Section-by-Section Analysis

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sections 101 through 107 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 2009.

Subtitle B—Air Force Programs

Section 111 would allow the Department of Defense to implement the October 2004 Deputy Secretary of Defense approved Management Initiative decision 917 (MID-917), which designated pilot programs to assess revised contracting, programming, budgeting, and financial processes for Performance Based Logistics (PBL) agreements. The Joint Strike Fighter (F-35) was designated via MID-917 as a pilot program. PBLs - and other commercially focused, accountability-based logistics contracts - have clearly demonstrated the potential to reduce aggregate sustainment costs while enhancing readiness (examples include: C-17, F/A-18E/F, F-117, KC-10, S-3, Navy Aircraft Tires, F/A-18 SMS, HIMARS, Javelin, F404 engine rotor, ARC-210 radio, F-14 LANTIRN pod, H-60 avionics). Performance Based Logistics (PBL) is buying a performance "end-state", in lieu of individual parts, supplies, technical representatives, or engineering changes. With this pilot program the Department is buying a comprehensive, performance based support package with continuous process improvements with guaranteed availability, improved reliability, obsolescence management, and other desired logistics elements which may involve investment for support equipment, training devices, spares, engineering changes, and, etc.

Unlike the PBL programs cited above, the F-35 Air System provides an autonomic logistics capability that will enable a knowledge based approach to sustainment. The JSF will have the capability to predict whether we need a spare or a repair or a reliability improvement based on fleet-wide diagnostics and prognostics. In order to fully leverage this capability, funding for sustainment cannot be tied to a specific element of support.

Responsiveness, measured performance, and specific availability goals mandate financial dexterity. Financial dexterity is the key enabler in execution to rapidly move resources to solve logistics and sustainment problems and improve readiness and availability. This pilot program is essential to establish the cost baseline for F-35 performance based logistics and prove the viability of performance based logistics prior to the exporting of the JSF to the eight international participant countries who have agreed to procure the F-35.

Therefore, the traditional appropriations structure, which in legacy programs has served us well, with many individual accounts/appropriations and with statutory and regulatory limitations on the use of funds, does possess constraints to cost and optimum operationally effective PBL execution. For instance, under the proposed legislation, the JSF logistics contractor would be able to use the Operation and Maintenance (O&M) appropriation to not only manufacture or procure replenishment spares and perform maintenance actions, but also fund redesignation and modernization efforts that result in increased parts life, which ultimately results in reduced spares purchases and reduced maintenance. These cost savings are expected to result in overall reduced life cycle costs.

Funding PBL contracts with one type of appropriation provides the essential flexibility to enable implementation of the most cost-effective sustainment solution. Further, as a joint international program, the JSF Program will be contracting for PBL on behalf of the eight international partner countries during this pilot timeframe FY 2010-2015. These countries will be providing funds via a single appropriation for PBL. This pilot program will enable the U.S. Services procuring JSF to fund its PBL contracts in the same manner on a performance outcome basis already employed by the eight international partner countries.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

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 2009.

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 2009.

Section 302 authorizes appropriations for the Defense Working Capital Funds, the National Defense Sealift Fund, and the Defense Coalition Support Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2009.

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 2009.

Subtitle B—Environmental Provisions

Section 311 would authorize the Secretary of Defense to reimburse the Moses Lake Wellfield Superfund Site Special Account within the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 for costs incurred by the United States Environmental Protection Agency (EPA) in overseeing a remedial investigation/feasibility study under CERCLA being performed by the Department of Defense under the Defense Environmental Restoration Program at the Former Larson Air Force Base.

The Army and the EPA entered into an interagency agreement on March 2, 1999 covering the Army's performance of a remedial investigation/feasibility study at the Former Larson Air Force Base. Under the terms of the agreement, 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.

The Army Corps of Engineers has verified costs incurred by EPA under the agreement for the period from April 1, 2005, through March 31, 2006, in the amount of $64,049.40. In the Conference Report accompanying the National Defense Authorization Act for Fiscal Year 2001 (H.R. CONF. REP. No. 106-945, at page 761), the Conference Committee directed "the Department of Defense (DoD) and the military departments to continue to seek congressional authorization prior to reimbursing EPA for any oversight costs incurred at environmental restoration sites where DoD or the military departments have incurred liability under CERCLA." This section would authorize the Army to reimburse EPA in an amount equal to $64,049.40 for their oversight costs.

Cost Implications: Current oversight costs for EPA are $64,049.40. Oversight costs will be paid out of the ER, FUDS account. The account has been under-funded over the past several years and Congressional plus-ups from $20 million to $70 million per year have been authorized and appropriated, except in fiscal year 2007, when there was no Congressional plus-up due to the continuing resolution appropriation. Congress continues to direct the Secretary of Defense and the Secretary of the Army to address the lack of funding support within the DoD and Army to meet the cleanup requirements of the FUDS program.

Subtitle C—Workplace and Depot Issues

Section 321 would provide an exception to the prohibition in section 2465 of title 10, United States Code, on the use of funds appropriated to the Department of Defense for the purpose of entering into a contract for the performance of firefighting functions on any military installation or facility. The limited exception would authorize contractor performance of firefighting functions to respond to wildland fires, nonstructural fires that occur on wildlands such as ranges and forests on military installations. This exception does not authorize the contracting of other fire fighting missions on military installations.

The exception would provide greater flexibility in accomplishing wildland firefighting and management, such as prescribed burns. This proposal will reduce or eliminate the need to utilize valuable warfighting assets, including Soldiers and equipment. This exception would provide authority currently available to other Federal agencies with land management

responsibilities, such as the U.S. Forest Service and Bureau of Land Management.

The Department of Defense has experienced problems with obtaining and utilizing necessary personnel for wildland fire fighting and prescribed burning on several military installations. Civilian employees available on these installations to perform these critical functions are often not sufficient, and the current statute restricts alternative manning for these functions.

Wildland fires are often managed by the environmental or public works departments, rather than installation firefighting activities. Environmental and public works departments rely on contractor labor to perform their functions. The current statutory restriction presents unique problems for these departments when controlling wildland fires. For example, under the current law a forester who is contracted to supplement the environmental staff and is well trained in wildland fire management and control may be restricted in responding to and controlling a wildland fire when it occurs. A very limited exception, as provided in this amendment, would provide clear authority to use contractor personnel in this critical area.

Section 322 would permit the Department of Defense to augment existing Federal employee security guards by utilizing contracts to meet and sustain applicable Force Protection requirements expeditiously. Such augmentation by contract will not displace any existing Federal employees, and will last only for the duration of the emergency that resulted in the enhanced Force Protection Condition. Importantly, this authority is required to meet the physical security demands of the Base Realignment and Closure (BRAC) related move by the National Geospatial Agency (NGA) to the New Campus East consolidated facility located at Ft. Belvoir, VA. Ft. Belvoir military authorities indicate that they do not have the resources to provide security protection to the large new NGA facility being constructed at the Engineering Proving Ground of Ft. Belvoir to house NGA and meet the security requirements of consolidating all the Washington, D.C. area NGA personnel and resources in this one location.

Section 2465 of title 10, United States Code, effectively prohibits any new contracts for security guard service at military installations in the United States. However, when a heightened security posture of Force Protection Condition Bravo or higher is set for Department of Defense (DoD) components based on terrorist threat or similar exigencies, current Federal employee staffing of security guards may be inadequate to meet and sustain the standards and measures of protection required by DoD and the Military Departments on a site-specific basis. As stated in DoD Directive 0-2000.12-H, "Protection of DoD Personnel and Activities Against Acts of Terrorism and Political Turbulence," the maintenance of Force Protection Condition Bravo "must be capable of being maintained for weeks without causing undue hardship [or] affecting operational capability," and further, that implementation of Force Protection Condition Charlie "will create hardship and affect the peacetime activities of the unit and its personnel."

Section 323. Section 2464 of title 10, United States Code, currently requires workloads sustaining a core logistics capability be accomplished by Federal Government employees, using government-owned facilities and equipment. This proposed change would allow workloads performed by Government employees using contractor-furnished equipment, or in facilities leased to the Government, to be counted as sustaining a core logistics capability under section

2464 if that work is being performed pursuant to a public-private partnership as defined by section 2474 of title 10.

Section 2474 seeks to encourage private-sector investment at Centers of Industrial and Technical Excellence. This private sector investment may include facilities or equipment. This proposed change would allow partnered workloads performed by Government employees using contractor-furnished equipment or leased facilities to be counted as core.

