under section 552(b)(3) of title 5.

(h) IMMUNITY.—The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, and other persons acting for the United States, shall be immune from any suit in any court for any cause of action arising from the provision or receipt of space situational awareness services, whether or not provided in accordance with this section, or any related action or omission.

~~—(i) DURATION OF PILOT PROGRAM. The pilot program under this section may be conducted through September 30, 2009.~~

## TITLE X—GENERAL PROVISION

### Subtitle A—Financial Matters

**Section 1001.** Section 2642 of title 10, United States Code, currently authorizes the charging of the Department of Defense reimbursement rate to the Central Intelligence Agency for activities related to national security objectives and to the Department of State for transport of armored vehicles to foreign countries. All other agencies must pay the higher non-Department of Defense Rate. By selectively providing the Department of Defense reimbursement rate to customers to maximize loads into areas where the Department of Defense might have to otherwise fly missions with partial aircraft loads, revenues to the Transportation Working Capital Fund for such airlift services would be increased. The non-Department of Defense reimbursement rate contains sunk costs that would not be increased by the greater volume of business generated through the use of the more favorable rate. The proposal would allow the Secretary of Defense to support other federal agencies without increased cost to the Department while balancing the need to maintain a robust United States commercial airlift capability in accordance with the National Airlift Policy.

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. 2642:

**§ 2642. Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate**

(a) **AUTHORITY.**—The Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military airlift services provided by a component of the Department of Defense as follows:

(1) For military airlift services provided to the Central Intelligence Agency, if the Secretary of Defense determines that those military airlift services are provided for activities related to national security objectives.

(2) For military airlift services provided to the Department of State for the transportation of armored motor vehicles to a foreign country to meet requirements of the Department of State for armored motor vehicles associated with the overseas travel of the Secretary of State in that country.

(3) For military airlift services provided to any element of the Federal Government outside the Department of Defense in circumstances other than those specified in paragraphs (1) and (2), but only if the Secretary of Defense determines that provision of those military airlift services will promote improved utilization of airlift capacity without negative effect on national security objectives or the national security interests contained within the United States commercial air industry.

(b) **DEFINITION.**—In this section, the term “Department of Defense reimbursement rate” means the amount charged a component of the Department of Defense by another component of the Department of Defense.

**Section 1002.** The amendment made by this proposal to section 2208 of title 10, United States Code, would revise subsection (r)(1) of section 2208, 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. It 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 amendment 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, such notification normally provided 5 days notice of a transfer. Under the amendment to section 2208 of title 10, which was made by section 1009 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005, transfers may not be made unless the Secretary of Defense submits an advance notification “in accordance with

normal procedures.” The history of this provision indicates that these normal 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 Services 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 (O&M) 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:** This proposal would make the following changes to section 2208 of title 10, United States Code:

**§ 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.~~

(1) 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.

**Subtitle B—Policy Relating to Vessels and Shipyards**

**Section 1011** would allow for the temporary reduction in the minimum number of operational aircraft carriers from 11 to 10. Section 1011 of the John Warner National Defense Authorization Act for Fiscal Year (FY) 2007 (Public Law 109-364), amended 10 U.S.C. 5062(b) to reduce the minimum number of operational aircraft carriers from 12 to 11. Deactivation of the USS ENTERPRISE (CVN 65), after 52 years of service, is scheduled to begin in FY 2013; the delivery of her numerical replacement, the CVN 78, is scheduled for FY 2015. The actual duration of this temporary reduction in the carrier force structure will depend on the

decommissioning date of the USS ENTERPRISE and the commissioning date of the USS GERALD R. FORD (CVN 78).

With the decommissioning of the USS JOHN F. KENNEDY (CV 67) in early 2007, the number of aircraft carriers Navy operates dropped to 11. In 2008, the USS KITTY HAWK (CV 63) will be decommissioned and replaced with the USS GEORGE H.W. BUSH (CVN 77), keeping the force structure at 11 carriers. Maintaining the USS KITTY HAWK -- the oldest active carrier in the fleet -- in an operational status beyond 2009 would be cost prohibitive.

Designed for a service life of 30 years, the USS ENTERPRISE is now 47 years old. She has been refueled three times, most recently in 1994. As the only ship of her class, she has unique maintenance and testing requirements and requires a long lead time for material and spare parts.

The ENTERPRISE entered her next, and last scheduled, major depot maintenance period in March 2008. This will enable the ENTERPRISE to complete two more deployments (in 2010 and 2012). Maintaining ENTERPRISE in operational status beyond 2012 would involve high technical risk and present considerable manpower and industrial base challenges. Extending ENTERPRISE would also require an additional major maintenance availability at considerable cost which would cause a significant impact on the maintenance schedule for other aircraft carriers.

Though the inactivation of the ENTERPRISE will not occur for several more years, the Navy has made technical decisions based upon ship inactivation commencing in November 2012. Accordingly, Navy needs the statutory authority now to temporarily operate with fewer than 11 operational carriers so it can properly budget, plan and program future carrier depot and operational availability schedules. Navy would need to reevaluate these decisions if the waiver is not granted.

Analysis by the Department of Defense indicates that Combatant Commander-required postures can be maintained throughout this period by accepting marginally increased risk and by carefully managing aircraft carrier maintenance and operating priorities.

**Budget Implications:** The budget request reflects the inactivation of the USS ENTERPRISE in 2012 and therefore no major maintenance availabilities for this carrier are funded in FY 2010-2012. Extending the USS ENTERPRISE beyond 2012 would require additional funds which are not included in the President's Budget request. This proposal is required to support the overall operation and maintenance and military personnel funding requested in the FY 2010 President's Budget.

