Section-by-Section Analysis

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sections 101 through 106 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 2008.

Subtitle B—Army Programs

Section 111 provides authority for multiyear contracts for Army programs.

Subtitle C—Navy Programs

Section 121 would allow the Secretary of the Navy to enter into a follow-on multiyear contract for VIRGINIA-class submarines and government-furnished equipment beginning in Fiscal Year (FY) 2009. The current multi-year procurement (MYP) for five ships (FY 2004-2008) is producing cost savings and facilitating industry stability. The Department of Defense expects the follow-on MYP to yield similar benefits.

The Department of the Navy's contracting strategy and budget for the FY 2009-2013 ships assumes that Congress will provide the authority to enter into an MYP contract for the FY 2009-2013 ships. Due to the complexity of shipbuilding contracts, much of the proposal development by the shipbuilders, as well as the negotiations between the Navy and the shipbuilders, will take place in FY 2008. It would greatly simplify these efforts, and give the Navy a stronger negotiating position, if the Navy could enter into those efforts with MYP authority from Congress. If MYP authority is not requested or granted until FY 2009, the Navy will have to develop a contingency plan to contract for the FY 2009-2013 ships without MYP terms and conditions. This would essentially cause the Navy to negotiate two separate contracts, as was done for the Block II (FY 2003-2008) ships.

Cost Implications: The current MYP for five ships (FY 2004-2008) saved $400 million, or an average of $80 million per ship. The second MYP for seven ships (FY 2009-2013) is anticipated to save in excess of $1 billion for the shipbuilder effort, plus more than $250 million for the electronics government-furnished equipment (GFE), resulting in an average savings of over $190 million per ship. Budget estimates for VIRGINIA-class submarines for FY 2009 and beyond are predicated on MYP authorization. Without the cost savings associated with a MYP, current budget estimates would be insufficient to support the planned procurement of VIRGINIA-class submarines.

The Block III estimates are based on a vendor survey conducted by Electric Boat in November 2003 in support of the Block II (FY 2004-2008) MYP contract. Navy calculations show that the total average savings per submarine are $155 million plus $35 million for the GFE.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

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 2008

Subtitle B—Missile Defense Programs

Section 211 would authorize the Department of Defense (DoD) to use Research, Development, Test and Evaluation (RDT&E) funding for Fiscal Year (FY) 2009 to develop and field ballistic missile defense capabilities.

In December 2002, the President directed DoD to field a missile defense capability, beginning in 2004, and continuously to improve on that capability over time. The Department executes that direction through the Missile Defense Agency (MDA). The MDA uses an evolutionary, capability-based acquisition approach to field Ballistic Missile Defense System (BMDS) capabilities and improve those capabilities through the spiral development, and the subsequent fielding, of incremental upgrades to individual BMDS elements and components.

The MDA is funded almost entirely by Defense-wide RDT&E funds. In section 231 of the Ronald W. Reagan National Defense Authorization Act for FY 2005, section 233 of the National Defense Authorization Act for FY 2006, and most recently in section 221 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Congress has supported the President's directive by authorizing the RDT&E funds appropriated to the MDA to be used for fielding purposes since fielding requires a range of activities that cross traditional fiscal lines. This section would give a one-year extension to this authority.

The need for this legislation flows from the DoD's evolutionary approach to the development and fielding of missile defenses. There is as yet no final or fixed missile defense architecture. Rather, the composition of missile defenses, including the number, type, and location of fielded elements and components, will change over time to meet changing threats and to take advantage of technological developments. By authorizing the MDA to use RDT&E funds for fielding purposes for FY 2009, Congress has provided the Director the flexibility to employ innovative technologies and capabilities across the entire spectrum of agency activities (research, development, construction, test and evaluation, fielding, and operational support).

In requesting this continued authority, the MDA has considered section 223a of title 10, United States Code (enacted in section 223 of the National Defense Authorization Act for FY

2004), which requires the Secretary of Defense to submit with the annual budget request the potential dates that individual missile defense program elements will be available for fielding, and the estimated dates that the elements will be transferred to a Military Department. In addition, MDA has considered that, as a general principle, procurement and other non-RDT&E functions should be carried out by the Military Departments.

This one-year extension provides a more flexible approach for BMDS development and fielding. Since research, development, test and evaluation of BMDS elements and components must continue, some number of BMDS elements and components will remain a part of the BMDS test bed even after being fielded as part of the initial capability. As a result, there will not be a clean break between development and initial operational use. Similarly, there will not be a clean break between the MDA's need to continue development while at the same time working with a Military Department to integrate individual elements or components into the Military Department's budget and, at the appropriate time, its force structure. Elements and components of the BMDS will be evaluated and transferred to a Military Department on an individual basis within the context of concurrently developing and permitting Combatant Commanders to operate a single BMDS. The length of time that shared responsibilities may be necessary will be tailored to each element and component.

The essential advantage offered by this approach is that the Secretary of Defense will meet emerging challenges and field militarily useful capabilities within the shortest possible time. This legislation is necessary to fully realize those advantages by providing the MDA with the funding flexibility for another year, it needs to use its RDT&E appropriation to develop, test, construct, field, and support BMDS elements and components that are not ready for transfer to a military service, but which have a militarily-useful capability and should be fielded as components of a layered missile defense while development continues. This would allow the MDA to take full advantage of the spiral development and capabilities-based acquisition approach.

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 2008.

Section 302 authorizes appropriations for the Defense Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2008.

Section 303 authorizes appropriations for other Department of Defense Programs for the Defense Health Program; for Chemical Agents and Munitions Destruction, Defense; for Drug Interdiction and Counter-drug Activities, Defense-Wide; and for the Defense Inspector General in amounts equal to the budget authority included in the President's Budget for fiscal year 2008.

Subtitle B—Environmental Provisions

Section 311 would authorize the Secretary of Defense to reimburse the United States Environmental Protection Agency (EPA) $186,625.38, owed pursuant to Administrative Order on Consent, EPA Docket Number CERCLA-10-2003-0114, in which the Defense Logistics Agency agreed to seek Congressional approval to reimburse EPA for past costs incurred at the Arctic Surplus Superfund Site, Fairbanks, Alaska.

In the Administrative Order on Consent, the parties agreed that the source of funding would be the Environmental Restoration account, Defense-wide. Reimbursement of EPA's past costs cannot be paid from this Account without special authorization from Congress.

Section 312 would authorize the Navy to pay a stipulated penalty to the Environmental Protection Agency (EPA). On October 25, 2005, EPA Region 10 assessed a stipulated penalty in the amount of $125,000.00 for the Navy's failure to timely submit a draft final Phase II Remedial Investigation Work Plan for the Jackson Park Housing Complex Operable Unit (OU-3T-JPHC) pursuant to a schedule included in an Interagency Agreement (Administrative Docket No. CERCLA-10-2005-0023). Under the approved schedule, the submission had been due by July 27, 2005.

The Navy disputed EPA's penalty assessment. During dispute resolution, the Navy and EPA Region 10 agreed that the period of noncompliance was from July 27, 2005, to September 2, 2005. The Navy also agreed to pay a stipulated penalty of $40,000 for this noncompliance.

Pursuant to section 2703(f) of title 10, United States Code, no appropriated funds from an environmental restoration account may be used for the payment of a fine or penalty without specific authorization in law. This proposed section would authorize the payment of this $40,000 civil penalty assessed against Jackson Park Housing Complex. This authority has been used previously to authorize the Secretary of the Air Force to pay stipulated civil penalties for remediation at F.E. Warren Air Force Base, Wyoming in 1998.

Cost Implications: This section would authorize the payment of a $40,000 penalty to EPA.

Section 313 would amend section 2905(e) of the Defense Base Closure and Realignment Act of 1990 to provide authority to enter into environmentally and economically sound agreements to have base closure property recipients conduct environmental restoration. The current authority has been used infrequently, if ever, because the existing language in section 2905(e) prohibits any profit incentive for taking over environmental restoration when purchasing closure property. This makes the authority essentially useless. This section would allow transactions that are not only economically sound, but also environmentally responsible.

Paragraph (1) of this section would remove the requirement that a property purchaser assume "waste management" and "environmental compliance" since those activities are required by the property owner due to general regulatory requirements for the proper functioning of

systems on the property.

Paragraph (1) also would expand the possible recipients to include private parties for land from base closure and realignment rounds prior to 2005. In addition, it would ensure that, as part of the transaction, the property recipient would obtain adequate insurance to cover its potential liabilities not otherwise covered. This is necessary because, while a property recipient under this section would assume responsibility for restoration (only as between itself and the United States; the United States cannot extinguish its liability to third parties), it would rightly enjoy only limited indemnification coverage by section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484). A requirement to obtain insurance would promote an effective restoration effort while ensuring that the cost of the insurance is included for purposes of the requirement to certify that the transaction is economically sound.

Paragraphs (2) and (3) of this section would remove the current disincentive in section 2905(e) by allowing transactions that are both environmentally and economically sound. The current law removes absolutely all possible financial incentive from any transaction. This effectively makes the provision unusable in the real world of business. The current law assigns cleanup responsibility to a property recipient without including any financial incentive to take that liability; it also does not reduce the liability of the United States with regard to third parties. The proposed change would allow possible financial incentives to be included in the transaction to offset the potential environmental liability, but without transferring the liability of the United States with regard to third parties.

Paragraph (6) of this section would add a new paragraph to address the distinction between the two existing base closure accounts, ensuring that any funds received would be placed in the appropriate account.

Cost Implications: This section does not create or change an entitlement or require funding in a Program Budget Decision.

Section 314 addresses application of the Solid Waste Disposal Act (SWDA) (also known as the Resource Conservation and Recovery Act (RCRA)) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to military readiness activities.

Subsection (a)(1) would exclude military munitions, including unexploded ordnance, and the constituents thereof from the definition of "solid waste" under the SWDA when the Department of Defense (DoD) deposits such items on an operational range incident to normal use, and such items remain thereon. Subsection (a)(2) provides that the exclusion in subsection (a)(1) does not apply to certain listed activities or circumstances such as traditional waste management activities like burial or land-filling, migration off an operational range, or firing off range. Subsection (a)(2) additionally provides that the exclusion in subsection (a)(1) ceases to apply once the operational range on which the items were deposited ceases to be an operational range. Subsection (a)(3) explicitly preserves the authority of federal, state, interstate, and local regulatory authorities to determine when, after an operational range ceases to be an operational

range, these items become a hazardous waste subject to the Act.

Subsection (b)(1) would exclude from the definition of "release" under CERCLA the presence of military munitions, including unexploded ordnance, and the constituents thereof, that the DoD deposited incidental to normal use on an operational range and that remain thereon. Subsection (b)(2) provides that the exclusion in subsection (b)(1) does not apply to certain listed activities or circumstances, such as migration off an operational range or firing off range.

Subsection (b)(2) additionally provides that the exclusion in subsection (b)(1) ceases to apply once the operational range on which the items were deposited ceases to be an operational range. Subsection (b)(3) explicitly preserves the President's authority to address an imminent and substantial endangerment to the public health, welfare, or the environment under section 106(a) of CERCLA.

Subsection (c) provides definitions of terms, including incorporating by reference terms already defined in title 10, United States Code.

Subsection (d) reaffirms that the exclusions set forth in subsections (a)(1) and (b)(1) do not apply once the operational range ceases to be an operational range.

Subsection (e) reaffirms the DoD's authority to protect the environment, safety, and health on operational ranges.

As noted above and reiterated in subsection (d), this section would have no effect on the legal requirements applicable to military munitions, including unexploded ordnance, or the constituents thereof, once the range on which they were deposited ceases to be an operational range. These provisions would restrict the application of certain authorities under CERCLA and RCRA for covered munitions while those ranges remain operational. Application of those same authorities when the range ceases to be an operational range is not affected by these two provisions. Nor would this section place any restriction on the applicability of the Safe Drinking Water Act on or off of an operational range. Nothing in this section affects a private party's right of action against the United States or any of its agencies to recover costs expended in the clean up of military munitions, including unexploded ordnance, and the constituents thereof, that are present on property formerly operated (directly or through a contractor) or formerly owned by the United States.

Section 315 would clarify the application of the conformity provisions of the Clean Air Act to avoid unnecessarily restricting the flexibility of Department of Defense (DoD), State, and Federal regulators to accommodate new or realigned military readiness activities into applicable air pollution control schemes. This section would maintain the DoD's obligation to conform its military readiness activities to applicable State Implementation Plans (SIPs), but would give the DoD three years to demonstrate conformity. The three-year extension could be particularly important for new weapon system beddowns or base realignments in recently designated nonattainment areas for either the new 8-hour Ozone or fine particulate (PM2.5) standards. The applicable SIPs for these recently designated nonattainment areas may lack the full range of

options normally relied upon to demonstrate that military readiness activities conform, or they may lack the required Environmental Protection Agency approval, or both. In addition, under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.

Section 316 would clarify that the United States may contribute resources towards the costs of managing natural resources on parcels of land in which an interest has been acquired where there is a demonstrated need to manage such resources to effectively avoid, limit or relieve restrictions to testing, training or operations. The section would also clarify the method of determining the limitation on the portion of acquisition costs that may be paid by a military department.

Section 2684a of title 10, United States Code, authorizes the Secretary of Defense and the Secretaries of the military departments to enter into agreements with eligible entities to address the use or development of real property "in the vicinity of, or ecologically related to, a military installation or military airspace" for the purpose of limiting any development or use of the property that would be incompatible with the mission of the installation or preserving habitat on the property in a manner that might affect environmental restrictions on the installation. An agreement must provide for the acquisition of real property, or a lesser interest in the property, and the sharing by the United States and the entity of the acquisition costs. An agreement must require the entity to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property acquired under the agreement.

Currently, section 2684a(d)(1)(B) provides that agreements with eligible entities shall provide for the sharing by the United States and the entity or entities of acquisition costs. Subsection (h) provides that operation and maintenance (O&M) funding may be used to enter into such agreements. However, the current section does not make clear whether O&M funding may be used for management of the natural resources and critical conservation values of the property after the acquisition is completed. Acquisition of interests in real property for habitat preservation requires long-term habitat management to avoid or reduce environmental restrictions. Contributions towards acquisition costs would be largely wasted in the absence of long-term natural resource management where interests in real property were acquired to avoid or reduce encroachment due to restrictions resulting from degraded natural resources such as threatened or endangered species habitat. The amendment would clarify that subsequent management may be addressed in agreements, and therefore may be funded from O&M appropriations.

The current section 2684a(d)(3)(B) provides a limitation on the portion of the acquisition costs that may be paid by the United States. The limitation provides that the portion paid by the United States may not exceed an amount equal to the fair market value of any property or interest that may be transferred to the United States upon the request of the Secretary concerned. Because more than one parcel of real property may be acquired under an agreement, it is unclear whether the limitation should be based on the fair market value of each parcel or the cumulative fair market value of all properties or interests acquired under an agreement and which may be transferred to the United States at the request of the Secretary concerned. The amendment

clarifies that each Secretary has discretion to meet the requirement on a transaction-by-transaction basis or the cumulative value of all properties and interests acquired under a single agreement.

Section 317 would authorize the Secretary of Defense to transfer not more than $91,588.51 to the Moses Lake Wellfield Superfund Site 10-6J Special Account. The transfer is to reimburse the United States Environmental Protection Agency (EPA) for its costs in overseeing a remedial investigation/feasibility study performed by the Department of the Army under the Defense Environmental Restoration Program at the former Larson Air Force Base, Moses Lake Superfund Site, Moses Lake, Washington.

The Army and the EPA entered into an interagency agreement on March 2, 1999, covering the Army's performance of the remedial investigation/feasibility study. The Army agreed to make a formal request for authorization and appropriations to provide reimbursement of the EPA's oversight costs if costs could not be recovered from other potentially responsible parties. To date, no costs have been recovered.

In the Conference Report accompanying the National Defense Authorization Act for Fiscal Year 2001 (H. Rept. 106-945, at page 761), the Conference Committee directed "the Department of Defense 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."

Subtitle C—Workplace and Depot Issues

Section 321 would provide authority to the Department of Defense (DoD) to award contracts for security-guard services identical to the current authority to award contracts for the performance of firefighting functions at military installations in the continental United States when personnel deploy. The Department believes such contracts could be more cost-effective and would provide all of DoD the needed flexibility to respond more effectively and rapidly to contingencies and other exigent situations, such as the need for enhanced security of military installations during current operations in Iraq.

The basic prohibition of section 2465 was added to Title 10 in 1986, when deployments were infrequent. The inflexibility of section 2465 has degraded readiness by decreasing the commander's ability to provide for force protection when security personnel deploy. In 2003, Congress allowed for temporary replacement of firefighters who have deployed. The Department requests the same provision for security-guard personnel; both firefighting and security missions endure when personnel fulfilling the mission deploy.

The current limited legislative authority does not allow the use of security guard contracts to allow for rapid replacement of deploying military police. This places an undue burden on the remaining military police personnel who are required to work extended hours to fill all required postings. This section reforms the legislation to allow the burden to be shared with contractor supplied security guards.

Cost Implications: Cost and budgeting data are unavailable for this section. Requirements for security services are in a constant state of flux as real world events and an ever-changing threat dictate the need. This uncertainty is further complicated, albeit positively, by the continuous improvements made in the force protection posture of our installations in the continental United States through infrastructure upgrades and long-term manpower realignments.

This effort would not result in long-term funding commitments. Rather, it is an effort to promote flexibility and give commanders the ability to purchase temporary security services with a reallocation of existing funds or through the use of supplemental appropriations to meet specific contingencies when personnel deploy. As such, the actual cost cannot be adequately predicted in advance.

Section 322 would allow the Department of Defense (DoD) to obtain the greatest contribution to the national defense and the global war against terror by two categories of its military personnel in greatest demand but who are available in only limited quantities. The section would not affect any current civil service personnel or positions performing security-guard and firefighting functions.

Section 2465 prohibits contracting for firefighting or security-guard functions at military installations. The Congress has provided limited exceptions, including authority to temporarily replace uniformed security-guard and firefighting personnel who are deployed. Although the current exceptions are helpful and have provided desperately needed flexibility in this area, they do not allow sufficient flexibility in military personnel management for deployments nor do they provide a solid basis for future planning for security-guard and firefighting support requirements. This amendment would not permit the DoD to contract for security-guard or firefighting functions that are, or would be, performed by Government civilian employees. Indeed, at least one of the armed forces plans to hire additional civilian employees to perform law enforcement functions in conjunction with the use of contracted security guards.

Subtitle D—Other Matters

Section 331 would amend section 377 of title 10, United States Code, to expand its applicability to include military support provided to civilian law enforcement agencies by the National Guard performing other duty under section 502(f) of title 32, U.S. Code.

Currently, no statutory mechanism exists to authorize reimbursement for National Guard support provided under authority of title 32, U.S. Code, although such military support has been provided and, in fact, is currently being provided in National Guard Operation JUMP START at the southwest border of the United States.

In the absence of such a statutory mechanism, the Department of Defense must either refuse to provide funds to support the requests for support from civilian law enforcement agencies or assume a significant burden on its own budget.

On the other hand, section 377 of title 10, U.S. Code, requires, with specified exceptions, that the Secretary of Defense seek reimbursement for such support provided by military units or personnel -- Regular, National Guard, or Reserve -- operating in duty under title 10, U.S. Code.

This can result -- and has -- in the imposition of a substantial burden on the budget of the Department of Defense (for which Congress has not authorized or appropriated funds for this purpose) to assist civilian law enforcement agencies (for which Congress or a State legislature has authorized and appropriated funds for their mission), in the conduct of their missions. Operation JUMP START, State National Guard support for the security of the southwest border of our country, is only the latest example but will, most assuredly, not be the last.

Section 332 would extend from two to five fiscal years the length of time by which funds can be transferred back to the "Foreign Currency Fluctuations, Defense" (FCFD) appropriation account to offset losses caused by fluctuations in foreign currency exchange rates. This would better align the time frame for the transfer of funds to the FCFD appropriation with the time frames needed for the completion or close-out of contracts and projects.

Section 2779 of title 10, United States Code, authorizes the Department of Defense to transfer funds to the FCFD account to offset losses caused by fluctuations in foreign currency exchange rates. Funds previously transferred out of the FCFD account to pay such obligations may be transferred back into the FCFD when those funds are not needed. Unobligated amounts of funds appropriated for operation and maintenance and military personnel also may be transferred to the FCFD account. Currently, section 2779 authorizes the Secretary of Defense to transfer funding for no later than two years prior to the current fiscal year.

Projects and contracts may take longer than two years to complete. As a result, it may not be possible to determine, with any degree of certainty, that funds previously transferred out of the FCFD account will no longer be needed to meet obligations associated with foreign currency fluctuations. This section would expand the time frame to five years, thus allowing additional time for the completion or close-out of projects and contracts and the identification of funds available for return to the FCFD account.

Similarly, because more than two years may be needed to complete contracts and liquidate claims, two years may not be sufficient to identify unobligated amounts of funds appropriated for operation and maintenance and military personnel funds that would be available for transfer to the FCFD account. Therefore, this section also would extend the transfer time frame to five years for these funds. This would allow for more certainty in the identification of funds available for transfer and reduce the risk that there will be insufficient funds to cover foreign currency fluctuation requirements.

Military construction appropriations acts through Fiscal Year (FY) 2004 included a similar general provision providing a five-year period for the transfer of funds to the FCFD account:

"§ 118. During the 5-year period after appropriations available to the Department of

Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations will not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations may be transferred into the appropriation 'Foreign Currency Fluctuations, Construction, Defense' to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred."

Cost Implication: This section does not create or change any entitlement or require funding in a Program Budget Decision.

Section 333. Section 7313 of title 10, United States Code, permits the obligation of funds for unusual cost overruns. However, the statute as written applies to a vessel inducted into an "industrial-fund activity or contracted for during a prior fiscal year." Section 7313 also permits the use of an appropriation after the otherwise-applicable expiration of the availability for obligation of that appropriation for payments to "an industrial-fund activity" or under a contract for amounts required because of changes in the scope of work for ship overhaul, maintenance, and repair. This section would update section 7313 to reflect the changed accounting systems of the naval shipyards and depot-level facilities and ensure that all Navy depot-level facilities would be covered by the statute, regardless of how they are funded, and would ensure that the statute applies to all current and future Centers of Industrial and Technical Excellence (CITEs).

In 1998, the Navy initiated a pilot effort at the Pearl Harbor Naval Shipyard (PHNSY) to consolidate intermediate and depot level repair activities, a critical component of which was bringing these activities under a common accounting system. At the time, PHNSY conducted its accounting as a Navy Working Capital Fund (NWCF) activity, also known as an industrial-fund activity. Under this pilot effort the Navy converted PHNSY to a direct funded activity, also known as a mission-fund activity. Program Budget Decision 404, dated December 14, 2000, permanently approved the transition of PHNSY from NWCF to a mission-funded activity. In 2002, the Navy received approval to transition the Puget Sound Naval Shipyard from NWCF to mission-funded.

Section 322 of the National Defense Authorization Act for Fiscal Year (FY) 2006 (Public Law 109-163) provided the Navy with approval for the conversion of the last two remaining NWCF shipyards (Norfolk and Portsmouth) to direct-funded no earlier than October 1, 2006. The Navy plans to make the final conversion of Portsmouth and Norfolk from NWCF to direct-funded in FY 2007. At that time, all naval shipyards will have transitioned to direct funding activities.

As a result, since all of the Naval Shipyards will have been converted to mission-funded activities by the end of FY 2007, 10 U.S.C. 7313 is no longer applicable to work performed in the naval shipyards and other mission-funded depot-level facilities as originally intended. The proposed legislative change to 10 U.S.C. 7313 would amend the statute to reflect the change to

the way these activities are funded and continue the authority as originally intended by Congress.

Continuation of this authority is necessary in order to ensure the return of ships to service in full mission-ready condition without deferring to another availability major emergent out-of-scope work encountered during ship overhaul, maintenance, and repair. For example, the USS PROVIDENCE (SSN 719) was overhauled at the Portsmouth Naval Shipyard. This FY 2003 Engineered Overhaul (EOH) availability, funded with $125,400,000 in FY 2003 Operation and Maintenance, Navy (O&MN) funds, began on September 30, 2003, and was scheduled to end on May 6, 2005. However, it was not until the work was in progress that the following major emergent out-of-scope work items were discovered: tank work beyond the original scope, an external hydraulic plant failure, trim/drain valve failures, and a delay to the engine room test phase due to failed components. The USS PROVIDENCE could not proceed on sea trials and be certified for continued unrestricted operations unless these repairs were completed during this EOH. Fortunately, the Department of the Navy, used authority under 10 U.S.C. 7313 to obligate FY 2003 O&MN funding in the amounts of $11,083,691.00 in FY 2004, $23,198,046.00 in FY 2005, and $2,479, 515.00 in FY 2006 for this new work, which otherwise would have been taken from current FY 2005 O&MN funding. In another example, the USS BOISE (SSN 764) was overhauled at the Norfolk Naval Shipyard with $90,700,000 of FY 2004 O&MN funding. This FY 2004 Depot Modernization Period (DMP) availability began on January 14, 2004, and was scheduled to end on February 15, 2005. However, it was not until FY 2005, near the end of this DMP, that the following major emergent out-of-scope new work items were discovered: engine room test failures, unplanned repairs to electrical switchboards, combat system test failures, and air system failures. Correction of these items in FY 2005 cost an additional $5,754,892.79 in FY 2004 O&MN funds. The USS BOISE could not proceed on sea trials and be certified for continued unrestricted operations unless these repairs were completed during this DMP. Using 10 U.S.C. 7313, the Department of the Navy obligated FY 2004 O&MN funding in FY 2005 for this new work. If current funding had been required for either of these vessels, it would have caused the cancellation of other submarine work, affecting the ability of the Commander, Submarine Force U.S. Atlantic Fleet, to meet deployment and surge/emergency surge requirements.

The need for the authority in 10 U.S.C. 7313 arises from such major emergent out-of-scope work that could affect the mission readiness of Navy vessels, but was not contemplated prior to induction of the ship into the depot-level facility for work, and is only discovered during ship overhaul, maintenance or repair and, therefore, was not included in the work plan or budget. The need for this authority exists regardless of how the depot-level facility is funded. As the naval shipyards transition from being "industrial-funded activities" to "mission-funded activities," the type and scope of work they perform does not change, nor does the need for this authority.

In addition, 10 U.S.C. 2474, as amended by section 341 of the National Defense Authorization Act of FY 2000, required the Secretary of Defense and the Secretaries of the military departments to designate each depot-level activity of the military departments and the Defense Agencies that was not approved for closure or major realignment at that time as CITEs. Pursuant to that Act, in July 2002, the Secretary of the Navy issued the Navy's list of designated

CITEs, including PHNSY and Intermediate Maintenance Facility, Hawaii, Puget Sound Naval Shipyard, Portsmouth Naval Shipyard, and Norfolk Naval Shipyard. Since ship depot-level maintenance, repair and overhaul might be performed at other Government depot-level facilities, by substituting "Centers of Industrial and Technical Excellence" for "industrial-fund activity" this proposed section would ensure that the statute's authority extends to those Government depot-level facilities selected by the Secretary of the Navy to be CITE facilities. The Secretary of the Navy may issue an updated CITE designation list in the future to include all such facilities, including the Kings Bay Refit Facility, which is not on the current list but does perform depot-level work and would qualify as a CITE. This proposed section would not affect the current authority applicable to contractor depot-level facilities. Neither this section nor the existing statute is a substitute for proper budgeting of known ship overhaul, maintenance, and repair requirements.

Cost Implications: This section has no budget implications because it merely updates the language of 10 U.S.C. 7313 to conform to the Navy's change of funding to mission-funding. It would not create or change an entitlement or require funding in a Program Budget Decision.

Section 334 would amend section 44310 of title 49, United States Code, relating to the expiration of Chapter 443, Aviation Insurance program, to extend the authority of the Secretary of Transportation to provide insurance and reinsurance. This extension is necessary to bring the statute in line with current practices that allow for the most efficient means of procurement of transportation by the Department of Defense and to preclude lapses of this wartime essential program. The government provided insurance for commercial air carriers providing transportation under contract to the Department of Defense is essential during the activation of the Civil Reserve Air Fleet in order to meet national defense needs.

Section 335 would allow the Department of Defense to require compliance with reasonable conditions in order for a military member or civilian employee of the Department to receive full replacement value coverage through a contract with the transportation provider for household goods being transported at government expense.

In section 363 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), Congress mandated that the full replacement value benefit be provided to military members and civilian employees through a contract with a transportation provider effective March 1, 2008. In order to obtain offers from reputable transportation providers, the Secretary of Defense must require reasonable prerequisites from the military members and employees for receipt of that benefit. Military members and civilian employees must participate in a customer survey in order for the Department to properly administer the currently structured program. Providing proof of ownership, time limits for filing of claims, assistance in identifying source of loss, and similar requirements for the members and employees will allow a contractor to obtain commercial insurance policies on reasonable terms and conditions and provide some protections from false claims.