Subtitle D—Other Matters

Section 331 would replace the current inconsistent and incomplete legislation regarding the recovery of missing military and Department of Defense (DoD) government property with language that is more comprehensive for all of the armed forces and that applies to DoD civilians, contractors, and any other person. The inconsistency of existing law came to light during recent attempts to recover certain dangerous military property found for sale in the civilian market and in the subsequent attempts to prosecute those who sold or otherwise misappropriated the Government property. The Army and the Air Force each have had similar, but incomplete, statutes passed by Congress following the end of World War II which facilitate the recovery of missing military property issued to enlisted personnel. Neither the Navy nor the Marine Corps have had equivalent statutory authority. However, section 375 of the National Defense Authorization Act of Fiscal Year 2008 (Public Law 110-181) as recently passed by Congress would repeal the Army and Air Force statutes and insert statutes applying to all of DoD, but would still limit the authority to clothing, arms, or equipment "furnished to a member of the armed forces" and improperly disposed of by that member to whom the military or Department of Defense property was furnished. While section 375 covers both enlisted and military officers, it would not provide authority that addresses DoD civilians, contractors, or other persons who might improperly dispose of military or DoD property. It also would not provide authority that includes property beyond individual equipment that has been furnished to the member of the armed forces improperly disposing of it. The DoD believes that even if section 375 were to become law, it remains unduly limiting of the authority to recover military and Department of Defense Government property that has been, and is being, improperly disposed of in the current conflicts in Iraq and Afghanistan.

The lack of a comprehensive statute applicable to any military or Department of Defense property complicates law enforcement and Department of Justice efforts to recover military or Department of Defense property which was misappropriated, or was the subject of unauthorized disposition, by military members, DoD civilians, contractors, or other persons. This section would create a comprehensive statute applicable to all of the military departments and all military and Department of Defense property regardless of to whom it was furnished or by whom it was improperly disposed or misappropriated. In addition, this section would authorize local and state officials to act as additional agents of the Federal Government to help recover misappropriated military items.

In a recent Navy case, the items in question were ceramic plate inserts for body armor (i.e., bullet proof vests), night vision goggles, and munitions list items that could pose a threat to local and state law enforcement personnel. The items had been issued to Navy and Marine

Corps personnel and then reported as "lost" or "misplaced." Later, the items were found for sale on the Internet by allegedly bona fide, intervening, good-faith purchasers. There was even an attempt to sell a Navy airplane over the Internet. Section 375 of the National Defense Authorization Act of Fiscal Year 2008 as passed by Congress might have facilitated the recovery of the "personal items," such as the bullet proof vests or night vision goggles if improperly disposed of by the member of the armed forces to whom they were issued; however, neither law enforcement nor Government property specialists could use section 375 to recover the airplane or other major military property that is improperly disposed of by other than the member of the armed forces to whom it was furnished, even if an airplane or other major equipment can be said to have been "furnished" to an individual military member.

Importantly, current Army regulations (AR) 735-5 2.1(e) and (f), promulgated pursuant to the existing statute (10 U.S.C. 4832), make it clear that neither action by unauthorized Army personnel, nor inaction by authorized Army personnel, creates a property interest for someone who may claim to be a bona fide purchaser. In addition, these provisions make it clear there is no such thing as a "bona fide purchaser without notice" with regard to misappropriated Army property.

It should be noted that this section would not obviate due process, but would merely act to postpone due process until after the property has been seized. This section would allow for the immediate recovery of military or Department of Defense property and would shift the burden of proof to the one in possession of the property to prove, after the property has been seized, that the property was not the subject of unauthorized disposition and was lawfully possessed by that person. DoD and General Services Administration records of authorized disposition of surplus property or property transferred to allies would be available for that purpose, if applicable.

This section would facilitate the recovery of missing DoD items and deter the misappropriation, and prevent the illegal transfer or sale, of sensitive military or DoD property and technology, as well as the potential misuse of DoD property against our military or domestic law enforcement personnel. In addition, this section would contribute to the ease of prosecution of any military officers, enlisted, DoD civilian employees, contractors, and any other person who misappropriates military or Department of Defense property.

This section would apply retroactively to all military and DoD Government property misappropriated, or improperly disposed of, not only during any future conflict, but also during the current conflicts in Afghanistan and Iraq.

Furthermore, this section would include a severability clause to ensure that the rest of the section would remain in full force and effect in the event any portion of it should be found to be unenforceable.

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 2009.

Section 402 would increase United States Marine Corps (USMC) Reserve component general officer billets from 10 to 12, in order to compete for full-time joint duty assignments. The Marine Corps has 12 validated Reserve component general officer billets (11 Active and one Joint). However, the Marine Corps is only authorized 10 Reserve component general officers. This prevents the Marine Corps from filling one of their internal Reserve component general officer billets and from competing for one of the Chairman's 10 full-time, joint duty assignment.

This section would permit the Marine Corps Reserve to fulfill all operational requirements. The USMC still would maintain the lowest enlisted member to general officer ratio among the Reserve components.

Cost Implications: The filling of these two positions by Reserve component officers would not exceed the threshold for budgetary submissions. The annual cost of each of these two additional general officers in an active status would be $21,500. Since this section does not call for an increase in authorized strength, the Department of Defense assumes that the generals would be in place of senior colonels who cost about $16,840 per year. As a result, the additional cost from this proposed change would be $4,660 per year for each officer. The Marine Corps would fund these positions within existing budget authority.

Section 403 would exclude from active-duty and full-time National Guard duty end strengths Reserve component members on voluntary active-duty orders or voluntary full-time National Guard duty orders who respond to a disaster, accident, or catastrophe. This would recognize short duration requirements for a specified operation not typically sustained by active duty. It also would recognize that meeting these requirements normally does not present a choice of fulfilling or not fulfilling the requirement based on end-strength levels. Disasters, accidents, and catastrophes are normally responded to quickly and with few bureaucratic impediments.

Members of the Air National Guard (ANG) and the Air Force Reserve (AFR) have been serving on voluntary and involuntary orders continuously and seamlessly as members of the Total Force in support of the Global War on Terror. These personnel have answered the call to duty in defense of the United States at home and overseas. They have performed active service, as defined in 10 U.S.C. 101(d), under 32 U.S.C. 502(f) (voluntary and involuntary Reserve Personnel Appropriation (RPA) days), 10 U.S.C. 12301(d) (voluntary Military Personnel Appropriation (MPA) or RPA days), and 10 U.S.C. 12302 (involuntary MPA days). The missions performed range from combat operations, border security, and protecting the homeland to disaster recovery and relief. The foundation of the Guard and the Reserve is built on volunteerism. The current Operational Tempo of the Armed Forces, and more specifically the Air Force, has placed demands for the continued utilization of the part-time force in meeting critical mission requirements. The reserve components continue to answer this call with a host of volunteers.

Section 115(b) of title 10, United States Code, gives flexibility to utilize the Guard and Reserve on active duty or full-time National Guard duty for 1,095 days in a rolling 1,460-day period without also counting against active-duty or full-time National Guard duty end strengths under section 115(a)(1) of title 10. While implementation of section 115(b) eliminates a significant perceived barrier to the effective use of Reserve component members -- i.e., the "179-day rule" for Active Duty for Operational Support (voluntary duty) -- the inclusion of voluntary active duty and voluntary full-time National Guard duty performed in response to domestic disasters may limit the availability of National Guard and Reserve personnel for use in support of homeland defense requirements as well as disaster response and relief (e.g., Hurricane Katrina) without affecting the end strength of the affected Service or reserve component.

This section would amend 10 U.S.C. 115(i) to exclude all periods of voluntary active duty and voluntary full-time National Guard duty for operational support performed by National Guard and Reserve personnel in response to emergencies, both natural and manmade, from counting against active duty and full-time National Guard duty end strengths under 10 U.S.C. 115(a)(1). In addition, this section would amend 10 U.S.C. 115(b)(3) to apply this exclusion to counting against operational support end strengths under 10 U.S.C. 115(b)(2). This would include duty performed under 32 U.S.C. 502(f)(2) or 10 U.S.C. 12301(d) (MPA or RPA days). This change would not create additional funding requirements. Instead, it would provide flexibility in utilizing Reserve component personnel for disaster response without affecting the end strength of either the active or reserve components. Close coordination of potentially competing requirements for National Guard personnel resources will continue to insure that the respective Combatant Commanders and State interests are addressed through the respective Service force-provider processes, coordinated by the National Guard Bureau.