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. 5062:

**§ 5062. United States Navy: composition; functions**

(a) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized,



trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

(b) The naval combat forces of the Navy shall include not less than 11 operational aircraft carriers, except that during the period beginning on the date of the decommissioning of the USS Enterprise (CVN 65) and ending on the date of the commissioning into active service of the USS Gerald R. Ford (CVN 78), the number of operational aircraft carriers in the naval combat forces of the Navy may be 10. For purposes of this subsection, an operational aircraft carrier includes an aircraft carrier that is temporarily unavailable for worldwide deployment due to routine or scheduled maintenance or repair.

(c) All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation consists of combat and service and training forces, and includes land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the Navy, and the entire remainder of the aeronautical organization of the Navy, together with the personnel necessary therefore.

(d) The Navy shall develop aircraft, weapons, tactics, technique, organization, and equipment of naval combat and service elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

### **Subtitle C—Counter-Drug Authorities**

**Section 1021** would extend through fiscal year (FY) 2011 the authorities provided in the Ronald W. Reagan National Defense Authorization Act for FY 2005 that allow the Department of Defense to support a unified campaign against narcotics trafficking and activities by organizations designated as terrorist organizations. It also would extend the troop caps for one additional year. These important authorities provide the Department of Defense (DoD) the flexibility to use funds appropriated for counter-narcotics activities to support Colombian efforts against terrorist organizations intimately involved in narcotics activities. This section would permit the DoD to provide support to the Government of Colombia as it continues to make progress against narco-terrorist organizations.

On November 22, 2004, the President of the United States, in a joint press conference in Cartagena with Colombian President Uribe, announced that the United States would continue to support the Government of Colombia in its campaign against narco-terrorism. This commitment was formalized in the Deputies Committee meeting of October 18, 2005, which directed continued support to Colombia at levels similar to FY 2005 and FY 2006.

Section 1021 of the Ronald W. Reagan National Defense Authorization Act (NDAA) for FY 2005 allows DoD funds used for assistance to Colombia to be used to “support a unified campaign ... against terrorist organizations such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN) and the United Self-Defense Forces of Colombia (AUC)” in fiscal years 2005 and 2006. Section 1023 of the John Warner National Defense Authorization Act for FY 2007 and section 1023 of the Duncan Hunter National Defense Authorization Act for FY 2009 extended this authority through FY 2009.

Extending these authorities would continue to provide the Command flexibility in supporting operations in Colombia while adhering to all of the other constraints, such as not allowing U.S. military personnel to participate in Colombian military combat operations. The Command has never reached the 800 military personnel limit contained in the current authority. During FY 2005, the first year of implementation, the number of military personnel in Colombia never exceeded 538.

**Budget Implications:** There are no cost implications associated with this proposal. The proposal would extend the authority to use already appropriated counter-narcotics funds to combat terrorist organizations that are inextricably tied to illicit drug trafficking.

**Changes to Existing Law:** This section would make the following changes to section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 2042), as amended by section 1023 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2382) and section 1023 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4586):

**SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.**

(a) AUTHORITY.—(1) In fiscal years 2005 through ~~2009~~2011, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC).

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107-115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108-287; 118 Stat. 988).

(c) NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106-246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107-115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia, and its follow-on programs, under subsection (a) in fiscal years 2005 through ~~2009~~2011 shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia, and its follow-on programs, may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia, and its follow-on programs, who are funded by Federal funds may not exceed 600.

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) RELATION TO OTHER AUTHORITY.—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

## **Subtitle D—Report Terminations**

**Section 1031** would provide a sunset for various reporting requirements. Currently, there are numerous reporting requirements that are not limited in duration and require reporting long after the original purpose was achieved.

Subsection (a) provides that periodic reporting requirements expire after five years unless the report is required by a public law that states the reporting requirement is indefinite or the report is required by a public law that provides for a specific number of years. Other reports would only be submitted for the period Congress specifically indicated it wanted the report to be submitted.

Subsection (b) provides that subsection (a) does not apply to the annual report of the Secretary of Defense under section 113(c) of title 10, United States Code, or to any report required by chapter 23 of title 10, United States Code.

**Changes to Existing Law:** This section would add new section 480a to chapter 23 of title 10, United States Code.

**Section 1032** would repeal section 489 of title 10, United States Code, eliminating a requirement that the Secretary of Defense, as part of the budget materials submitted to Congress each year, submit a report identifying all military museums that, during the most recently completed fiscal year, were operated by the Secretary of Defense or Secretary of a military department, were otherwise supported using funds appropriated to the Department of Defense or, were located on property under the jurisdiction of the Department.

Since the enactment of section 489 in 2004 (by section 1033(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375; Oct. 28, 2004)), no Member of Congress, nor any congressional staff member, has ever raised a question about the reports under that section or the data submitted in those reports. The reporting requirement involves extensive data collection, but has not provided any data that is useful to DoD and the DoD components in managing their programs.

**Changes to Existing Law:** This section would repeal section 489 of title 10, United States Code:

**~~§ 489. Annual report on Department of Defense operation and financial support for military museums~~**

~~(a) REPORT REQUIRED.—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, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report identifying all military museums that, during the most recently completed fiscal year—~~

- ~~(1) were operated by the Secretary of Defense or the Secretary of a military department;~~
- ~~(2) were otherwise supported using funds appropriated to the Department of Defense; or~~
- ~~(3) were located on property under the jurisdiction of the Department of Defense, although neither operated by the Department of Defense nor supported using funds appropriated to the Department of Defense.~~

~~(b) INFORMATION ON INDIVIDUAL MUSEUMS.—For each museum identified in a report under this section, the Secretary of Defense shall include in the report the following:~~

- ~~(1) The purpose and functions of the museum and the justification for the museum.~~
- ~~(2) A description of the facilities dedicated to the museum, including the location, size, and type of facilities and whether the facilities are included or eligible for inclusion on the National Register of Historic Places.~~
- ~~(3) An itemized listing of the funds appropriated to the Department of Defense that were obligated to support the museum during the fiscal year covered by the report and a description of the process used to determine the annual allocation of Department of Defense funds for the museum.~~
- ~~(4) An itemized listing of any other Federal funds, funds from a nonappropriated fund instrumentality account of the Department of Defense, and non-Federal funds obligated to support the museum.~~