Full replacement value protection will have a positive impact on morale. Managing a statutorily mandated entitlement through the use of a contract presents special challenges, as a

third party must be found willing to offer on the contract. Properly implemented, increased liability requirements will likely cause carriers to use more caution and care in handling household goods with less damage to the members' personal property. Most claims settlements pursuant to full value protection provisions will be made directly with carriers resulting in reduced claims administration costs for the Department. The ultimate consequence of increasing the carriers' potential liability, consistent with full replacement value coverage, will be an enhancement of overall service member and employee satisfaction and a decrease in the number of claims filed with the government for carrier caused loss and damage. This section would place the government employee and military member on par with private sector employees. In the competition with the private sector for skilled employees, the federal sector needs the flexibility to eliminate obvious impediments to the recruitment and retention of talented personnel.

Cost Implications: If implemented, this section would not create any adverse financial effects on the Department of Defense.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 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 2008

Subtitle B—Reserve Forces

Section 411 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 2008.

Section 412 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 2008.

Section 413 prescribes the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2008.

Section 414 prescribes the maximum end strengths for non-dual status technicians of the reserve components of the Army and Air Force for fiscal year 2008.

Section 415 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 2008 to provide operational support.

Subtitle C—Authorization of Appropriations

Section 421 authorizes appropriations for fiscal year 2008 for military personnel.

Section 422 authorizes appropriations for fiscal year 2008 for the Armed Forces Retirement Home in an amount equal to the budget authority included in the President's Budget for fiscal year 2008.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would increase the authorized strength limitations for active duty Army officers in the grade of major at every given level of officer end strength.

The Army is transforming to a new force structure to meet the needs of our nation in the Global War on Terror. In order to meet the National Military Strategy, the Army has transformed from a Division-based force to a Brigade-based force. This new force structure contains modular combat units which are designed to operate independently on the battlefield to defeat the asymmetric threat. Brigade-size units now must assume many combat functions, such as Command, Control, Communications, Computers and Intelligence, Civil Affairs, and Logistics, which were previously done by higher headquarters. This would result in the need for more leaders and the performance of important staff functions at a lower level. If these new units are to accomplish their mission effectively, a slightly higher grade structure is necessary.

For the modular Army structure in Fiscal Year (FY) 2008 the Defense Officer Personnel Management Act (DOPMA) entry point is 66,861. Under current legislation the Army is allowed 13,329 DOPMA-controlled majors. However, the new modular structure will require 16,181 majors. As a result, the Army can only fill, at most, 82.4 percent of their requirements within current DOPMA constraints -- a shortage of 2,852 field-grade positions.

Without this legislation approximately 20 percent of the Army's O-4 structure is not feasible under Title 10. This legislation would fix this problem. Therefore, this legislation is critical to the success of the modular Army.

Cost Implications: This section would cost the Army an estimated $38 million annually and $190 million over the FY 2008-2012 Future Years Defense Program.

Section 502 would increase the authorized strength limits for active-duty Navy officers in the grades of captain, commander, and lieutenant commander at each level of officer end strength. While aggregate Navy end strength continues to decline, the need for more senior and experienced officers continues to escalate. Navy is operating at, or very near, its control-grade limits and, consequently, suppressing billet grades in the programming and budgeting process to comply with Title 10 limits.

In response to the challenges outlined in the National Military Strategy, Navy is

transforming to meet Global War on Terror (GWOT) requirements. As Navy continues its force realignment, the need for more seasoned Sailors becomes increasingly critical to supporting Navy's service-specific and joint-mission requirements. Navy has invested in future capabilities with technological advances requiring fewer people, but ones with more talent and experience. For example, today's surface fleet requires a ship's complement comprised of 14.6 percent control-grade officers; in the future, 17.1 percent control-grade officers will be required. While smaller crews result in an overall reduction in Navy's end strength, the high-tech nature of emerging platforms demands an increase in highly-skilled, educated, and experienced control-grade officers. For the same reasons, similar growth in control-grade officers is necessary within the aviation and special warfare communities. Legacy air wings were comprised of 20.9 percent control-grade officers, compared to the current air wings comprised of 25.2 percent control-grade officers. This increase reflects the transition from multi- to single-seat aircraft. Similarly, SEAL Officer Program Authorizations in the control grades increased from 46 to 53 percent from 2001 to 2006 due to GWOT requirements. Concurrent with increasing Navy-specific requirements, joint control-grade officer requirements are also on the rise and account for a large percentage of Navy's control-grade billets (20 percent of its captains, 17.6 percent of its commanders, and 13.5 percent of its lieutenant commanders). As joint requirements increase, the control-grade inventory available for Navy's force structure requirements decreases.

Executing the temporary relief authorized by 10 U.S.C. 527 incurs significant personnel risk because Navy has limited force-shaping tools to recover once temporary relief under that authority expires. Navy needs control-grade relief beginning in Fiscal Year (FY) 2008 to grow a more senior force to meet future mission requirements. Without such relief, Navy would have to fill more senior-grade requirements with junior officers, resulting in officers filling demanding positions without first having acquired the requisite foundation of fleet experience.

For Navy's FY 2008 force structure, the DOPMA entry point (using end-of-June-2006 data) is 44,231. Under current DOPMA constraints Navy is allowed 2,624 captains, 6,066 commanders, and 9,551 lieutenant commanders. Navy currently funds 2,607 captain, 6,051 commander, and 9,497 lieutenant commander billets. However, current Navy requirements demand 2,713 captains, 6,330 commanders, and 9,696 lieutenant commanders. This means Navy currently suppresses 106 captain, 279 commander, and 199 lieutenant commander billets at a lower pay grade (a total of 584 control grade billets). If Title 10 limits were increased by five percent, Navy would be authorized to grow 131 captains, 304 commanders, and 478 lieutenant commanders. Funding to the previously-mentioned current control-grade requirements would give Navy the authority to grow 25 captains, 25 commanders, and 279 lieutenant commanders as future control-grade requirements emerge. This legislation is critical to Navy's ability to carry out the National Military Strategy.

Cost Implications: Navy is requesting control-grade relief beginning in FY 2008 to be executed within current fiscal constraints. FY 2009 and future increases in control grades would be implemented in a phased fashion as funding is identified. Full use of this authority would cost Navy an estimated $48 million annually. The annual cost of funding only Navy's currently suppressed requirements would be approximately $26 million.

Section 503 would authorize up to 10 percent of the number of Reserve Component (RC) general and flag officers authorized to be in an active status to serve on active duty for a period not to exceed 365 days. The current exclusion of 180 days applies to all RC general and flag officers. Increasing the exclusion for a number not to exceed 10 percent of the authorized RC end strength limitations will give the RCs more flexibility in detailing RC general and flag officers to perform operational support and promote greater Active Component (AC)/RC integration.

RC general and flag officers provide operational support in a variety of positions throughout the world and are increasingly in demand by the AC. However, after they are on active duty for 180 days or more, they are counted against the active duty end strength limitation of general and flag officers authorized in 10 U.S.C. 526(d). This limits the ability of the RC to detail these officers to assignments that require a longer tour length. Increasing the exclusion to 365 days would permit the RCs to more effectively utilize these officers. By limiting the authority to 10 percent of the authorized strength for RC general and flag officers under section 12004 of title 10, the maximum number of officers who could serve on active duty at any time for up to one year would be 20 in the case of the Army National Guard and Army Reserve, 4 in the case of the Navy, 15 in the case of the Air National Guard and Air Force Reserve, and 1 in the case of the Marine Corps Reserve.

Cost Implications: Using the Washington, D.C. area as the assignment location, the average cost of increasing the assignment limit from 180 to 365 days is approximately $120,000 per officer. However, actual costs are not significant because the assignment period will be covered either with a single officer under this section or two different officers under the current statute. Currently, only the Navy intends to use this authority.

Section 504 would amend language in sections 3258 and 8258 of title 10, United States Code, to reinstate eligibility of military officers on active duty the entitlement to reenlist in their former enlisted grade.

The current law entitles only Reserve officers to reenlist; however, effective May 1, 2006, all military officers on the active duty list were converted, or are in the process of converting, to Regular appointments as per Department of Defense policy based on Congressional intent. In the proposed language, the word "Reserve" would be omitted, thus entitling all officers to reenlist in their former enlisted grade, if applicable.

Cost Implications: This section would generate no additional costs.

Section 505 would modify section 630 of title 10, United States Code (discharge of commissioned officers with less than five years commissioned service or found not qualified for promotion to first lieutenant or lieutenant junior grade), to expand the probationary period of Active Duty and Reserve officers from less than five years of commissioned service to less than six years of commissioned service.

Currently, there are no tools that allow for involuntary separation of officers with

between five and six years of service; yet, it is not unusual for the long-term career potential of an officer to only become clear during this period. Expanding the probationary period to less than six years of commissioned service would allow for involuntary separation prior to six years of commissioned service, rather than forcing the military departments to retain these officers until they twice fail to be selected for promotion to lieutenant commander or major, which typically occurs between 10 and 11 years of service.

This section would align with other provisions of the law that differentiate between career and non-career officers, specifically sections 1174 and 1175A of title 10. In addition, this section would allow for greater flexibility in shaping the officer corps within each branch of service, particularly within the junior ranks, at no additional cost.

Cost Implications: No additional costs are associated with this section.

Section 506. A Permanent Military Professors (PMP) competitive category will be the smallest competitive category in the Navy, with a forecasted maximum strength of 85 officers. Due to the small number of officers, unique career path, and longevity, a PMP competitive category needs to maintain a consistent Defense Officer Personnel Management Act exemption policy. Currently, all PMPs at the United States Naval Academy, as well as those serving at the United States Military Academy and the United States Air Force Academy, are exempt from authorized strength limitations. All PMPs in the Army and Air Force serve at their respective service academy. The Navy has additional PMPs serving at the Naval War College and the Naval Postgraduate School, believing they provide a more stable cohort of proven professional role models for midshipmen and graduate students (the legacy program suffers from severe gaps in officer billets that have been filled with civilian adjunct faculty, recalled reservists, or left vacant). These additional PMPs are not currently covered by the authorized strength exemption. This section would extend the exemption to these additional PMPs.

Aligning all Navy PMPs with the current statute will establish a consistent policy across the projected Navy PMP competitive category and ensure consistent and effective career management of PMP officers.

Cost Implications: No additional costs.

Section 507 would add a mandatory separation provision for years of service in the case of Reserve component officers serving in the grades of lieutenant general and vice admiral. This change, along with the provisions of section 511 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (which established the requirement for mandatory separation for those officers at age 64), would mirror the provisions covering regular general and flag officers serving in the grade of O-9.

Specifically, this section would amend section 14508 of title 10, United States Code, to allow a Reserve component officer in the grade of lieutenant general or vice admiral to be retained in an active status until the officer reaches 38 years of commissioned service. Section 14512 of title 10, as amended by section 511 of the NDAA for FY 2006 (Public Law 109-163),

specifies that a Reserve component officer in the grade of lieutenant general or vice admiral could be retained in an active status until the officer reaches 64 years of age. The proposed change to section 14508 of title 10, combined with the change made to section 14512, are consistent with the criteria governing regular officers of the same grade under sections 636 and 1251 of title 10, respectively. These changes are based on the recent change that authorized the chief or director of the various Reserve components to be appointed to the grade of lieutenant general, or vice admiral in the case of the Naval Reserve. However, there is currently no provision that governs the mandatory removal for years of service of Reserve component officers serving in those positions or that grade.

Cost Implications: There are no significant costs associated with this section.

Section 508 would amend sections 8117 and 8118 of title 5, United States Code, to accomplish two goals. First, the three-day waiting period, by which days 46-48 of disability in traumatic injury claims are not paid unless disability exceeds 59 days, would be changed so that the waiting days are counted during the first three days of disability for all claims, and would not be deducted if disability exceeds 14 days. This change would bring the waiting period in line with workers' compensation for each of the 50 States, all of which have waiting days of between three and seven days at the beginning of disability. Placing waiting days at the beginning of the 45-day Continuation of Pay (COP) period, rather than at the expiration of COP, would mean that the original purpose of waiting days, to discourage the filing of minor claims by employees who sustain minor injuries, would again be in place. Second, the money paid to injured employees for COP, when the injury was caused by a party other than the injured employee or the Federal government, could be recouped if the employees subsequently received a settlement for damages from the responsible party. The change in the waiting days, bringing this provision in line with private sector practices, is expected to result in the filing of fewer claims because employees would not receive COP for minor injuries involving three days or less of absence from work. The provision allowing COP paid to an employee to be recouped in the case of a settlement of a suit for damages against the responsible party would prevent employees from collecting twice for the same incident, instead placing the financial responsibility for paying all the costs of the injury on the responsible party.

Section 8118 of title 5 provides for the payment of the employee's regular pay for a period not to exceed 45 calendar days -- COP. Section 8117 of title 5 provides for waiting days for compensation, but there are no waiting days for COP. Section 8131 of title 5 gives the United States subrogation rights in any claim for compensation filed under the Federal Employees' Compensation Act (FECA), while section 8132 of title 5 sets out the process for such recovery.

At present, the COP period in FECA is not subject to any waiting period. This is in contrast with the workers' compensation statutes for each of the 50 States, all of which provide for a waiting period at the onset of disability; the purpose of establishing waiting days is to discourage the filing of claims for minimal absences from work, with the costs for processing such a claim often exceeding the benefits paid. Under FECA, the waiting days are at the expiration of the 45-day period, not at the onset; placing waiting days at the end of the 45-day

period defeats the purpose of discouraging the filing of claims for very short periods of absence from work. This section would place the waiting days once again at the beginning of disability for all claims, as they were prior to the 1974 amendments to FECA that established COP.

The second part of this section (amending sections 8131 and 8132) (otherwise known as subrogation of COP), would eliminate the scenario where employees can collect benefits from two different sources for the same injury. When an employee sustains a job-related injury that is caused by someone other than the injured employee or the Federal government, he or she is entitled to file suit and collect damages from a liable third party, but must reimburse the Federal government for a percentage of the money received for damages; the exact formula is noted in section 8132 of title 5. If, for example, an employee receives $10,000 in FECA benefits due to a job-related injury, but also received $50,000 from the responsible third party who caused the injury, that employee must refund some of that $10,000 back to the government, and money received by the employee in excess of the amount owed can be held as a credit against future benefits that may be payable. The entire amount does not have to be repaid; the employee is allowed to keep 20 percent of the money as an incentive to sue, for example, and attorney's fees and court costs are subtracted before the amount due the government is calculated. However, none of these rules apply to the first 45 days of COP given to the employee; because COP is not considered compensation, an injured employee may receive both COP and money paid by a responsible third party to compensate him or her for the first 45 days worth of disability. In effect, the employee receives both benefits at the same time. This section would include money paid in COP to the employee in the calculation of that portion of any settlement that is repaid to the government.

Cost Implications: This section would have no cost implications because its changes would result in cost avoidance and savings.

RESOURCE REQUIREMENT ($M): This section would save $4.75 million in FY 2008), and $25 million from FY 2008-2012.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Army	-2.09	-2.14	-2.195	-2.25	-2.31
Navy	-1.28	-1.31	-1.35	-1.38	-1.41
Marine Corps	-.24	-.24	-.25	-.25	-.26
Air Force	-1.14	-1.17	-1.2	-1.23	-1.26

COSTING METHODOLOGY: Figures for COP subrogation assumes approximately $2 million annually in savings, based on costs paid by the Department of Labor when they had to refund COP after it was initially refunded to the government when this benefit was initially collected in error by Office of Workers' Compensation Programs. Adding a waiting period for COP assumes another $3 million annually in savings. This $3 million is based on the average salary of $58,300 for injured Department of Defense (DoD) employees (source: OPM Fedscope

Web site, figures for September of 2005), divided by 260 workdays, times the 10,200 DoD employees filing traumatic injury lost time claims last year, times three to reflect the savings in adding three waiting days, but then dividing in half because about half the claims would involve disability of 14 days or more and not be subject to waiting days. DoD-wide savings are prorated across the Services, based on proportion of claims filed (Air Force - 24 percent; Army - 44 percent; Navy - 27 percent; Marine Corps - 5 percent). As an example, for Air Force, you would multiply $5 million by 24 percent to obtain their savings. The DoD assumes an inflation rate of 2.5 percent. From each Service total, 5 percent is deducted to account for the fact that some employees may miss only one or two days, rather than all three days.

Section 509 would modify section 16165 of title 10, United States Code, to allow Selected Reserve (SR) members who have a break in service in the SR greater than 90 days to remain eligible for education benefits under chapter 1607 of title 10, provided they remain in the Individual Ready Reserve (IRR) during the break. Entitlement to payments would resume when the Service member returns to service in the SR.

Events caused by force structure or stationing changes, or other circumstances outside the control of the Service member, may require temporary transfer to the Ready Reserve, other than the SR. Current law permits Service members of the SR to incur a break not to exceed 90 days while retaining eligibility for the benefit, provided the Service member serves in the IRR during such break. This section would provide a significant enhancement to a valuable education benefit by clarifying that the Service member may continue to receive benefits during a short break in SR service of not more than 90 days, and allowing a longer break in SR service with eligibility for the benefit resuming after the Service member is reassigned to a position in the SR.

Cost Implications: There are no additional costs associated with this section. Service contributions to the education fund assume eligible members will continue to serve in an eligible status.

Section 510 would eliminate mandatory retirement for Years of Service (YOS) or Time in Grade (TIG) for active duty and reserve component general and flag officers above the grade of major general or rear admiral. The current statutory limitations which would be eliminated are: (1) O-9, 38 YOS or 5 years TIG, whichever is later; and (2) O-10, 40 YOS or 5 years TIG, whichever is later.

This would increase the flexibility of the Secretary of Defense in managing the most senior levels of the officer corps. Eliminating such mandatory retirement limitations corresponds with Department of Defense efforts to allow officers to serve longer tours and tenure and rely on the statutory age limitations to ensure the timely transfer of personnel to the retired roles.

Enactment of this section will increase the overall experience level of the general and flag officer corps by: (1) eliminating the need to accelerate general and flag officers assignments; (2) increasing the flexibility regarding succession planning; (3) creating a bench of candidates for our most senior positions; and (4) growing a more experienced senior leader force.

Cost Implications: This section would generate no additional costs.

Section 511. Section 502 of the John Warner National Defense Authorization Act for Fiscal Year 2007 ("NDAA") (Public Law 109-364) extended the mandatory retirement age from age 62 to age 68 for active-duty general and flag officers. However, it failed to include a conforming change to section 637(b)(3) of title 10, United States Code, which currently limits the extension to age 62 for officers who have reached their mandatory date of retirement for years of commissioned service. This proposed section would make that conforming change.

In addition, section 637(b)(3) currently refers to section 1251(b) of title 10 as the exemption to the general mandatory retirement age. This proposed section would change that reference to section 1253 of title 10 to reflect the addition of that new provision by the NDAA.

The failure to extend the mandatory retirement age in section 637 from age 62 to age 68 already has limited the ability of the Department of Defense to retain an officer for another tour of duty; the Department anticipates numerous additional cases in the near future. Extending the age provisions in the NDAA without the conforming change to the years of service provision proposed by this section effectively precludes use of the revised age limits.

Cost Implications: This section would generate no additional costs.

Subtitle B—Reserve Component Matters

Section 521 would clarify explicitly that commissioned officers of the Regular Army or Regular Air Force, who are detailed to duty with the Army National Guard or the Air National Guard of a State, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or the District of Columbia, are not subject to the limitations of section 1385 of title 18, United States Code, in the performance of duties conducted under the command and control of the Governor of the applicable State or Territory to which that member has been detailed.

In the Department of Defense's view, members of the Regular Army or Regular Air Force are implicitly exempt from the limitations of section 1385 of title 18 when carrying out duties directed by the Governor of the State or Territory to which that member has been detailed, notwithstanding the fact that such an officer has not vacated his or her regular appointment. However, because others may disagree with the Department's view, the risk to an individual member of the Regular Army or Regular Air Force is unacceptable. This section would clarify this exemption and protect members of the Regular Army or Air Force who are detailed to duty with the Army National Guard or the Air National Guard of a State or Territory.

Section 522 would permit the Secretary concerned to order Reserve component members to active duty in accordance with the terms of a voluntary agreement entered into by the member and the Service, in which the member agreed to perform active duty for a specific period or periods of active duty. Currently, because the duty is voluntary, the member may withdraw consent at any time before reporting for active duty even if the member had previously agreed to the period of active duty. This uncertainty suppresses the desire of some commanders to rely on

volunteers to meet future requirements. This section would address that concern, providing the commander and member with greater predictability.

Under this section, and consistent with the Continuum of Service construct, Reserve component members would enter into an agreement stating their availability and willingness to serve on active duty for a specified duration or total number of cumulative days during a specified period, generally a year or other agreed-to period. This proposed amendment would permit the Secretary concerned to order the member to active duty consistent with the voluntary agreement for a specified period or periods of service, thus assuring access to the member during the period and for the duration or cumulative service specified in the agreement.

An underlying concept of the Continuum of Service construct is to maximize volunteerism while ensuring sufficient human resources to meet military requirements. It is based in the fact that Reserve component members vary widely in their availability for military service and their willingness to volunteer for such service. This variability results from personal circumstances with regard to employment, family obligations, personal desires, financial situations, etc. It is possible, for example, that teachers may be able to commit to 60 to 90 days of military service during the summer. Seasonal workers and self-employed members may be similarly able to commit to duty during specified periods. Locking in this availability in a contract between the member and the Service would assist force planners and provide predictability for the member, while optimizing the effectiveness and utility of volunteerism. However, the Services need a mechanism to enforce the terms of any such agreement. This is critical for force planning and for ensuring a sufficient force to respond to emerging requirements. This section would permit the Secretary concerned to enforce the service agreement.

Cost Implications: There are no additional costs associated with this section.

Section 523 would amend section 12602 of title 10, United States Code, to provide benefits that are extended to Reserve component members who have served in support of a contingency operation to members of the National Guard performing duty in a full-time National Guard status under section 502(f) of title 32, when such duty is at the request of the President or the Secretary of Defense.

As the Department moves from a strategic Reserve to an operational Reserve, members of the National Guard may be employed in a wider range of missions in a duty status other than active duty. For example, approximately 10,000 National Guard members performed duty at the request of the President, in a title 32 status, to secure airports following the terrorist attacks of September 11, 2001. More recently, about 2,000 guardsmen will perform duty at the request of the President, in a title 32 status, to assist the border patrol in securing the borders in the southwest States over the next two years.

Individuals performing Federal missions, whether in an active duty status or full-time National Guard duty status under the command and control of the State governor, should be eligible for the same benefits provided Reserve component members serving in support of a

contingency operation, including leave accumulation (10 U.S.C. 701), early access to TRICARE (10 U.S.C. 1074), contracts for medical care for spouse and children (10 U.S.C. 1079), and the high-deployment allowance (37 U.S.C. 436). This proposed amendment would ensure National Guard members who are performing duty comparable to that performed by Reserve component members are provided with the same benefits.

Cost Implications: Costs would depend on when the President or Secretary of Defense would authorize the employment of the guard in a title 32 status associated with this section. Any such costs would not be included in military department budget submissions.

Section 524 would amend section 12686 of title 10, United States Code, to remove what is considered to be a barrier to using members who wish to perform active duty periodically, are within two years of retirement eligibility, and are willing to waive sanctuary. The section would permit members to execute a one-time waiver to cover future periods of active duty that would otherwise place the member in sanctuary. However, to protect the member who may wish to withdraw his or her consent, the proposed revision would allow for execution of the waiver prior to the member commencing any period of active duty. This would facilitate more timely calls to active duty.

Permitting Reserve members to voluntarily waive 10 U.S.C. 12686(a) would allow them to make their own informed choices regarding performance of future periods of active duty. A member's voluntary waiver of active duty retention can apply to all orders regardless of duration. Permitting a member to voluntarily execute a one-time or "blanket" waiver covering all future tours of active duty (other than for training), while preserving the member's right to thereafter revoke such a waiver (pursuant to procedures laid out in Service regulations), empowers the member to the greatest degree possible without reducing the member's protections afforded by this statute. Under these circumstances, requiring a separate, written waiver from a member for each separate tour of active duty (other than for training) which the member may serve while near or within 18 to 20 years of service, imposes an unnecessary administrative burden on the member and on the Armed Service. Finally, Reserve members whose tenure of service on active duty entitles them to eligibility for an active duty retirement because they "reached 20" would remain eligible for such active duty retirement benefits notwithstanding this proposed amendment of section 12686.

Cost Implications: There are no costs associated with this section.

Section 525 would increase from six to 12 months the period of temporary Federal recognition as an officer of the Army or Air National Guard that can be granted to a person while the process for their appointment as a reserve officer of the Army or Air Force is completed.

The appointment of officers in the grades of O-1 through O-5 cannot be delegated below the Secretary of Defense. Such an appointment must be accomplished before permanent Federal recognition can be granted. Although 32 U.S.C. 308 permits the granting of temporary Federal recognition while the appointment process is completed, such temporary Federal recognition can only be granted for a six-month period. Officers failing to receive permanent Federal

recognition by the end of this six-month period due to unforeseen administrative or procedural delays must be re-examined (32 U.S.C. 307) and extended temporary Federal recognition with a new date of appointment established as the date of the re-examination.

The automatic expiration of the temporary Federal recognition without issuance of permanent Federal recognition will void the original date of appointment. Upon re-examination, a new date of appointment will be established as of the date of the re-examination, which will void the previous period of temporary Federal recognition for longevity credit, since permanent Federal recognition was not received to ratify this period of service. An increase in the period of temporary Federal recognition from six to 12 months would allow for the anticipated additional processing time at the Office of the Secretary of Defense level, as well as eliminate the need for many officers to apply to the appropriate records correction board to receive credit for the previous temporary Federal recognition service lost due to expiration of the original six-month period.

Cost Implications: There are no costs associated with this section.

Section 526 would modify section 312 of title 37, United States Code, to extend the eligibility for the Nuclear Officer Incentive Pay Continuation Pay (COPAY) from 26 to 30 years of commissioned service. The Submarine Officer Community currently has an 11 percent inventory O-6 shortfall (31 officers out of 282 authorized billets), and the amount of the shortfall is increasing. In Fiscal Year (FY) 2006 the non-statutory retirement rate of O-6s is 64 percent greater than the historical average. Additionally, Major Command screened O-6s are retiring at a rate 79 percent higher than the historical average in FY 2006. The loss of these high-quality senior officers will lead to critical shortages in senior Navy and Joint billets. The significant reduction in incentive pay due to the loss of COPAY eligibility at 26 years of commissioned service is a major factor in the decision of many submarine O-6s to retire. Enactment of the COPAY eligibility extension to 30 years of commissioned service will provide significant return on investment by improving retention of the high-quality senior submarine officers, and is vital to sustaining and improving personnel readiness within the Naval Nuclear Propulsion Program.

The Submarine Force produces approximately 23 Major Command screened O-6s per year who serve in critical leadership positions in the Navy and continue on to serve throughout the Department of Defense. The Nation cannot afford to lose the talent and experience of these key officers. Reduction in submarine officer incentive pays at 26 years of commissioned service is a major factor in the O-6 retirement decision.

Cost Implications: This section seeks statutory authority only, and will be executed only upon realignment of funding in the program of record.

Subtitle C—Education and Training

Section 531. Chapters 441 and 941 of title 10, United States Code, allow the Secretaries of the Army and Air Force to provide supplies and equipment for a prescribed course in military training (National Defense Cadet Corps) in support of schools wishing to start a Junior Reserve

Officer's Training Corps (JROTC) detachment at their own expense. This section would allow schools to pursue the same goals, but with the option of a Marine Junior ROTC unit.

Currently, 10 U.S.C. 2031 requires the Department of Defense (DoD) to pay one-half of the salary of JROTC instructors, as well as other equipment and transportation costs. The proposed amendment would allow a high school to establish a Marine Corps-prescribed course in military training and pay for all costs of that course independently, without having to request funds from the DoD. This amendment would make authority similar to that in chapter 441 of title 10 (applicable to the Army), applicable and available to the Marine Corps by adding a parallel chapter, giving the Secretary of the Navy matching authority.

Cost Implications: No additional costs are associated with this section.

Section 532 would amend section 612 of title 10, United States Code, to include permanent or career military professors at the military academies or other educational institutions as members of promotion selection boards at the discretion of the Secretary of the military department concerned.

The current law only provides for board membership from officers on the Active Duty List, which excludes permanent professors under section 641(2) of title 10. Although there may be other reasons to exclude the permanent professor from the Active Duty List, the ancillary consequence of doing so -- their disqualification from sitting on selection boards -- may have been an unintended consequence of legislative drafting. This change would not mandate their inclusion; it would only allow them to be board members at the discretion of the Secretary of the military department concerned based on the needs of the Service.

Cost Implications: No additional costs are associated with this section.

Section 533 would add new legislation to title 10, United States Code, to authorize appointment to the grade of captain for Navy Permanent Military Professors (PMPs) and other career professors per Secretary of the Navy Regulation. This authorization would exempt Navy PMPs and other career professors from the provisions in section 611 of title 10 which requires convening of promotion selection boards to consider officers for promotion to the higher grade.

Navy selects officers in the grade of commander to become PMPs. The small size, unique assignment, and longevity provisions of this competitive category make promotion within the requirements of sections 611 and 623 of title 10 untenable. Effective personnel management of this competitive category necessitates a process that will allow for appointments as vacancies occur at non-standard intervals. Once recommended for appointment to the grade of captain, per Secretary of the Navy Regulation, appointment will be effected per current statute. Promotion to captain will not be authorized until appointed to that grade by the President, by and with the advice and consent of the Senate.