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 2009.

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 2009.

Section 413 prescribes the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2009.

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 2009.

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 2009 to provide operational support.

Subtitle C—Authorization of Appropriations

Section 421 authorizes appropriations for fiscal year 2009 for military personnel.

Section 422 authorizes appropriations for fiscal year 2009 for the Armed Forces Retirement Home in an amount equal to the budget authority included in the President's Budget for fiscal year 2009.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would give the Chairman of the Joint Chiefs of Staff a reserve general/flag officer in each of the combatant commands as well as the Joint Staff. This recommendation also recognizes the increase of the number of combatant commands with the inception of AFRICOM.

Historically, the two Assistants to the Chairman for National Guard and Reserve Matters have been held by Army National Guard and the Air Force Reserve general officers. The expansion of exemptions for reserve components means the Joint Staff will encourage a broader pool of candidates.

This amendment also supports the Commission on the National Guard and Reserve's recommendation to ensure that National Guard and Reserve general and flag officers have the opportunity to serve in joint assignments, obtain joint experience, and acquire joint qualifications to compete for position that prescribe the grade of lieutenant general/vice admiral (O-9) and general/admiral (O-10).

Section 502 would amend section 662 of title 10, United States Code, to comport with the standard in section 619a of title 10, which goes into effect on October 1, 2008, that officers must be a Joint Specialty Officer/Joint Qualified Officer (JQO) to be appointed to the grade of O-7. This section also would simplify the promotion objective as applied under the new Joint Qualification System (JQS) that acknowledges all joint experiences no matter where they occur. Under the JQS, joint experiences, other than a standard 36-month joint duty assignment, are certified and recorded in an officer's record only after the experience is completed. The JQO promotion objective provides a single, easily identifiable and trackable standard. With Joint Professional Military Education, a prerequisite for JQO designation, the military departments already will have made a quality cut in selecting officers who show potential for future promotion; therefore, there is a greater likelihood that the military departments would consistently meet the joint promotion objective.

If enacted, this section would provide an accurate and relevant assessment of Joint Qualified Officers.

Section 503 would bring the guidance regarding joint duty assignment lengths and exceptions in line with the Joint Qualification System (JQS) developed by the Department as directed in section 516 of the John Warner National Defense Authorization Act for Fiscal Year (FY) 2007. The transition to an experience-based system that takes into account multiple joint

experiences, joint individual training, and participation in joint exercises necessitates this conforming legislation. In particular, this section would: (1) strike all references to "joint duty credit for certain joint task force assignments;" (2) replace references to "cumulative service" with the term "accrued joint experience;" and (3) move the description of a qualifying reassignment from subsection (g)(4) to subsection (d)(1)(D). All of the proposed changes would simplify the implementation of the JQS and streamline this section of statute.

Section 504 would update and streamline the language in section 619a of title 10, United States Code to reflect the changes made to section 661 of title 10, United States Code, by section 516 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

Section 619a currently requires officers on the active duty list who are to be appointed to the grade of brigadier general or rear admiral (lower half) after September 30, 2008, to be joint specialty officers. This initiative would replace the "joint specialty" language with "Joint Qualified Officer," in accordance with the changes made to section 661 of title 10. Since a "joint duty assignment" (JDA) is an inherent prerequisite to become a Joint Specialty Officer/Joint Qualified Officer, this initiative would remove the redundant requirement in section 619a(a)(1) to have completed a JDA.

This section also would provide more specificity regarding the criteria for a "serving-in" waiver under section 619a(b)(4). Such a waiver may be requested if the officer has completed Joint Professional Military Education II and is currently assigned to a JDA. In addition, this section would delete section 619a(h) because the special transition rules for nuclear propulsion officers are outdated now that there are no longer officers in the inventory who meet the criteria of subsection (h).

Section 505. These conforming amendments would ensure that the terminology used in sections 663 and 665 of title 10, United States Code, corresponds with changes made to section 661 of title 10 in section 516 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), which became effective on October 1, 2007. Specifically, these amendments would replace references to "Joint Specialty Officer" with "Joint Qualified Officer."

Section 506 would replace references to "Joint Specialty Officer" in section 667 of title 10, United States Code, with "Joint Qualified Officer" to correspond with changes made to section 661 of title 10 in section 516 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364). This section also would delete the current paragraph (16) of section 667, which directs reporting the number of officers granted "credit" for service in a qualifying joint task force, since those experiences are now accounted for in the Joint Qualification System. Instead, this section would create a requirement to report the number of officers certified at each level of joint qualification.

Section 507 is a conforming amendment to section 503 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (FY 2007 NDAA), which extended the mandatory retirement age of general and flag officers. This technical correction would provide

for the extension of lieutenant generals who have reached their mandatory date of retirement for years of commissioned service to the revised age limits.

Section 14508 of title 10, United States Code, currently is silent regarding lieutenant generals. As a result, section 14508 limits their mandatory retirement age to that of major generals, age 64, not 66 as provided for in section 503 of the FY 2007 NDAA. This has limited the ability of the Department of Defense to retain an officer as intended by the revised statutes. The Department anticipates that numerous cases will fall into this category in the near future.

Extending the age provisions as directed in the FY 2007 NDAA without a conforming change to the years of service provision would effectively preclude continued service by lieutenant generals to the revised age limit.

Subtitle B—Reserve Component Management

Section 511. Section 513 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) amended section 10216 of title 10, United States Code, to permit the Army to delay mandatory separation for military technicians (dual status) until age 60. The Air Force Reserve and the Air National Guard also employ military technicians (dual status) and would benefit from the force management flexibility permitted in this provision. By retaining experienced personnel, this proposal would extend that flexibility to the Air Force and increase the retention of experience and the combat readiness of units.

Cost Implications: Since each technician position will be filled, whether by a technician retained until age 60 or a replacement in the same pay schedule or pay band, any additional cost from this proposed change would be marginal. However, acknowledging that there may be some pay difference between retained technicians and replacement technicians, the cost for this pay differential would apply to approximately 230 technicians who face mandatory separation under existing law.

Section 512 would amend section 14703 of title 10, United States Code, and section 324 of title 32, United States Code, to bring those provisions pertaining to Reserve component chaplains and medical officers in line with similar statutes governing active duty officers, which allow such medical officers and chaplains to be retained until age 68.

Section 324 of title 32 sets the maximum age at which an officer may be retained in the National Guard at age 64. This is inconsistent with section 14703 of title 10, United States Code, which provides the Secretaries of the military departments with authority to retain chaplains and medical officers in the Reserve components until age 67. However, under section 1251 of title 10, the active duty components may retain medical officers until age 68. This amendment would make the age limit for medical officers in the Reserve components and the active duty components uniform at age 68. Health care providers frequently maintain proficiency well beyond the current age of mandatory removal. Given the ongoing deployments, and the desire of many providers to be retained, it is only prudent to change the Reserve component provisions in Title 10 and Title 32 to mirror the related sections that apply to active duty officers.

Attrition is expensive and losses, particularly among health care professionals, translate into a particularly expensive problem. The Department of Defense invests such significant resources in recruiting and retaining these critically-needed personnel that it can ill afford to lose them. There is no dispute that retaining health care professionals is considerably more effective than recruiting replacements. If these health care professionals wish to be retained beyond the normal mandatory retirement age, it would be more cost-effective to retain these individuals than to recruit and train new accessions.

Cost Implications: As of September, 2007, there were ten medical officers and no chaplains in the Selected Reserve who are age 66. In other words, there are ten officers who could be retained for another year under this section. The Department of Defense estimates that the number of officers per component and the maximum annual total cost of this section would be as follows:

Component	Number of Officers	Annual Cost
Army NG	1	$19,654
Army Reserve	5	$98,270
Air Force NG	1	$19,654
Air Force Reserve	1	$19,654
Navy Reserve	2	$39,308

The Department estimates that the total annual cost of this section would be $196,540. The military departments would fund any costs from this section within existing budget authority. Therefore, this section does not meet the threshold of a budgetary proposal.

Section 513. Section 503 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) increased the mandatory retirement age for certain Reserve officers from 60 to 62 years of age, or from 62 to 64 years of age. Specifically, it amended sections 14508, 14509, 14510, and 14511 of title 10, United States Code, to allow for separation on the last day of the month in which the officer becomes 62 or 64 years of age, as applicable. However, section 503 did not include conforming amendments to sections 12647 and 14702 of title 10. This proposal would amend these provisions to conform to the other new statutory limitations regarding the mandatory retirement date for Reserve officers.