~~(5) The management structure of the museum, including identification of the persons responsible for preparing the budget for the museum and for making acquisition and management decisions for the museum.~~

~~(6) The number of civilian employees of the Department of Defense and members of the armed forces who served full-time or part-time at the museum and their role in the management structure of the museum.~~

~~(c) INFORMATION ON SUPPORT PRIORITIES.— Each report under this section shall also include a separate description of the procedures used by the Secretary of Defense, in the case of museums identified in the report that are operated or supported by the Secretary of Defense, and the Secretary of a military department, in the case of museums identified in the report that are operated or supported by that Secretary, to prioritize funding and personnel support to the museums. The Secretary of Defense shall include a description of any such procedures applicable to the entire Department of Defense.~~

### **Subtitle E—Other Matters**

**Section 1041.** Section 127b of title 10, United States Code, provides authority for the Secretary of Defense to pay a monetary amount or provide a payment-in-kind to a person as a reward for providing U.S. Government personnel or government personnel of allied forces participating in a combined operation with armed forces, with certain information or nonlethal assistance. The National Defense Authorization Act for Fiscal Year (FY) 2008 amended that section to authorize the offering and making of rewards by acting through government personnel of allied forces for the first time. The Department of Defense implemented the authority to offer and make rewards by acting through government personnel of allied forces in guidance that the previous Deputy Secretary approved on August 19, 2008, and which took effect 30 days later.

The authority to offer and make rewards by acting through government personnel of allied forces expires at the end of FY 2009. This proposal would extend that authority through FY 2010. This section provides authority only; there is no associated funding or appropriation line. The Department of Defense will confirm that the implementation procedures established by the previous Deputy Secretary of Defense on August 19, 2008, are still valid.

The authority to offer and make rewards by acting through government personnel of allied forces is currently in use in Afghanistan. The Commander, United States Central Command, is supportive and expects to expand this method of offering and making rewards. The authority was not implemented until fiscal year 2009 and requires more time to mature and develop based on adjusted national and theater strategies.

#### **BUDGET IMPLICATIONS:**

The program anticipated to expend \$1 million (+) per fiscal year from the Operations and Maintenance, Defense-wide account to support the allied forces based on the initial efforts currently on-going Afghanistan and expectation of extending the authority in FY 2010. This extension is being requested for the first time.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>
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	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
O&M D/W	0.5	1.0	TBD	TBD	TBD	TBD	TBD
Total	0.5	1.0	TBD	TBD	TBD	TBD	TBD

Budget Activity = BA 4 (O&M Defense Wide, OSD Admin & Service Wide Activities)

Budget Line Item = 4G-4GTN

Program Element = 0902198D8Z

**Cost Methodology:** The anticipated cost of the program is \$1 million (+) per fiscal year. This analysis was focused on the review of historical data and emerging requirements. The cost for FY 2010 has been included in the FY 2010 Overseas Contingency Operations (OCO) submission. FY 2009 is the first full year of implementation of the DoD Rewards program for the allied forces. This full implementation year has a sunset clause in the same year. To determine projected authority requirements, we analyzed and identified reported DoD Reward program obligations from U.S. like size organization and current quarterly execution for the first allied forces incorporated in this program. This data was additionally used as a basis for determining future requirements.

**Changes to Existing Law:** This proposal would make the following change to section 127b of title 10, United States Code:

**§ 127b. Assistance in combating terrorism: rewards**

(a) **AUTHORITY.**—The Secretary of Defense may pay a monetary amount, or provide a payment-kind, to a person as a reward for providing United States Government personnel, or government personnel of allied forces participating in a combined operation with the armed forces, with information or nonlethal assistance that is beneficial to—

(1) an operation or activity of the armed forces, or of allied forces participating in a combined operation with the armed forces, conducted outside the United States against international terrorism; or

(2) force protection of the armed forces, or of allied forces participating in a combined operation with the armed forces.

(b) **LIMITATION.**—The amount or value of a reward provided under this section may not exceed \$5,000,000.

(c) **DELEGATION OF AUTHORITY.**—(1) The authority of the Secretary of Defense under subsection (a) may be delegated only—

(A) to the Deputy Secretary of Defense and an Under Secretary of Defense, without further redelegation; and

(B) to the commander of a combatant command, but only for a reward in an amount or with a value not in excess of \$1,000,000.

(2) A commander of a combatant command to whom authority to provide rewards under this section is delegated under paragraph (1) may further delegate that authority, but only for a reward in an amount or with a value not in excess of \$ 10,000, except that such a delegation may be made to the commander's deputy commander, or to the commander of a command directly

subordinate to that commander, without regard to such limitation. Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).

(3)(A) Subject to subparagraphs (B) and (C), an official who has authority delegated under paragraph (1) or (2) may use that authority, acting through government personnel of allied forces, to offer and make rewards.

(B) The Secretary of Defense shall prescribe policies and procedures for making rewards in the manner described in subparagraph (A), which shall include guidance for the accountability of funds used for making rewards in that manner. The policies and procedures shall not take effect until 30 days after the date on which the Secretary submits the policies and procedures to the congressional defense committees. Rewards may not be made in the manner described in subparagraph (A) except under policies and procedures that have taken effect.

(C) Rewards may not be made in the manner described in subparagraph (A) after September 30, ~~2009~~ 2010.

(D) Not later than April 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of this paragraph. The report shall identify each reward made in the manner described in subparagraph (A) and, for each such reward--

- (i) identify the type, amount, and recipient of the reward;
- (ii) explain the reason for making the reward; and
- (iii) assess the success of the reward in advancing the effort to combat terrorism.