PMP officers are currently members of the Human Resource (HR) and Unrestricted Line (URL) competitive categories. Even though PMPs are eligible for promotion to captain during

the annual HR and URL statutory selection boards, a PMP has not been selected for captain since Fiscal Year 2004. To provide promotion opportunity, a PMP competitive category is being established. It will be the smallest competitive category in the Navy, with a forecasted maximum strength of 85 officers. Due to the small number of officers, unique career path, and longevity, a PMP competitive category will be outside of the Department of Defense (DoD) promotion opportunity and flow point guidelines as defined in DoD Instruction 1320.13 and Secretary of the Navy Instruction 1420.1A.

Enactment of this section will ensure effective career management of PMPs, with continued career mobility through pay grade O-6, by rewarding exceptional performance and offering as needed opportunity for appointment to the grade of captain.

- PMPs will not be guaranteed promotion to captain because a maximum of 16 O-6 billets will be established. Limited opportunity for promotion to captain will incentivize competition among PMPs and lead to continued educational research and growth, not complacency or professional atrophy.

- PMPs support the missions of the United States Naval Academy, Naval War College, and Naval Postgraduate School by providing a more stable cohort of proven professional role models for midshipmen and graduate students.

- PMPs perform O-6 level duties including direction of one or more academic courses; revision of core and major curricula; establishment of new core and major courses; and, leadership of academic programs and other leadership responsibilities commensurate with the officer's academic and professional background and experience.

- Senior PMPs will provide department-, division- or institution-level leadership in the development, articulation, and implementation of curricular change, updates, and enhancements, the evaluation of student progress, and the assessment of academic programs.

- PMPs are more cost efficient (better pay back for years of education invested vice legacy program of three years payback for two years of Graduate education).

Cost Implications: No additional costs are associated with this section.

Subtitle D—General Service Authorities

Section 541 would authorize the Secretary of Defense to waive the eight year minimum service obligation for initial appointments of commissioned officers in critically short health professional specialties, as determined by the Secretary. No such waiver could reduce the period of obligated service to a period of less than two years.

Currently, the Department of Defense (DoD) faces significant challenges in recruiting

qualified health professionals, particularly in critical specialties such as surgeons, orthopedists, and nurse anesthetists. Many medical recruiters have said the eight year minimum service obligation (MSO), codified in 10 U.S.C. 651, is a significant disincentive for these professionals. Given the opportunity, many would like to serve the nation, but they are not willing to commit for eight years. For example, the military departments have received a significant number of inquiries from older health care providers between the ages of 48 and 60 who express an interest in serving in the military for a limited period of time. This group would be the primary target of this initiative.

According to a survey conducted by the Dallas firm, Merritt, Hawkins, and Associates, nearly half of physicians age 50 or older plan to leave medicine within the next three years. While 38 percent plan to retire, 12 percent will seek jobs in non-medical settings. A 2004 survey by the American Medical Association found that 38 percent of all physicians are 50 years old or older, while 30 percent are 55 years old or older. Approximately 250,000 physicians are currently between the ages of 50 and 65.

This section would provide a waiver for a select group of experienced physicians who have stated they are willing to serve their country for at least two years, but are unwilling to accept the eight year MSO. The DoD has no interest in reducing the MSO for most physician accessions. This change would not affect retention because this group is not joining now. The President currently has waiver authority; this section would provide similar authority to the Secretary.

Cost Implications: There is no cost to the Department involved in enacting this section.

Section 542 would improve the Department of Defense's (DoD's) ability to shape the Armed Forces in a fashion that would allow for the adjustment of known overages in the grades, competitive categories, year groups, and specialties of officers who are retirement eligible by reason of years of service. The DoD would use the Enhanced Selective Early Retirement (SER) authority only after exhausting all other available means of retraining or transferring personnel in those overages.

The Air Force is in the midst of its most significant transformation since the Cold War drawdown of the 1990's. The Air Force is eliminating approximately 34,500 active duty authorizations in order to fund this transformation. As part of its continuing force-shaping efforts, the Air Force will seek to reduce personnel primarily through voluntary measures. For members who are not retirement eligible, the Voluntary Separation Program will be an integral part of their force-shaping efforts in Fiscal Year (FY) 2007.

To address the oversubscription of officers who are retirement eligible, this section would reinstate the enhanced SER force-shaping tool embodied in section 638a of title 10. This tool, authorized for use from October 1, 1990 to December 31, 2001, expanded the categories of officers who could be selected for retirement in accordance with section 638 of title 10. This section would reauthorize the use of these tools from October 1, 2007 through December 31, 2012, with a relaxation of the 30-percent limitation relating to officer competitive categories.

The DoD would resort to enhanced SER and discharge only when overages could not be adjusted through any other force-shaping tool. When voluntary actions do not achieve the necessary losses, the Air Force would implement an SER board. An SER board, operating with the proposed relaxation of the 30-percent restriction relating to competitive categories, could review a greater eligibility pool and thus provide a more "surgical" reduction based on excess skills.

Cost Implications: This section would not generate any additional costs.

Subtitle E—Military Justice Matters

Section 551 would recognize the inherent authority of the Secretaries of the military departments to prescribe regulations authorizing legal assistance for individuals not specifically designated by 10 U.S.C. 1044. This would clarify a potential inconsistency between sections 1044a and 1044 of title 10, directly address the authority to extend legal assistance services to individuals not otherwise eligible under section 1044. This section would also extend the scope of sections 1044c and 1044d of title 10 to equal the scope of section 1044a—to include all individuals eligible for legal assistance and not merely those individuals specifically listed in section 1044.

This amendment would recognize that the Secretary concerned has the authority to provide legal assistance to persons other than those specifically listed in the statute. This authority is already recognized in 10 U.S.C. 1044a(a)(2) which authorizes military notary services to "[o]ther persons eligible for legal assistance under . . . regulations of the Department of Defense." Specifically enumerating it in 10 U.S.C. 1044(a) more clearly recognizes the Secretaries' necessary flexibility, when in the interests of the military service concerned, to provide certain civilian employees, or their survivors, this important assistance.

DoD Instruction 1400.32 (*DoD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures*) provides that "[c]ivilians deploying to or in a theater of operations shall be furnished the opportunity and assistance with making wills and any necessary powers of attorney"; this instruction is further implemented by current service regulations. These DoD civilian employees are often in locations where legal assistance from non-military legal assistance providers would be difficult, while military legal assistance is reasonably available. This section would recognize that the Secretaries of the military departments may extend military legal assistance to individuals not currently designated in 10 U.S.C. 1044 (*e.g.*, DoD civilians employees). This section also would allow the Secretary concerned to extend legal assistance to such individuals who, due to unforeseen events such as terrorist attacks or natural disasters, cannot obtain affordable non-military legal assistance.

Cost Implications: This section would not create or change an entitlement or require funding in a Program Budget Decision because the Secretaries' authority to provide legal assistance under 10 U.S.C. 1044 is specifically subject to the availability of legal staff resources. This section would have no budgetary impact.

Subtitle F—Defense Dependents Education System

Section 561 would allow the Secretary of Defense to pay tuition for dependents in overseas areas to attend private boarding schools in the U.S., under criteria established by the Secretary in implementing regulations. This amendment to subsection (b)(1) of section 1407 of the Defense Dependents' Education Act of 1978 will allow a dependent whose sponsor is located in an overseas area such as South America, where there are no Department of Defense (DoD) schools, to attend a boarding school in the U.S. A U.S. boarding school would provide an appropriate alternative educational placement when local public or private schools are not available in the sponsor's area of employment and would allow placement of the student in a location closer to the sponsor than the DoD-operated London Central High School dormitory.

Under the current provision, tuition may be paid to allow dependents in an overseas area to attend a school in that area with the intent of the dependent remaining with his or her sponsor. In areas where the local private and public schools do not provide an adequate alternative to a DoD school, and where the only boarding facility operated by DoD is located in an area that would be farther for the sponsor to travel to than the U.S., this amendment provides an alternative for the Secretary to pay tuition for that dependent to attend a boarding school in the U.S.

DoD students affected by this section are already provided tuition support to attend private schools or private schools with boarding facilities in overseas areas under authority provided by existing law and DoD regulation. This section does not seek additional funding and is simply intended to permit the Department of Defense Education Activity a wider range of private school placement choices based on the location of the sponsor's assignment and student education requirements. The section is submitted at this time due to the recent decision of the DoD Dependents Education Council to cease operation of the DoD-operated boarding school in the United Kingdom in support of the completed and planned closure of U.S. military facilities in the London area.

Cost Implications: This section has no budgetary impact.

Subtitle G—Other Matters

Section 571 would eliminate a limitation on the number of Reserve Officers' Training Corps (ROTC) scholarships that may be awarded each year to cadets desiring to serve in the Reserve components of the Army. Currently, section 2107a(h) of title 10, United States Code, limits the number of cadets that may be appointed each year to receive a scholarship under the section to 416. This amendment would help provide the additional commissioned officers the Army National Guard and Army Reserve need to fulfill their critical mission.

Army ROTC has received a 15 percent increase in their mission, primarily to provide officers for the Army National Guard and Army Reserve. ROTC scholarships have proven to be very effective in recruiting ROTC cadets and retaining the cadets through commissioning. The

amendment will provide greater flexibility for the ROTC program and enable the Army to distribute its resources to better meet its mission requirements and to attract quality candidates who will become the future leaders of the Reserve components of the Army.

Section 572 would simplify the current statutory scheme for the Army, Navy, and Air Force bands by replacing current sections 3634, 6223, and 8634 of title 10, United States Code, with a single section that applies to all three military departments. It also would clarify the circumstances that create competition with local civilian musicians and those that would not create such competition. For example, sponsors of fundraising events frequently request that military bands perform at the event so that they can avoid the cost of hiring commercial musicians. Also, producers charge admission fees to "military-themed" productions and try to obtain performances of the military bands for free, rather than hire commercial musicians. Finally, this section would harmonize existing statutes relating to the ability of military bands to produce recordings for sale to the American public.

Because of confusion associated with the earlier repeal of section 974 of title 10, this proposed section would provide that members of the military bands or similar musical units may perform music in their personal capacities, with or without compensation, but requires that such members act exclusively outside of their official positions when doing so. Members may not wear their military uniforms or use their official titles or positions, and must comply with all applicable ethics rules.

Rather than permitting only a few select military bands to produce such recordings, this section would authorize any military band or similar musical unit to produce and distribute recordings to the public at a cost that covers only production and distribution expenses. Under current authority, funds appropriated for military operational missions may be reallocated to the production of military band recordings, and any resulting income from these recordings can be credited to appropriations available for band expenses, rather than back to the original funding source. This section would require that the funds used for recording expenses be reimbursed to the original funding source. As the purpose of the authority to produce recordings is to provide the American public with greater access to music performed by military bands, this access should be provided at the lowest possible cost.

Cost Implications: This section would not add to the budget requirements of the Department of Defense.

Section 573. The addition of these sections would eliminate an inconsistency regarding the recovery of missing military property that currently exists within the military departments. The inconsistency came to light as an issue in recent investigations and attempts to recover certain dangerous military property that were found for sale in the civilian market. It was noted that the Army and the Air Force each have two statutes that facilitate the recovery of missing military property, but that the Navy and Marine Corps does not have an equivalent of either statute. The Army and the Air Force provisions are 10 U.S.C. 4832 and 4836, and 10 U.S.C. 9832 and 9836, respectively. The lack of equivalent statutes complicates law enforcement and Department of Justice efforts to recover Navy and Marine Corps property. Accordingly,

recovery of missing Navy and Marine Corps property is not handled in the same manner as similar instances of missing Army or Air Force property in that the burden is upon the Navy and Marine Corps rather than the holder of the property to prove title. In a recent Navy case the items in question were ceramic plate inserts for body armor (*i.e.*, bullet proof vests), munitions list items that could pose a threat to law enforcement personnel. The items had been issued to and "lost" or misplaced by Navy and Marine Corps personnel. Later, the items were found to be for sale on the Internet by supposed *bona fide* purchasers.

As an example, a current Army regulation prescribed pursuant to 10 U.S.C. 4832, it is clear that action or even inaction by unauthorized Army personnel should not create a property interest for someone who may claim to be a *bona fide* purchaser. Specifically, Army Regulation (AR) 735-5 2.1(e) and (f) provide:

> e. Army property will not be used for any private purpose except as authorized by HQDA.
>
> f. No Government property will be sold, given as a gift, loaned, exchanged, or otherwise disposed of unless specifically authorized by law. Items replaced in-kind and payments made under the provisions . . . for lost, damaged, or destroyed Army property do not constitute a sale of Army property. Title to such property remains with the U.S. Government.

These provisions provide additional support to 10 U.S.C. 4836, Individual equipment: unauthorized disposition, which makes clear that there is no such thing as a "holder in due course" or a "*bona fide* purchaser without notice" of U.S. Army property. This law shifts the burden of proof and allows the immediate recovery of the property.

With equivalent Navy and Marine Corps statutes as those of the Army and the Air Force, recovery of missing Navy and Marine Corps items will be facilitated in order to prevent the illegal export of sensitive military property and technology as well as the potential misuse of the military items against domestic law enforcement personnel. The addition of these sections will provide consistency amongst the services by assuring that missing Navy and Marine Corps property cases are processed in the same manner as cases originating from the Army and the Air Force.

Cost Implications: This section does not create or change an entitlement or require funding in a Program Budget Decision.

Section 574 would provide the Department of Defense (DoD) with more flexible tools with which to manage the deployment of Service members. Specifically, this section would modify the definition of deployment and eliminate statutory thresholds and management oversight mechanisms. It also would repeal a currently-suspended requirement to pay High Deployment Allowance (HDA) and replace it with compensation from Hardship Duty Pay (HDP). These changes would allow the DoD to balance operational tempo, compensate Service members who deploy beyond their Service norms, and provide predictable allowances.

Section 991 of title 10, United States Code, currently requires the military departments to track the deployment of individuals and manage members to ensure that they do not deploy or continue to stay in a deployed status beyond set thresholds. The section defines "deployment" as any training exercise or operation that precludes a member from returning home at night. It also establishes the deployment thresholds as either (1) 220 days or more out of the preceding 365 days or (2) 400 days out of the preceding 730 days. The Secretary of Defense must approve the deployment of members beyond these thresholds, but may delegate this authority to a general or flag officer or a Senior Executive Service or civilian officer of the DoD.

This section would redefine "day away" by no longer counting non-operational temporary duty absences and absences for conferences, seminars, and training as being operationally deployed from station or home port unless designated by the Secretary concerned. In the case of a Reserve component member, the DoD would continue to adhere to the definition of housing in section 991(b)(2) of title 10.

This section also would repeal section 436 of title 37. Section 436 currently authorizes a member to receive a monthly HDA if the member at any time during the month has been deployed for over a threshold of 191 consecutive days; has been deployed for over an established threshold during the previous 730 days; or, in the case of a Reserve component member, is on active duty under specified conditions and periods of time. The monthly rate of this allowance cannot exceed $1,500 and is in addition to all other pays and allowances.

Section 436 became law before September 11, 2001, and does not allow the flexibility that the DoD needs to compensate, establish deployment expectations, and influence retention behavior for members who experience hardship duty by being deployed in excess of approved high-deployment thresholds. Section 436 is more appropriately constructed for forces operating normally in a low operational tempo environment, as opposed to a protracted Global War on Terror. In addition, section 436 mandates that HDA be paid from Operation and Maintenance (O&M) funds for the military department in which the member serves. HDA as authorized would be a huge expense that could potentially depreciate the military department's O&M accounts. Although HDA is currently suspended, continuing to deploy Service members without some consideration of tempo and compensation cannot continue indefinitely, as it may adversely affect retention.

Instead, the DoD seeks to utilize the flexible HDP authority in title 37 to ensure that the tempo allowance is predictable and fairly compensates members within the respective military department. As a result, this section would provide for a corresponding increase in the existing pay authority in section 305 of title 37 to adjust the maximum monthly rate for HDP from $750 to $1,500 and would allow for payment on a lump sum or monthly basis. This would provide the military departments with the authority and the flexibility they need to implement fully their "tempo allowance" programs.

The DoD believes that military department-specific levels of payment for exceeding thresholds would better accomplish their individual goals, such as encouraging volunteerism and

growing skills unique to the deployed environment.

Cost Implications: The DoD estimates that this section would cost $102 million annually when fully implemented; however, the military departments would commence paying hardship duty pay for high deployment tempo in Fiscal Year (FY) 2007 within the current $750 statutory cap. The initial implementation in FY 2007 will recognize members in certain high deployments situation, to include members in harms way. For that reason, the additional cost of this legislation would represent the delta between the full implementation cost of $102 million and the levels paid in FY 2007, which we expect to be more than half of the full implementation cost. The DoD calculated the full implementation cost estimate using historical deployment data from the Defense Manpower Data Center and tempo allowance tables developed by each military department. Specifically, the actual number of military personnel deployed for a given duration and a given frequency were calculated by military department, and the proposed tempo allowances were applied to determine the estimated annual cost. This annual cost estimate assumes that the historical "snapshot" provides a reasonable expectation of the number of deployed military personnel in each tempo allowance pay category in the future.

The cost estimate assumes the same deployment patterns in support of Operation Enduring Freedom and Operation Iraqi Freedom (OEF/OIF). The overall cost estimate was derived using end-of-month snapshots of the number of Service members deployed to OEF/OIF between October 2003 and September 2005 and each military department's proposed Tempo Allowance Tables -- which take into consideration their military department-specific deployment cycles. The key costing assumption is that the average number of Service members deployed to these operations in the future, both in terms of consecutive days deployed and for a total number of days deployed within a rolling 730-day period, would approximate the number of members actually deployed during the aforementioned two-year time frame.

If HDA suspension was lifted and payments were resumed without restarting personnel tempo counters, it could potentially cost the DoD over $271 million out of the O&M accounts. Repealing section 436 of title 37 would eliminate this potential cost.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would provide the Secretaries of the military departments with the authority to make the screening of units and members of the Ready Reserve more effective and accurate by offering up to $50 per year to members of the Individual Ready Reserve (IRR) who complete the requested screening electronically. This would allow the creation of an Internet-based alternative to physical muster screening and capitalize on technology that is now readily available to gather the necessary information the Department of Defense needs to manage the force.

Section 10149 of title 10, United States Code, requires the Secretary concerned to provide a system of continuous screening of units and members of the Ready Reserve to ensure

that there will be no significant attrition of those members or units during a mobilization; that there is a proper balance of military skills; that members whose mobilization in an emergency would result in an extreme personal or community hardship are not retained in the Ready Reserve; and for other reasons. Such screening involves direct communication between the member and the Reserve component and provides a tool to update the address, phone number, email address, employer and fitness information on Ready Reserve members.

Currently, ensuring that members complete this screening is practically unenforceable without the use of a physical muster, which is very expensive and time-consuming because many members of the Ready Reserve do not live close to a unit. Section 433 of title 37 requires the military departments to pay 125 percent of the average United States per diem for the previous fiscal year for each member it musters, or approximately $162 per member. Since the flat-rate allowance for muster duty under section 433 constitutes commutation for travel to the immediate vicinity of the designated muster duty location, transportation, subsistence, and the special or extraordinary costs of enforced absence from home and civilian pursuits, physical musters are limited, by policy, to members who reside with 150 miles of the muster site since screening is limited to a one-day activity. Accomplishing that screening through electronic means would overcome that limitation, thus expanding the effectiveness of the screening.

This section would authorize a muster of the Ready Reserve force without the expense and logistical challenges of getting people physically to a unit location. In practice the Department would use the Internet to maintain contact with members of the IRR and collect up-to-date information. Initially, individuals would likely be notified by mail that a muster will occur; as the program matures, future contact could be made solely through the Internet. This section would provide a discretionary authority to provide a monetary incentive to encourage participation. The result would be a more ready and more accessible force.

Cost Implications: The proposed allowance would be paid only to members of the IRR; Selected Reserve (drilling) members are screened continuously. Currently, only the Marine Corps plans to use this authority. It plans to realign $1.3 million of the $1.55 million currently budgeted for in-person musters to pay for Individual Ready Reserve online screening. Therefore, this section would create neither a new cost nor an increase in the budget, but rather a realignment of currently-budgeted funds used to conduct physical musters. In fact, this section could produce cost savings. The Marine Corps Reserve currently spends approximately $162 per IRR member to screen (muster) annually with in-person musters. If granted this authority, the Marine Corps could triple the number of IRR members it could muster with either electronic or in-person musters within its current budget. The Marine Corps already has conducted a limited number of screenings electronically and has a system in place to accommodate this new screening mechanism, if authorized. Moreover, research shows that providing a modest incentive increases participation in surveys. The proposed $50 incentive is viewed as a cost-effective way to maintain communications with IRR members and evaluate the readiness of the IRR.

RESOURCE REQUIREMENTS ($MILLION)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Army	0	0	0	0	0
Navy	0	0	0	0	0
Marine Corps	1.3	1.3	1.3	1.3	1.3
Air Force	0	0	0	0	0
Total	1.3	1.3	1.3	1.3	1.3

Section 602 would permit a Junior Reserve Officer's Training Corps (JROTC) instructor to receive reimbursement of Permanent Change of Station (PCS) expenses if the instructor agrees to serve in a hard-to-fill position, as determined by the Secretary of the military department concerned, provided funding is available. The instructor would receive the reimbursement of expenses from the institution, which would then be reimbursed by the Secretary of the military department concerned.

The JROTC is an academic and citizenship program whose primary purpose is to "instill in students in United States secondary educational institutions the value of citizenship, service to the United States, personal responsibility and a sense of accomplishment." The JROTC improves American society by building better citizens for America. The JROTC benefits the military by exposing more of American society to a military experience. Unfortunately, military departments have encountered difficulty in recruiting retired personnel to fill instructor positions in certain high schools (e.g., inner city and rural schools). Staffing shortages compromise a military department's ability to establish and maintain JROTC units. To become eligible for the reimbursement of expenses, the instructor would have to contract to serve in specified hard-to-fill locations for a minimum of two years. If the instructor leaves the position prior to end of the two-year commitment, he must remit to the department concerned the amount of funds that were provided to cover moving expenses.

JROTC actively pursues the most highly-qualified instructors. Under section 2031 of title 10, United States Code, JROTC instructors are retired military members who, after an honorable 15-20+ years of military experience and education, are uniquely qualified to teach the JROTC-approved curriculum. Their military training and experience cannot be duplicated by non-military members. The intent of Congress, and the goal of the Department of Defense, is to establish 3,500 JROTC units. Under Title 10, the military departments must recruit from a limited and highly-specialized pool of instructors. If this pool is exhausted, it will be very difficult to maintain and operate existing JROTC units. Unfortunately, it is highly likely that the lack of certified instructors will lead to the closing of certain JROTC units, with its resulting negative impact on the JROTC cadets.

Cost Implications: The Department of Defense estimates that this section would cost $4.0 million per year, and $20.0 million from Fiscal Year 2008 through Fiscal Year 2012, to implement. The Army estimates that utilizing this authority would cost $4.0 million each year for PCS costs. The Air Force, Navy and Marine Corps do not plan to implement this authority.

RESOURCE REQUIREMENTS ($MILLION)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Army	4.0	4.0	4.0	4.0	4.0
Navy	0.0	0.0	0.0	0.0	0.0
Marine Corps	0.0	0.0	0.0	0.0	0.0
Air Force	0.0	0.0	0.0	0.0	0.0
Total	4.0	4.0	4.0	4.0	4.0

Section 603 would amend the Reserve Income Replacement Program to clarify the eligibility criteria for income replacement payments and authorize such payments to continue in the case of a member who is retained on active duty for authorized medical care or to be medically evaluated for disability.

Currently, the statute is unclear as to the exact meaning of months of service for eligibility. Legislative history in the treatment of months indicates that a month could constitute either a full calendar month or a period that commences on a date in one calendar month and ends on the date preceding that original date in the following calendar month. A month calculated in this way would have the same number of days in it as the month in which the period began. This calculation works well when considering consecutive months of service, but it does not work well or serve the member well with service criteria that considers cumulative months. In that case, a member could conceivably be on duty for several days (as many as 30) and not receive credit for those days. For example, a member who begins active duty on February 14 and is released from that duty on April 10 would receive a month's credit for the duty from February 14 to March 13, but would receive no credit for the period from March 14 to April 10 because that period does not involve the completion of a full month. Thus, for nearly two months of duty as counted in days, the member gets credit for only one month.

This section would correct that shortcoming by addressing and measuring cumulative periods of qualifying duty and a preceding 60-month period in days -- 180 days rather than a cumulative six months; 730 days rather than 24 cumulative months; and 1,826 days rather than 60 previous months.

The section also would extend income replacement payments to an otherwise eligible member who is wounded or becomes ill while in a hostile fire or imminent danger area and whose orders are changed to place the member in a medical status under section 12301(h) of title 10, United States Code. Payments would continue as long as the member's service on active duty is continuous. Payments would cease when the member is released from active duty and no further payments would be authorized unless the member qualifies because of another period of involuntary service.

Finally, this section would clarify that, although the program will terminate on December 31, 2008, a member who is entitled to payments because of service during the period the program was in effect may still receive those payments. As currently written, the statute does not permit the payment of benefits after that date even though the member is otherwise entitled to such payments.

Cost Implications: Costs for this section are not budgeted by the military departments since the cost is directly tied to service for a contingency operation.

Section 604 would clarify the authority to pay tuition assistance to members of the Ready Reserve and provide the criteria under which such payments may be made. The current provision is ambiguous at best regarding the authority to pay tuition assistance to a Reserve component member when they are not serving on active duty or full-time National Guard duty, except for commissioned officers of the Reserve components of the Army, which is explicitly provided for under section 2007(c) of title 10, United States Code.

These proposed amendments would provide specific authority to pay tuition assistance to members of the Selected Reserve. Officers shall agree to serve in the Selected Reserve for four years after completing the education or training program for which assistance was provided. An officer of the Individual Ready Reserve (IRR) may receive tuition assistance with two caveats. First, the officer must have a specialty identified by the Secretary of the military department as critical to future operational needs of the nation. Secondly, the officer agrees to serve in the Ready Reserve for four years after completing the education or training program for which he or she received tuition assistance. At the military departments' discretion, enlisted members of the Selected Reserve or Individual Ready Reserve may be required to complete a service obligation for up to four years. In addition, for enlisted members of the IRR, the Secretaries of the military departments also must determine which military specialties are essential. Servicemembers in these limited career fields could be extended this benefit.

For members of the IRR, the intent is to provide the Secretaries of the military departments with leeway in using this authority while ensuring that this benefit is extended to those specialties deemed most critical. An example is the Army's 09L program. In this linguist program, the Army recruits Arabic speakers (American citizens or U.S. permanent residents, many of Iraqi origin), directly into the IRR. These servicemembers are scheduled to deploy normally following English as a Second Language training and Basic Military Training. Because English is their second language, some 09L recruits were having trouble passing basic training. The education benefit would be useful in this instance since it would improve graduation rates for servicemembers with critical skills.

Further, with the amendment to the statute regarding tuition assistance for members of the Ready Reserve, the requirement for commissioned officers to serve on active duty or full-time National Guard duty for two years following completion of the training or education has been deleted since the revised subsection (c) of section 2007 now imposes a four year service obligation on the member.

Finally, these amendments would add a repayment provision in the event that a Ready Reserve member fails to complete the required period of obligated service that was agreed for receiving tuition assistance.

Additionally, this section would removes areas in subsection (d) of section 2007 that would not longer be necessary.

Cost Implications: This authority is discretionary and, as such, imposes no new cost for the military departments. The Army National Guard and Army Reserve already budget for tuition assistance and the other Reserve components must include funding in their budget submissions if they choose to use this authority.

Section 605 would amend chapter 1606 of title 10, United States Code, to permit individuals to retain the use of education benefits following separation from the Selected Reserve that was a result of force-shaping initiatives associated with Base Closure and Realignment (BRAC) actions. Individuals who entered into a contract for education benefits will lose that benefit through no fault of their own. This continuation of the benefit would only be extended to individuals currently meeting program participation requirements. Contributions to the education accrual fund have already been made for these individuals. The accrual account actually has enough money so that the military departments have not had to make contributions for several years. Force-shaping as a result of BRAC is expected to continue through 2011.

Cost Implications: Total costs for this program are expected to be under $500,000. At this time, only the Reserve components of the Air Force are planning to use this authority, and their Montgomery GI Bill accrual accounts are funded through the outyears.

Section 606 would amend section 1968 of title 38, United States Code, to provide temporary authority to continue Servicemember's Group Life Insurance for 180 days following a member's involuntary release from active duty or separation from the Selected Reserve if the separation is through no fault of the member but is due to Base Realignment and Closure or other transformation action that eliminates the reserve unit in which the member served. Extending the period of time for an additional 60 days would allow individuals sufficient time to replace their insurance coverage either through new employment or contracting for their own insurance coverage. This option would only be extended to individuals meeting program participation requirements and agree to pay for the additional 60 days of insurance coverage.