Cost Implications: Since end strength limitations still apply, any additional costs associated with this section would be minimal.

Section 514 would allow the Secretary of the military department concerned to require military technicians to wear the service uniform while performing their civilian duties.

Most military technicians (dual status) perform the same job for the Department of Defense, whether in civilian or military status. The requirement to wear the appropriate military uniform is already in place for Army and Air National Guard technicians, and it acts to reinforce and encourage the Total Force work environment. This section would provide the authority to the Secretary of the Army and the Secretary of the Air Force to have a consistent policy regarding the wearing of the uniform among all dual status military technicians. It does not

apply to non-dual status technicians.

Section 515 would clarify the authority in section 325 of title 32, United States Code, to permit, with Presidential authorization and Gubernatorial consent, any National Guard officer -- not just an officer serving in command of a National Guard unit -- to retain his state commission in the National Guard while serving on active duty, so the officer thus possesses a dual status, federal and state. This would facilitate unity of effort in situations where title 10 and title 32 forces work together by allowing an officer who has been placed in a dual status to command the title 10 forces in his federal status (National Guard of the United States) and title 32 forces in his state status (National Guard).

This section also would allow the required Presidential authorization and Gubernatorial consent for a National Guard officer on active duty to continue to exercise his state commission to be obtained in advance for purposes of establishing command succession for mixed component (federal and state) units.

Finally, this section would clarify that an officer in a dual status retains full authority to perform National Guard functions authorized by State law without violating the provisions of the Posse Comitatus Act (18 U.S.C. 1385) if doing so in his state status, i.e., in command of, or working as a member of, a National Guard unit or team in state status.

Section 516 would clarify the authority to consider for vacancy promotion National Guard officers who have been ordered to or are serving on active duty in support of a contingency operation and to promote such officers.

Currently, section 14317(e)(1)(B) of title 10, United States Code, provides that a reserve officer who has been ordered to or is serving on active duty in support of a contingency operation may, if eligible, be considered for promotion by a vacancy promotion board convened under section 14101(a) of title 10. Section 14101(a) of title 10 states that a "vacancy promotion board" is a board convened to recommend reserve officers of the Army and Air Force for promotion to fill a position vacancy under section 14315 of title 10. Section 14315 authorizes consideration for a vacancy promotion only in the case of an officer in the Army Reserve or Air Force Reserve. Thus, the authority in section 14317(e)(1)(B) to consider for vacancy promotion reserve officers order to active duty in support of a contingency operation does not apply to National Guard officers. This section will amend section 14317(e)(1)(B) to provide that a reserve officer who has been ordered to or is serving on active duty in support of a contingency operation may be considered for promotion not only by a vacancy promotion board under section 14101 but also "by examination for Federal recognition under title 32."

In addition to clarifying the authority to consider for vacancy promotion National Guard officers on active duty in support of contingency operations, the section would also clarify the authority to promote reserve officers who have been selected for a vacancy promotion and before being promoted are ordered to active duty to serve in support of a contingency operation. The change will enable officers, who are ordered to active duty in support of a contingency operation after being selected for promotion, to be promoted against vacancies other than those which existed in the unit with which they were ordered to active duty. This will prevent the officer

from forfeiting the pay of the higher grade simply because the officer was ordered to active duty. Many Guard officers are on active duty with units other than their home units. This section would amend section 14317(d) by adding language to indicate clearly that the prohibition against a vacancy promotion within the subsection does not apply to an officer who has been ordered to or is serving on active duty in support of a contingency operation.

Subtitle C—Education and Training

Section 521. Currently, the president of the National Defense University (NDU) may confer only specific master of science degrees. This section would expand the specific list of degrees to include the Master of Arts in Strategic Security Studies, a degree formally approved and officially recognized by the Secretary of Education on February 27, 2007.

The NDU School for National Security Executive Education (SNSEE) is a joint, intergovernmental, and multinational school that combines faculty expertise and student experience to offer security professionals the knowledge they need to operate in an increasingly complex global security environment. Consistent with the July 2007 National Strategy for the Development of Security Professionals, SNSEE conducts interagency education with an integrated, strategic-level curriculum. This program offers a variety of courses taught in multiple formats with part- or full-time enrollment options.

On February 27, 2007, the Secretary of Education, on the recommendation of the National Advisory Committee on Institutional Quality and Integrity, recommended the awarding of the Master of Arts in Strategic Security Studies to 32 international students of counterterrorism then enrolled in the SNSEE program in the event Congress did not act to amend section 2163 of title 10, United States Code, before their graduation in 2007.

Section 522 would clarify the sources of tuition reimbursement for students attending the Air Force Institute of Technology (AFIT), as well as how the Institute may use such funds. Specifically, this section would allow the AFIT to collect and retain tuition from civilian employees to defray the incremental costs of instructing these students.

Currently, section 9314 of title 10, United States Code, gives the AFIT the authority to collect and retain reimbursement from the Department of the Army, the Department of the Navy, and the Department of Homeland Security for the cost of instructing servicemembers detailed for instruction at the Institute. However, section 9314 is silent regarding the disposition of funds received, and the reimbursement of instruction from the Air Force (when appropriated funds have not been provided), when the students are civilians from other Department of Defense (DoD) components, other Federal agencies, and private (non-governmental) parties. As a result, the AFIT sends the tuition it collects for the attendance of civilian employees to the U.S. Treasury. This legislative proposal would establish clear guidance for the AFIT to collect and retain tuition received from agencies for the attendance of civilian employees. It also would specify that the AFIT may utilize these funds to defray the incremental costs of such instruction. Examples of these incremental costs include the additional faculty members, staff members, and operating equipment and supplies needed to teach the civilian students.

These changes would clearly identify the parties that are required to bear the cost of tuition while attending the AFIT. They also would resolve ambiguities that currently exist regarding the use of funds received by the AFIT. Section 7049 of title 10 contains similar clarifications, on a limited basis, for the Navy.

Cost Implications: This section would authorize the AFIT to retain tuition reimbursements from civilian employees to cover incremental costs in support of students for which appropriated funding is not received. The Department of Defense estimates that this section would enable the AFIT to retain $144,000 from fiscal year (FY) 2009 through FY 2014 to cover incremental costs. Therefore, this section does not meet the definition of a budget-related proposal.

Description	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Tuition	$18,000	$20,000	$22,000	$25,000	$28,000	$31,000
No. of Credit Hours	58	65	71	81	91	100

Note: The estimate assumes a 10 percent increase in contractor population per FY, with the reimbursements rounded to the nearest thousand.

Section 523 would amend sections 4314, 4321, 7102, 9314, and 9317 of title 10, United States Code, to empower the Commandants, Presidents, and Commanders to establish new degree programs without having to amend the law each time. Currently, the degrees that may be granted by the United States Army Command and General Staff College, the United States Army War College, the Marine Corps University, the United States Air Force Institute of Technology, and the Air University are listed in sections 4314, 4321, 7102, 9314, and 9317. New degrees require Congressional action.

The United States Army Command and General Staff College, the United States Army War College, the Marine Corps University, the United States Air Force Institute of Technology, and the Air University have the responsibility to serve the professional education needs of all military and civilian personnel in their military department, including the Active component, National Guard, and Reserve component. To remain current and relevant to the needs of the military departments and the Department of Defense (DoD), their educational programs must change to meet the changing needs. Also, the increased demands placed on their personnel in prosecuting the Global War on Terror necessitate appropriate changes in the modalities by which the DoD delivers its educational programs to the force. As the programs evolve, it is important that the degrees conferred continue to match the programs to which they are attached. In addition, the continuing evolution of their educational programs produces opportunities across the colleges, universities, and institutes to develop and offer other types of degree programs that will continue to serve the needs of the military departments. However, current legislation precludes them from awarding other types of degrees or making changes to titles of existing degrees.

Currently, under sections 4314, 4321, 7102, and 9317, only the following types of academic degrees may be conferred: a Master of Military Arts and Science from the United States Army Command and General Staff College; a Master of Strategic Studies from the United States Army War College; a Master of Military Studies from the Command and Staff College of Marine Corps University; a Master of Strategic Studies from the Marine Corps War College of

Marine Corps University; a Master of Operational Studies from the Command and Staff College's School of Advanced Warfighting of Marine Corps University; a Master of Strategic Studies from Air War College; a Master of Military Operational Arts and Science from Air Command and Staff College; a Master of Airpower Arts and Science from the School of Advanced Airpower Studies (currently renamed the School of Advanced Air and Space Studies); and an Associate degree from the Community College of the Air Force.