(d) COORDINATION.—(1) The Secretary of Defense shall prescribe policies and procedures for the offering and making of rewards under this section and otherwise for administering the authority under this section. Such policies and procedures shall be prescribed in consultation with the Secretary of State and the Attorney General and shall ensure that the making of a reward under this section does not duplicate or interfere with the payment of a reward authorized by the Secretary of State or the Attorney General.

(2) The Secretary of Defense shall consult with the Secretary of State regarding the making of any reward under this section in an amount or with a value in excess of \$ 2,000,000.

(e) PERSONS NOT ELIGIBLE.—The following persons are not eligible to receive a reward under this section:

- (1) A citizen of the United States.
- (2) An officer or employee of the United States.
- (3) An employee of a contractor of the United States.

(f) ANNUAL REPORT.—(1) Not later than December 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the rewards program under this section during the preceding fiscal year.

(2) Each report for a fiscal year under this subsection shall include the following:

(A) Information on the total amount expended during that fiscal year to carry out the rewards program under this section during that fiscal year.

(B) Specification of the amount, if any, expended during that fiscal year to publicize the availability of rewards under this section.

(C) With respect to each reward provided during that fiscal year--

- (i) the amount or value of the reward and whether the reward was provided as a monetary payment or in some other form;
- (ii) the recipient of the reward; and
- (iii) a description of the information or assistance for which the reward was paid, together with an assessment of the significance and benefit of the information or assistance.

(D) Information on the implementation of paragraph (3) of subsection (c).

(3) The Secretary may submit the report in classified form if the Secretary determines that it is necessary to do so.

(g) DETERMINATIONS BY THE SECRETARY.—A determination by the Secretary under this section is final and conclusive and is not subject to judicial review.

## **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 given in section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year (FY) 2009 (NDAA), an authority that is similar to that given in the NDAA's for FY 2006, 2007, and 2008. 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 that was 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 2010, 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.



In addition, this proposal would exempt any employee granted a waiver under section 1101(a) from any aggregate limitations on pay. Under the current authority employees covered under the National Security Personnel System (NSPS) and section 9901.313 of Title 5, Code of Federal Regulations (CFR) are still subject to an aggregate pay limitation for total annual compensation equal to the annual rate of the salary payable to the Vice President under 3 U.S.C. 104 or \$227,300 for calendar year 2009. The changes recommended by this proposal would ensure that all NSPS and non-NSPS employees are treated equally and are exempt from any aggregate limitations on pay, encompassing even those employees whose aggregate limitation on pay is limited by a regulation or law other than 5 U.S.C. 5307.

### **BUDGET IMPLICATIONS**

The Department estimates that this section would cost \$4.3 million per year from FY 2010 through FY 2015. 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 offset 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.

<b>NUMBER OF PERSONNEL AFFECTED</b>			
	<b>FY 2010</b>	<b>Appropriation To</b>	<b>Civilian Personnel</b>
DoD Wide	+3,504		
Total	+3,504		

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>				
	<b>FY 2010</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
Army	\$1.2	O&M, Army	BA1	
Navy	\$1.0	O&M, Navy	BA1	
USMC	\$0.6	O&M, MC	BA1	
Air Force	\$1.0	O&M, Air Force	BA1	
Defense Wide	\$0.5	O&M, DW	BA3	
Total	\$4.3	-	-	

**Cost Methodology:** The cost of this section 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 2006, 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 section would make the following changes to section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615):

**SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.**

(a) **WAIVER AUTHORITY.**—During ~~calendar year 2009~~ calendar years 2009 and 2010, 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.

(b) **APPLICABILITY OF AGGREGATE LIMITATION ON PAY.**—~~Section 5307 of title 5, United States Code~~ Aggregate limitations on pay, whether established by law or regulation, shall not apply to any employee in any calendar year in which that employee is granted a waiver under subsection (a).

(c) **ADDITIONAL PAY NOT CONSIDERED BASIC PAY.**—To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

(d) **REGULATIONS.**—The Director of the Office of Personnel Management may issue regulations to ensure appropriate consistency among heads of executive agencies in the exercise of authority granted by this section.

**TITLE XII—MATTER RELATING TO FOREIGN NATIONS**

**Section 1201** would authorize \$1.5 billion for the Commanders' Emergency Response Program (CERP) in FY 2010 and would authorize the Secretary of Army to submit the quarterly CERP reports to Congress in 45 days from the end of the quarter, rather than the 15 days presently required. The steps involved, the complexity, and the review and coordination processes for the CERP Quarterly Report preclude the Department from meeting the present 15 days requirement. Changing the requirement to allow 45 days will provide a more realistic due date for the Department to meet.

**Budget Implications:** This section would be funded from within Overseas Contingency

Operations appropriations requested in the Administration's Fiscal Year 2010 Overseas Contingency Operations request. The cost is reflected in the following table and an explanation of the costing methodology follows:

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Appropriation From	Budget Activity	Dash-1 Line Item
TBD	+1,500	-	-	-	-	-	-		
Total	+1,500	-	-	-	-	-	-		

**Changes to Existing Law:** This section would make the following changes to section 1202 of the National Defense Authorization Act for Fiscal Year 2006, as amended:

**SEC. 1202. COMMANDERS' EMERGENCY RESPONSE PROGRAM.**

(a) ~~AUTHORITY FOR FISCAL YEARS 2008 AND 2009~~ **FISCAL YEAR 2010**.—During ~~each of fiscal years 2008 and 2009~~ **fiscal year 2010**, from funds made available to the Department of Defense for operation and maintenance ~~for such fiscal year, not to exceed \$1,700,000,000 in fiscal year 2008 and \$1,500,000,000 in fiscal year 2009~~ **\$1,500,000,000** may be used by the Secretary of Defense to provide funds—

- (1) for the Commanders' Emergency Response Program; and
- (2) for a similar program to assist the people of Afghanistan.

(b) QUARTERLY REPORTS AND BRIEFINGS.—

(1) IN GENERAL.—Not later than ~~15 days~~ **45 days** after the end of each fiscal-year quarter ~~of fiscal years 2008 and 2009~~ **of any fiscal year during which the authority under subsection (a) is in effect**, the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that quarter that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes of the programs under subsection (a).