Cost Implications: There are no costs associated with this section.

Section 607 would allow Service members who enlist with the Educational Loan Repayment Program (ELRP), described in section 2171 of title 10, United States Code, the opportunity to make a decision on participating in the Montgomery GI Bill (MGIB) at an appropriate time. Current law requires new Service members to make an election concerning MGIB participation at the time of initial enlistment.

Amending section 3011(c)(1) of title 38 would permit members who elect to take the

ELRP during their initial enlistment to delay their decision to participate in the MGIB Program until their second enlistment. This would afford these members the ability to make a sound decision at a much more appropriate time.

The purpose of this initiative is to correct inequities in application and the perception of unfair treatment. Currently, members enlisting with an ELRP incentive must decide whether or not to participate in the MGIB program at the time of their initial enlistment. However, section 3033 of title 38 bars members from using the same period of service to qualify for two educational assistance programs. By deferring the requirement for election, it would allow members the opportunity to defer that decision until they commit, through a reenlistment, to a period of qualifying service for the MGIB.

Cost Implications: No additional costs are associated with this section.

Subtitle B—Bonuses and Special and Incentive Pays

Section 611 would extend critical recruiting and retention incentive programs for the Reserve components that are due to expire at the end of calendar year 2007. 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 maintain required manning levels in skill areas with critical shortages by retaining members who currently are serving in the Selected Reserve. With a smaller active duty force from which to recruit, the bonus becomes more critical to meeting manning requirements.

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.

Extending the Ready Reserve enlistment and reenlistment bonus authorities would allow the Reserve components to target these bonuses at individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

Finally, 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.

All of these bonuses and special pays provide an important array of incentives that are necessary for the Reserve components to meet manning requirements. Extending these authorities for another year would ensure the continuity of these programs.

Cost Implications: There are no additional costs associated with this section. The military departments have already projected expenditures for these incentives in their budget proposals.

Section 612 would extend for one year, until December 31, 2008, accession and retention incentives for certain medical officers, nurses, dentists, and pharmacy officers. Experience shows that manning levels in these health professions 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.

Cost Implications: There are no additional costs associated with this section. The military departments have already projected expenditures for these incentives in their budget proposals.

Section 613 would extend for one year, through December 31, 2008, 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.

The Department of the Navy (DoN) has only met its submarine nuclear junior officer retention goal once in the past six years (2000-2005). Despite recent retention improvements, DoN missed the submarine junior officer retention goal again in Fiscal Year 2005. As well as facing junior officer retention difficulties, the submarine officer community is also short 332 control grade officers (O-4 through O-6), indicating a senior officer retention shortfall. These two shortfalls -- lower than required junior officer retention and mid- to senior-grade officer inventory shortages -- place at risk the community's ability to meet critical manning requirements.

The attraction of the civilian job market for nuclear-trained officers remains strong. These 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 after for positions in career fields, both in and out of the nuclear power industry, primarily due to their educational

background and management experience.

The 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 in the Naval Nuclear Propulsion Program.

Cost Implications: There are no additional costs associated with this section. The Navy has already projected expenditures for these incentives in their budget sections.

Section 614 would allow certain members qualified in a designated critical skill to receive a critical skills retention bonus even though their total years of service exceed 25 years of active or reserve service. Specifically, this section would allow the Secretary of Defense to waive the eligibility restrictions in section 323 of title 10, United States Code, to allow members to receive the Critical Skill Retention Bonus (CSRB) beyond 25 years of service to retain those identified critical skills in high demand as needed to maintain appropriate readiness levels.

The Department of Defense needs this exception to the current 25 years-of-service restriction to help stem losses of highly-trained and experienced personnel possessing the critical skills needed to sustain the war on terrorism and to fight the "long war." As evidenced by the initiatives introduced in the recent Quadrennial Defense Review, force restructuring efforts will require the Department to find ways to realign skills and experience, as needed, in a timely and efficient manner that will produce the highest return on investment. This will require retention and transfer incentives for some of our more experienced members. The Department cannot wait for the next generation to be accessed, trained, and have the assignments and jobs required – we must have the flexibility to capitalize on the experts who are available and can provide many more years of service.

In practice, in certain officer specialties, many billets identified as being critical skills are manned by officers ineligible to receive the CSRB due to the statutory eligibility requirements. Some officers who have prior enlisted service are denied a CSRB due to the statutory time-in-service eligibility requirement even though they have critical skills needed in today's military. For example, the Navy currently has a shortage of 620 Surface Warfare Officers (a designated critical skill) in the grades of lieutenant commander through captain. This proposed CSRB extension would enable the Navy to mitigate this shortage by providing an incentive for an estimated 42 Surface Warfare Officers per year with prior enlisted service to continue their active duty careers.

In addition, the current eligibility requirements can prevent the payment of a bonus to an officer with critical skills serving in a targeted billet when another officer serving in a similar capacity is paid a critical skills bonus. Waiver authority could correct this inequity. More importantly, it would enable the Department to pay CSRB to all officers with critical skills in targeted populations, including those who are presently determined ineligible.

Cost Implications: The Department estimates that the annual cost of this section would be $3.98 million. The military departments would accommodate any added cost within existing funds or would budget for the costs prior to implementing this section. The cost for each service is reflected in the following table and an explanation of the costing methodology follows:

RESOURCE REQUIREMENTS ($MILLIONS):

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Army	2.7	2.7	2.7	2.7	2.7
Navy	0.74	0.74	0.74	0.74	0.74
*Marine Corps	0	0	0	0	0
Air Force	0.54	0.54	0.54	0.54	0.54
Total	3.98	3.98	3.98	3.98	3.98

*Marine Corps does not utilize the CSRB program

Costing Methodology (Navy): The Navy estimated that 42 control grade Surface Warfare Officers could qualify for a CSRB each year through a waiver of the eligibility requirements. After totaling the bonuses that would be paid across the various ranks in that group, the expected annual additional CSRB payments would be $743,300.

Costing Methodology (Army): The Army estimated that 30 Special Operations soldiers could qualify for a CSRB each year through a waiver of the eligibility requirements. If all 30 soldiers were eligible for a six-year contract and paid the cap amount of $150,000 per year, the total maximum, expected annual additional CSRB payments would be $2.7 million.

Costing Methodology (Air Force): The Air Force estimated that 22 Combat Controllers and Pararescuemen would qualify for a CSRB with a waiver of the eligibility requirements. The Air Force subtracted the current year of service from the highest year of tenure to determine the maximum number of years each Airman could serve. The CSRB amount then was applied according to the number of years each Airman could serve. After totaling the bonuses that would be paid to each Airman, the estimated additional CSRB payments each year would be $540,000.

Section 615 would expand a temporary program to pay a referral bonus to "members of the Army" by authorizing a referral bonus for an eligible individual who refers a person who is appointed as an officer in the Army to serve in a health profession; this is currently authorized for referring enlistees.

This section would also extend the time period for the temporary program to permit the Secretary of the Army to conduct the program through December 31, 2010.

Section 616 would amend section 308c(c) of title 37, United States Code, to permit certain individuals who previously served in the Armed Forces to be eligible for a Selected Reserve accession bonus. Specifically, individuals who previously served, but were separated prior to completion of Initial Active Duty for Training (IADT) under conditions that were honorable or uncharacterized, would be eligible to receive the bonus provided they are otherwise qualified.

In a challenging recruiting environment, the Reserve components are finding niche populations that are otherwise eligible for accession into the armed forces. One such population includes individuals who were not able to complete initial active duty for training for valid reasons outside of their control or because they simply were not ready for military service when they initially enlisted. There are individuals who are taking a second look at military service or would like a second chance. In fact, the Office of the Assistant Secretary of Defense for Reserve Affairs has received letters from such individuals. Although this population is small, this section would give the components a tool they could use to channel these recruits into skill areas were there are critical shortages.

Currently, section 308c(c) of title 37 limits an accession bonus to members who have never previously served in the Armed Forces. There are no exceptions to this restriction. This section would allow a limited exception to the eligibility criteria to include individuals who enlisted, but did not complete IADT, provided their characterization of service at discharge was either honorable or uncharacterized. This would provide a small expansion of the pool of potentially eligible recruits.

Cost Implications: The military departments budget for bonuses based on needs and projected accessions. This section would not result in additional, unprogrammed costs.

Section 617 would simplify and increase flexibility in the use of the Selected Reserve Reenlistment Bonus by specifying the minimum period of obligated service in the Selected Reserve as three years and providing a single bonus cap of $15,000 in all cases.

Section 308b of title 37, United States Code, allows the reenlistment bonus to be paid multiple times during a career. However, the current criteria for paying two three-year bonuses or one six-year bonus limits the Department of Defense's flexibility. In addition, the provision regarding an immediate second three-year reenlistment appears inconsistent with the expanded authority allowing for multiple bonus contracts. Moreover, section 618 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) removed the restriction regarding the number of bonuses that may be paid under section 308b of title 37, but in the process retained what is now confusing language regarding the amount that may be paid for a third or subsequent three-year reenlistment. This confusing language needs to be removed, which this proposed section would accomplish.

Since this authority is discretionary, the Reserve components' budget request would reflect the funding needed to meet manning objectives.

Cost Implications: There are no additional costs associated with this section. The military departments have already considered this bonus in their budget submissions.

Section 618. The military departments rely on Multiyear Special Pay (MSP) and Incentive Special Pay (ISP) as critical tools for managing the medical force. This section would raise the annual caps for MSP and ISP from $50,000 to $75,000. The Department of Defense (DoD) needs this added authority to allow it to react quickly to prevent a physician shortfall in critical wartime specialties.

In 2004, the Council on Graduate Medical Education, a national advisory body that makes policy recommendations regarding the adequacy of the supply and distribution of physicians, predicted that if current trends continue, demand for physicians will significantly outweigh supply by 2020. The military currently has a declining inventory of some wartime critical medical specialties. As a result, the DoD needs more incentives to attract and retain those specialists.

Each year the DoD convenes a Uniformed Services group, the Health Professions Incentives Working Group, to review physician staffing levels on a specialty basis and make recommendations to the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)) on incremental adjustments within the MSP and ISP caps. The process takes into account current DoD staffing, civilian pay, operational demand, and other Service-specific issues. These recommended increases are vetted though Service medical personnel planners and, in the past, have been applied sparingly (as demonstrated by the fact it took the DoD several years to reach the current cap levels).

The Fiscal Year (FY) 2007 Special Pay Plan has only three physician specialties at the $50,000 maximum, offered in exchange for a four year obligated service commitment -- Neurosurgeons (estimated FY 2005 manning, 90 percent), Anesthesiologists (84 percent), and Radiologists (76 percent). The vast majority of the remaining medical specialties are offered MSPs closer to $33,000. Only Neurosurgery is at the $50,000 ISP maximum; for most specialties, the ISP is close to $28,000.

This section would raise the ISP and MSP caps in anticipation of projected out-year shortages in critical wartime specialties due to a significant military to civilian pay gap and decreased retention from increased OPTEMPO (multiple deployments) for many of these specialists. The military departments would have to assess the benefits and budget within their programs. Decisions to implement any amount above FY 2007 MSP/ISP pay plan amounts would require coordination with and approval by the OASD(HA) to maintain a consistency of pays across all three military departments, with exceptions given only under certain Service-specific circumstances.

The DoD has been using all available accession and retention incentives with fair success. However, the DoD requires additional authorizations that can be focused on selected professional communities if the Department is to continue to meet its mission requirements. The Army and Navy have been unable to fill their available Health Professions Scholarship Program

quotas for the past two years (the Department's traditional accession source for physicians and dentists). The DoD has only a limited amount of time in which to identify and enact some compensating strategies.

The DoD is in an increasingly competitive environment for medical professionals and needs this authority now to allow it to react quickly to prevent a physician shortfall in a future that will be marked by a projected nationwide physician shortage.

Cost Implications: This section only seeks to provide the Secretaries of the military departments with discretionary authority that would be limited by the availability of annual appropriations. No additional funding is required. The DoD would apply the increased authority only to critical wartime specialties, not to all physicians, so potential increased costs that the military departments might need to fund are relatively limited.

Section 619 would increase dental officer additional special pay and provide the Secretary concerned the flexibility to target improved compensation at the junior dental officers who have a continuation rate at the first decision point that continues to fall.

Section 302b of title 37, United States Code, authorizes additional special pay for an officer who is an officer of the Dental Corps of the Army or the Navy or an officer of the Air Force designated as a dental officer, and is on active duty under a call or order to active duty for a period of not less than one year. Additional Special Pay (ASP) provides a retention incentive for dental officers and helps narrow the military-civilian pay gap. Current dental ASP rates have not changed since 1997. As a result, the pay gap between military and civilian pay has widened since authorization of current dental ASP rates.

In the Health Professions Retention-Accession Incentives Study (HPRAIS) I, the Center for Naval Analyses (CNA) showed that "the uniformed-civilian pay gap existed at every career juncture and that this pay gap was greater for specialists than for general dentists." CNA further stated that "the uniformed-civilian pay gap in 2000 dollars is substantial, averaging approximately $69,000 for general dentists and $113,000 for specialists." The American Dental Association's 2001 Survey of Dental Practice and 2002/2003 Survey of Advanced Dental Education reported an average annual net income of $270,000 for dental specialists and $159,550 for general practitioners. It reported that civilian net pay increased per year at a rate of 5 percent for general dentists and 8 percent for specialists. In HPRAIS II and III, CNA stated that "current uniformed dental ASP should be increased," targeting "the group for which compensation increases will have the most impact on improving uniformed dentist retention (those facing stay-leave decisions)."

Military dentistry's current experience validates CNA's findings. Critical shortages of dental officers in the four-to-ten year commissioned service group exists in all of the Services. This shortage, especially in the O-4 pay grade, severely jeopardizes the Department of Defense's (DoD's) ability to maintain an adequate number of general dentists, a reasonable deployment rotation for junior officers, and an adequate pool from which to train dental specialists. The current Navy O-4 pay grade manning at 66 percent is a result of low continuation rates of dental

officers beyond the first term of service. In Fiscal Year (FY) 2005, only 40 percent of dental officers remained on active duty after the first decision point, down from 60 percent in 2001. Most of these officers leave military service due to high dental education debt and the large inequity in pay when compared to civilian dentists. According to the 2002/2003 Survey of Advanced Dental Education, the average education debt load for dentists graduating from dental schools in 2001 was $132,500, resulting in an average monthly debt payment of $1,200.

This section would target dental officers in these year groups with a dental ASP increase. Present annual dental ASP rates are $4,000 for those with less than three years of service (YOS), $6,000 from three to ten YOS, and $15,000 for ten plus YOS. This section would increase the $4,000 ASP rate to $10,000 and the $6,000 ASP rate to $12,000. These increases would provide increased incentives for junior officers to remain on active duty.

Furthermore, a recent Military Health System value estimation study by the TRICARE Management Activity showed that military dentistry (the direct care system) in FY 2001 delivered a 17 percent "profit margin." Clearly, direct system dental care is more cost-effective than private sector dental care. DoD's severe shortage of military dentists, however, results in productivity losses within our health care facilities that must be made up in the costly civilian sector. In FY 2004, the military departments obligated over $63 million for this private sector dental care; in FY 2005 that amount was $54.4 million.

Multiple factors degrade DoD's ability to staff health care facilities with appropriate levels of qualified dentists. The increased rate of retirements, losses outnumbering gains, and unfilled authorizations -- especially mid-career authorizations -- all point to an impending military dental health crisis at current pay levels for dentists. Annual trends have shown continual decreases in dental officer manning over the past years. Despite the 104 dental officer conversions in FY 2005, Navy dentistry was only manned at 91 percent at the end of FY 2005, down from 99 percent for FY 2000.

Cost Implications: This section seeks to provide to the Secretary concerned the discretionary authority to pay ASP up to the statutory maximum amount of $15,000 per year. The DoD estimates that this section would cost $4.1 million annually.

Section 620. The military departments rely on pipeline programs such as the Health Professions Scholarship Program (HPSP) as a primary source of accessions. Both the Navy and the Army were unable to fill their HPSP quotas last year. This section would enhance the ability of the military departments to recruit qualified applicants into the program by authorizing a $20,000 accession bonus. This bonus, in conjunction with the existing HPSP benefits, would make the HPSP program more attractive to prospective medical and dental school students

The Army and the Navy have fallen short of HPSP recruiting goals in Fiscal Years (FYs) 2005 and 2006. During FY 2005, Army executed 77 percent and Navy filled only 56 percent of their medical student quotas. Projections for FY 2006 are equally abysmal, with Army projecting 84 percent and Navy 62 percent. To date, the Department of Defense projects FY 2006 HPSP execution for all three military department at 81 percent for physicians and 82

percent for dentists. Anecdotal evidence points to several factors for these shortfalls, including changes in the gender mix at medical schools (currently 50 percent are female, with their lower propensity to serve). These shortfalls in HPSP recruitments decrease military department medical and dental readiness capabilities.

An accession bonus of up to $20,000 would revitalize the program and draw more applicants -- from the pool of those who would otherwise be willing to serve -- into the system, thus decreasing the shortfall. The Health Professions Scholarship Program Accession Bonus (HPSPAB) would be offered to students who qualify for the Medical and Dental Corps Health Professions Scholarship Program; agree to serve on active duty after completing medical or dental school as Medical or Dental Corps officers; and execute a written agreement to remain on active duty serving in their qualified specialty for a minimum of four years. The HPSPAB would target college students enrolled or enrolling into a four-year accredited medical or dental program and would consist of a one-time lump sum payment of up to $20,000.

The HPSP is the main accession pipeline feeding these communities and the impact will be felt 3-4 years from now when the flow out of the pipeline will be lower than required, even considering potential or planned active duty force reductions from future military-to-civilian substitutions. The Navy has received permission to consider HPSP students a critical skill and will offer them a Critical Skill Accession Bonus (CSAB) of $20,000. This section would offer the military departments a permanent solution to the problem. The Navy is the only service to offer the CSAB and is funding it out of current budget; there is no budget off-set. Since this section would provide discretionary authority, the bonus could be discontinued if recruitment improves because of a reduction in military department billet authorizations due to Medical Readiness Review or if the HPSP program attracts more applicants.

Cost Implications: While the total population of HPSP participants is normally near 4,000 participants at any given time, the services normally access approximately 800 to the program per year. It would only be new accessions that would be eligible for this bonus. The military departments would be required to assess the benefits and budget within their programs if they choose to implement this bonus at any level up to the maximum. This section would provide the Secretary concerned discretionary authority that would be limited by the availability of annual appropriations. No additional funding is required for FY 2007.

Subtitle C—Retired Pay and Survivor Benefits

Section 621. In order neither to penalize either the spouse or former spouse, nor cause the individual to petition for waiver, this section would direct the Director of the Office of Management and Budget or the Secretary concerned, as the case may be, to waive any claim for overpayment against a spouse or former spouse if the claim is attributable to a determination of entitlement to disability compensation.

The Department of Veteran Affairs (VA) makes disability determinations that often are retroactive in effect. When a former Service member receives a retroactive disability determination, he must waive retired pay in order to receive VA disability compensation. Since

the determination is retroactive, disposable retired pay must be computed from the effective date of the disability, and an adjustment made to the amount of the former spouse's previous payments. Because this waiver reduces the amount available to pay the former spouse from retired pay, the retroactive characterization usually causes the former spouse to be deemed to have been overpaid. The Defense Finance and Accounting Service (DFAS) credits the former member for the total amount of the overpayments to the former spouse and then establishes a debt against the former spouse's future Uniformed Services Former Spouses' Protection Act (USFSPA) payments to recover the debt.

The debt notice letter that DFAS sends to the former spouse informs the individual that he or she may request a waiver of the debt under section 2774 of title 10, United States Code. DFAS may waive collection from the former spouse "when collection of the erroneous payment would be against equity and good conscience, and not in the best interest of the United States." Because these payments were correctly computed based on information available at the time, such payments are not viewed as "erroneous," and DFAS routinely grants waivers.

Cost Implications: This section is cost neutral.

Section 622. Under current law, if a Service member who is required to make a Survivor Benefit Plan (SBP) election fails or refuses to do so, the Service member is "deemed" to have made the election if the Defense Finance and Accounting Service receives both a written request from the former spouse and a copy of the court order within one year after the divorce. If, however, the former spouse is not aware that the Service member failed to comply with the court order and does not make a deemed election within the one-year period, the former spouse is precluded from receiving SBP benefits. This section would extend the deemed election period from one year to five years after the date of the divorce. This amendment would allow the former spouse significant additional time to file, but would continue to prevent elections after more than five years from the date of the divorce. Elections made more than five years after the date of the divorce would be difficult to manage and enforce.

Under this section, the Government would not incur any additional cost, other than administrative expenses. Former Service members and their former spouses would pay any additional insurance costs.

Cost Implications: This section is cost neutral.

Section 623 would allow either Service members or former spouses to submit an application for direct payment of benefits. Former spouses occasionally refuse to submit the application. As a consequence, the Service member will have income tax withheld on the full amount of the Service member's retired pay and must then make the payments provided in the divorce decree to the former spouse. Allowing the Service member to submit the application would equalize the parties' position in this matter. In addition, this section would allow collection of overpayments from the former spouse or his or her estate. The former spouse shall be deemed to have agreed to provide prompt notice to the Secretary if the operative court order upon which payment is based is vacated, modified, or set aside.

Cost Implications: This section is cost neutral.

Section 624 would amend section 1408 of title 10, United States Code, to base all awards of military retired pay on the Service member's rank and time served at the time of the divorce. It would be exclusively prospective.

In cases where the Service member is not retired at the time of divorce, courts often award a percentage of the Service member's retired pay to the former spouse as of the date the Service member actually retires. In essence, the court treats post-divorce promotions and longevity pay increases earned by the Service member as marital assets. This treatment of military retired pay is inconsistent with the treatment of other marital assets in divorce proceedings. For such assets, only those that exist at the time of divorce or separation are subject to division. Assets that are earned after a divorce are the sole property of the party who earned them.

Pay increases attributable to promotions and additional time served should be the Service member's separate property. However, as a matter of equity, the former spouse should benefit from Cost of Living Allowances (COLA) and other across-the-board pay increases approved by Congress. For example, as the pay for an O-4 (Major/Lieutenant Commander) with 14 years of service is increased due to COLA and targeted pay increases, so too is the dollar amount of the allocation to the former spouse. The objective in this regard should be to provide the former spouse, on a present value basis, with approximately the same amount of retired pay that he or she would have received had the payments begun immediately on divorce.

Cost Implications: This section is cost neutral.

Section 625 would authorize the Defense Finance and Accounting Service to apply Cost of Living Allowances (COLA) to dollar-specific awards under the Uniformed Services Former Spouses' Protection Act (USFSPA).

No provision of the USFSPA permits COLA for dollar amount awards. As a consequence, virtually all USFSPA awards are expressed as a percentage of retired pay. This rule limits the flexibility of the parties and the courts in negotiating property settlement agreements and causes practitioners and the courts difficulty in their efforts to draft orders. No compelling reason exists for the current statutory limitation on dollar-specific awards.

Cost Implications: This section is cost neutral.

Section 626 would require the payment of Survivor Benefit Plan (SBP) payments and allocations of retired pay with a present value of less than $5,000 to a former spouse in a single lump sum.

Requiring direct payment of all allocations of retired pay increases the Defense Finance and Accounting Service (DFAS) workload by creating many small monthly payments to former

spouses. It is economically inefficient for DFAS to process small monthly payments. DFAS believes that the small benefits should be automatically cashed out, without any form of election, in a single lump sum. This approach would simplify administration of the Uniform Services Former Spouses' Protection Act (USFSPA) for all parties, result in savings to the Department of Defense (DoD), and be more convenient to former spouses.

For purposes of determining small benefits, the Internal Revenue Code provides that the accrued benefit of a participant will be considered small if the present value thereof, as determined in accordance with section 417(3)(3) of the Code, is $5,000 or less. It would also be appropriate, under certain circumstances, to extend the cash-out approach, as an optional form of payment, to SBP payments as well as allocations of retired pay in excess of $5,000. To do so, the DoD would need authority to promulgate regulations which specify the circumstances under which a former spouse can elect to receive SBP payments and allocations of retired pay with a present value in excess of $5,000 in a single lump sum.

Specifically, this section would amend title 10, United States Code, to include a "small benefit cash-out" provision that is similar to the rule contained in section 411(a)(11)(A) of the Internal Revenue Code. The provision would include a grant of authority to the DoD to determine which actuarial assumptions to use in calculating present value. The provision would apply to both allocations of retired pay and SBP payments and would be non-elective.

In addition, this section would amend the Internal Revenue Code to include these payments in the category of "eligible rollover distribution" so they can be rolled over, on a tax-deferred basis, to an Individual Retirement Account. Furthermore, this section would amend the USFSPA to authorize the DoD to promulgate regulations which specify the circumstances under which former spouses can elect to receive SBP payments and allocations of retired pay with a present value of more than $5,000, calculated in the same manner as "small benefits," in a single lump sum.

Cost Implications: This section is cost neutral.

Section 627 would prohibit State courts from requiring immediate payment of retirement benefits from a property settlement in a divorce action when the affected Service member, though eligible, has not yet retired.

Existing law prevents courts from forcing Service members to retire, but does not address when a distribution from retired pay could or should begin. Some States have mandated immediate payment of the value of a Service member's pension pursuant to a divorce action even though the member remains on active duty and does not draw retirement pay. California courts, for example, require a Service member who remains on active duty past retirement eligibility to pay the former spouse his future pension out of current income. *See, e.g., Gillmore v. Gillmore*, 29 Cal. 3d 418; 629 P.2d 1 (1981). In that case, the Court reasoned that the employee-spouse, by postponing retirement, effectively deprived the non-employee spouse of her immediate enjoyment of an asset earned by the two of them during the marriage. Such holdings have become the norm in both community property and equitable distribution States. As a result, a

retirement-eligible Service member who otherwise would remain on active duty may have no choice but to retire, and take a new job, in order to comply with the financial liabilities imposed by such courts. Forced retirement under such circumstances is unjust, unwarranted, and harmful to the security of the United States. As the Department of Defense (DoD) noted in its September 1999 report to the Committees on Armed Services of the Senate and the House of Representatives, "[to] provide for our national defense, the Armed Forces must be allowed to control when a member is permitted to retire." In that report, DoD specifically recommended for the first time, amending section 1408 of title 10, United States Code, to explicitly prohibit a court from requiring a member to begin payments of retirement benefits to a former spouse before the member actually retires.

Courts that require Service members who remain on active duty past retirement eligibility to pay their former spouses future, unreceived pensions out of current income ignore the fact that retirement-eligible members, unlike employee-spouses in the private sector, do not have sole control over the date of their retirement, but instead may be called upon to serve on active duty as long as it is in the best interest of the national defense. This section would require Service members to pay a portion of their pensions only after they receive the pensions.

Cost Implications: This section is cost neutral.

Section 628 would revoke the requirement that a former spouse, who is eligible for direct payment through the Defense Finance and Accounting Service (DFAS) of an allocable share of retired pay, be married to the member for ten or more years during which the member completed ten or more years of creditable service. No other examined public or private retirement system or plan contains such a restriction. Revocation should prevent the courts, practitioners, and parties to divorce proceedings from mistakenly interpreting this rule as a prerequisite to allocation of retired pay. Finally, revoking this requirement would allow DFAS to issue separate Federal income tax reporting documents to the parties for their respective shares of the allocations.

Cost Implications: This section is cost neutral.

Section 629 would authorize the designation of multiple Survivor Benefit Plan (SBP) beneficiaries. It also would authorize the courts (or the parties) to establish and designate responsibility for payment of premiums related to SBP coverage (current law requires them to be deducted from disposable retired pay).

Current Survivor Benefit Plan laws provide that a member can designate only one SBP beneficiary. The limit on SBP beneficiaries inappropriately deprives the surviving current spouse of an interest in the SBP and overcompensates the surviving former spouse. As a result, SBP annuity payments should be divisible or assignable among multiple beneficiaries.

Under this section, the Government would not incur any additional cost, other than administrative expenses, as a result of implementing these recommendations. Former members and their former spouses would pay any additional insurance costs.

Cost Implications: This section is cost neutral.

Section 630 would amend the provisions of the law which relate to the Survivor Benefit Plan (SBP), to permit the courts (or the parties) to establish and designate responsibility for payment of premiums related to SBP coverage. At present, the law requires premiums to be deducted from the member's retired pay.

Cost Implications: This section is cost neutral.

Section 631 would establish a presumption that, unless otherwise agreed to by the parties or ordered by a court, multiple beneficiary designations and related allocations of Survivor Benefit Plan (SBP) benefits must be proportionate to the allocation of retired pay. This presumption applies in any case of former spouse coverage, even if the former spouse is the sole beneficiary.

Under current law, a Service member may designate only one SBP beneficiary. This limit on SBP beneficiaries inappropriately deprives the surviving current spouse of an interest in the SBP and overcompensates the surviving former spouse.

Under this section, the Government would not incur any additional cost, other than administrative expenses, as a result of implementing these recommendations. Former Service members and their former spouses would pay any additional insurance costs.

Cost Implications: This section is cost neutral.