As a result of these limitations, there is no flexibility to change titles of existing degrees if a school names change, as in the case of the School of Advanced Air and Space Studies. More importantly, the schools lack the flexibility, as degree-conferring institutions of higher learning, to award degrees in other areas relevant to military department developmental education needs without specifically requesting new legislation each time such a situation arises. The inherent time delay between seeking and acquiring new legislation severely limits the schools' ability to be responsive to the needs of the military departments in this area.

Current needs that the schools cannot meet because of statutory constraints include offering Bachelor degrees to enlisted personnel, offering degrees which can be earned by combining distance learning and residence education modes at the junior and senior officer level, and awarding degrees for programs such as the Air Force Test Pilot School.

This section would allow all military department personnel to make maximum use of the essential education provided by the DoD and would enable them to transfer credit as appropriate from civilian colleges and universities to complete degrees which are recognized as important to the mission of the military departments.

This section would provide the schools the flexibility currently not allowed by their degree granting authority, while also requiring that all degrees granted by the schools be directly in support of the mission of the military departments.

Section 524 would authorize the Secretary of the Navy to prescribe the strength of Brigade of Midshipmen at the United States Naval Academy (USNA). Currently, section 6954(a) of title 10, United States Code, states the midshipmen strength limit is 4,000 or such higher number as may be prescribed by the Secretary of the Navy under subsection (h). Between 2003 and 2006 the authorized strength of the Brigade of Midshipmen was increased to 4,300 under section 6954(h). This authority to prescribe increases for the midshipmen strength limit expired beginning in academic year 2007-2008.

Permanent authority to increase the strength of the Brigade of Midshipmen to 4,400 is necessary to provide the Secretary of the Navy with maximum flexibility to address officer accession requirements that are affected by mission and operational imperatives and variables in retention and in commissioning programs. The authority would enable the Navy and Marine Corps to better adjust their officer accession plans quickly to respond to changing force structure requirements and the operational environment.

The Marine Corps along with the Army expect to bear the burden of war for the foreseeable future. The Naval Academy is a steady and constant source of new officer

accessions for the Navy and Marine Corps. Marine Corps end strength is expected to increase to 202,000 by fiscal year (FY) 2012 and the size of their officer force is increasing from 27 percent to almost 30 percent of the Department of the Navy (DoN) officer contribution towards officer end strength. The end strength of the Navy is stabilizing. From 2003-2007 the Naval Academy commissioned on average 197 Second Lieutenants for the Marine Corps and Naval Reserve Officers' Training Corps (NROTC) commissioned 201, for an average annual total of 398. The increased Marine Corps accessions requirement equals 650 accessions from USNA and NROTC combined, or more than 250 additional new Second Lieutenant Marines per year.

The 100 midshipmen increase in USNA Brigade Strength ensures that the Marine Corps accessions requirement is met and that Navy does not have to reduce its own accessions from USNA.

There is no rationale that supports maintaining parity in the size of the service academies when such disparity exists between Army, Navy/Marine Corps, and Air Force end strengths. Consequently, there is a need to adjust the law to support this new dynamic. The Secretary of the Navy must have in place the requisite legal authorities that allow him to man the force structure requirements of the Department of the Navy to respond quickly to changes in the operating environment.

Cost Implications: The Department of Defense estimates that the cost of this section would be $22.4 million across the Future Years Defense Plan. This section would be funded from the Military Personnel, Navy (MPN) and Operations and Maintenance (O&M) accounts from the Navy. DoN would accommodate any added cost within existing funds or would budget for the costs prior to implementing this section. The cost for the Navy is reflected in the following table:

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Navy Personnel	0	32	64	96	128

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Total Cost	0	2.514	4.415	6.581	8.894

COST METHODOLOGY

Factoring in attrition (approximately 22 percent) the Navy would require an increase of 128 in the number of Midshipmen to yield 100 additional officers to meet the Marine Corps accession requirements. This estimate assumes 3.4 percent inflation on military pay and 6.0 percent inflation on material goods. Navy costs include MPN for midshipmen and additional military instructors and O&M for additional faculty and staff salaries, initial outfitting for personnel, and other mission operating costs (e.g., academic, professional development, physical, Information Technology support, etc.).

Subtitle D—General Service Authorities

Section 531 would replace the requirement for a line-of-duty determination prior to a member being eligible for a posthumous commission or warrant under sections 1521(a) or 1522(a) of title 10, United States Code, with a requirement for a certification or finding that the member was qualified for appointment to the next higher grade. The processing of line-of-duty determinations, in some cases, has unnecessarily delayed the processing of posthumous commissions or warrant requests past the date of the funeral or services for the member who died. This delay has not allowed the proper recognition to the member and family concerned.

This change would make the posthumous commission provision consistent with the provisions of typical appointment determinations. The processing of the typical appointment recommendation requires a determination by the Secretary of the military department or other authority within the military department concerned that the officer is qualified for appointment to the next higher grade.

Section 532 would increase from six years to eight years the maximum length of a reenlistment contract. This would provide the military departments with greater flexibility in offering second term reenlistment contracts.

Most service members are at their 8-10th year of service when they enter into their second reenlistment contract. It is at this point that most members decide whether to remain in the military until they become eligible for retirement for years. On average, soldiers enlist for three or four years. If the Army is able to offer an eight-year reenlistment, and soldiers take that option, they would remain on active duty past that critical halfway point of a 20-year career and are more likely stay for a career.

This change also would allow qualified service members to enhance their quality of life by selecting a station or unit of choice reenlistment option that would guarantee stabilization at one location or unit for up to eight years, instead of the current six years. Improving unit stabilization in this way would allow the Army to better manage unit deployment rotations in support of Operation Iraqi Freedom/Operation Enduring Freedom and minimize the use of Stop Loss.

Only Army has expressed an interest in using this proposed revision. Although they have not performed a formal analysis, Army believes that at least half of the soldiers who reenlist for six years would have taken an eight-year option if it were offered.

Cost Implications: Section 308(a)(2)(A)(ii) of title 37, United States Code, currently restricts the reenlistment bonus to the lesser of $90,000 or 15 times monthly basic pay times the number of additional years. In all cases, the $90,000 (which is currently allowed) would be the lesser of the two amounts.

Subtitle E—Other Matters

Section 541 would authorize the Attorney General to commence a civil action in any appropriate United States District Court whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in, or has engaged in, a pattern or practice of conduct in violation of any provision of the Servicemembers Civil Relief Act; or any person or group of persons is denying, or has denied, any person or group of persons any protection afforded by any provision of this Act, and such denial raises an issue of general public importance.

Servicemembers and their families face overwhelming challenges in their daily lives when servicemembers are called to active duty, including financial hardship that can push servicemembers' families to the brink of foreclosure or eviction. Congress long ago recognized the special burden that servicemembers encounter when their deployment impedes their ability to meet previously incurred financial obligations and, in enacting the Servicemembers Civil Relief Act in 2003, restated and improved protections for servicemembers in the predecessor to that Act, the Soldiers' and Sailors' Civil Relief Act of 1940. Enforcement of the Servicemembers Civil Relief Act by the Attorney General is necessary to foster compliance with the Act.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Bonuses and Special and Incentive Pays

Section 601 would extend critical recruiting and retention incentive programs for the Reserve components that are due to expire at the end of calendar year 2008. 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: Because this section merely would continue critical recruiting and retention incentive programs the Department of Defense funds each year, there would be no additional costs associated with this section. The military departments have projected expenditures of $631.8 million each year from fiscal year 2009 through 2013 for these incentives in their budget proposals, to be funded from the Reserve Component, Military Personnel accounts.

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
ARNG	38,500	38,500	38,500	38,500	38,500
USAR	32,100	32,100	32,100	32,100	32,100
USNR	6,100	6,100	6,100	6,100	6,100
USMCR	1,900	1,900	1,900	1,900	1,900
ANG	27,434	27,434	27,434	27,434	27,434
USAFR	19,100	19,100	19,100	19,100	19,100
Total	125,134	125,134	125,134	125,134	125,134

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
ARNG	225	225	225	225	225
USAR	248	248	248	248	248
USNR	29	29	29	29	29
USMCR	3.6	3.6	3.6	3.6	3.6
ANG	73	73	73	73	73
USAFR	53.2	53.2	53.2	53.2	53.2
Total	631.8	631.8	631.8	631.8	631.8

Section 602 would extend for one year, until December 31, 2009, accession and retention incentives for certain nurses, medical, dental and pharmacy officers. Experience shows that manning levels in these health care professional fields would be unacceptably low without these

incentives, which in turn would generate substantially greater costs associated with recruiting and development of replacements. The Department of Defense and Congress have long recognized the prudence of these incentives in supporting effective personnel levels within these specialized fields.