(2) ADDITIONAL MATTERS TO BE INCLUDED.— \* \* \*

\* \* \* \* \*

(e) PROHIBITION ON CERTAIN PROJECTS UNDER THE COMMANDERS' EMERGENCY RESPONSE PROGRAM IN IRAQ.—

(1) PROHIBITION.—Except as provided in paragraph (2), funds made available under this section for the Commanders' Emergency Response Program in Iraq may not be obligated or expended to carry out any project commenced after ~~the date of the enactment of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009~~ **October 14, 2008**, if the total amount of such funds made available for the purpose of carrying out the project exceeds \$2,000,000.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply with respect to funds managed or controlled by the Department of Defense that were otherwise provided by another department or agency of the United States Government, the Government of Iraq, the government of a foreign country, a foundation or other charitable organization (including a foundation or charitable organization that is

organized or operates under the laws of a foreign country), or any source in the private sector of the United States or a foreign country.

(3) WAIVER.—The Secretary of Defense may waive the prohibition contained in paragraph (1) if the Secretary of Defense—

\* \* \* \* \*

(f) CERTIFICATION ON CERTAIN PROJECTS UNDER THE COMMANDERS' EMERGENCY RESPONSE PROGRAM IN IRAQ.—

(1) CERTIFICATION.—Funds made available under this section for the Commanders' Emergency Response Program in Iraq may not be obligated or expended to carry out any project commenced after ~~the date of the enactment of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009~~ **October 14, 2008**, if the total amount of such funds made available for the purpose of carrying out the project exceeds \$1,000,000 unless the Secretary of Defense certifies that the project addresses urgent humanitarian relief and reconstruction requirements that will immediately assist the Iraqi people.

(2) DELEGATION.—The Secretary may delegate the authority under paragraph (1) to the Deputy Secretary of Defense.

\* \* \* \* \*

**Section 1202** would expand the “Iraq and Afghanistan First” policy, which is a critical contributor to gaining local Iraq and Afghan support for the presence of United States forces and maximizing employment in those two countries to diminish the pool of the unemployed, who are more easily drawn into the insurgency.

To support our efforts in Iraq and Afghanistan, the United States, our Allies, our coalition partners, and Iraqi and Afghan forces themselves depend on the free flow of regular, reliable, large-scale shipments of goods and supplies through Iraq and Afghanistan's regional neighbors. This is particularly true in Afghanistan, a land-locked country in which U.S. efforts and the U.S., Allied, and coalition military presence is likely to increase over the next several months, while we simultaneously build up the numbers and capabilities of Afghan forces. It is reasonable to foresee a sizeable, sustained force level in Afghanistan over the next several years, combined with robust civilian and humanitarian assistance, which will require high-capacity and diverse supply lines.

Most U.S. supplies currently enter Afghanistan from the south through Pakistan. Helping to stabilize Pakistan through economic and security assistance is a U.S. national security priority. Purchasing goods and services in Pakistan in support of operations in Afghanistan would further that objective by providing economic opportunity for Pakistani businesses, and putting concrete action behind the stated U.S. commitment to building a more stable, secure, and prosperous Pakistan. In addition, it makes sense to purchase some of our supplies in Pakistan in order to decrease overall transportation costs and risks, since lines of communication through Pakistan will remain important in ensuring adequate throughput of supplies to forces in Afghanistan.

At the same time, increasing throughput requirements and increasing instability in Pakistan have highlighted the need for the United States to expand and diversify lines of communication. USTRANSCOM and USCENTOM are actively pursuing this objective by expanding the Northern Distribution Network (NDN), which they envision consisting of multiple modes of transportation (air, sea, road, and rail) and multiple routes. A route through the South Caucasus will be an important component of the NDN, and all NDN routes converge in Central Asia.

This authority will align U.S. procurement and acquisition policy to support critical efforts to bolster stability in Pakistan, expand the NDN, resupply U.S. forces in Afghanistan, and build partnerships and improve stability throughout the region. By procuring goods locally in Pakistan and along the NDN, the United States will incentivize those governments along the route along with their populations to support our efforts. Further, the United States will demonstrate in a concrete way that we value the support of these countries, and that we aim to develop with them lasting partnerships tied to the international effort to stabilize Afghanistan.

Lastly, increasing the local procurement of goods in Central Asia, Pakistan, or the South Caucasus will decrease overall U.S. transportation costs and risks. Shipping goods from Europe or the United States to Afghanistan is very costly, requires multiple modes of transportation, and relies on uninterrupted throughput in a number of diverse facilities (ports, rails, roads, air) in many different countries, while dealing with numerous customs services. By reducing the distance, complexity, risk, and cost involved in resupplying forces in Afghanistan, the United States will gain a strategic advantage in that effort.

**Changes to Existing Law:** This section does not amend existing law.

**Section 1203** would authorize \$7.5 billion for the Afghanistan Security Forces Fund (ASFF) in Fiscal Year (FY) 2010 for the purposes of allowing the Commander, Combined Security Transition Command-Afghanistan to provide assistance to the security forces of Afghanistan.

The ASFF supports the manning, training, and equipping of the Afghan National Security Forces (ANSF) to provide the security to allow the Islamic Republic of Afghanistan (IRoA) to grow and mature. The fund enables the IRoA to counter the increasing threat of a well-armed insurgency, Taliban, Al Qaeda, criminal gangs, narco-terrorists, and other anti-government elements that threaten the peace and stability of Afghanistan.

The increase in the FY 2010 authorization request continues an accelerated effort to train, equip and sustain the ANSF. The largest increase is for sustainment costs due to increased ANSF assigned strength from 117,000 in September 2007 to 145,000 in September 2008 and projected at 174,000 by September 2009. The remaining increase over FY 2009 includes facilities to support the increased ANSF including billeting, arms storage, and administrative spaces.