Subtitle D—Commissary and Nonappropriated Fund Instrumentality Benefits

Section 641 would provide temporary authority to allow certain members of Armed Forces, including members of the Selected Reserve, to continue to have access to commissaries and exchanges for a two-year period following their involuntary separation from active duty or the Selected Reserve. The continuation of these privileges for Selected Reserve members is contingent on the member's involuntary separation resulting from force-shaping action directed by the Secretary of the military department, such as Base Realignment and Closure or other force draw-down and shaping requirements.

A similar extension of benefits was provided during the drawdown period in the 1990s, extending to December 31, 2001, for members involuntarily separated from active duty in order to ease the transition caused by reductions in force. It was a technical oversight that this specific provision was not renewed when 10 U.S.C. 1175a (Voluntary separation pay and benefits) was added by the National Defense Authorization Act for Fiscal Year 2006.

This section would apply the same extension, December 31, 2012, that currently applies to section 1175a.

Cost Implications: This section would generate no additional costs.

Subtitle E—Other Matters

Section 651 would ensure continuous entitlement to career sea pay for members who are assigned to a crew for a multi-crewed class of vessels.

As the Sea Services (Navy and Coast Guard) continue to transform the way they perform their core missions, ship classes will soon enter the fleets that are specifically designed to remain at sea for long periods while crews "rotate" to and from the vessel, between these vessels, or to shore. This is the crewing concept behind the Navy's Littoral Combat Ship (LCS), as well as the Coast Guard's National Security Cutter and Offshore Patrol Cutter. The concept of multi-crewing larger afloat assets in order to achieve higher operational tempo (OPTEMPO) of the vessel, while maintaining a reasonable personnel tempo (PERSTEMPO) for crewmembers, requires crews to be treated as separate units from the ships and to spend short periods ashore while they are in the "off-cycle" of the crew rotation. These rotational crewmembers will continue to maintain the same normal OPTEMPO/PERSTEMPO as do personnel assigned to ships in the traditional manner (*i.e.*, assigned to a single vessel), but their PERSTEMPO will be achieved by rotating from one "hull" to another within a specified ship class, interspersed with periods of time ashore. For example, the PERSTEMPO of service members in the Coast Guard assigned to sea duty will remain at 185 days a year away from home port, but the OPTEMPO of the new classes of cutter will be 230 days a year out of home port.

Multi-crews are not an entirely new concept: gold and blue crews for submarines have existed for many years. The multi-crew concept described in this section, however, goes further than a two-crewed submarine in that there will be more than two crews and, even though the individual crewmembers will be assigned to sea duty, the crew will not necessarily be associated with a specific hull. As a result, the definition of sea duty contained in the career sea pay statute (37 U.S.C. 305a) must be amended to accommodate this change to the concept of a ship's crew.

To operate the United States' multi-crewed, optimally-manned assets at maximum operational effectiveness requires fully-trained and -qualified personnel who are on board and ready to go whenever deployed. Failing to adequately compensate our personnel would result in attrition, absenteeism, and an unmotivated crew. This, in turn, would decrease the operational readiness and effectiveness of our key assets. Amending the definition of sea duty would ensure that the Sea Services retain their ability to recruit individuals to go to sea, stay at sea, and return to sea.

Cost Implications: Navy does not anticipate that this section would increase programmed costs for career sea pay. Instead, this section would ensure that members assigned to sea duty remain eligible for career sea pay. While vessels such as LCS will be multi-crewed, the overall sea pay population should not increase since the number of personnel needed to man a LCS crew is much less than such traditional ship classes as Destroyer Guided Missiles. In addition, as the LCS class of ship enters the fleet, Navy will decommission older, more manpower-intensive legacy

platforms (*e.g.*, LHA-1 class, LPD 12/14, AGF-11, and four Mine Hunter Coastal Crews, in just the next year), which will offset any increased costs in career sea pay from the enactment of this section. Navy anticipates a net savings of 2,674 end strength associated with the increases and decreases associated with the planned decommissionings, new construction, and pre-commissionings. Furthermore, for Fiscal Year 2008 Navy is programming for 27 LCS Hulls with 36 crews and 36 mission-specific modules, which translates to 2,012 end strength. Even allowing for the more senior-level of crewing, the number of individuals receiving career sea pay for the LCS class of ship is equivalent to 28 percent of the number who would receive it if Navy were to field an additional 27 DDGs, or 7,290 end strength. Given the concurrent removal of larger, more manpower-intensive legacy platforms, Navy expects that their career sea pay budget will remain stable, if not decline, if multi-crew ships are included in the career sea pay program.

Section 652 would authorize the establishment of an Army fund in which current appropriations could be deposited and invested to pay future bonuses and incentives to Soldiers and former Soldiers who agreed to serve periods of obligated service. The Army would deposit into the fund at the time a Soldier enters into an agreement to serve an amount that would be sufficient, after investment, to pay the bonus or incentive when it is payable under the agreement, thus linking the annual recruiting and retention budget directly to the annual recruiting and retention mission. The fund could be used only for a bonus or incentive that is specifically authorized by law to be paid from the fund. The fund could be used for incentive programs that would provide payments in the future to purchase a residence or start a business after a period of obligated service. The fund is similar to the Department of Defense Education Benefits Fund under section 2006 of title 10, United States Code.

The fund would provide the Army with a more accurate method to determine the true annual costs to recruit and retain the force. The current method of using annual appropriations to pay bonuses and incentives based on past agreements results in annual costs based on estimates. The Veterans Education Assistance Program (VEAP) illustrates this management challenge. Although cancelled in July 1985, the Army must continue to budget, for another 10 to 15 years, for possible withdrawals by Soldiers and veterans for their VEAP benefits. By eliminating these costs in the annual budget, the Army can clearly identify today's annual costs for manning the force.

Section 653 would expand the education loan repayment program for the Selected Reserve and include additional types of loans incurred for educational purposes by members of the Selected Reserve that would be eligible for loan repayment by the Department of Defense.

The section would also make both officer and enlisted personnel of the Selected Reserve eligible for education loan repayment. Currently, only an enlisted member of the Selected Reserve "in a reserve component and military specialty specified by the Secretary of Defense" is eligible for education loan repayment. As amended, section 16301 would authorize education loan repayment for a member of the Selected Reserve "in a reserve component and officer program or military specialty specified by the Secretary of Defense." These amendments are similar to recent amendments (in section 537 of the National Defense Authorization Act for Fiscal Year 2006) to section 2171 of title 10, United States Code, concerning the educational

loan repayment program for service performed on active duty.

Section 654 would amend the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301 et. seq.) to exclude full-time National Guard duty (FTNGD) from the five-year limit on service after which the member is no longer entitled to the reemployment rights and benefits and other employment benefits of USERRA. Currently, certain types of active duty service are exempted from the five-year reemployment limit under USERRA. These exemptions cover service during a time of war or national emergency, support of missions where others have been ordered to duty under an involuntary call-up authority, and for other critical missions or requirements. After the events of September 11, 2001, 38 U.S.C. 4312(c)(4)(B) was used to exempt voluntary active duty in support of Operation Noble Eagle and Operation Enduring Freedom. However, full-time National Guard duty performed under 32 U.S.C. 502(f) is not covered under those exemptions.

As part of the new operational reserve construct, National Guard personnel will be used in ever-increasing numbers to support certain operational requirements while serving in a title 32, full-time National Guard duty status (as defined in 10 U.S.C. 101(d)(5)). Indeed, section 512 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) added a new chapter 9 to title 32 to authorize this type of service. Examples of the employment of the National Guard in a title 32 status when such an exemption may be appropriate are airport security following the terrorist attacks of September 11 and the recent southwest border security mission.

Since the exemption authority granted by USERRA does not explicitly include the full-time National Guard duty status, adding the language proposed by this section to the statute would allow exemption of title 32 FTNGD when the Secretary of Defense determines it is appropriate.

Cost Implications: There are no costs associated with this section.

Section 655. The Uniformed Services Former Spouses' Protection Act requires, in part, that a Service member be given notice of an application for payment of retired pay and a copy of the order. Implementing regulations require that the Service member be given 30 days to respond to the application. Service members, however, occasionally request that payments start immediately. This section would allow the Service member to waive the notice requirement.

In addition, this section would revoke the statutory requirement that a copy of the court order be sent to the Service member. The Defense Finance and Accounting Service plans to notify Service members that, upon request, it will send a copy of the order. A similar arrangement exists concerning copies of child support orders.

Cost Implications: This section is cost neutral.

Section 656 would provide that a former spouse may be eligible to receive payments under the Uniformed Services Former Spouses' Protection Act (USFSPA) if the Service member,

except for confinement periods served prior to convening authority action, would have been eligible to retire at the time he loses retirement eligibility because of the abuse. The section would be effective retroactively to October 23, 1992, the date the underlying statute was enacted.

The USFSPA requires that, for a former spouse to be eligible for benefits as a victim of abuse by a Service member, the Service member must be eligible to retire at the time the Service member loses eligibility to receive retired pay as a result of the abuse. In addition, the Act provides that the date that the convening authority approves a court-martial sentence may be used as the date on which the Service member's eligibility to receive retired pay terminates. Decisions regarding pretrial confinement and confinement between the trial and the convening authority's action are made independently of their effect on a former spouse's eligibility for benefits under the Act. In a few cases, former abused spouses have lost the opportunity to receive an allocation of retired pay simply because the Service members were confined prior to convening authority action on their cases. The Service members would have been eligible to retire on the date the convening authority approved their sentences; however, they lost their eligibility for retired pay because they were confined prior to and/or after the trial and such confinement was not creditable service. To remove disincentives to reporting and subsequently cooperating with prosecution Authorities in abuse cases is consistent with the overall purpose of the Act. While a decision to confine a Service member during these periods may serve to protect abused spouses and dependent children, in a few cases the confinement action may have the effect of depriving them of benefits under the Act.

Cost Implications: This section is cost neutral.

Section 657 would eliminate the jurisdictional requirement in the Uniformed Services Former Spouses' Protection Act that must be satisfied for a State court to exercise jurisdiction over the allocation of retired pay.

At the time when Congress enacted the Act, many States provided that retirement or pension benefits were not marital property. Such benefits were considered to be the separate property of the person earning them and were, therefore, not subject to division during a divorce. The reason for this requirement no longer exists because all States now provide that retirement benefits are marital property that is subject to division. Moreover, the purpose of the requirement was to ensure due process for the member and to prevent "forum shopping" by the former spouse. Since all States now provide for the division of military retired pay, the issue of "forum shopping" is no longer a significant concern.

In addition, this requirement, which applies only to a division of military retired pay as property, creates a special jurisdictional provision that does not exist for similarly situated non-military couples in divorces. Moreover, ambiguities in the Act's jurisdiction requirement provisions have complicated the intent and interpretation of the law. Taken together, elimination of this requirement would simplify administration of the Act.

Cost Implications: This section is cost neutral.

Section 658. Subsection (a) would add a new subsection (e) to section 319 of the Immigration and Nationality Act (INA) providing naturalization eligibility to accompanying lawful permanent resident (LPR) spouses and children of Armed Forces members stationed abroad by treating their period of residence abroad as residence within the United States for purposes of meeting otherwise applicable naturalization requirements for physical presence or residence in the United States, and for the purpose of readmission as LPRs without having abandoned status through long absence from the United States.

This section does not eliminate the longstanding requirement that the alien be admitted as an LPR, either before having departed the United States pursuant to the service member's orders, or based upon subsequent admission to the United States with an immigrant visa. A major reason for this requirement is the difficulty posed by subsequently born or adopted children. Under section 320 of the INA, a child born outside the United States automatically becomes a citizen if one parent naturalizes (or is already a citizen), and the child is residing in the United States in the custody of that parent pursuant to a lawful admission for permanent residence. Children born abroad during the foreign deployment thus would not be able to take advantage of this provision until they are admitted to the United States as LPRs. While at first impression this may seem unfair, and that the provision should either generally or specifically waive the LPR requirement so that residence abroad is counted as residence in the United States for section 320 purposes, adopted children pose a problem in this respect. Immigration law should treat adopted children equitably with birth children, but if children adopted abroad by military families may become citizens abroad without any required admission as an LPR, then the necessary protections of the immigration process relating to foreign adoptions would be entirely circumvented. Thus, this section does not treat foreign residence as equivalent to U.S. residence for section 320 purposes for either birth or adopted children. Note that while section 320 automatic citizenship would not be available without admission as an LPR, section 322 naturalization of birth or adopted children would be without the need for temporary admission into the United States; in these cases, it is the naturalization adjudication that would provide the necessary protection, as opposed to section 320 automatic citizenship.

Subsection (b) is a conforming amendment to the statute providing for overseas military naturalization, in order to make overseas naturalization available to eligible spouses and children under the new section 319(e) of the INA, as well as the service members themselves.

Subsection (c) applies the amendments to applications for admission or naturalization pending before the Secretary of Homeland Security.

TITLE VII—HEALTH CARE PROVISIONS

TRICARE Program Improvements

Section 701 would authorize the Secretary of Defense to index TRICARE Standard cost sharing requirements for retired members and their dependents in order to reflect increases in health care costs since TRICARE Program cost sharing requirements and amounts were adopted in 1995. Although TRICARE Program cost sharing requirements and amounts have not been

adjusted for more than ten years, virtually all other health care programs in the Nation have experienced cost increases shared by program sponsors and beneficiaries.

Before promulgating the regulations, the Secretary of Defense would first consider the recommendations of the Task Force on the Future of Military Health Care regarding beneficiary and government cost sharing, as required by the John Warner National Defense Authorization Act for Fiscal Year 2007. The regulations would become effective not later than 90 days after the date of enactment of this Act. The Secretary also would submit a copy of the regulations and a report describing their rationale to the Senate and House Armed Services Committees at least 30 days before the regulations become effective.

Section 702 would exclude, as a covered health care service under TRICARE (including both military hospital care and other care), services arising from a surrogate pregnancy.

Under current law, maternity benefits are available to female health care beneficiaries, including active duty members and wives of male current or former members, without distinction between pregnancies for the benefit of the military family and surrogate pregnancies, usually for a fee, for the benefit of others. The military health care benefit is designed to be an important part of the commitment of the Armed Forces to members and their families. It is not, however, intended to support surrogate pregnancies, typically an income-producing enterprise.

Based on the health care entitlement of current law, the Department of Defense does not have data on the volume of maternity care now being provided or paid for arising from surrogate pregnancies, but is aware of a number of such cases. This section would clarify that the very generous TRICARE benefit for maternity care does not extend to surrogate pregnancies.

Cost Implications: There are no cost implications that would result from this section.

Section 703 would modify section 1073 of title 10, United States Code. This section would authorize the Director, TRICARE Management Activity, to suspend the eligibility of persons who commit fraud against the TRICARE program.

This section would authorize the Secretary to suspend eligibility for health care benefits of a covered beneficiary for up to five years. Currently, the only sanctions available to the Department of Defense are recovery of erroneous payments and medical claims verification. Suspension of eligibility for health care benefits would not apply to active duty members of the Uniformed Services. Suspension of eligibility would not affect the eligibility of other family members.

Cost Implications: There is no cost to the Department involved in enacting this section.

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

Subtitle A—Acquisition Policy and Management

Section 801. The National Defense Authorization Act for Fiscal Year 2004 established the authority (10 U.S.C. 167a) for the Secretary of Defense to authorize the commander of the unified combatant command with the mission for joint warfighting experimentation to develop and acquire certain defined equipment. This authority is scheduled to expire on September 30, 2008. This amendment would clarify the authority granted in that section to include the ability to expend operation and maintenance funds for the sustainment of equipment after its acquisition. Furthermore, this amendment would delete the provision which terminates the Secretary's authority granted under the statute on September 30, 2008. Such deletion would allow the authority to be a continuing authority of the Secretary.

In application, as authorized by 10 U.S.C. 167a, the Secretary of Defense authorized the Commander, U.S. Joint Forces Command (USJFCOM), to develop and acquire equipment supportive of the joint warfighter. Limited Acquisition Authority (LAA) allows USJFCOM (in its UCP 06 Joint Force Integrator role) to rapidly deliver critical operational capabilities to the joint warfighter by moving forward through the Department of Defense procurement and fielding processes to quickly meet critical battle management command and control, intelligence, communications or interoperability needs, as articulated by the joint warfighter. Specifically, USJFCOM has used the authority to identify critical needs for the support of forces in operations Enduring Freedom and Iraqi Freedom. To support the need to deliver supplies and equipment with precise accuracy in the remote areas of Afghanistan and Iraq, LAA was used to develop and acquire the Joint Precision Airdrop System. To aid in the defense against improvised explosive devices (IED), LAA was used to develop and acquire the Change Detection Workstation, which is used to identify area changes over time which might indicate IED activity. LAA is also being used to develop the Speech-to-Speech capability which will be used by the soldier on the ground to communicate in the language of the local population. The ability to identify and quickly respond to the warfighter's immediate needs has been invaluable in support of the Global War on Terror; to remain responsive to the warfighter's needs, the authority should be made permanent.

This amendment would allow the commander with the joint warfighting experimentation mission to provide for sustainment, which will allow for the adequate sustainment of equipment after development and acquisition until such time as the equipment becomes a program of record with full support from an appropriate executive agency.

Section 802 would authorize the head of the contracting activity in Iraq or Afghanistan, that is the Joint Contracting Command Iraq/Afghanistan (JCC I/A), to authorize the use of funds appropriated or otherwise made available to the Department of Defense for the procurement of any article or item covered by 10 U.S.C. 2533a(b)(1)(B) through (E), but without application of the requirement of that law for such articles or items to be of U.S. origin. However, the use of such authority is narrowly limited: (i) such procurement must be conducted in Iraq or Afghanistan in support of contingency operations; (ii) such article or item procured must be grown, reprocessed, reused, or produced in Iraq or Afghanistan; (iii) such article or item procured is to be used only by the military forces, police, or other security personnel of the nation of Iraq or Afghanistan; and (iv) offers are requested from as many potential sources as is practicable under the circumstances.

The articles or items covered by 10 U.S.C. 2533a(b)(1)(B) through (E), are: clothing and the materials and components thereof normally associated with clothing (and the materials and components thereof); tents; tarpaulins; covers; 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 any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

This narrowly defined provision would provide needed flexibility to support Iraqi and Afghani security forces. It responds to a request from the Commander of U.S. forces in Iraq to enhance the ability of the contracting effort to respond to the needs of the Combatant Commander in those contingency operation environments. This section would provide near term and long term payoffs in developing Iraq's and Afghanistan's economic capabilities on their journey to prosperity and self reliance. The proposed authority would provide increased opportunities for economic development and expansion, entrepreneurship, and skills training for the people of Iraq and Afghanistan. This section would directly support our campaign plan objectives leading to a moderate, stable, and representative Iraq and Afghanistan capable of controlling and governing their respective territories. Local contracting that would result under the proposed authority will help cultivate indigenous capabilities and capacities that can be used in the future by Iraqi and Afghani government officials. This section represents a meaningful, credible counterinsurgency initiative that would provide important tools to focus local acquisitions where they can best support our campaign plan.

Section 803. Subsection (e) of section 4202 of the Clinger Cohen Act states that the authority established by section 4202 to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures shall expire on January 1, 2008. Section 4202 established this authority for an initial period of three years. Since that time, Congress has extended the authority five times, most recently until January 1, 2008.

In 2003, Congress directed the Government Accountability Office (GAO) to report on the extent, benefit, and impact of the simplified acquisition test program. Regrettably, GAO was unable to determine the actual effectiveness of the program because the Federal Procurement Data System and the Defense Contract Action Data System databases contain unreliable test program data. The GAO report did state that most procurement officials from the selected buying organizations with whom they spoke said they would like the authority available under the test program to be made permanent and that there are benefits associated with buying commercial items using simplified procedures. The GAO report concluded that anecdotal evidence was not sufficient to determine whether to make the test program permanent and recommended further evaluations. The Department of Defense stated that it would develop a methodology to evaluate the benefits of the test program and the Department reported its findings to the GAO on September 15, 2005. The data collected by the Military Departments and the Defense Logistics Agency did not indicate that the use of Federal Acquisition Regulation

(FAR) Subpart 13.5 is having a detrimental effect on competition. None of the systems used track lead-times, but manually collected data indicated savings in the range of six to 38 days per action, though this can be influenced by unrelated factors.

The test program continues to receive favorable reviews, and Department buying activities want to retain this authority. The primary benefit of FAR 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.

Section 804 would allow the Department to guarantee higher minimum levels of business than are currently authorized by law to United States air carriers participating in the Civil Reserve Air Fleet. The Civil Reserve Air Fleet is made up of commercial civilian air carriers who volunteer on a yearly basis to make their aircraft available to the United States Armed Forces as part of the program in return for the Department of Defense's peacetime airlift business. No extra incentives or premiums are paid to the air carriers and no laws exist to compel their assistance or nationalization. Awarding sufficient guaranteed amounts of the Department's peacetime business has been an effective incentive to convince air carriers to commit airplanes to the Civil Reserve Air Fleet program.

Annually, the Department awards all of its known airlift requirements to the participating United States air carriers in proportion to the number of airplanes they commit to the program. This guaranteed amount of business is used by the air carriers to obtain financing for operations, improvements, and expansion of their fleet. As additional airlift requirements are identified throughout the year, these too are awarded under this contract to the carriers in proportion to their commitment to the program. This additional business, however, cannot be used to obtain financing because of its unpredictability.

Over the past 10 years the known requirements during peacetime have been approximately $320 million annually and the additional business is approximately $300 million more annually. However, with fewer military personnel being based overseas, the predictable part of the Department's airlift requirements is decreasing. Although overall requirements will not likely decrease, the Department believes that the amount that can be guaranteed at contract award under current law will soon fall below a level that will induce the air carriers to commit enough aircraft to meet Civil Reserve Air Fleet requirements.

This section would authorize the Department of Defense to guarantee a minimum level of peacetime business for the Civil Reserve Air Fleet participants sufficient to induce the air carriers to commit a sufficient number of aircraft to the program to meet the Department's contingency transportation requirements. The guarantee, however, would not be based on known requirements at time of award. The minimum guarantee of business would be based on the Department's forecast needs for the next year, but capped at a maximum of eighty percent of the historical levels of peacetime airlift expenditures. Although highly unlikely, any minimum business guarantee not met by the end of the contract period would result in a payment to the

carriers of the remainder of that guarantee. The risk of having to pay the air carriers at the end of the year, in effect a subsidy, remains extremely low. That, however, is a small risk compared to the acquisition costs of other alternatives if the Department is unable to meet its wartime airlift requirements due to a lack of air carrier participation.

Cost Implications: As the section utilizes transportation funds already appropriated annually to the military departments, there would be no impact on the budget. However, appropriated amounts would be committed sooner in the fiscal year than is currently the case. Because the maximum guarantee can be no more than eighty percent of peacetime business averages, no subsidy would be paid unless the Department's needs for commercial airlift were to fall drastically within a one-year period for unforeseeable reasons.

Section 805 would make federal court jurisdiction over Contract Disputes Act of 1978 (41 U.S.C. 601 et. seq.) ("CDA") claims, disputes and appeals the same, whether or not they arise out of a maritime contract.

Contract claims and appeals arising out of a maritime contract are currently subject to the jurisdiction of the U.S. District Courts under the Suits in Admiralty Act of March 9, 1920 (46 U.S.C. 741-752), as amended ("SAA"), or the Public Vessels Act (46 U.S.C. 781-790) ("PVA"), as applicable. The CDA specifically provides under Section 603 that "[A]ppeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 [SAA] or chapter 22 [PVA] as applicable, to the extent that those chapters are not inconsistent with this chapter." In addition, the SAA and PVA have been interpreted to confer *in personam* federal admiralty jurisdiction over maritime contract claims against the United States (including claims involving public vessels), effecting a waiver of sovereign immunity, without requiring the plaintiff to exhaust administrative remedies under the CDA. The SAA and PVA thereby create a separate jurisdictional basis upon which to make a claim against the government or appeal an administrative determination under a maritime contract. All other CDA contract claims, excluding the Tennessee Valley Authority, are under the federal court jurisdiction of the Court of Appeals for the Federal Circuit (41 U.S.C. 607(b)) or the U.S. Court of Federal Claims (41 U.S.C. 609(a)(1)).

Prior to passage of the SAA in 1920, all contractual claims, including contract claims in admiralty, against the United States were brought pursuant to the Tucker Act (28 U.S.C. 1346, 1491) (1911) under which the Court of Claims had jurisdiction. The passage of the SAA, which vested exclusive jurisdiction in the District Courts where a suit against the government is maritime in nature, repealed the Tucker Act and the jurisdiction of the Court of Claims insofar as a claim related to a maritime contract. *See Matson Navigation Co. v. United States*, 284 U.S. 352 (1932); *Amell v. United States*, 384 U.S. 158 (1966). When Congress subsequently passed the CDA, they considered applying the CDA to appeals of administrative determinations of claims arising out of maritime contracts. S.Rep. No. 1118 at 18, 95th Cong., 2nd Sess. (1978). At that time, Congress stated that since the District Courts were vested with exclusive admiralty jurisdiction, the courts had developed an expertise in admiralty matters "resulting in a common body of procedural and substantive law, applicable to private litigants and the United States alike." *Id.* Congress also opined that admiralty matters sounding in contract involve unique

maritime issues and procedural questions to warrant continued District Court jurisdiction. *Id.*

However, since passage of the CDA, experience has demonstrated that CDA disputes and appeals arising out of maritime contracts, in almost all cases, involve only issues related to government procurement law and regulation and do not require the application of the unique expertise for which the District Courts are recognized in maritime matters. Federal government contract law has developed as a separate specialty practice in its own right, and federal court expertise in this area now resides in the Court of Federal Claims (formerly the Court of Claims or U.S. Claims Court) and the Court of Appeals for the Federal Circuit rather than in U.S. District Courts. The ability to invoke admiralty jurisdiction in CDA cases because it involves a maritime contract provides claimants with the ability to forum shop among the District Courts, with disparate procedural and substantive law, when uniformity in federal procurement law should be the desired objective.

For these reasons, this section would eliminate separate U.S. District Court jurisdiction over claims, disputes and appeals arising out of federal government maritime contracts.

Cost Implications: If enacted, this section would not increase the budgetary requirements of the Department of Defense or any other governmental agency.

Section 806. The National Defense Stockpile anticipates that under current market conditions, it will exceed its current authority before the end of Fiscal Year 2007 and Fiscal Year 2009 for various commodities. Without these additional authorizations, the Department of Defense will be required to cease sales in these areas, ending generation of revenue. Moreover, if customers cannot rely on the Department of Defense to be a stable supplier of materials, they will go elsewhere, thereby jeopardizing future revenue goals. Uncertainty in whether or not the Department will be able to remain in the market also will lead to market disruption and instability.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Section 811. Section 1412 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), amended section 37 of the Office of Federal Procurement Policy Act to create an acquisition workforce training fund based on five per cent of the fees collected by executive agencies under certain specified interagency contracts for five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004 (November 24, 2003). Repealing the sunset provision would provide the acquisition workforce with vital training and development resources to improve the collective competency of the current and future acquisition workforce. These resources are critical to ensuring that civilian and defense agencies are able to train, develop, and keep current their acquisition professionals.

Section 812. In the early 1990's, the Department of Defense recognized a need for its laboratory industrial base to remain up-to-date. Specifically, the labs often needed to adapt facilities quickly to meet emergent requirements. The speed at which change is required often

exceeds the ability of the current military construction program to provide required facilities. In 1996 Congress authorized the Department of Defense (DoD) Laboratory Revitalization Demonstration Program with an aim to increasing the flexibility of Defense laboratories to modernize antiquated facilities. Section 2892 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), as later amended by section 2871 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261), provided limits for operation and maintenance funded minor military construction higher than allowed under 10 U.S.C. 2805 to specifically allow DoD laboratories more flexibility to provide required facilities. This flexibility has proven invaluable in allowing the laboratories to meet emergent requirements to support transformational initiatives. Additionally, some construction carried out under this authority may contribute to the modernization component of recapitalization. Therefore, this section also may help the laboratories improve their recapitalization rates which are currently estimated at well over 100 years, two-to-four times longer than the target rate for research and development facilities.

This section would add a new subsection to 10 U.S.C. 2805 addressing laboratory revitalization and recapitalization. The new subsection would apply limits and definitions derived from those in the temporary authority of the DoD Laboratory Revitalization Demonstration Program. The utilization of that authority, as documented in the required reports, clearly demonstrated to Congress the value of allowing DoD laboratories this additional flexibility in the funding of required facilities.

This section also would, as a stylistic measure, insert subsection headings into 10 U.S.C. 2805.

Section 813. Section 845(i) of the National Defense Authorization Act for Fiscal Year (FY) 1994 states that the "authority to carry out projects under subsection (a) shall terminate at the end of September 30, 2008." The use of Other Transactions for certain prototype projects was originally authorized for the Defense Advanced Research Projects Agency in FY1993 and subsequently extended to the Military Departments and any other official designated by the Secretary of Defense. The authority was originally granted for a two-year period and later extended several times to the current termination date of September 30, 2008. This proposed legislation would extend the authority to September 30, 2013.