Cost Implications: There are no additional costs associated with this section because this section merely would continue critical accession and retention incentive programs the Department of Defense funds each year. The military departments have projected expenditures of $57.95 million each year from fiscal year (FY) 2009 through FY 2013 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. The military departments would fund these incentives from existing budget authority.

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Army	538	538	538	538	538
Navy	268	268	268	268	268
Marine Corps	0	0	0	0	0
Air Force	263	263	263	263	263
Total	1,069	1,069	1,069	1,069	1,069

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Army	$12.5	$12.5	$12.5	$12.5	$12.5
Navy	$37.9	$37.9	$37.9	$37.9	$37.9
Marine Corps	$0	$0	$0	$0	$0
Air Force	$7.5	$7.5	$7.5	$7.5	$7.5
Total	$57.95	$57.95	$57.95	$57.95	$57.95

Section 603 would extend for one year, through December 31, 2009, 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 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 to extend the authority for the Secretary of the Navy to pay the authorized bonuses to nuclear-qualified officers, because this section merely would continue the critical accession and retention incentive programs the Navy funds each year. The Navy has projected expenditures of $28.7 million each year from fiscal year (FY) 2009 through FY 2013 for these incentives in its budget proposal, to be funded from the Navy's Military Personnel accounts. The Army and Air Force are not authorized in the statute to pay these bonuses.

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Army	0	0	0	0	0
Navy	1,384	1,384	1,384	1,384	1,384
Marine Corps	0	0	0	0	0
Air Force	0	0	0	0	0
Total	1,384	1,384	1,384	1,384	1,384

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Army	0	0	0	0	0
Navy	$28.7	$28.7	$28.7	$28.7	$28.7
Marine Corps	0	0	0	0	0
Air Force	0	0	0	0	0
Total	$28.7	$28.7	$28.7	$28.7	$28.7

Section 604 would authorize an accession bonus for psychology officers.

Clinical psychology manning fell from 100 percent in fiscal year (FY) 2004 to 84 percent in FY 2006. At the end of FY 2006 the onboard count was 515 and the billet authorizations were 615, for a fill rate of 84 percent and a deficit of 100 psychologists (Army: 41, Navy: 20, Air Force: 39). However, Navy's data counts three types of psychologists (Clinical, Research, and Aerospace Experimental). When corrected to include only Clinical Psychologists, the Navy's deficit is 27. All three military departments had performed well until onboard manning began a downward trend in FY 2003. It is apparent that this trend, which became more pronounced by FY 2005, will continue to worsen.

Overall Department of Defense Fill Rates

	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06
Authorized	498	505	514	508	522	540	540	540	541	575	615
Onboard	458	512	523	524	549	532	569	571	571	533	515

Percentage	92	101	102	103	105	99	105	106	106	93	84
Difference	-40	+7	+9	+16	+27	-8	+29	+31	+30	-42	-100

Annual Difference by Military Department

	FY02	FY03	FY04	FY05	FY06
Army	+14	+25	+19	-15	-41
Navy	+16	+10	-1	-14	-20
Air Force	-1	-4	+12	-13	-39
Total	+29	+31	+30	-42	-100

Fully-licensed clinical psychologists do not access directly into military medicine due to the significant pay disparity between civilian and military clinical psychologists. Many psychologists are leaving the military for the higher pay available in private practice. Because of this, several years ago the military departments developed a clinical internship program for unlicensed clinical psychologists. The program allows psychologists to spend up to 24 months under the supervision of a licensed psychologist while they obtain the needed clinical hours and experience prior to sitting for their licensure examination. This worked well during times of low operational tempo; however, it now is crippling the Department of Defense's (DoD's) ability to meet Global War on Terror (GWOT) expectations because 37 percent of the 515 clinical psychologists onboard at the end of FY 2006 were not universally deployable for various reasons (most notably, because they were unlicensed). The universally deployable psychologists are those who are licensed and serving in Continental United States billets. Those serving overseas and on ships or with the Marines are considered already deployed.

The DoD needs a new accession bonus to meet immediate demands for fully-trained psychologists. Loss rates for clinical psychologists during the past two years have been significantly higher than historical rates. In addition, this near-term, sharp decline in inventory is occurring at the same time that billet authorizations are increasing. From FY 2004 to FY 2006, military department authorizations grew by 74 billets (Army: 57, Navy: 4, and Air Force: 13), while inventory declined by 56 (Army: -3, Navy: -15, and Air Force: -38). Clinical psychologists have a high deployment rate in support of GWOT. The stress on clinical psychologists has grown due to family separations and the heavy task of caring for military personnel with significant physical and psychological war injuries. Changing our accession model from interns to fully-trained psychologists will abate the shortage of deployable officers.

Both the Health Professions Scholarship Program (HPSP) and the Internship Program provide the DoD with a pipeline that produces fully-trained, licensed specialists one-to-five years later. To meet the near-term billet growth and to replace losses, the DoD needs to access fully-trained and licensed psychologists. While some of this billet growth is already programmed, the DoD expects additional growth will be required to respond to expected increases in service members suffering from Post Traumatic Stress Disorder.

The DoD accesses psychologists through the HPSP and the Internship Program as direct accessions. Over the last five years, Army and Navy have averaged a total of 30 accessions per year (Army: 20, Navy: 10), with roughly 66 percent entering through via the Internship

Program (Army and Navy) and 33 percent through the HPSP (Army only). Air Force data is not available.

Cost Implications: The annual cost of this section would depend on the size of the accession bonus. For planning purposes, the DoD envisions that all three military departments would offer the same bonus amount and that up to 50 per year (16-17 per military department) could be accessed at $70,000 each, for a total of roughly $3.5 million per year, to be funded from the Military Personnel accounts for the Army, Navy, and Air Force. All three military departments would implement a standardized bonus amount approved by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) in the same manner as is done for existing medical-specific special pays and bonuses. Although the exact amount would not be decided until after the authority was granted, because of the Congressional and National interest in the Military Health System's Mental Health capability the bonus likely would be near the maximum.

The Office of the ASD(HA) would need to monitor the success of the bonus in the first year as a gauge to future requirements. The Office of the ASD(HA) predicts that each military department would fully welcome this proposed authority and utilize it to the maximum extent possible over the next five years.

Section 605 would modify section 312 of title 37, United States Code, to extend the maximum period of a written agreement (obligation) to serve on active duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants beyond the current five-year limit. This would allow extending Continuation Pay (COPAY) agreement lengths to six or seven years. Enactment of the COPAY extension through seven years would align Nuclear Trained Surface Warfare Officer (SWO(N)) Department Head (DH) tours with their COPAY obligation. This would provide the continuity of obligation for SWO(N)s through their second nuclear department head tour, which is nominally completed at 11.5 years of commissioned service (YCS). This is vital to sustaining and improving personnel readiness within the Surface Nuclear Community. Longer contracts also would benefit the submarine officer community by providing longer-term stability in the force.

Continuation Pay is one component of the Nuclear Officer Incentive Pay (NOIP) compensation program that has been in use since 1969. The success of the Naval Nuclear Propulsion Program (NNPP) is dependent upon the accession and retention of high-quality, highly-trained officers, achieved through the judicious use of targeted nuclear officer incentive pays. NOIP has enabled the NNPP to maintain an unparalleled record of safe and successful propulsion plant operations. Uninterrupted compensation authority is required to sustain this record.

COPAY is the retention tool used to retain SWO(N)s through their nuclear CVN DH tours. SWO(N)s nominally start their nuclear CVN Principal Assistant tour (their second DH tour) at 9.5 YCS. This is a minimum two-year tour, taking the officer out to 11.5 YCS. Authorizing the use of a seven-year COPAY agreement would align SWO(N) DH tours with COPAY.

SWO(N)s comprise 14 percent of the Surface Warfare Officer Community. The Surface

Warfare Officer Community has 192 (15 percent) fewer lieutenant commander control-grade officers than it requires. The SWO DH requirement is currently 275 DHs per year and is increasing to more than 290 by fiscal year 2012, requiring a 40 percent retention rate. The projected average retention rate for SWO(N)s (Year Groups 1995-2000) is 29 percent.