## **BUDGET IMPLICATIONS**

This section would be funded from within Overseas Contingency Operations appropriations requested in the Administration's Fiscal Year 2010 Overseas Contingency Operations request. The cost is reflected in the following table and an explanation of the costing methodology follows:

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
TBD	+7,462	-	-	-	-	-	-		
Total	+7,462	-	-	-	-	-	-		

**Changes to Existing Law:** This section does not amend existing law.

**Section 1204** seeks to extend existing statutory authority to provide administrative services and support, and to pay designated expenses for certain coalition liaison officers to the combatant commander with the mission of joint warfighting experimentation and joint force training, specifically Commander, U.S. Joint Forces Command (USJFCOM). Currently, the authority extends only to Combatant Commanders directly involved in military operations.

Since this authority was originally enacted, it has been employed to good effect by allowing members of the Coalition supporting the war on terrorism to perform liaison officer duties that directly allow DoD to maximize the benefit and contribution of coalition partners. DoD has gone to Congress to build on the original authority several times since 2002, seeking to facilitate the ability of developing nations to support U.S. efforts in the war on terrorism by allowing DoD to defray the expenses of liaison officers temporarily assigned to the headquarters of a combatant commander, component commander, or subordinate operational command in connection with the planning for, or conduct of, a coalition operation.

As integral support to such operations, USJFCOM provides joint warfighting training, experimentation, and exercise capabilities to combatant commanders and their component and operational subordinate staffs. Fidelity of training and experimentation to conditions in the theatre of operations, and the need for responsiveness to changing operational demands require USJFCOM to have timely access to sources of information and expertise related to ongoing military operations. Important among such sources of information and expertise are coalition liaison officers. Current law allows only the commander actually conducting military operations to defray the expenses of such liaison officers.

USJFCOM currently lacks such authority. Although the need for coalition liaison officers in support of USJFCOM activities has been identified, certain developing nations that could provide such officers have been unable to support the expense of sending such officers to the United States for a suitable period of time. This proposal would allow USJFCOM to fund such a liaison officer to the same extent and in the same manner as Commander, U.S. Central Command (USCENTCOM) is currently able to do for coalition liaison officers who support the planning for, and conduct of USCENTCOM coalition operations.

## **BUDGETARY IMPLICATIONS**

Anticipated costs of this authority would be borne by DoD operations and maintenance funds available to USJFCOM.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
Navy	+0.075	+0.075	+0.075	+0.075	+0.075	+0.075	O&M, Navy	01	1CCH
<b>Total</b>	+0.075	+0.075	+0.075	+0.075	+0.075	+0.075			

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b> <b>(offset to fund legislative proposal and incorporated in President's budget submission)</b>									
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>
Navy	-0.075	-0.075	-0.075	-0.075	-0.075	-0.075	O&M, Navy	01	1CCH
<b>Total</b>	-0.075	-0.075	-0.075	-0.075	-0.075	-0.075			

**Cost Methodology:** The cost of this section has been calculated by estimating the yearly cost to the United States for travel, housing, and support of one coalition officer from a developing nation in the Central Command theatre of operations residing and working at USJFCOM headquarters in Norfolk, Virginia. This cost is projected across the FYDP in anticipation of continuing such coalition operations.

**Cost:**

Appropriation: 1804N (O&M Navy)  
Budget Activity: 01  
Budget Line Item: 1CCH (Headquarters)  
Amount: +\$75,000

**Offset:**

Appropriation: 1804N (O&M Navy)  
Budget Activity: 01  
Budget Line Item: 1CCH (Headquarters)  
Amount: - \$75,000

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. 1051a:

**“§ 1051a. Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personnel expenses**

(a) AUTHORITY.—The Secretary of Defense may provide administrative services and support for the performance of duties by a liaison officer of another nation involved in a military operation with the United States while the liaison officer is assigned temporarily—

(1) to the headquarters of a combatant command, component command, or subordinate operational command of the United States in connection with the planning for, or conduct of, a military operation; or

(2) to the headquarters of the combatant command assigned by the Secretary of Defense the mission of joint warfighting experimentation and joint force training.

\* \* \* \* \*

### **TITLE XIII—MILITARY CONSTRUCTION, MILITARY FAMILY HOUSING, AND REAL PROPERTY**

**Section 1301** would raise the spending limit on the use of operation and maintenance (O&M) funds for unspecified minor military construction (MILCON) from \$750,000 to \$3,000,000 when applied to projects in Afghanistan that are necessary to meet military operational requirements involving the use of the Armed Forces in support of contingency operations. Increasing the authority in Afghanistan facilitates greater flexibility in military construction by allowing O&M funds to be used for a wider variety of minor projects, such as temporary dining facilities, berthing facilities, ammunition storage, utilities, and medical facilities that are no longer affordable under the limit originally set in 2004. Given the nature of the ongoing overseas contingency operations, waiting for authorization and appropriation of a military construction project does not effectively meet operational requirements. For smaller scale projects that exceed the existing \$750,000 limit, the commander often must either cancel or build to a lesser requirement in order to appropriately fund the project with O&M funds.

The proposal is temporary, expiring at the end of fiscal year (FY) 2011. The proposal supports transparency by requiring the military departments to report quarterly on their use of the higher threshold.

#### **Rising construction costs:**

Rising construction costs affect every project considered for Afghanistan. The Army component of Central Command (ARCENT) experienced annual OEF/OIF construction cost growth ranging between 20-40% per year, pushing many minor yet essential projects beyond either O&M construction thresholds or unspecified minor military construction thresholds. The following examples demonstrate this cost growth (all amounts in thousands of dollars):

Project	Location	FY04	FY08-10
Landfill	Iraq	\$ 420	\$ 880
DFAC	Dwyer	\$ 500	\$2,000
Medical Facility	Dwyer	\$ 800	\$2,000
Dining Facility	Wolverine	\$ 880	\$2,200
MedLog Warehouse	Bagram	\$ 700	\$3,350
Brigade HQ Building	Kandahar	\$ 750	\$3,500

The FY 2004 costs for similar facilities were derived from previously approved Operation and Maintenance, Army (OMA) projects built in the USCENTCOM Area of Responsibility (AOR). Although the last two example projects exceed the \$3.0 million authority requested, they serve to illustrate the overall cost growth trends.