This authority provides the Department of Defense (DoD) with an important tool to develop revolutionary ideas that help maintain U.S. technological superiority. It is consistent with the Packard Commission's call for increased prototyping under streamlined contracting rules in order to "fly before we buy." Global Hawk is a well studied example showing the benefits of this authority to reduce both the time and cost to produce prototypes. In addition, the authority allows DoD to tap into research and development by non-traditional defense contractors, and in other cases, to receive a cost share by traditional defense contractors in developing technology. The authority allows DoD to have flexibility to determine, to some extent, what acquisition laws and regulations are appropriate for a transaction based on the appropriate acquisition strategy, and business case for the agreement.

Section 814 would provide the Secretary of Defense the flexibility to determine whether an operational support mission can be conducted as a civil operation in compliance with the Federal Aviation Regulations. The applicable part of the current definition of public aircraft under 49 U.S.C. 40102 is expanded to include such operational missions. These could include flights involving activities such as parachute training, carriage of sling loads, or target towing. Section 40125 of title 49 is also amended to reference such missions. The Department of Defense (DoD) currently has the authority to determine when chartered transportation is a civil or public aircraft operation through a designation under section 40125(c)(1)(C). With these amendments, DoD would be able to do the same for operational support. If the Secretary does not designate an aircraft chartered to provide operational support as being in the national interest (and thus a public aircraft operation), such operation would be a civil operation and must comply with applicable FAA civil safety regulations. A technical correction is also included to correct cross references in section 40125 to the definitions provision.

Cost Implications: If enacted, this section would not increase the budgetary requirements of the Department of Defense.

Section 815. Section 1413 of the National Defense Authorization Act for Fiscal Year 2004 allows agencies to use direct hire authority for certain acquisition positions that are difficult to fill. This authority will expire after September 30, 2007. Agencies continue to gain experience with direct hire authority and extending this authority for an additional five years would support agencies' efforts to overcome the anticipated retirement of a large number of acquisition professionals in the coming years.

Section 816 would extend the Secretary of Defense's long term contract authority to electricity from renewable energy sources.

The Secretary of Defense has authority under the general procurement laws to contract for the acquisition of electricity for a five-year term. With the increased emphasis on development of renewable energy sources, however, current law is inadequate to meet Department of Defense needs. Companies investing in these sources of energy advise longer term contracts are more desirable because they would: (1) allow amortization of any new energy source over ten years in lieu of the existing five-year maximum; and (2) generate more interest from current producers, as well as from new sources, which will in turn help ensure supplies for the Department of Defense and other agencies.

Section 817. Under current legislation the Commander, United States Special Operations Command (USSOCOM), would be required to obtain specific legislative approval to obtain necessary commercial assets. The current legislation not only constrains the manner in which the USSOCOM Commander can spend MFP-11, but impacts the command's operational and acquisition capabilities for timely responses for special operations.

Current leases will expire in 12 months, impacting the Special Operations Force's ability to retain expensive commercial assets (*i.e.*, commercial leasing of aircraft is generally done on a three year or longer basis, even though there is no intention of eventually acquiring the assets).

This is based upon the high acquisition costs of this equipment and the limited leasing market once these assets are acquired.

Additionally, the process of identifying and evaluating assets is extremely long. The inability to enter into leases in excess of the limitations embodied in this provision without prior funding and approval has a major affect on the ability of the services and special operations to obtain, in a time constrained manner, commercial assets for evaluation and assessment. Current acquisition processes to lease or procure assets is extremely long. Assets must first be acquired, shipped, worthiness certified, crews trained, modifications to assets made, and capability assessments completed. This may require extension of leases longer than the three-to-five year limitation in order to prevent a six-to-twelve month operational gap. This is especially true where a special use asset following this process may be limited to a short utilization period following extensive modification and alternation. The goal for these assets is to utilize them as long as operations can be sustained, but not to necessarily have them in inventory when change outs are required for mission capability.

Additional detailed justification is available under separate cover.

Subtitle C—Other Matters

Section 821 is essential to prevent the Government from being found liable for breach of contract in several pending court cases and from unnecessarily expending resources to defend such cases. Section 808(e)(2) of the National Defense Authorization Act for Fiscal Year 1998 made unallowable the compensation of certain executives in excess of a "benchmark" to be set by regulations, and made the statutory cap expressly applicable to contracts entered into before, on, or after the date of enactment. In *General Dynamics Corp. v. United States*, 47 Fed.Cl. 514 (Fed. Cl. 2000), the court held that application of the statutory cap to a contract awarded prior to the enactment date of the National Defense Authorization Act for Fiscal Year 1998 constituted a breach of contract, and that the Government was liable for breach damages due to the retroactive application of the cap. This amendment would make the statutory cap prospective from the date of its original enactment in 1997, and thus avoid the breach of contract claims due to the retroactive application of the statutory cap as addressed in *General Dynamics* and in several similar pending court cases. Executive compensation would still be subject to a test of reasonableness.

Section 822 would amend subsection (a)(1) of section 26 of the Office of Federal Procurement Policy Act (OFPP Act, 41 U.S.C. 422) to permit the Director of the Office of Management and Budget to appoint an acting Chair for the Cost Accounting Standards Board (CASB) when there is no appointed OFPP Administrator. Over the past four years, the CASB has spent a large majority of its time as an inactive, non-functional entity because it cannot operate without an appointed OFPP Administrator. Many CASB rules and regulations must be updated, and a major initiative to conduct a comprehensive review must be launched; however, these actions have not occurred simply because there has been no appointed OFPP Administrator. Under the current law, the OFPP Associate Administrator cannot convene the CASB, nor act as the Chair for the CASB, even though the OFPP Associate Administrator can

conduct every other aspect of business on behalf of OFPP.

Section 823 would allow Federal agencies to spend up to 3.0 percent of their Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) program budgets to cover the programs' administrative costs, including commercialization assistance, technical assistance, contracting, program evaluation and other program administration costs. A 2005 study by the RAND Corporation determined that the administrative overhead of the SBIR/STTR programs, not including commercialization assistance, is at least 3 percent and likely much higher.

Existing law prohibits the use of SBIR and STTR funds to cover the programs' administrative costs, including cost associated with salaries and expenses. This forces the Department of Defense to pay for these costs with core, non-SBIR/STTR program funds. Increased SBIR and STTR funding has enabled the Department of Defense to make more individual awards. However, it also has increased the administrative burden at the expense of core programs. This section would allow the military departments and Defense Agencies to fund a portion of their own cost of doing business. It also would free valuable resources to help meet mission objectives. In addition, requiring the SBIR and STTR programs to fund their administrative costs from within would allow for more-effective program management. Furthermore, the 3.0 percent figure would allow the Department of Defense to maintain a more robust database to track success stories and provide greater insight into SBIR Phase III and other commercialization efforts.

Section 824 would increase the amount of funding participating Federal agencies are allowed to apply toward technical assistance for Phase I and Phase II award recipients and allow participating Federal agencies to pay for this discretionary technical assistance during Phase II directly through a single service provider, as authorized for assistance provided during Phase I. Existing law requires that the Phase II award recipients purchase these services individually. With generally over 1,000 Phase II contracts issued per year, this mechanism is impractical. This section will allow efficient acquisition and employment of technical assistance services. It will also increase the amount of funds permitted for this use to a level consistent with current market levels. Effective transition assistance can be an important enabler of technology commercialization which is a very high priority of the Department and Congress.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Department of Defense Management

Section 901 would consolidate the Department of Defense Retirement Board of Actuaries and the Department of Defense Education Benefits Board of Actuaries into the Department of Defense Board of Actuaries.

The Secretary of Defense, in an effort to streamline the independent advice and recommendations being received by him and his other senior advisors, has directed a top-to-

bottom review of all Department of Defense-supported federal advisory committees. Currently, there are two separate non-discretionary Federal Advisory Committees that oversee the Department of Defense Military Retirement Fund and the Department of Defense Education Benefits Fund. These advisory committees are known as the Department of Defense Retirement Board of Actuaries and the Department of Defense Education Benefits Board of Actuaries, respectively. The Department of Defense Retirement Board of Actuaries is established pursuant to 10 U.S.C. 1464. The Department of Defense Education Benefits Board of Actuaries is established pursuant to 10 U.S.C. 2006(e). This proposed section would require the repeal of section 1464 in its entirety as well as subsection (e) of section 2006.

Members of the existing Department of Defense Retirement Board of Actuaries are appointed by the President and may be removed only by the President. Members of the existing Department of Defense Education Benefits Board of Actuaries are appointed by the Secretary of Defense and may be removed only by the Secretary of Defense. The criteria for appointing and filling vacancies for members of both Boards are the same. The criteria for removing a member of both Boards are the same. In addition, the same three individuals are currently appointed as the members of both Boards. As part of the Department of Defense's (DoD's) review of supported advisory committees, DoD has determined that the Secretary of Defense, his senior advisors, and service members would be better served if the operations of the above advisory committees were consolidated into the Department of Defense Board of Actuaries.

This section also would consolidate the authorities to appoint and remove future members of the Board with the President, rather than divide those authorities between the Secretary and the President.

The critical work of the current two advisory committees will not be disrupted or lessened by this consolidation because the proposed legislative change would not affect either fund. This is especially true since the same members serve on both advisory committees.

Section 902 would give the Department of Defense the ability to manage its workforce based upon workload and on the most cost-effective workforce, as required by sections 129 and 129a of title 10, United States Code. Section 130a of title 10, United States Code, limits the number of "military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in major headquarters activities." The statute incorporates by express reference Department of Defense (DoD) Directive 5100.73, "Major Department of Defense Headquarters Activities", issued on May 13, 1999, in defining the DoD major headquarters activities that are subject to personnel limitations under the statute, and precludes any change to that Directive "except as provided by law." This highly unusual statutory language locks in outdated regulatory provisions that predate the terrorist attack of September 11, 2001, and preclude DoD from promulgating modernized regulations in this area, in response to the challenges posed by the Global War on Terrorism and the current security environment.

This limitation may also impede compliance with requirements in section 343 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), including the requirement to provide special consideration to using Federal Government employees for work

that is "associated with inherently governmental functions." The limitation hampers the Secretary of Defense's flexibility to manage the workforce mix. The current major headquarters limitation encourages the use of contractors even when this may be inappropriate or more costly because contractor personnel are not subject to the limitation.

Cost Implications: This section would have no associated cost, but rather would facilitate the achievement of a more cost effective workforce.

Section 903 would provide the Secretary of the Army with greater flexibility to determine the number of Deputy Chiefs of Staff and Assistant Chiefs of Staff on the Army Staff. The total, however, would not exceed eight. Currently, section 3035 of title 10, United States Code, limits the Army Staff to five Deputy Chiefs of Staff and three Assistant Chiefs of Staff.

This amendment would provide the Secretary with the flexibility to adjust the number of Deputy Chiefs of Staff and Assistant Chiefs of Staff as required by the Army's mission. The amendment supports the legislative priority of the Secretary of Defense to gain flexibility in preparedness.

Section 904 would authorize the Department of Defense (DoD), as an employer, to mandate electronic delivery both of employee tax statements (W-2s) under 26 U.S.C. 6051 and of agency leave and earnings statements (LES's) to agency employees or military members, under regulations to be issued by the Secretary of Defense.

The Defense Finance and Accounting Service (DFAS), a subordinate agency of DoD and the payroll agent for DoD, maintains the military and civilian payroll systems for approximately 1,400,000 military and 700,000 civilian employees of DoD. DFAS has set up access to computerized employee pay and leave accounts through the myPay Web page for all military and civilian employees it pays and services, except for those determined to be in a secret status as identified by the military departments. For years, myPay has provided military members and civilian employees with a secure method to view, print, and save their LES and W-2 electronically, which also mitigates the risk of identity theft. Every DoD employee and military member has customized, individual access to his or her personal account on myPay through the input of the individual's Social Security Number and a unique personal identification number (PIN).

DoD pays the majority of its payroll accounts by electronic funds transfer, and is phasing out manual processes and printed LES's and W-2s. As the phase-out continues, the cost rises astronomically for providing printed W-2s and LES's to those few employees who choose to continue receiving the printed copies. Further, many of these employees and members use myPay to review or obtain copies of their LES's and W-2s, but fail to turn off the printed copy of these documents. Most DoD employees and military members have assigned Government computers and printers with which they can access myPay. For those employees or members who do not have immediate access to a computer or are in a deployed status, DFAS would continue to provide printed LES's and W-2s. In March 2005, the Internal Revenue Service (IRS) reported that 73 percent of the 54 million tax returns filed at that time for tax year 2005 had been

filed electronically. The IRS Commissioner stated that the home computer is replacing the paper tax form. Thus, the advancement of technology is making the use of computers a common practice among most taxpayers. This legislation would provide DoD with the authority to mandate that employees and members use the electronic system in order to minimize the costs to DoD and their employing agency, and to maximize security and efficiency in getting required tax reports and providing earnings statements to employees and military members. Military retirees and annuitants are excluded from this legislation.

This legislation promotes the President's 2001 Management Agenda of Expanded Electronic Government and the goals set out in the E-Government Act of 2002, Public Law 107-347 (December 17, 2002). It will provide secure access to military members and to employees for critical salary and tax information held by DoD employers, and will improve efficiency in the financial management of the DoD. Since 10 U.S.C. 3332 requires that, generally, Federal wage, salary, and retirement payments be made by electronic funds transfer, this legislation will harmonize the delivery of reports about Federal wage and salary payments.

Cost Implications: There is no budgetary impact associated with this section.

Section 905. Military and security forces of democratically-elected governments around the world face grave challenges to their ability to protect the citizens of their nations effectively from cross-border attacks, violent street crime, gangs, international terrorism, transnational crime, attacks by illegal armed groups, and other forms of violence, while continuing to respect and protect the civil liberties and basic freedoms on which their democracies are based. Military forces, in particular, are increasingly called upon by civilian government leaders to perform non-traditional missions, such as supporting police and other security forces in law enforcement missions, disaster relief, humanitarian assistance, counter-drug and counter-terrorism missions, environmental protection, and peacekeeping and peace support missions, all of which bring the military into close contact with civilian populations.

The United States has a long history of promoting democracy, respect for the rule of law and human rights, and political and economic freedom as integral components of its foreign policy. Beginning with the 1961 Foreign Assistance Act (section 502B), it has been the express policy of the United States to promote and encourage increased respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. It is further the policy of the United States that, except under rare circumstances, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Furthermore, the United States must formulate and conduct international security assistance programs in a manner that will promote and advance human rights and avoid identification of the United States, through such programs, with governments that deny to their people internationally recognized human rights and fundamental freedoms.

The Department of Defense (DoD) has issued numerous directives regarding respect for human rights. The regulatory authority for implementation of human rights training is found in DoD Directive (DODD) 5111.1, paragraph 3.1.13, which gives responsibility to the Under

Secretary of Defense for Policy to "[d]evelop, coordinate, and oversee the implementation of DoD policy for the defense and military aspects of the promotion of constitutional democracy and respect for human rights in other countries, U.S. participation in peace operations, and in humanitarian assistance." DODD 5410.17, paragraphs 3.1; 6.1; and 6.1.12., establishes the requirements for DoD components to develop human rights training programs that reflect the U.S. commitment to basic principles of internationally-recognized human rights.

Many of the nations of the U.S. Southern Command's Area of Responsibility experienced violent internal conflict and high levels of human rights abuse in the second half of the last century. Since the 1990's, most have adopted democratic forms of government and are working to strengthen democratic institutions, civil society, and political parties.

U.S. Southern Command established a human rights policy in 1990, a human rights office in 1995, and began to promote the Human Rights Initiative, "Measuring Progress in Respect for Human Rights," with military forces of the nations in its Area of Responsibility in 1997. By 2002, every Western Hemisphere nation except Cuba had contributed to the Initiative's consensus that respect for human rights is a fundamental component of a democracy and a precondition for true security. Since then, the Ministers of Defense of eight Western Hemisphere nations have committed to implement the Human Rights Initiative within their military forces. The Human Rights Centers would continue and expand the work begun under U.S. Southern Command's Human Rights Initiative.

Subtitle B—Chemical Demilitarization Program

Section 911 would allow a Chemical Demilitarization Citizens' Advisory Commission established for a State under section 172 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484) to remain in existence, at the discretion of the Governor of the State, until after all closure activities are completed pursuant to the Solid Waste Disposal Act for the chemical agent destruction facility in the commission's State.

Section 172 required the Secretary of the Army to establish a Chemical Demilitarization Citizens' Advisory Commission for any State in which there was located a chemical weapons storage site. Subsection (h) of section 172 provides that the commission established for a State terminate after the stockpile for which the commission was established has been destroyed.

The Department of Defense believes that some communities would desire to continue to use the commissions as a mechanism for sharing their concerns with, and gathering information from, the Army concerning the Chemical Demilitarization Program until the chemical agent disposal sites have been approved for closure. Once stockpile destruction is completed, extensive work remains before the disposal site can be approved for closure.

This also would amend section 172 to reflect the proper office of responsibility within the Department of the Army for serving as the Army's representative to the commissions.

Subtitle C—Intelligence-Related Matters

Section 921 would repeal standards for disqualification from eligibility for security clearances that apply only to the Department of Defense (DoD). These standards, enacted in section 1071 of the National Defense Authorization Act for Fiscal Year (FY) 2001 (Public Law 106-398), and amended in section 1062 of the Ronald W. Reagan National Defense Authorization Act for FY 2005 (Public Law 108-375), prohibit the Department from granting or renewing a security clearance to a person who: (1) has been convicted of a crime, was sentenced to imprisonment for more than a year, and was incarcerated as a result of that sentence for not less than one year; (2) is a user of or is addicted to a controlled substance; (3) is mentally incompetent; or (4) was discharged or dismissed from the armed forces under dishonorable conditions. The Secretary of Defense or the Secretary of the military department concerned may waive prohibitions (1) or (4). The waiver authority may be delegated, in accordance with standards and procedures established by Executive order or other Presidential guidance.

These DoD-specific criteria unduly limit the ability of the Department to manage its security clearance program and may create unwarranted hardships for individuals who have rehabilitated themselves as productive and trustworthy citizens. During five years of practice under the statute, the Secretaries of the military departments have granted 54 waivers, demonstrating that DoD's use of the waiver authority is very limited. Nevertheless, such decisions ought to be made in the normal course of the security clearance process established by the President under Executive Order 12968 without having to personally involve the Secretary of a military department. In addition, the necessity to go through this onerous procedure may have had a chilling effect on individuals and agencies, discouraging them from pursuing an unknown number of meritorious cases.

Section 922 would amend 16 provisions of Title 10, United States Code, to clarify whether prior references to "Director of Central Intelligence" should be considered as a reference to "Director of National Intelligence" or "Director of the Central Intelligence Agency." This clarification is necessary to implement the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (Public Law 108-458), which separated the authority and responsibilities of the former Director of Central Intelligence and assigned some of them to the new Director of National Intelligence (DNI) and others to the new Director of the Central Intelligence Agency. This section would assign responsibilities as the head of the intelligence community to the Director of National Intelligence and responsibilities as the head of the Central Intelligence Agency to the Director of the Central Intelligence Agency.

This section also would conform section 201 of title 10 to IRTPA concerning the requirement that the Secretary of Defense obtain the concurrence of the DNI in certain appointments, and changing a reference from "National Foreign Intelligence Program" to "National Intelligence Program."

Section 923 would exempt from disclosure under the Freedom of Information Act (FOIA) certain information in the possession of the Department of Defense concerning weapons of mass destruction (WMD) which does not also meet the threshold for national security classification.

The exemption would be available to the Department for only the period of time the information remains sensitive. It would also require the Department to safeguard such information commensurate with its sensitivity, and it would preempt contrary State or local laws. It would also require the Department to take reasonable actions to ensure the information is also safeguarded by parties with whom it shares the information.

Individuals, corporations, universities, and State and local governments operate research programs, chemical plants, nuclear power stations, medical treatment facilities, and other activities that generate information that easily could assist a terrorist or other adversary to make or use a weapon of mass destruction. Such information created by or for the United States Government can be classified under current authorities, when appropriate, and certain unclassified information about U.S. Government programs may be properly withheld from disclosure under exemption (b)(2) of FOIA.

Exemption (b)(2), however, does not provide protection against release of unclassified information about non-U.S. Government facilities and activities that may be of significant value to terrorists or other adversaries seeking to attack U.S. interests by chemical, biological, radiological, or nuclear means. When in the Department of Defense's possession, in some cases, the information about non-U.S. Government facilities or activities will not fall within any current FOIA exemption, even though its release might create a risk to national security. This section would provide statutory protection against a requirement to release such information under FOIA and similar State and local laws, but for only that period of time the information remains sensitive.

Exemption (b)(4) does provide protection against release of information from non-U.S. Government facilities provided it is (1) confidential business information, (2) which is voluntarily provided to the government and (3) is customarily protected by the submitter. However, meeting this multi-tiered test is not always easily achieved.

Due to the uncertainties described above, a WMD withholding statute is warranted, but only one of limited scope and duration. The limitations are necessary because much of the information at issue is not under the control of the Department of Defense or any other Federal, State or local agency and thus may become public through other means. At such time, it would be unnecessary for the Department of Defense to continue to withhold and safeguard the same information.

Also, information such as security plans and inventories of specific private sector facilities would quickly become non-sensitive if, for example, the facility closed or the inventory was moved to another location. Again, continued withholding and safeguarding by the Department would be unnecessary.

Additionally, the narrow scope is necessary to ensure information necessary for disclosure and exchange for medical or public heath and safety reasons may be disclosed pursuant to existing law and regulation.

EXAMPLES OF THE NEED FOR A FOIA EXEMPTION FOR WEAPONS OF MASS DESTRUCTION INFORMATION

Information provided to the United States Government (USG) by non-USG persons or entities. As long as such information is controlled by a non-USG person or entity, there is generally no legal requirement to release it to the public, and the research community has displayed some degree of sensitivity to the need for voluntary restraint in publishing it. Once in USG hands, it would be difficult to classify it under EO 12958, and it would be subject to release under FOIA unless it fits within some statutory exemption.

EXAMPLES:

- Formulas and descriptions of dangerous materials or organisms.
- Maps, designs, security plans, and vulnerability assessments for factories, laboratories, power plants, medical facilities, etc., containing dangerous materials or organisms, or for transportation or storage of them.
- Studies of the effects and possible methods of weaponization of dangerous materials or organisms.
- Studies of defensive or risk management measures.
- Capabilities and limitations of equipment for handling, storing, and transporting dangerous materials or organisms.
- Design details and capabilities of detection equipment.
- Response plans and capabilities of state and local governments.
- The identities of individuals involved with manufacture, storage, and transport of dangerous materials, or with emergency response plans.

Information created by the government that needs to be shared with researchers, industry, or state and local governments. Classification of such information makes it difficult to share with everyone who needs it, since a large number of recipients might need to be individually granted security clearances, and because provisions would have to be made for storing and safeguarding it. The national security interests involved could be adequately protected by non-disclosure agreements. The likelihood of success in defending the application of a high-2 exemption in court would be uncertain.

EXAMPLES:

- USG evaluations of security plans and vulnerability assessments of non-USG facilities and activities.
- USG recommendations of "best practices" for the security of WMD materials or organisms.
- USG technical evaluations of detection and protective equipment.
- Reports of USG-sponsored research concerning WMD information.

- Rosters of non-USG persons and entities involved in the manufacture, storage, use, transport, or protection of WMD materials or organisms.

Section 924. To protect Limited Distribution (LIMDIS) products and to assist in the investigation and prosecution of those who violate distribution restrictions, this section would establish specific criminal and administrative penalties for the wrongful disclosure, possession or conveyance of LIMDIS products. Amending 10 U.S.C. 455 would enable the Department of Defense (DoD) to protect sensitive geodetic information from inappropriate disclosures, including postings of such products on the internet, and internet commerce.

Section 455 of title 10 is a Freedom of Information Act (FOIA) exemption 3 statute. Under this statute, all LIMDIS products are exempt from disclosure to the public under the FOIA. Accordingly, only products exempt from FOIA release will be subject to the proposed civil and criminal penalties.

All LIMDIS materials must be marked with a complete LIMDIS caveat that cites 10 U.S.C. 455. Upon enactment of this revision to the statute, the LIMDIS caveat published on such materials will be changed to inform users of the new civil and criminal penalties under the revised 10 U.S.C. 455. Notice of this change would also be posted in the Federal Register. DoD and the National Geospatial-Intelligence Agency (NGA) will also revise agency directives and instructions as necessary to implement this requirement.

The proposed protections are similar to the protection offered for sensitive procurement information by 41 U.S.C. 423, "Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information."

The geneses of this new subsection are repeated requests and feedback from agents of the Defense Criminal Investigative Service (DCIS) for more clear and effective proscriptions on the disclosure to unauthorized persons and the wrongful possession and selling of geodetic products that the Secretary of Defense and the Director, NGA, have determined to withhold from the public. Section 455 of title 10 identifies three categories of unclassified geodetic products that may be withheld from the public. These include products obtained or produced, or which contain information that was provided, pursuant to an international agreement that restricts disclosure to Government officials of the agreeing parties or that restricts use of such information for Defense or other Government purposes only. Almost half of the geodetic product currently withheld fall into this category. The United States must be able to assure our international partners that we have the capabilities to enforce our agreement to protect such products. The second and third categories of products directly relate to the intelligence and military missions of NGA. The second category includes products that contain information that has been determined -- in writing -- would, if disclosed, reveal classified or sensitive sources and methods or capabilities used to obtain source material for production of the geospatial information and data. The third and final category of geospatial products which are withheld from the public are those products which contain information that has been determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations; reveal military operational or contingency plans; or reveal, jeopardize, or compromise military or intelligence

capabilities. The use of these products for warfighting and intelligence purposes mandates that they not be classified. Still, such sensitive geodetic products must be protected from disclosure to all unauthorized sources, to include being posted on the internet where they are immediately available to those who would do harm to U.S. troops and allies. Current protection efforts have been ineffective, at least in part, because of the lack of effective penalties for unauthorized possession, sell, and use.

In accordance with DoD and NGA regulatory guidance, these sensitive geodetic products bear a caveat identifying them as "LIMITED DISTRIBUTION (LIMDIS)." For several years, products bearing the LIMDIS caveat have wrongfully been offered for sale to the public through a variety of means from surplus stores to on-line auctions. NGA Office of International and Policy, Disclosure and Release Division, has repeatedly found LIMDIS products such as Evasion maps being offered for sale worldwide on eBay or displayed on internet sites. To date, DCIS efforts to prosecute the eBay sellers have not been successful. Arguments to prosecutors that these items are government property, the wrongful possession of which may be prosecuted as theft or wrongful conversion of government property, while legally correct, do not adequately convey the sensitivity and value of the products.

Cost Implications: Enactment of this section would not increase costs for the government.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 repeals the requirement for a two-year budget cycle for the Department of Defense.

Section 1002 would authorize the Department of Defense to place burden sharing contributions received from the Republic of Korea in interest- bearing accounts if the contributions are invested in short-term treasury obligations of the Republic of Korea.

Under section 2350j of title 10, United States Code, the Army receives substantial host-nation funding for the United States military mission in Korea. Because of the ongoing restationing and force restructuring actions currently being undertaken there, the amount of burden sharing contributions from the host nation is increasing. The time frames for the expenditure of funds, however, are lengthening due to the complexities and logistics of the large scale implementation. In some circumstances, funds are provided in advance of actual expenditures due to the structure of the burden sharing agreements that require annual and periodic cash contributions. This section would allow the Secretary of Defense to authorize certain contributions to be placed in accounts and invested in treasury obligations of the Republic of Korea of no more than six months in maturity.

Interest on cash contributions awaiting disbursement will maintain the monetary value of the contributions and thus the value of the contributions toward the security of the host nation and United States forces stationed in the host nation.

Section 1003 would increase the limitation on advance billing of working capital fund customers from $1 billion to $2 billion. The Department of Defense (DoD) uses advance billing to manage cash shortfalls without disrupting logistics operations. DoD generally does not use advance billing in peacetime, nor does it advance bill very often.

Following the war to liberate Kuwait, large, legislatively-directed, cash transfers from the Defense Working Capital Funds (DWCF) threatened the solvency of the Funds. To maintain their solvency, the Funds advance-billed customers $5-6 billion. In the past three years, legislatively-directed cash transfers have impacted DWCF cash accounts by $823.0 million, $967.2 million, and $100.0 million in fiscal years 2004-2006, respectively. In 1998, section 1007 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) and section 8146 of the Department of Defense Appropriations Act, 1999 (Public Law 105-262) adopted the current $1 billion limitation on advance billing. Imposed in peacetime, this limitation could severely constrain logistics support during the Global War on Terror. For example, if four of the five sub-elements of the Funds were low on cash at the same time, the limitation would be only $250 million for each of the Army, Navy, Air Force, and Defense-Wide subaccounts -- less than the monthly outlays for several of the Funds in recent months.

The Funds are designed to be flexible and responsive to customer demands within a business-like structure. They have surged in response to the Global War on Terror and, overall, are operating at levels 25 percent greater than their peacetime business base. In dollar terms, the Funds are operating at $22 billion above their $89 billion peacetime base. Business for some of the Funds has grown 70-90 percent above their peacetime level. In addition, the Funds finance fuel purchases. Given current prices in world markets, DoD has experienced fuel price variability greatly in excess of the current $1 billion limitation during each of the last two fiscal years. The size of these variations, the requirement to provide logistics support during wartime, and the financial volatility involved with the Funds all support increasing substantially the limitation on this essential, last-chance mechanism for financial flexibility in managing these Funds.