Since 2000, SWO(N) accessions have been reduced by 31 percent, aligning accessions with current requirements and producing a cumulative Military Personnel, Navy (MPN) cost avoidance of $30.8 million. However, retention requirements have risen with the reduction in accessions. Dynamic retention initiatives are critical to maintaining retention and MPN cost avoidance. Retaining experienced officers, in whom we already have made substantial financial and training investments, is far more cost-effective and advantageous to sustaining military personnel readiness than accessing new officers. This broader authority will enhance Navy's flexibility in retaining SWO(N) officers by providing the option of entering into longer service agreements.

Subtitle B—Travel and Transportation Allowances

Section 611 would modify in two ways the categories of people who may receive travel and transportation allowances to attend the burial of a member of the uniformed services who dies while on active duty or inactive duty. The section would authorize these allowances for the brother or sister of a deceased member if the brother or sister is the dependent child of the member's parent or parents. Currently, section 411f(c) of title 37, United States Code, authorizes these allowances for the surviving spouse of the deceased member, the unmarried child or children of the deceased member, and the parent or parents of the deceased member. It is not uncommon for a deceased member to have younger siblings residing with the member's parents. This authority would allow the family of the deceased member to receive travel and transportation allowances so these siblings could travel with their parents for the burial of their sister or brother.

This section would also authorize the person who directs the disposition of a deceased member's remains to receive travel and transportation allowances to attend the burial of the deceased member. Currently, these persons may receive travel and transportation allowances to attend the burial only when no other person, such as the parent of the deceased member, has been provided the allowances. This section would provide a person who directs the disposition of the remains with unconditional eligibility to receive the allowances. Section 1482(c) of title 10, United States Code, specifies who may be designated to direct the disposition of a deceased member’s remains, and these are mostly relatives, by blood, adoption, or "in locus parentis." Thus, for example, the amendment would permit an adult sibling of the deceased member to receive travel and transportation allowances to travel for the purpose of directing the disposition of the remains and accompanying a surviving spouse or parent who was not designated for that responsibility.

These allowances could also be paid to these persons to attend a memorial service for the deceased member when the remains of the deceased member are determined to be unrecoverable.

Cost Implications: The estimated cost to the Army is $100,000 per year. Generally speaking,

the Army is currently sustaining 70 percent of the casualties, the Marines 20 percent, the Navy 7 percent, and the Air Force 3 percent. The cost to implement this section for each Service can therefore be inferred based on those general percentages. So if the Army's cost is $100,000, the cost to the Marines, Navy and Air Force is $29,000, 10,000, and 4,000, respectively.

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.

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.

Cost Implications: The SBP is partially subsidized by the federal government. Members pay premiums for SBP coverage, but the premiums do not cover the full cost of benefits. Therefore,

if this section were enacted and resulted in an increased number of SBP participants, there would be a cost to the Military Retirement Fund. However, it is impossible to reliably predict whether this proposed legislation would result in more or less SBP enrollees. The section would extend from one year to five years the time that former spouses (and members and former members) have to file their court ordered SBP entitlement. However, they only get that entitlement if the State divorce court has already ordered the coverage. Therefore, this section does not create a new entitlement; instead, it simply extends the time that former spouses (and members and former members) have to notify the Defense Finance and Accounting Service of the court-ordered SBP coverage. Because SBP participants share the cost of the coverage, some members and former spouses elect to forego the coverage despite the court order. Some simply wait before deciding if they want SBP or some other insurance option. The effect of this proposed extension (from one year to five years) will likely result in some participants being added who would not have been. On the other hand, it will also likely result in some participants electing to further delay their decision whether to participate and ultimately not participating. The most likely result is that it will be a wash and have no cost implications.

Section 623 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.

Section 624 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. This section would allow courts to designate who is responsible for paying SBP premiums.

Section 625 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 over compensates the surviving former spouse.

Section 626 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.

Section 627 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.

Section 628 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: The effect of this section is there may be a couple cases per year where a military spouse qualifies for an allocation of retired pay (due to victim abuse) that he or she would otherwise not qualify for. This would happen only in the extremely unusual situation that a senior member of the military is placed in pre-trial confinement at a point in his or her career very close to the 20-year mark. If later convicted of the underlying crime, that time spent in pre-trial confinement would not count towards retirement eligibility and thus the member likely

would lose his or her retirement. Under current law, his or her spouse (who might become a former spouse) would lose their victim abuse share as well. Under this section, time spent in pre-trial confinement would count towards the spouse potentially qualifying for his or her share of the retirement, but only time up until action by the Convening Authority.

There may be a few additional cases picked up due to the retroactivity. This section allows Defense Finance and Accounting Service to cover someone deemed to be eligible at any time since the USFSPA was first enacted in 1992. The DoD study group recommended retroactivity for this section because they concluded that the Congress intended the law to work this way in the first place; thus this section would clarify the language to make it work the way Congress intended. The numbers of newly eligible victims of abuse will be small.

Section 629 would eliminate the jurisdictional requirement in the Uniformed Services Former Spouses' Protection Act (USFPA) 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.

Section 630 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 would result in annually increasing cost savings to the Government (the Military Retirement Fund). Future former spouse payments would be smaller than under current law for any member divorced while on active duty who later retires at a higher grade or pay step. While this section would essentially be cost neutral in the first few years, as more and more members divorced following passage of this provision eventually retire, future savings would grow, ultimately achieving savings of millions of dollars per year (for example, 1,000 divorces each resulting in $1,000 per year savings would save $1 million per year).

Section 631 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.

Section 632 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.

Section 633. 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 (DFAS) 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.

Subtitle D—Other Matters

Section 641 would make permanent the ability of service members to retain their eligibility for the Earned Income Tax Credit even if they deployed to a combat zone.

Until 2004, service members could lose their eligibility for the Earned Income Tax Credit (EITC) if, for example, they had no earned income to report due to the combat zone tax exclusion of their military pay. In 2004, Congress amended section 32 of title 26, United States Code, to allow service members (generally lower-paid enlisted members) to elect to include nontaxable wages earned in a combat zone as "earned income" for purposes of calculating their eligibility for the EITC. As a result, certain service members no longer lost their eligibility for the EITC because they deployed to a combat zone. However, this provision will expire on December 31, 2007.

This section would provide a permanent fix to the problem of service members potentially losing their eligibility for EITC due to a deployment to a combat zone. It also would correct another inequity. Currently, relatively highly-paid service members can qualify for the EITC by electing to exclude wages earned in a combat zone for EITC purposes. As a result, a lower paid service member could qualify for a smaller EITC than a higher paid service member. This section would eliminate this inequity by defining a service member's earned income for purposes of calculating eligibility for the EITC as the greater of their taxable earned income or their wages subject to employment tax.

By adopting this section, whether pay is earned in or out of a combat zone will no longer be relevant for purposes of EITC qualification.

Cost Implications: The Department of Defense (DoD) estimates that the adoption of this section would result in reduced cost to the U.S. Treasury as compared with the retention of current law because some relatively highly paid military members no longer would longer qualify for the EITC. However, the DoD is unable to provide reliable cost estimates because of the multitude of variables involved and DoD's lack of access to the necessary information. At the present time there are roughly 210,000 service members deployed to a combat zone. Determining the EITC tax consequences for these service members would depend on each individual member's tax situation. In addition, any estimate would depend on whether Congress extends the current Combat Zone EITC law (it expires on December 31, 2007) and whether they change the law to effectively end EITC for highly paid service members. If Congress extends EITC in the current form, this section would result in additional tax revenue due to some relatively highly paid service members no longer qualifying for EITC. How many such members currently claim the credit is something the DoD simply cannot reliably estimate, but the additional revenue to the Treasury should not be substantial.

Section 642 would clarify that the entire Family Separation Allowance, including the $190 increase since 1986 and any future increases, is nontaxable.

Section 134(a) of title 26, United States Code, states that "Gross income shall not include any qualified military benefit." Section 134(b)(1) defines a "qualified military benefit" as including any allowance which is received by a member of the uniformed services and was excludable from gross income on September 9, 1986. The Conference Report (H.Rept. 99-841) to the Tax Reform Act of 1986 (Public Law 99-514) specifically stated that "family separation allowances" were a "qualified military benefit" under this statute.

Section 134(b)(3) generally limits the excludable benefits to the benefit amount "in effect on September 9, 1986." On that date the Family Separation Allowance (FSA) was $60/month. Since 1986, the FSA has been raised to $250. Defense Finance and Accounting Service currently treats the entire $250 as nontaxable. However, it is unclear whether the $190 that has been added to the allowance since 1986 should be subject to taxation. This proposed amendment would clarify that the entire FSA -- including any future increases -- is nontaxable.