Rising cost factors include:

- 1) Increases in the cost of construction materials (concrete costs \$500 per cubic yard (CY) in Afghanistan vs \$100 per CY stateside),
- 2) Lack of a skilled local labor force requires outsourcing more technicians,
- 3) Contractors in country who cannot support the scale of construction requires going outside of the country or using larger contractors which can drive costs up due to minimal competition, and
- 4) Cost to ship and transport materials due to limitations in air, sea, and land access.

Impact: A \$3,000,000 O&M threshold for unspecified minor military construction provides the maneuver commander in the counterinsurgency fight the flexibility to reposition forces in response to the enemy situation without delay. The threshold would permit rapid construction of enabling facilities to include force protection, medical, and temporary logistic support (e.g., fuel and ammunition storage).

**Changes to Existing Law:** This section would make no changes to the text of existing law.

**Section 1302** would extend the authority by two years to September 30, 2011. The Navy has successfully awarded two pilot projects under the 10 U.S.C. 2881a authority.

The Navy continues to evaluate candidates for a third project. The execution of the third candidate project has been delayed pending the Navy's review of unaccompanied housing requirements and underlying policies and development of an unaccompanied housing master plan. The Navy is developing the master plan as part of its formulation of the fiscal year (FY) 2010 budget. Options under consideration include Navy installations in the Mayport/Jacksonville, FL area as well as follow-on phases to existing projects at San Diego and Hampton Roads.

### **BUDGET IMPLICATIONS**

The Navy has funds in the Military Personnel, Navy (MPN) account for a third pilot project as shown below. Actual costs and savings, which may involve other appropriations, will vary based on location and project scope.

The MPN information below is predicated on the following assumptions regarding the number of personnel affected. The actual number of personnel affected will vary based on location and project scope.

<b>NUMBER OF PERSONNEL AFFECTED</b>
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	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Appropriation To	Personnel Type (Officer, Enlisted, or Civilian)
Army	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Navy	+1,200	+1,200	+1,200	+1,200	+1,200	+1,200	Military Personnel, Navy	Enlisted
Air Force	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	+1,200	+1,200	+1,200	+1,200	+1,200	+1,200		

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Appropriation From	Budget Activity	Dash-1 Line Item
Army	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Navy	+10.2	+10.6	+11.0	+11.3	+11.7	+12.1	Military Personnel, Navy	02	80
Air Force	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	+10.2	+10.6	+11.0	+11.3	+11.7	+12.1			

**Cost Methodology:** The cost is estimated on the Basic Allowance for Housing required for 1,200 sailors included in the project scope. To date, the Navy has executed two of the three authorized pilot projects. The actual cost impact will depend on the final selection of the third candidate site and its associated scope.

**Changes to Existing Law:** This section would make the following changes to 10 U.S.C. 2881a(f):

**§ 2881a. Pilot projects for acquisition or construction of military unaccompanied housing**

(A) PILOT PROJECTS AUTHORIZED.— The Secretary of the Navy may carry out not more than three pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

\* \* \* \* \*

(f) EXPIRATION.—The authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, ~~2009~~2011.

**Section 1303.** Over the past several years, amendments to section 2667 of title 10, United States Code, have caused proliferation of multiple notice-and-wait requirements applicable to leases of real property under the control of a military department to non-Federal entities. These multiple notice-and-wait provisions have differing submittal requirements, differing dollar value reporting thresholds, and differing notice-and-wait periods. These multiple and inconsistent notice-and-wait requirements are administratively burdensome and cause compliance difficulty. This proposal would standardize notice-and-wait submittal requirements, dollar value thresholds, and notice-and-wait periods, while retaining the information requirements contained in current law.

Accordingly, subsection (a) excludes section 2667 leases from the lease notice-and-wait requirement that is redundant of the notice-and-wait requirements of section 2667.

Subsection (b) deletes three provisions of section 2667 that each contain separate notice-and-wait requirements, and adds a new subsection that establishes notice-and-wait requirements for any lease under section 2667 over a specified annual rental value and containing all of the information previously required under the deleted provisions.

**Changes to Existing Law:** The proposal would make the following changes to sections 2662 and 2667 of title 10, United States Code:

**§ 2662. Real property transactions: reports to congressional committees**

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary of a military department, or, with respect to a Defense Agency, the Secretary of Defense, may not enter into any of the following listed transactions by or for the use of that department until the Secretary submits a report, subject to paragraph (3), to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(A) An acquisition of fee title to any real property, if the estimated price is more than \$750,000.

(B) A lease of any real property to the United States, if the estimated annual rental is more than \$750,000.

(C) A lease or license of real property owned by the United States, other than a lease pursuant to section 2667 of this title, if the estimated annual fair market rental value of the property is more than \$750,000.

(D) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than \$750,000.

(E) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than \$750,000.

(F) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

(G) Any transaction or contract action that results in, or includes, the acquisition or use by, or the lease or license to, the United States of real property, if the estimated annual rental or cost for the use of the real property is more than \$750,000.

(2) \*\*\*

\* \* \* \* \*

**§ 2667. Leases: non-excess property of military departments and Defense Agencies**

(a) LEASE AUTHORITY.—Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that—

- (1) is under the control of the Secretary concerned;
- (2) is not for the time needed for public use; and
- (3) is not excess property, as defined by section 102 of title 40.