Cost Implications: This section has no budget implications.

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 inactivation date of the ENTERPRISE and the delivery date of the CVN 78.

Navy currently operates 12 aircraft carriers. With the decommissioning of the USS JOHN F. KENNEDY (CV 67) in early 2007, the number of aircraft carriers will drop 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 KITTY HAWK -- the oldest active carrier in the fleet -- in an operational status beyond 2008 would be cost prohibitive.

Designed for a service life of 30 years, the ENTERPRISE is now 46 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 is scheduled to be deployed in the summer of 2007 and, upon her return, to enter her next, and last scheduled, major depot maintenance period in March 2008. Navy has begun planning that availability, which will enable the ENTERPRISE to complete two more deployments (in 2010 and 2012). Any extension beyond that would require an additional major maintenance availability at considerable cost and with a significant impact on the maintenance schedule for other aircraft carriers.

Though the inactivation of the ENTERPRISE will not occur for several more years, Navy needs to make technical decisions now that would preclude her operation beyond early FY 2013. Accordingly, Navy needs the statutory authority now to temporarily operate with fewer than 11 operational carriers so it can properly plan and execute the upcoming FY 2008 depot-level maintenance availability and the schedules of other carriers.

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.

Cost Implications: Navy is refining the cost implications of keeping the ENTERPRISE operational between FY 2013 and FY 2015. Currently, Navy estimates it would cost at least $1 billion, based on average operating costs for the five-year period between 2001 and 2005.

Section 1012 would amend section 7307 of title 10, United States Code, to eliminate the requirement for legislation to authorize the transfer to foreign countries of vessels that are in excess of 3,000 tons or that are less than 20 years of age. It does not eliminate the requirement to identify in advance the proposed excess vessels and their recipients to the Congress.

Currently, the Department of Defense must seek legislation authorizing the transfer to foreign countries of U.S. naval vessels that weigh more than 3,000 tons or are less than 20 years old pursuant to subsection (a) of section 7307. The committees of oversight for the legislation are the Senate Armed Services Committee and the House Foreign Affairs Committee.

The Department of Defense (DoD) is seeking relief from the requirement to have these vessel transfers individually authorized in annual legislation passed by the Congress. Prior to 1974, legislation was not required; the Secretary of the Navy could approve such transfers. With

the addition of a requirement to notify the Congress 30 days in advance of a proposed transfer, there is ample time for Congress to act to stop any particular proposed transfer. Currently, DoD must identify each ship and its proposed recipient by name in the legislative proposal. If for any reason the legislation is not enacted, the transfers cannot take place. If DoD is unable to complete the transfer to the identified recipient within the time period (generally two years), DoD cannot transfer the vessel to another country without seeking new legislation. Eliminating the requirement to authorize the ship transfers in law provides DoD the flexibility of offering ships to other countries within the same fiscal year should the initial offer not be executable.

This section would have the added benefit of allowing the Executive Branch (DoD and the Department of State) the flexibility to seek other vessel recipients between legislative cycles, making it simpler and easier to transfer such vessels in response to changing foreign policy and national security needs. It also could potentially reduce maintenance costs to the Navy. Currently, if an authorized transfer cannot take place, the U.S. Navy must continue to fund the costs of maintaining and/or decommissioning the vessel in its inventory until new legislative authority is provided for a transfer. Enactment of this legislation could also in some cases reduce costs for the recipient countries as timely "hot" transfers of vessels can be more economical by eliminating the need for the recipient country to pay the costs of refurbishment of vessels that have been transferred to an intermediate or "cold" storage status.

Subtitle C—Counter-Drug Activities

Section 1021 would extend the current authority through Fiscal Year (FY) 2008.

The current authority, which expires at the end of FY 2007, provides that a joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities.

Subtitle D—Matters Related to Homeland Security

Section 1031 would permit reimbursement for defense support of civil activities provided by National Guard units or personnel, under authority of title 32, United States Code, to Federal departments or agencies for National Special Security Events and other activities determined by the Secretary of Defense as being critical to national security.

Currently, in accordance with section 1535 of title 31, U.S. Code, (the "Economy Act"), defense support of civil authorities -- including that provided by National Guard units or personnel in Federal Service -- provided to Federal departments and agencies under authority of title 10, U.S. Code, is provided on a reimbursable basis. However, current law does not provide a way for defense support of civil authorities provided by National Guard units or personnel to Federal departments and agencies under authority of title 32, U.S.C., to be provided on a reimbursable basis.

Given their presence in all 50 States, the Commonwealth of Puerto Rico, Guam, the U.S.

Virgin Islands, and the District of Columbia, as well as their familiarity with local laws, territory, and government authorities, National Guard units and personnel are invaluable assets to be called upon for support to Federal departments and agencies for National Special Security Events and other events that are critical to national security (e.g., preventing or responding to terrorist activities or threats). Additionally, National Guard units and personnel operating under authority of title 32 are not subject to the limitations imposed by section 1385 of title 18, U.S. Code, (the "Posse Comitatus Act"), thereby permitting great flexibility in the support they can provide to Federal departments and agencies.

These advantages have long been recognized and put to use in past National Security Special Events and other events. However, in each case, the Secretary of Defense was faced with two options: (1) refuse the request for support, or (2) approve the request for support and provide Department of Defense funds to pay for the support rendered. This limitation in current law has imposed a significant burden on the Department of Defense.

Limiting this authority to requests that are approved by the Secretary of Defense recognizes both the Secretary's authority over Federal funding of activities of the military forces and the Secretary's responsibility to ensure the preparedness of military forces.

Limiting this authority to support to Federal departments and agencies recognizes that title 32 affords Federal funding for National Guard activities under control of a State for Federal purposes (e.g., training, counter-drug activities, and homeland defense activities). This limitation does not -- nor, for that matter, does this section -- affect the authority of the Governor of a State to approve military support by National Guard units or personnel of their State to State or local law enforcement agencies in a State Active Duty Status, funded by the State.

Subtitle E—Other Matters

Section 1041 would amend section 2674 of title 10, United States Code, to clarify and expand the inherent authority of the Secretary of Defense to provide for the security and protection of certain high-risk military and civilian Department of Defense (DoD) personnel and distinguished official guests of the DoD, both in the United States and abroad, with qualified security personnel.

As early as 1890, the Supreme Court recognized the inherent authority of federal law enforcement officers to provide personal protection to federal officials, even in the absence of a specific authorizing statute. *Cunningham v. Neagle*, 135 U.S. 1 (1890). In *Neagle*, the Court specifically recognized the inherent authority of a Deputy U.S. Marshal to protect a Supreme Court Justice from a murderous assault. In the wake of that decision, Congress later granted the United States Marshals Service express statutory authority to "protect Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process . . . ." Title 28, United States Code, §566(e)(1)(A). In its July, 2000, report entitled SECURITY PROTECTION Standardization Issues Regarding Protection of Executive Branch Officials, the General Accounting Office (now the Government Accountability Office) recognized that agencies

operating under such implied authorities are in need of clarity. The report recommended that the Director of the Office of Management and Budget consider whether such agencies should be provided with specific statutory authority to provide protection to executive branch officials. This is precisely what we are proposing herein.

DoD has long recognized its inherent authority to provide for the physical security and protection of senior Defense officials from threats of personal harm arising directly from their official duties. However, recent and profound changes in the nature and magnitude of terrorist threats against DoD officials, who present vulnerable and public targets to those that would strike at the nation's security apparatus, now make an express affirmation of the implied authorities of the Secretary of Defense to provide for their protection imperative. Given the increasingly violent and personal nature of recent terrorist attacks, security for high-risk DoD personnel has never been more important. The military and civilian security personnel currently performing these critical duties face exposure to potential liability for actions taken in the course of their duties and would benefit greatly from an expressed enunciation of statutory authority from Congress.

State Department "Special Agents" perform essentially the same security function for high-risk State Department officials, pursuant to authority set forth at section 2709 of title 22, United States Code. This proposed amendment to section 2674 of title 10 would expressly reflect the Secretary of Defense's limited authority to provide for the physical security and protection of senior Defense officials and official guests of DoD within the United States and abroad. However, in contrast to the State Department's broad protection authority, this proposed amendment would only authorize the Secretary of Defense to provide for such protection "when the threat conditions cause the Secretary to determine that such protection is necessary for reasons of national security." Thus, this legislation is narrowly tailored to provide for protection authority only when DoD has credible intelligence indicating that a terrorist organization or similar group may attempt to harm DoD officials.

Furthermore, although the proposed amendment would authorize DoD security personnel to effectuate arrests for violations of the United States Code committed in their presence, DoD anticipates that the arrest authority would only be exercised during the most serious of actual life-threatening emergencies, including but not limited to emergencies involving threats of bodily harm, intimidation, assault, abduction, attempted kidnapping and murder. (*See generally* 18 U.S.C. 111, 112, 115, 1114, 1116, 1201 and 1203.) Without the authority to effectuate arrests, attempts of apprehending assailants would be futile if the DoD security personnel, who had witnessed firsthand acts of violence aimed at DoD officials, had to notify and wait for the arrival of other federal state, or local law enforcement officials to effectuate arrests. Finally, as a means of further limiting the scope of the domestic security and protection operations, such security and protection details will only be exercised in accordance with guidelines approved by the Secretary of Defense and the Attorney General of the United States.

Cost Implications: None.

Section 1042 would establish the United States Court of Federal Claims as the exclusive

federal court forum for bid protests.

Section 1491(b)(1) of title 28, United States Code, provided temporary concurrent federal jurisdiction between the U.S. Court of Federal Claims and the District Courts to hear pre-award or post-award bid protest matters. Section 12(d) of the Administrative Disputes Resolution Act of 1996 (Public Law 104-320) ("ADRA"), contained a sunset provision that terminated District Court jurisdiction to hear such bid protests under section 1491 as of January 1, 2001, leaving all ADRA bid protest cases under the jurisdiction of the Court of Federal Claims. Nonetheless, independent federal jurisdiction over bid protests involving maritime contracts has been upheld by the District Courts under the Suits in Admiralty Act, 46 U.S.C. 741-752, as amended ("SAA"). As a result, federal jurisdiction to hear bid protest actions arising out of maritime contracts or prospective maritime contracts continues to exist in the U.S. District Courts rather than exclusively in the U.S. Court of Federal Claims.

Bid protest disputes are unique to government contract law and regulation and have no private maritime sector equivalent proceeding, which is a basis for the waiver of sovereign immunity under the SAA. Conversely, section 1491(b)(1) of the title 28 is specifically directed to bid protest claims, and its provisions and limitations should be applied equally to all plaintiffs. Current practice now permits disappointed bidders to maintain a bid protest claim in the District Courts under a separate and unrelated statutory scheme (SAA), simply because the contract or prospective contract is maritime in nature.

The ADRA does not address maritime contracts. However, the ability to invoke admiralty jurisdiction in bid protest cases merely because the case involves a maritime contract evades Congressional intent under the sunset provision of the ADRA to prevent forum shopping among the District Courts and the Court of Federal Claims and to provide national uniformity in resolving federal bid solicitation disputes. 142 Cong. Rec. S11848-11850 (daily ed. Sept. 30, 1996) (statements of Sen. Cohen and Sen. Levin). Senator Levin, who together with Senator Grassley had introduced the ADRA legislation, specifically remarked that the Acquisition Law Advisory Panel had recommended that there should be only one forum for bid protests, and that forum should have jurisdiction to "consider all protests which can now be considered by the district courts and by the Court of Federal Claims." 142 Cong. Rec. S11849 (daily ed. Sept. 30, 1996). Senator Levin described the bid protest provision of the ADRA such that after the sunset provision took effect, "the jurisdiction of the district courts would terminate, and the Court of Federal Claims would exercise exclusive judicial jurisdiction over procurement protests." 142 Cong. Rec. S11849-11850. *See also* H.R. Conf. Rep. No. 104-841, at 10 (1996) ("It is the intention. . . to give the Court of Federal Claims exclusive jurisdiction over the full range of procurement protest cases previously subject to review in the federal district courts and the Court of Federal Claims").

The District Courts are vested with exclusive admiralty jurisdiction and are recognized as having the specific expertise in the unique area of maritime and admiralty law. However, government contract law has developed as a separate specialty practice its own right and bid protest disputes have been resolved in the federal courts largely by the Court of Federal Claims (formerly the U.S. Claims Court), rather than U.S. District Courts. Bid protests involve

government procurement law and regulation, whether or not arising out of a maritime contract, and do not require the application of the expertise for which the District Courts are recognized in maritime matters.

For these reasons, exclusive federal court jurisdiction over the full range of bid protest disputes should be vested in the Court of Federal Claims under 28 U.S.C. 1491.

Cost Implications: If enacted, this section would not increase the budgetary requirements of the Department of Defense and does not require a Program Budget Decision.

Section 1043. Section 2245 of title 10, United States Code, addresses proficiency flying. It defines proficiency flying by adopting the meaning given that term in Department of Defense Directive (DoDD) 1340.4, "Proficiency Flying Programs" (July 17, 1972). DoD no longer has a proficiency flying program and desires to cancel DoDD 1340.4.

Flying proficiency and its supporting entitlement for participating rated personnel have been subsumed into other aviation provisions of law and regulations of the military departments. DoD Instruction 7730.57, "Aviation Career Incentives Act of 1974 and Required Annual Report" (July 18, 2003), provides Department policy for these programs.

Repealing section 2245 will allow the Department to cancel DoDD 1340.4.

Cost Implications: This section would generate no additional costs.

Section 1044. Subsection (a) states the Congressional findings that the conversion of the 2nd Brigade of the 25th Infantry Division to a Stryker Brigade Combat Team supports the national defense, foreign policy, and the previously approved reorganization of the Army.

Subsection (b) directs the Secretary of the Army to proceed with the conversion at its current location.

Section 1045 would authorize the Secretary of Defense and the Secretaries of the military departments to enter into cooperative agreements with State, local, or tribal governments and other entities for the preservation, management, maintenance, and improvement of cultural resources off military installations and for the conduct of research regarding the cultural resources. Currently, under section 2684 of title 10, United States Code, this authority is limited to such cooperative agreements related to cultural resources on military installations.

The authority to enter into these cooperative agreements related to cultural resources located off military installations, and to expend available funds for that purpose, would enable the Department of Defense to expend funds related to activities off the installation to mitigate the adverse effects related to undertakings on historic properties on an installation. Historic properties include, for example, archeological sites, buildings, and structures. This alternate mitigation could be used for compliance with section 106 of the National Historic Preservation Act (NHPA).

Alternatives could include mitigation in another location, the purchase of land or preservation easements off the installation, and the development of research contexts. The exact alternate mitigation plan would be developed in consultation with stakeholders. When possible, efforts would be combined with other environmental easements and buffer zone initiatives.

This alternate mitigation authority will provide additional flexibility for the Department to comply with section 106 of the NHPA. The alternate mitigation would be used in lieu of traditional mitigation required by section 106, which is focused on the specific historic property located within the area of potential effect for the undertaking and subject to adverse effects from the undertaking. Alternate mitigation would expedite NHPA compliance and improve the Department's ability to meet changing training needs and land use.

The section would also expand the definition of "cultural resource" under section 2684 to include an Indian sacred site.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would authorize compensation for hours spent traveling back from an administratively uncontrollable event for Federal Wage System (FWS) employees who are exempt from the overtime pay provisions of the Fair Labor Standards Act. This change would provide for the same treatment of General Schedule (GS) and FWS employees when they make the same trip.

Section 5544 of title 5, United States Code, addresses circumstances under which wage board employees who are exempt from the Fair Labor Standards Act are paid overtime. Under current law, an employee who must travel in order to perform work that cannot be scheduled or controlled administratively is paid for time spent traveling to the temporary duty station to perform the work. However, time spent traveling from the temporary duty station back to the official duty station is not compensated because the return leg of the journey can be scheduled or controlled administratively.

For example, the Naval Air Systems Command has a small group of FWS employees stationed at the Naval Air Pacific Repair Activity in Atsugi, Japan, that is responsible for repairing Navy aircraft world-wide. Because of the war effort, these FWS employees must travel around the world to perform their repair work. From October 1, 2005 through June 15, 2006, these employees took 51 such trips. They spend a significant amount of time -- typically from 15 to 30 hours -- traveling to these locations. It is not feasible to schedule the travel only during working hours because some of the flights are not scheduled frequently and some parts of the world to which these employees must travel do not have adequate facilities for overnight stays. This section would make both the trip to the temporary duty station and the return trip compensable.

By contrast, GS employees in the same situation are compensated for both legs of the journey under 5 U.S.C. 5542(b)(2)(B)(iv). This proposed section would apply the same

exception to FWS employees.

Cost Implications: The Department of Defense intends to apply this section only to employees stationed overseas. Since this section would affect only approximately 70 trips made by FWS employees each year, the annual costs to the Department of Defense would be negligible. The Department estimates that this section would cost approximately $50,000 per year.

Section 1102 would allow Federal civilian employees to receive comparability payments related to the geographical area of their permanent duty station in the United States or to their place of residence for employees who enter Federal service just prior to an assignment on a deployment temporary change of station. This section would not establish entitlements, but rather provide the discretionary authority to ameliorate the financial disadvantages that civilian employees experience when assigned in support of our armed forces in a contingency operation on a temporary change of station.

The Department of Defense (DoD)'s on-going contingency operations have necessitated longer deployments for its civilian employees. To support these contingency operations, the DoD has sent its civilian employees on temporary duty (TDY) for up to 180 days. When the contingency deployments are for greater periods of time than 180 days, civilian employees deploy on temporary change of station (TCS). When an employee deploys on TCS, the employee's pay and allowances are no longer determined on the basis of the employee's permanent duty station. As a result, employees who previously deployed to areas of contingency operations on TDY without loss of comparability payments or allowances based on the employee's permanent duty station are penalized when they deploy to the same areas for longer periods and lose entitlement to these payments and allowances. This section would keep civilians are on par with the military with regard to billeting, rations, and the storage of a personal vehicle during a contingency operations deployment.

This section also would authorize the Secretary of Defense to allow a civilian employee to store the employee's personal vehicle without charge while the employee is assigned on a temporary change of station. The Secretary could store the vehicle for the employee or reimburse the employee for the costs of storage.

Section 1103 would 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 of the Commander of the U.S. Central Control, and in direct support of or directly related to a military operation or operation in response to a declared emergency.

Under current law (section 5547 of title 5, United States Code) 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 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.

This section would allow an agency head, during calendar year 2008, 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 $212,100 in a calendar year.

Section 1104 would increase the maximum number of Defense Intelligence Senior Executive Service (DISES) employees by 50 in Fiscal Year (FY) 2008 and by another 50 in FY 2009. The Administration's draft FY 2006 defense authorization bill proposed increasing the maximum number of DISES employees by 150 over two years. Section 1125 of the National Defense Authorization Act for FY 2006 (Public Law 109-163) increased the maximum number of DISES employees by 50, to 594. The accompanying report language indicated that Congress would consider further raising the ceiling based on additional justification submitted by the Department. The Department of Defense (DoD) proposed an additional increase in FY 2007, but the conference report for the John Warner National Defense Authorization Act for FY 2007 (H.Rpt. 109-702) indicated that Congress had deferred consideration of increasing the statutory ceiling on the number of DISES employees until the Department completed a strategy for improving DoD's senior management, functional, and technical workforce as required by section 1102 of the Act, to be delivered to Congress by March 1, 2007.

The Department intends to use the requested authority to upgrade 100 existing positions, which is necessary to provide senior leadership and oversight for defense intelligence organizations that have greatly increased their missions and activities in support of the Global War on Terrorism, the new requirements generated by the Intelligence Reform Act to support the Office of the Director of National Intelligence and the new intelligence centers, DoD's implementation of the recommendations of the 9-11 Commission and the WMD Commission, and the remodeling of defense intelligence. There are no legislated ceilings for senior level personnel anywhere else in the Intelligence Community (IC). Even with authority to upgrade these 100 positions, the Department will still have 93 unfilled validated DISES requirements and will still be well below the average of IC senior executives to workforce. The number of defense civilian intelligence authorizations increased from 37,500 in 2001 to 43,600 in 2005. The Department projects the authorization level will increase further to 50,000 by 2010.

With an increase to 694, DISES employees as a percentage of the total civilian intelligence authorizations will remain relatively constant at 1.4 percent through 2010. No significant budgetary impact is foreseen. No new funds or additional end strength of civilian employees are requested -- components that upgrade positions will absorb the incremental costs (the difference between GG-15 and DISES salaries) in their civilian personnel accounts.

The Department submits this legislative change in the expectation that it will be supported by the strategic plan that will be submitted to Congress in compliance with section

1102 as described above.

Section 1105 would modify section 6304(f) of title 5, United States Code, by adding senior-level positions and Defense Intelligence Senior-Level positions to the list of positions eligible for a 90-day cap on the accumulation of annual leave. This would allow senior-level employees to receive the same flexible annual leave accrual currently authorized for members of the Senior Executive Service, the Defense Intelligence Senior Executive Service, and certain other senior government officials.

Senior-level employees are experts, with state-of-the-art knowledge in fields critical to mission accomplishment. They bring enlightened thinking and innovation to the employing agency and generally occupy demanding, highly-technical positions that focus on high-profile and fast-track assignments. In these senior-level positions, employees find it as difficult to schedule annual leave to avoid "use-or-lose" mandates as do employees who occupy positions in the Senior Executive Service.

Section 1106. Currently, section 5550b, title 5, United States Code, provides that each hour spent by a General Schedule employee in a travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for the purposes of calculating compensatory time off. Prevailing Rate employees are not included in the definition of employee under this section.

Currently, Prevailing Rate employees may be compensated for travel outside their normal tour of duty only under certain narrow circumstances. Overtime pay is not authorized for any other official travel. This section would amend section 5550b to allow Prevailing Rate employees to receive compensatory time off for each hour spent on official travel which is not otherwise compensable.

Section 1107 would lead to more efficient processing of retirement cases by allowing Federal retirement annuities to commence on either the day after retirement or the day after age and service requirements are met.

Currently, the commencement date of an annuity under the Civil Service Retirement System (CSRS) or the Federal Employee's Retirement System (FERS) varies by retirement system. Under CSRS, the annuity commences on the first day of the month after separation or the last day of pay or, if the employee separates on the first, second, or third day of the month, the annuity will begin the next day. Under FERS, annuities begin on the first day of the month after separation.

Section 8345 of title 5, United States Code, applies only to CSRS annuities. Prior to the enactment of section 305 of the Omnibus Budget Reconciliation Act of 1982 (Public Law (P.L.) 97-253) on September 8, 1982, Federal retirement annuities began on either the day after retirement or the day after the last day of pay if the retiree were eligible for retirement. P.L. 97-253 amended 5 U.S.C. 8345 to change the retirement provisions to provide that annuities commence on the first day of the month after separation. A later amendment to P.L. 97-253

provided an exception for those employees who served three days or less in a month. This meant that the annuities for employees who separated for retirement on the first, second, or third day of the month began on the next day.

The FERS Act provides that FERS annuities commence on the first day of the month after separation. This section would amend section 8464 of title 5 to allow FERS annuities to commence on the first day after separation from service or day of eligibility for an annuity.

Both CSRS and FERS statutes provide exceptions for those whose separations are involuntary or due to an approved disability retirement. Generally, these annuities commence on the day after separation, or the last day of pay, if all eligibility requirements are met. These exceptions would no longer be needed.

Sections 8345 and 8464 of title 5 were enacted to save the retirement system money. Congress believed that most employees would continue to retire at the end of a pay period in the middle of the month, and that the 10-20 days that were not paid as retirement annuity would save the retirement system money. Since employees plan their retirements to avoid periods when their pay has stopped and their retirement annuity has not begun, the current provisions regarding the commencement date of annuities save little or no money. In addition, the few employees who are caught unaware of these provisions often allege inadequate or ineffectual retirement counseling. This often results in additional administrative costs to respond to their complaints.

The current deviations in annuity commencement dates between retirement systems and types of retirement result in a cumbersome administration process for human resources (HR) personnel who must counsel and advise employees on retirement. In addition, they make a complex process even more burdensome by laying additional responsibilities on HR personnel to ensure that all employees are appropriately advised regarding annuity-commencing dates.

Cost Implications: There are no cost implications that result from this section.

Section 1108 would modify section 8706 of title 5, United States Code, to permit employees who are called to active military duty to continue coverage under Federal Employees Group Life Insurance (FEGLI) for a period not to exceed 24 months. Currently, when an employee is called to active military duty, the employee is permitted to continue coverage under the Federal Employees Health Benefits Program (FEHBP) for up to 24 months, but life insurance continued coverage is limited to 12 months. A statutory change allowing continued FEGLI coverage for up to 24 months would bring the benefits under these two programs into conformance, reduce complexities for employees, as well as program administrative personnel, and simplify business processes.

The Service Members' Group Life Insurance (SGLI) provides automatic coverage on the first day of active duty, but is currently limited to $400,000 with a monthly premium of up to $26.00 and the option for the Service member to reduce or waive SGLI coverage. Individuals serving on active duty would be afforded an opportunity to provide greater protection to their families if the limitation of 12 months for continued FEGLI coverage was extended to 24

months.

Section 8706 allows continued coverage under FEGLI for up to 12 months after discontinuance of pay. This limitation is imposed for Leave Without Pay (LWOP) for any reason with no distinction being made for employees called to serve in the uniformed services on active duty. Section 8905(a) of title 5 provides for continued coverage under the FEHBP for up to 24 months for employees called to active duty. The period of coverage begins on the date the employee is placed on LWOP.

Title 10 provides authorities for calls to active duty. The authority most commonly used since September 14, 2001, is section 12302. This is an involuntary call to active duty with a limitation on involuntary service for any single contingency to 24 cumulative months.

Amending section 8706 to provide for continued FEGLI coverage for up to 24 months, the time allowable for continued coverage under FEHB, will simplify administration and understanding of the FEGLI program. This change would also provide for continued FEGLI coverage for the duration of most involuntary calls to active duty. Employees and their families would have increased security and protections during this time of service to the nation.

Cost Implications: There is no cost to the Department of Defense involved in enacting this section.

Section 1109 would modify section 5334(f) of title 5, United States Code, to require that when an employee moves, voluntarily or involuntarily, from a Department of Defense (DoD) or Coast Guard nonappropriated fund (NAF) instrumentality to a DoD or Coast Guard position, respectively, covered by the General Schedule (GS) pay system without a break in service of more than 3 days, the service in a covered NAF instrumentality must be treated as Federal service in the executive branch for the purpose of setting an employee's GS rate of basic pay.

A NAF employee who is moved involuntarily and without a substantial change in duties would continue to be entitled to the lowest step of the employee's GS grade that equals or exceeds the employee's rate of basic pay under the NAF instrumentality immediately before movement to the GS pay system (after taking into account any geographic pay conversion) or, if there is no such step, the maximum rate of the grade. An employee may be entitled to a higher rate than provided by section 5334(f)(2) (*e.g.*, if the employee is entitled to a retained rate under 5 U.S.C. 5365 or a rate under section 5334(f)(3)).

Section 5334(f)(3) would allow the superior qualifications and special needs pay-setting authority in 5 U.S.C. 5333 to be used to set the employee's initial GS rate of basic pay when the employee moves from a NAF position to a GS position in the same agency without a break in service of more than 3 days.

These proposed changes would enhance the Department's ability to manage its total workforce effectively and equitably.

Under current law, a NAF employee who competes and is selected for a DoD or Coast Guard GS position may have his or her initial rate of basic pay set at the minimum rate of the appropriate grade or at any step of that grade that does not exceed the employee's highest previous rate in a NAF position. The restriction to a rate not exceeding their highest previous rate prevents some NAF employees from receiving any pay increase when they move to GS positions. In fact, the restriction actually causes a decrease in pay for an employee whose NAF pay falls between two steps of a GS grade level; such an employee must be paid at the lower step to avoid exceeding their highest previous rate of NAF pay. To correct this inequity, section 5334(f)(2) would allow an employee's NAF rate to be used as the highest previous rate in applying OPM's maximum payable rate regulations. Thus, GS pay would generally be set at the lowest rate that equals or exceeds the NAF highest previous rate (after taking into account any geographic pay conversion).

Unlike applicants selected from outside the Federal Government, employees moving under portability-of-benefits provisions currently are not eligible for higher pay under the superior qualifications and special needs pay-setting authority in 5 U.S.C. 5333. Unlike Federal employees transferring between civil service positions, NAF employees are not entitled to receive a two-step increase when moving to a higher-level position. The only way to receive a higher rate of pay offered for superior or unique qualifications is to incur a break in service of more than 3 days and forfeit such portability-of-benefit entitlements as the transfer of annual and sick leave balances. This proposed legislation would correct this inequity by providing authority to apply the superior qualifications and special needs pay-setting authority to NAF employees who meet portability requirements if it would result in a higher rate than provided by section 5334(f)(2).

Section 1110 would reestablish the Federal Acquisition Regulation requirement that contractors inform their employees, in writing, of their whistleblower rights. In May 1991, the Federal Acquisition Regulation required contractors to inform their employees of their whistleblower rights under an earlier version of section 2409 (then codified as section 2409a), of title 10, United States Code. That requirement expired when regulations implementing a revision to the statute went into effect in September 1995.

Since 1995, the Department of Defense has encountered examples of company policies and actions that would inhibit employees from disclosing information to a Government official of a substantial violation of law related to a contract. Companies often inform contractor employees of their obligation not to divulge company-sensitive information outside the company, and of the penalties for doing so. Such a warning may discourage employees from making lawful communications alleging illegal company practices to authorized Government officials. This section would require that contractor-employees are informed of their right to make protected disclosures under the statutes, regardless of requirements by contractors that certain company-sensitive information not be disclosed outside the company. While the Department understands the need for contractors to protect proprietary information and to address employee concerns internally, section 2409 of title 10, United States Code, and section 265 of title 41, United States Code, do not require that contractor-employees first address their allegations to company officials in order to be eligible for protection. Therefore, this section

would ensure that contractor employees are not inhibited from making such complaints to Government officials under section 2409 of title 10, United States Code, and section 265 of title 41, United States Code.

Cost Implications: This section has no budgetary impact.

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Subtitle A—Assistance and Training

Section 1201 would authorize the Secretary of Defense to provide equipment, supplies, services, training, and funding to foreign nations to allow them to assist the United States Government to recover the remains of United States personnel who are missing from our Nation's wars.

The Department of Defense believes thousands of remains of missing Americans from World War II, the Cold War, the Korean War and the Vietnam War may be recoverable. The Joint POW/MIA Accounting Command (JPAC), which is run by the United States Pacific Command, will be the action agency which uses these funds. Currently JPAC recovers and identifies the remains of missing servicemen and repatriates them to their families for proper burial. JPAC recovery and investigative teams conduct approximately 50 missions per year. Their level of training and expertise is unrivaled. Due to the number of recoverable remains, these teams cannot get to all currently identified loss sites. Foreign nations are quite willing to assist with these operations; however, they lack the necessary equipment, supplies, and training to conduct operations that support subsequent identifications. The Department believes that to fully leverage host nation assistance in accounting for our missing, those nations need to be trained and equipped to JPAC defined standards to undertake the less challenging of these operations. Since JPAC is the Department of Defense's lead agency in ancient remains recovery and identifications, it is the organization best suited to train and equip these nations.

Section 1202 would provide the Secretary of the Air Force authority similar to that accorded the Secretary of the Navy in section 7227 of title 10, United States Code, by permitting the Secretary of the Air Force to provide support and service to foreign military and other foreign state aircraft transiting United States Air Force installations.

At present, foreign military and other foreign state aircraft transiting Air Force installations are often unable to obtain needed support and services because the Air Force lacks the authority to provide said support and services on either a reimbursable or non-reimbursable basis. Countries and organizations with which the United States has a cross-servicing agreement under section 2342 of title 10 may obtain support and services on a reimbursable basis pursuant to those agreements for their military aircraft. However, the Air Force lacks the authority to provide support and services to foreign military aircraft from countries with which the United States has no such agreement, as well as other foreign state aircraft which are not military aircraft, such as a chartered civil aircraft carrying a country's Prime Minister or chief diplomat. At a few Air Force installations, including Andrews Air Force Base, Maryland, the need for the

authority to provide certain expected and necessary forms of support to transiting non-military foreign state aircraft is particularly acute and its absence has, on occasion, served as a source of embarrassment to the United States. It has also endangered the ability of state aircraft of the United States to obtain such support and services when transiting foreign government airports.

This section would authorize the Secretary of the Air Force to provide support on a reimbursable or non-reimbursable basis, depending upon the nature of the support or service provided, as well as whether the foreign country involved provides reciprocal support and services to state aircraft of the United States. Additional authority to sell fuel pursuant to this section is only for Air Force-owned fuel, as the authority to provide Defense Energy Support Center (DESC)-owned fuel is already authorized pursuant to section 2404 of title 10 and DESC's implementing regulations.

Cost Implications: If enacted, this section would not increase the budgetary requirements of the Department of Defense.

Subtitle B—Nonproliferation Matters and Countries of Concern

Section 1211. Section 1605 of the National Defense Authorization Act for Fiscal Year 1994 does not include new organizations and new responsibilities of existing organizations relevant to counterproliferation. Additionally, the report the law requires does not cover the activities that have emerged in related Combating Weapons of Mass Destruction (WMD) areas. The legislation has been overcome by events and the benefit of the annual report does not justify the cost of production.

Relevant new organizations that have been established since the 1994 chartering legislation for the Counterproliferation Review Committee (CPRC) include: the Department of Homeland Security (DHS), the Director of National Intelligence, the National Counterproliferation Center (NCPC), the National Counter Terrorism Center (NCTC), and the Counterproliferation Technology Coordination Committee (CTCC). The latter is led by the National Security Council, the Homeland Security Council, and the Office of Science and Technology Policy (OSTP). Within the Department of Defense (DoD), there have been significant changes relevant to Combating WMD responsibilities with the creation of the Assistant Secretary of Defense for Homeland Defense (ASD(HD)) to coordinate between DHS and DoD. The U.S. Northern Command (USNORTHCOM) was established as a new regional Combatant Commander for the Continental United States.

The U.S. Strategic Command (USSTRATCOM) was assigned the role of lead Combatant Command for Combating WMD. Finally, directly related science and technology (S&T) programs in the Department of Energy (DOE) were transferred to DHS.

Many interagency activities have been established to share information on the development of capabilities to reduce the threat of WMD.

The National Proliferation and Arms Control Technology Working Group (NPAC TWG)

is an interagency group to share technology development information on technologies to assess compliance with nonproliferation and arms control agreements more effectively.

The Technology Support Working Group is a tri-department group (DoD, DOE, and Department of State) to foster technology developments to counter terrorism threats.

The CTCC was established to assess technology development activities across the U.S. government to identify capabilities and gaps in our technology development programs to counter the WMD threat.

Other specific interagency efforts are: the National Counterproliferation Center, the National Counterterrorism Center, Management of Domestic Incidents, establishment of the Domestic Nuclear Defense Office (DNDO), the Proliferation Security Initiative, the 2004 National Critical Infrastructure Protection Research and Development Plan, and the National Homeland Security S&T Plan.

At the same time, each department necessarily coordinates with appropriate other departments in investment planning for WMD threat reduction to leverage resources to apply resources more effectively to improve capabilities.

Subtitle C—Other Matters

Section 1221 would make technical corrections to subsection (e) of section 2350a, of title 10, United States Code.

Specifically, this section would replace "a Mission Need Statement" with "an analysis of alternatives plan." The Mission Need Statement no longer exists. In the past, a Mission Need Statement was prepared before the initiation of a new acquisition program. The analysis of alternatives (AoA) plan is now the appropriate document for addressing cooperative opportunities with any country or organization referred to in subsection (a)(2) of section 2350a or NATO organizations. Like the Mission Need Statement, the AoA plan is prepared well before program initiation.

Subsection (e) of section 2350a of is titled "Cooperative Opportunities Document," yet there are three instances of the use of the term "arms cooperation opportunities document" in the subsection. In every instance this term should be replaced with "cooperative opportunities document" to be consistent with the title of the subsection. Cooperative opportunities in the area of defense extend well beyond "arms" to areas such as information technology and communications. Furthermore, the Department of Defense acquisition Directives and Instructions, consistent with the title of the subsection, do not recognize the term "arms cooperation opportunities document," but do recognize a statutory requirement for information on cooperative opportunities.

Section 1222 would add the Commander, U.S. Northern Command, or designee, to the Board of Visitors of the Western Hemisphere Institute for Security Cooperation.

When the Western Hemisphere Institute for Security Cooperation was established by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and signed into law in October, 2000, there was only one combatant command that had geographic responsibility for Latin America (less Mexico, which was not the responsibility of any unified combatant commander): the U.S. Southern Command. The Commander, U.S. Southern Command, or his designee, has been a member of the Board of Visitors since the Board's inaugural meeting in June, 2002.

The U.S. Northern Command was established on October 1, 2002, with geographic responsibility for Canada, and Mexico. Since both Canada and Mexico are members of the Organization of the American States (the Charter of which provides the context of democratic principles upon which the Institute's curriculum is based) and send students to the Institute, it is appropriate that the Commander, U.S. Northern Command, be an official member of the Board of Visitors alongside his Southern Command counterpart.

In practice, U.S. Northern Command has sent observers to meetings of the Board and briefed its members. The Board of Visitors, in its report to the Secretary of Defense of its December 2005 meeting, recognized the need for more formal involvement by the U.S. Northern Command in the affairs of the Institute and recommended that its commander be made a permanent member of the Board.

The term "Western Hemisphere" more correctly describes the source of eligible personnel than "Latin America" and corresponds to the name of the Institute.

Section 1223 would allow the Secretary of Defense to accept funds from the Government of Palau that are intended to defray the expenditures of the Civic Action Team in Palau.

Currently, the Government of Palau pays $250,000 annually to defray Civic Action Team expenditures. However, because of the Miscellaneous Receipts statute it is questionable whether the Department of Defense can retain and use this payment directly from the Government of Palau.

This section would provide specific authority for the Secretary of Defense to accept the funds and merge them with the Department of Navy Operation and Maintenance appropriation.

Section 1224 would add a new provision to chapter 443 of title 49, United States Code, to authorize the Departments of Defense and State to incur obligations arising out of aircraft losses due to participation in an international risk-sharing agreement. Such agreements would be in support of an international organization or alliance such as the North Atlantic Treaty Organization (NATO) or other similar organizations. This authority is expected to be used in support of NATO military or humanitarian missions conducted under a risk sharing agreement in which the participants share risk proportionate to the percentage of dues they pay. For example, the United States pays approximately 22 percent of the NATO civil budget. If an aircraft were lost during a NATO-sponsored operation, the United States would pay 22 percent of the losses

incurred regardless of whether the aircraft was a U.S. aircraft or not. This proposed risk-sharing regime is expected to save the United States money since the U.S. has historically incurred a proportionally greater risk than its percentage of contributions to NATO budget due to the greater involvement of U.S. aircraft in NATO operations.

The section would require the establishing of a revolving fund in the Treasury known as the air operations risk-sharing revolving fund at the outset of a contingency or other international operation covered by such an agreement. The fund would be administered by the Secretary of Transportation and would be used to receive contributions from other member nations as well as pay obligations to other nations incurred by the Department of Defense or State while participating in authorized international operations. To be authorized, an international risk sharing agreement must have been negotiated by or coordinated with Department of State.

When obligations arise, the U.S. agency having incurred the obligation may request the Secretary of Transportation to pay the obligation out of funds in the air operations risk-sharing revolving fund. If the revolving fund contains no funds or insufficient funds to cover the loss, the agency having incurred the obligation is required to transfer the necessary amounts to the fund.

In the case of the Department of Defense, the risk-sharing obligation is accompanied by proposed authority under Title 10 to engage in risk sharing activities and a proposed permanent appropriation to fund such obligations.

As a technical matter, this section would authorize funds to be transferred from the proposed air operations risk sharing revolving fund to the currently existing aviation insurance revolving fund to indemnify the Secretary of Transportation for obligations arising under section 44305 of title 49. Funds cannot be transferred from the existing aviation insurance revolving fund to the proposed operations risk-sharing revolving fund.

At the completion of air operations entered pursuant to subsection (a) of proposed new section 44311 of title 49, the Secretary of the department that incurred the obligation would be required to terminate the risk-sharing revolving fund when the Secretary reasonably believes that no additional claims or contributions will be received. Amounts remaining in the risk-sharing revolving fund would then be transferred to the Miscellaneous Receipts Account in the United States Treasury. Any contributions received after termination would also be transferred to that account. This would be required for each risk sharing fund, as there may be more than one risk-sharing revolving account operating at a time (e.g., one with NATO to share the risks of a NATO operation and one with another international alliance in the Pacific for a different contingency, or one by Department of Defense for a contingency and one by Department of State for an international disaster response).

TITLE XIII—MATTERS RELATED TO DEFENSE AGAINST TERRORISM AND RELATED SECURITY MATTERS

Section 1301 would increase to $5 million the authority of the Secretary of Defense to

pay rewards under the Department of Defense Rewards program (as compared to the authority of the Secretary of State to pay up to $25 million under 22 U.S.C. 2708). It also would increase the authority of the Secretary of Defense to delegate responsibility for implementation of the program, up to $1 million, to the Combatant Commander, who may delegate up to that amount to his deputy commander or, with approval of the Secretary of Defense or his designee, to commanders of commands directly subordinate to him.

These changes would provide Combatant Commands with the necessary flexibility, agility and responsiveness to tailor their respective rewards programs to address the varying environments and requirements within their particular Area of Responsibilities. The ability for Combatant Commanders to rapidly increase and decrease rewards authorizations based on analyses of emerging threats -- and with overall greater authority to significantly increase the amount of the award offered -- is essential to the operational effectiveness of the program as well as its tactical implementation in specific instances.

This proposed amendment would allow Department of Defense Rewards payments to have greater parity with the Rewards for Justice Program and permit greater delegation of that increased authority under the discretion of the Secretary of Defense. The increased authority in reward amounts and the ability to further delegate corresponding increases in reward authority reflected in this legislative change would:

(1) permit the Secretary of Defense to attract a greater numbers of individuals willing to provide information to coalition forces in effecting assigned missions and force protection; and

(2) ensure that reward amounts can be raised and lowered with sufficient agility to produce a tactical effect with a strategic resource.

Increasing the combatant commanders' reward authority would increase their ability to acquire information while simultaneously desynchronizing an enemy's perceived hierarchical position (*e.g.*, an insurgent leader currently listed with a reward of $1 million may command the perception that he is a more prominent figure than an individual listed at $50,000). By ensuring commanders have the ability to increase and decrease reward amounts in a significant manner, they would be able to challenge the enemy hierarchy and command structure, ensuring that enemy leadership remains psychologically unbalanced, which would have a significant negative impact on their ability to exercise command and control. In addition, the current timeline for rewards authorization in excess of $200,000 is too slow to support the speed with which changes need to occur at the operational level, likewise reducing the tactical effectiveness of changing reward amounts initiated or supported by the combatant commander.

The proposed changes in statutory reward authority and delegation of reward authority amounts would be accompanied by a commensurate change -- from $100,000 to $2 million -- in the reward amount which triggers the requirement for the Secretary of Defense to consult with the Secretary of State under 10 U.S.C. 127b(d)(2).

TITLE XIV—ADDITIONAL AUTHORIZATIONS FOR INCREASED COSTS DUE TO THE GLOBAL WAR ON TERROR FOR MILITARY ACTIVITIES AND MILITARY CONSTRUCTION FOR FISCAL YEAR 2008

Section 1401 provides for the additional authorization of the Army for aircraft, missiles, weapons and tracked combat vehicles, and other procurement equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1402 provides for the additional authorization of the Navy and Marines Corps for aircraft, weapons, missiles and torpedoes, shipbuilding and conversion, ammunition, other procurement operation and maintenance, and military construction in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1403 provides for the additional authorization of the Air Force for aircraft, ammunitions, missiles, other procurement, operation and maintenance, and military construction in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1404 provides for the additional authorization of Defense-wide activities in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1405 provides for the authorization of Joint Improvised Explosive Device Defeat Fund in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1406 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 additional costs due to the Global War on Terror for fiscal year 2008.

Section 1407 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 additional costs due to the Global War on Terror for fiscal year 2008.

Section 1408 authorizes appropriations for the Defense Working Capital Funds in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1409 authorizes appropriations for other Department of Defense programs for the Defense Health Program; for Drug Interdiction and Counter-drug Activities, Defense-Wide; and

for the Defense Inspector General in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1410 provides for the authorization of the Iraq Freedom Fund in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1411 provides for the authorization of the Afghanistan Security Forces Fund in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1412 provides for the authorization of the Iraq Security Forces Fund in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1413 provides for the authorization of additional personnel strengths for the active forces in the numbers provided for by the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

Section 1414 provides for the authorization of additional military personnel.

Sections 1415 through 1418 authorizes appropriations of the military construction of the military departments in amounts equal to the budget authority included in the President's Budget for additional costs due to the Global War on Terror for fiscal year 2008.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXI—ARMY

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXII—NAVY

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXIII—AIR FORCE

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXIV—DEFENSE AGENCIES

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXVI—CHEMICAL DEMILITARIZATION CONSTRUCTION PROGRAM

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXVII—GUARD AND RESERVE FORCES FACILITIES

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXVIII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

[TO BE SUBMITTED AT A LATER DATE]

TITLE XXIX—MILITARY CONSTRUCTION GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

Section 2901 would authorize the transfer of funds from the Department of Defense (DoD) Base Closure and Realignment (BRAC) account to the DoD Family Housing Improvement Fund (FHIF), enabling the use of the privatization authorities to meet the family housing requirements associated with the 2005 BRAC recommendations. It also would allow similar transfers of funds to the Military Unaccompanied Housing Improvement Fund (MUHIF).

Section 2883 of title 10, United States Code, establishes the DoD FHIF and the MUHIF for the acquisition or construction of military housing using military housing privatization authorities. Credits to the FHIF include funds that the Secretary of Defense may transfer from amounts authorized and appropriated for the acquisition or construction of family housing. Typically, funds associated with projects authorized and appropriated as part of the family housing construction and improvement program have been cited in transfers to the FHIF. Section 2883 similarly authorizes the transfer of funds for authorized and appropriated military unaccompanied housing construction projects into the MUHIF for use in conjunction with unaccompanied housing privatization projects.

The Department of Defense has been able to leverage its resources through the use of the military housing privatization authorities. By using the authorities to attract private sector investment, Navy is able to construct the same amount of housing with a lesser investment (or construct more housing with the same investment).

Installations gaining additional personnel as result of the 2005 BRAC decisions need housing. Navy would identify projects to construct housing and, subject to approval, execute those projects using funds deposited in the DoD Base Closure Account 2005 established under the authority of section 3005 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107). Because Congress does not specifically authorize and appropriate funds for the construction of housing as part of the BRAC budget, those funds are not available for transfer to the FHIF or MUHIF to acquire or construct housing through use of military housing privatization authorities. As such, Navy would not be able to similarly leverage its BRAC resources to construct needed housing at gaining installations.

Because Congress requires advance notification of funds transfers, in addition to the issuance of solicitations or conveyance or lease of property, Congress would be afforded oversight over the use of these funds.

Cost Implications: This section would not create or change any entitlement or require funding in a Program Budget Decision.

Section 2902 would amend the law to raise the dollar threshold for Congressional notification of leases for military family housing facilities in a foreign country as well as for real property related to family housing facilities in a foreign country.

The current Congressional notification threshold of "$500,000" was established in 1987 in section 2311 of the National Defense Authorization Act for Fiscal Years 1988 and 1989. Today, leases for military family housing facilities in foreign countries cost considerably more than when the current threshold was established. Consequently, Congressional notification is required even for leases related to very small family housing facilities. The section would reduce the administrative burden associated with Congressional notification and allow the Army Services to place Army families into leased family housing facilities more quickly.

Section 2903 would revise the method for adjusting, to account for foreign currency fluctuations, the maximum lease amounts for family housing units the Secretary of the Army may lease in Korea under section 2828(e)(4) of title 10, United States Code.

Section 2801 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) amended section 2828(e) to authorize in paragraph (4) the Secretary of the Army to lease up to an additional 2,800 units of family housing units in Korea at an increased maximum amount of $35,000 per unit per year. This authority was in addition to the existing authority of the Secretary to lease family housing units in Korea at $25,000 per unit per year, which was provided by Congress in 1987. Both maximum amounts are to be adjusted annually to account for foreign currency fluctuation and changes to the consumer price index. The method provided, however, has not maintained the $10,000 differential in these maximum lease amounts. This amendment would restore and maintain the proportional relationship between the maximum lease amounts.

Section 2904 would increase the maximum lease cost for up to 600 Army regular cost family housing units in areas designated by the Secretary of the Army when the process for adjusting domestic leasing amounts is insufficient because of market conditions, utility costs or other unforeseen circumstances that impact lease amounts. Instead of applying a maximum lease amount based on the national average to all leases, this section would provide the flexibility necessary to lease family housing in areas where lease costs significantly exceed national averages.

Unlike the Basic Allowance for Housing, which varies based on local factors, the lease cap is a universally applied average value which does not reflect local or regional conditions. This is a major constraint in leasing rental units for military families in areas where utility costs, market price levels, and other economic factors are significantly higher than those of the majority of the nation. The proposed language will provide the flexibility needed to lease adequate quarters in those areas.

The number (500) of high-cost leased housing units authorized under current law is shared among the services and generally addresses the need for high-cost leases under normal circumstances. However, this level is inadequate to meet Army needs under special circumstances in areas significantly impacted by Army Transformation, re-stationing, and where economic conditions drive costs significantly above the national average. This section is not requesting more leases but it proposes flexibility in changing the maximum lease amount of up to 600 of the 3,159 regular cost leases already authorized to the Army. Finally, the difficulty in housing recruiters in areas distant from Army installations is also addressed by the section.

Section 2905 would extend the temporary authority to make or accept cash equalization payments in connection with exchanges of reserve component facilities by three years.

Under section 18240 of title 10, United States Code, the Secretary of Defense may authorize the Secretary of a military department to acquire a facility, or an addition to an existing facility, needed to satisfy the military requirements for a reserve component by carrying out an exchange of an existing facility under the control of that Secretary through an agreement with a State, local government, local authority, or private entity. Section 18240(c) provides that the value of the replacement facility, or the addition to an existing facility, acquired by the United States must be at least equal to the fair market value of the facility conveyed by the United States under the agreement. When section 18240 was enacted in section 2809 of the Ronald W. Reagan National Defense Authorization Act of 2005, the Secretary of Defense was provided with temporary authority to make or accept cash equalization payments if the value of the facility or addition to be acquired was not equal to the value of the facility or addition to be conveyed.

This temporary authority to accept or make cash equalization payment is limited to 15 exchange agreements and expires on September 30, 2007. This section would extend the authority through fiscal year 2010.

Subtitle B—Real Property and Facilities Administration

Section 2911 would move section 2677 of title 10, United States Code, into section 2663 of title 10. This is part of a continuing effort to consolidate and better organize the provisions of chapter 159 of title 10, dealing with real property. Section 2663, as consolidated itself two years ago, deals with the acquisition of real property authorities. The language of section 2677 deals with the acquisition of options for real property, a subject properly within the ambit of section 2663. This proposed section would move the language of section 2677, without substantive change, to become subsection (h) of section 2663.

This section has no discernable budget implications.

Section 2912 would transfer the Air Force Memorial and the site upon which it is constructed to the administrative jurisdiction, custody, and control of the Secretary of the Air Force and empower the Secretary of the Air Force to enter into agreements with appropriate private organizations to provide for the management and maintenance of the Air Force Memorial.

Subsection (a) would effectuate a transfer of the subject land to the Air Force.

Subsection (b) further provides that in order to ensure the Air Force Memorial is appropriately maintained, the Secretary of the Air Force may enter into an agreement with the Air Force Memorial Foundation (the original donor of the Air Force Memorial) or other appropriate private organizations so that they may assist in on-going management and maintenance of the memorial and the site.

Subtitle C—Land Conveyances

Section 2921 would provide needed flexibility for the use of the Arlington Navy Annex, make the best use of taxpayer dollars, and promote efficiency and eliminate waste. Section 2881(h) of the National Defense Authorization Act for Fiscal Year 2000 currently requires the Secretary of Defense to transfer administrative jurisdiction over the Arlington Navy Annex to the Department of the Army not later than January 1, 2010, or when the Navy Annex is no longer required for use as temporary office space during the Pentagon renovation, whichever is earlier. Section 2881(c) further requires that, upon transfer to the Secretary of the Army, the Secretary of Defense must provide for the removal of improvements, *e.g.*, Federal Office Building #2 (FOB #2), and prepare the property for use as part of Arlington National Cemetery (ANC).

The proposed change is necessary to take into account more recent projections on ANC out-year requirements as well as realignments mandated under the base realignment and closure (BRAC) process. This section would maintain Congress' original intent that the Navy Annex be transferred to ANC to accommodate the cemetery's future requirements, and it also recognizes that the Department of Defense (DoD) will need office space during transitions required by BRAC. The section would allow the Department to wind down its occupancy of FOB #2 in an economically sensible way during BRAC, while still allowing ANC to obtain the property as soon as it needs it. In a period of two years alone, office space at FOB #2 will cost approximately $20 million less than equivalent office space elsewhere in the National Capital

Region. This section does not obstruct or degrade the cemetery's requirements because it does not plan to develop the Navy Annex property until 2014. If ANC needs to revise its plans, it will still be able to request the transfer at any time and DoD will be required to fulfill that request within 12 months.

This section is in conformance with the master plan required by section 2881 of the National Defense Authorization Act for Fiscal Year 2000 (relating to the use of the FOB #2 property). This section does not affect the requirements of the Defense Base Closure and Realignment Act of 1990 regarding deadlines for completing the realignment of the current tenant organizations in FOB #2.

Subtitle D—Other Matters

Section 2931 would allow the Secretary of Defense to use funds appropriated for operation and maintenance for construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation. During times of emergency, time and flexibility are of the essence. This authority would provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects.

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

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

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

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

Section 2932 would increase various funding limitations related to emergency construction and unspecified minor military construction.

Cycle time for facility construction is too long and typically takes about five to eight years from requirements determination to beneficial occupancy. The existing cost thresholds effectively limit the size and scope of facilities to be constructed utilizing unspecified minor military construction funds from both the military construction and operations and maintenance appropriations. The program has continued to lose ground to inflation over the past several years. The Government Accountability Office, in a report released in February 2004 entitled "Long-term Challenges in Managing the Military Construction Program," estimated that construction costs for the military have increased by an average of 41 percent since the thresholds amended in this provision were last adjusted. Increasing the cost limits for minor construction projects would allow the Department of Defense (DoD) to: (1) respond more effectively to urgent and unforeseen requirements with properly sized and scoped facilities; (2) reduce the recapitalization rate faster by allowing facility projects under $3,000,000 to be funded from the unspecified minor military construction account instead of the normal military construction programming and budgeting process; and (3) allow the DoD health care community the same level of spending authority as the Department of Veterans Affairs (DVA), allowing DoD to easily partner with DVA on health care projects.

In addition, this legislation would provide a mechanism to consolidate functions into efficient and modern space, while eliminating obsolete, unproductive, and costly spaces and thereby improving the use of scarce resources.

Section 2933. This proposed amendment to section 302(d) of the Federal Land Policy and Management Act (FLPMA) of 1976 (Public Law 94-579, as amended by Public Law 100-586) increases military readiness by giving the Secretary of the Interior the authority to issue to the Secretary of Defense, the Secretary of a military department, or the Commandant of the Coast Guard a nonrenewable general authorization to use public lands in Nevada for military maneuvering, military training, and equipment testing provided those activities do not involve live ammunition or ordnance. Public Law 100-586, an amendment to FLPMA in 1988, provided the Secretary of the Interior this authority for Alaska. This proposed amendment would expand the existing authority to include Nevada.

Historically, the military has been required to secure access to public lands for many aspects of military training, especially the location of equipment, through formal land withdrawal. This proposed amendment provides a less formal, more flexible process to facilitate military testing and training by:

- Allowing the military to use public lands in Nevada without formally withdrawing them from public use. Land withdrawals typically last 15 years or longer and confine the use to the military purposes for which they were withdrawn. The general authorization provided for in section 302(d) has a maximum life of three years and permits other uses that are consistent with FLPMA's multiple use and sustained yield mandate.

- Using general land use authorizations to provide flexibility to rapidly alter training scenarios to reflect changing real-world scenarios. As planners recognize

new training requirements, exercises can be adjusted utilizing public lands made available under general authorizations. For example, authorizations to use public lands that underlie the Fallon Range Training Complex (FRTC) airspace can be used for placement of mock Patriot missile batteries in support of interoperability training with the Army. The need for the integration of Patriot batteries into Navy Air Wing training is derived from events that occurred during Operation Iraqi Freedom and was not anticipated during the process to renew and expand formal land withdrawals that support the FRTC.

- Using general land use authorizations to increase efficiency and reduce costs. The time and manpower savings will be realized by the Department of Defense (DoD) and the Bureau of Land Management (BLM) by using a streamlined process to address short term needs vice the traditional land withdrawal process.

The proposed amendment will not relieve DoD or BLM of their responsibilities under the National Environmental Policy Act, Endangered Species Act, or other environmental laws. The general land use authorization process will include involvement of state and local governments and the public as provided under section 1712(f) of FLPMA.

Cost Implications: This section does not create or change an entitlement or require funding in a Program Budget Decision. The provision will, however, simplify the military's process for gaining authorization to use public land in Nevada. It will result in savings, to the Bureau of Land Management and the military, compared with a land withdrawal. Those savings will come from potential man-hours saved in not having to staff a lengthy formal land withdrawal section. This simplified process does require DoD to reimburse BLM for administrative costs associated with requests for general land use authorizations. The cost implications of this aspect of the section are difficult to estimate but are expected to be negligible. The benefit to military readiness, while difficult to quantify in terms of dollars, will be significant.