\* \* \* \* \*

(c) TYPES OF IN-KIND CONSIDERATION.—

(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

- (A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.
- (B) Construction of new facilities for the Secretary concerned.
- (C) Provision of facilities for use by the Secretary concerned.
- (D) Provision or payment of utility services for the Secretary concerned.
- (E) Provision of real property maintenance services for the Secretary concerned.
- (F) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

~~————(4)(A) Not later than 30 days before issuing a contract solicitation or other lease offering under this section for a lease whose annual payment, including any in-kind consideration to be accepted under subsection (b)(5) or this subsection, will exceed \$ 750,000, the Secretary concerned shall submit to the congressional defense committees a report containing—~~

- ~~————(i) a description of the proposed lease, including the proposed duration of the lease;~~
- ~~————(ii) a description of the authorities to be used in entering the lease and the intended participation of the United States in the lease, including a justification of the intended method of participation;~~
- ~~————(iii) a statement of the scored cost of the lease, determined using the scoring criteria of the Office of Management and Budget;~~
- ~~————(iv) a determination that the property involved in the lease is not excess~~

property, as required by subsection (a)(3), including the basis for the determination;

~~—— (v) a determination that the proposed lease is directly compatible with the mission of the military installation or Defense Agency whose property is to be subject to the lease and the anticipated long-term use of the property at the conclusion of the lease; and~~

~~—— (vi) a description of the requirements or conditions within the contract solicitation or other lease offering for the offeror to address taxation issues, including payments in lieu of taxes, and other development issues related to local municipalities.~~

~~—— (B) In the case of a lease described in subparagraph (A), the Secretary concerned also shall submit to the congressional defense committees a report at least 30 days before the date on which the Secretary concerned enters into a lease the following information:~~

~~—— (i) A copy of the report submitted under subparagraph (A).~~

~~—— (ii) A description of the differences between the report submitted under that subparagraph and the new report.~~

~~—— (iii) A description of the lessee payment required under this section.~~

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.—(1) In this subsection and subsection (b)(6), the term “covered entity” means each of the following:

(A) The Army and Air Force Exchange Service.

(B) The Navy Exchange Service Command.

(C) The Marine Corps exchanges.

(D) The Defense Commissary Agency.

(E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary concerned may waive the requirement in subsection (b)(6) with respect to a lease if—

(A) the lease is entered into under subsection (g); or

(B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary concerned shall provide to the congressional defense committees written notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary concerned regarding the opportunity to exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

(5) The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

~~—— (6) The Secretary concerned shall provide written notification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives regarding all leases under this section that include the operation of a community~~

~~support facility or the provision of community support services, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.~~

(e) DEPOSIT AND USE OF PROCEEDS.— \* \* \*

\* \* \* \* \*

(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY.—(1) \* \* \*

\* \* \* \* \*

(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION.—(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, or the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Paragraph (1) does not apply if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit served under subparagraph (A).

~~(3) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and—~~

~~—— (A) the competitive procedures used to select the lessee; or~~

~~(B) in the case of a lease involving the public benefit exception authorized by paragraph (2), a description of the public benefit to be served by the lease.~~

(4) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship’s operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

~~—— (5) If a proposed lease under subsection (a) involves a project related to energy production and the term of the lease exceeds 20 years, the Secretary concerned may not enter into the lease until at least 30 days after the date on which the Secretary of Defense submits to the congressional defense committees a certification that the project is consistent with the Department of Defense performance goals and plan required by section 2911 of this title.~~

(i) DEFINITIONS.—In this section:

(1) The term “community support facility” includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title).

(2) The term “community support services” includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(3) The term “military installation” has the meaning given such term in section 2687(e)(1) of this title.

(4) The term “Secretary concerned” means—

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning the Defense Agencies.

(j) EXCLUSION OF CERTAIN LANDS.—This section does not apply to oil, mineral, or phosphate lands.

(k) NOTICE-AND-WAIT REQUIREMENTS. —(1) The Secretary concerned may not issue a contract solicitation or other lease offering under this section for a lease with an annual rental value that is greater than \$750,000 (other than for a lease under subsection (g)) until the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report with respect to the proposed lease and a period of 30 days has elapsed after the date of the submission of the report. Any such report shall include the following:

(A) A description of the proposed lease, including the proposed duration of the lease.

(B) A description of the authorities to be used in entering into the lease and the intended participation of the United States in the lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the lease, determined using the scoring criteria of the Office of Management and Budget.

(D) A determination that the property involved in the lease is not excess property, as required by subsection (a)(3), including the basis for the determination.

(E) A determination that the proposed lease is directly compatible with the mission of the military installation or Defense Agency the property of which is to be subject to the lease and a description of the anticipated long-term use of the property at the conclusion of the lease.

(F) A description of the requirements or conditions within the contract solicitation or other lease offering for the offeror to address taxation issues, including payments-in-lieu-of taxes, and other development issues related to local municipalities.

(2) The Secretary concerned may not enter into a lease with respect to which a report was required under paragraph (1) until the Secretary submits to the committees specified in that paragraph a report with respect to the proposed lease and either a period of 30 days has elapsed after the date of the submission of the report or a period of 14 days has elapsed after the date of the submission of a copy of the report in an electronic medium pursuant to section 480 of this title. Any such report shall include the following:

(A) A copy of the report submitted under paragraph (1) with respect to that lease.

(B) A description of the differences between the report submitted under paragraph (1) and the report being submitted under this paragraph.

(C) A description of the lease payment required under this section, including a description of any in-kind consideration that will be accepted.

\_\_\_\_\_ (D) A description of any community support facility or provision of community support services under the lease, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.

\_\_\_\_\_ (E) A description of the competitive procedures used to select the lessee or, in the case of a lease involving the public benefit exception authorized by paragraph (2) of subsection (h), a description of the public benefit to be served by the lease.

\_\_\_\_\_ (F) In the case of a proposed lease under subsection (a) that involves a project related to energy production and for which the term of the lease exceeds 20 years, a certification that the project is consistent with the Department of Defense performance goals and plan required by section 2911 of this title.