Cost Implications: The current practice of the Department of Defense is to treat the entire FSA as nontaxable. Therefore, the U.S. Treasury will incur no additional costs if this section becomes law.

Section 643 would permit shipment of no more than two household pets and specifies that exotic pets, endangered species, horses, livestock or large pets weighing over 150 pounds are not authorized. The amendment would provide the same treatment to military personnel stationed OCONUS as is currently afforded by FEMA to non-military evacuees during hurricane and similar disasters in CONUS. The emotional turmoil on military members and their dependent children due to having to abandon family pets during forced evacuations from foreign countries when other commercial opportunities for shipment may not be available within the

time constraints without great personal expense adversely impacts morale. This is especially so where the military members have paid to have family pets shipped to these locations and the attachment by family members to these animals is long term.

Cost Implications: If enacted, this section may increase by a *de minimus* amount the budgetary requirements of the Department of Defense, however, amount is expected to be minimal as the number of such evacuations worldwide are rare and many of the family pets could be accommodated in commercial aircraft utilized by the Department for such evacuations without additional expense to the Department of Defense.

NUMBER OF PERSONNEL AFFECTED

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Army	0	Less than 999	0	0	0
Navy	0	Less than 999	0	0	0
*Marine Corps	0	Less than 999	0	0	0
Air Force	0	Less than 999	0	0	0
Total	0	Less than 4000	0	0	0

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Army	0	Less than $100K	0	0	0
Navy	0	Less than $100K	0	0	0
*Marine Corps	0	Less than $100K	0	0	0
Air Force	0	Less than $100K	0	0	0
Total	0	Less than $500K	0	0	0

COST METHODOLOGY

American service members have been involved in getting U.S. citizens out of danger since the founding of the republic. Before the most recent noncombatant evacuation order - or NEO – for Lebanon, U.S. service members helped evacuate people from Liberia in 1993, Tanzania and Kenya in 1998, Indonesia after the tsunami in 2005, Liberia again in 2004, Panama in 1989. However, specific military evacuations of dependents are less frequent as occurred in Turkey in March 2003 for Operation Iraqi Freedom, Clark AB Mt Pinatubo eruption in June 1991 and Saigon in 1975. Because NEO occurs so infrequently, it should be budget scored as zero. Many of the commercial United States air carrier aircraft used to evacuate military dependents during a

NEO have 4 or 5 IATA pet containers already in the pressurized cargo areas (maintained at 50 to 70 degrees) plus under seat transport of cats and small dogs in soft carriers authorized, so DOD costs may be significantly less than estimated. As an aside, most airlines ban animals flying on flights more than 12 hours long and as checked baggage between May 15 and Sept. 15 on those pets going as cargo when temperatures are extreme and pet safety cannot be assured. That may make the transport more expensive or more difficult to arrange but would not necessarily prohibit the transport of those pets. All payments would be to transportation providers from the Transportation Working Capital Funds with reimbursement from Service O&M funds. Since NEO actions are normally associated with major physical or civil difficulties with an OCONUS location, request for reimbursement of these costs would likely be included in a request for supplemental appropriations made to remedy the larger problem, such as relocation of base activities to another OCONUS location as happened with Mt. Pinatubo and the destruction of Clark AB in the Philippines. The commercial cost to ship a pet to an overseas location if arranged by the member can be as high as several thousand dollars per animal. The cost to ship a pet pursuant to a military charter flight is estimated to be a maximum of $282 based on amounts paid to transport service animals (Seeing eye dogs) that are transported space-required at government expense under current DOD regulations and reimbursement from the military members when shipping pets PCS. Current Air Mobility Command rates are $94 for pets and containers up to 70 pounds, for 71 pounds up to 140 pounds it is $188, and for 141 to 150 pounds it is $282. Pets and containers over 150 pounds are not accepted. As of Oct. 1, 2000, DOD pays up to $275 to help defray the cost of quarantining pets during a PCS move [FY01 Defense Authorization Act] so this cost may not be a factor in all cases. Bottom line is that when an evacuation is ordered, our military personnel should be treated equally with the rest of the US population during evacuations.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—TRICARE Program Improvements

Section 701 would authorize the Secretary of Defense to index TRICARE Standard cost sharing requirements for retired members and their dependents, institute Standard enrollment fee, and increase other copays 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. While military retirees and family members have earned a generous benefit, the cost of the benefit has increased significantly, causing an imbalance in the cost-sharing arrangements between beneficiaries and the government. These modest cost increases represent a rebalancing of this arrangement, and places the benefit on a stable financial footing, while retaining a generous benefit for our beneficiaries.

This section would allow changes in cost shares consistent with recommendations of the Task Force on the Future of Military Medicine. Before promulgating the regulations, the Secretary of Defense would 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 (NDAA) for Fiscal Year (FY) 2007. The

regulations would become effective not later than 90 days after the date of enactment of the FY 2009 NDAA. 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.

Cost Implications: Estimated savings for this section is $1.184 billion in FY 2009. This section is also included as an appropriation general provision in the President's Budget. That general provision would also reduce the Defense Health Program appropriation by $1.184 billion in FY 2009.

Section 702 would alter the payment options available to retired members who wish to enroll in TRICARE Prime. There is anecdotal evidence that retirees have lost continuous coverage or have been locked out of their benefit due to breaks in payment. This occurs because some Reservists often do not have enough funds in their pay accounts (if they don't drill for a month or two) to cover their monthly premium payments. This section would guarantee retired members continuous healthcare coverage by ensuring on-time premium payments, either through a deduction from retired pay or through one of the available payment options. This section would give our retirees several premium payment options similar to other health plans and help ensure their premium payments will be paid on time, thereby preventing a loss of coverage or lock-out. This section is modeled after the Department of Defense's payment options to Reservists for our dental insurance programs.

Section 1097a(c) of title 10, United States Code, currently authorizes a member or former member of the uniformed services eligible for medical care to elect to pay the fees for enrollment in TRICARE Prime by collection of payments from the member's retired pay, retainer pay, or equivalent pay. This proposal would make mandatory the payment of enrollment fees by monthly deduction from such pay unless such pay is insufficient for fee payment.

Section 1097(e) of title 10 currently requires the Secretary of Defense to permit covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation. This proposal would authorize the Secretary to permit payment of enrollment fees in full at the beginning of the enrollment period or on a quarterly basis, by check, money order, credit card, or electronic funds transfer only for covered beneficiaries whose retired pay, retainer pay, or equivalent pay, as the case may be, is insufficient for them to pay enrollment fees by monthly deductions from such pay.

Section 703 would permit the Secretary of Defense to authorize command-sponsored dependents of uniformed members, located in remote areas overseas where adequate medical care (including the provision of obstetrical anesthesia) is not available in their locality, to choose to be transported to the nearest facility where the care may be provided. If air transportation of the dependent is otherwise required to obtain adequate medical attention in connection with obstetrical care, then the Secretary also may authorize the dependent to choose transportation to a Military Treatment Facility (MTF) that could provide appropriate obstetrical services nearest to the closest point of entry to the continental United States (CONUS) rather than to a medical facility outside the United States (OCONUS). This is similar to the expenses paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081) and the

benefits provided to civilian Department of Defense (DoD) employees in remote areas abroad under 10 U.S.C. 1599b.

This section would clarify that the Secretary of Defense has the discretion to implement such authority, which the Secretary would accomplish by changing the Joint Federal Travel Regulations (JFTR) and including a list of the remote overseas locations. Under current law, a dependent of a uniformed member located outside the United States in need of medical treatment not locally available -- including obstetrical care -- will receive transportation to the nearest appropriate medical facility in which adequate medical care is available. For the majority of dependents, this is a short trip by car to the nearest MTF. For many pregnant dependents of uniformed members stationed in remote areas, and thus not stationed close to such a facility, this can mean a departure from duty location by air, typically to Germany or Japan, at a minimum of four to six weeks prior to delivery. Because the entire process can take up to three months, command-sponsored dependents of uniformed members find themselves cut off from their families. If transportation were available to CONUS, more command-sponsored dependents of uniformed members in these remote areas would be able to spend this crucial time closer to family and friends.

This authority would mirror that already available in the case of civilian employees and dependents located in very remote OCONUS areas. If those individuals are in need of obstetrical treatment, and adequate facilities are not locally available, the Secretary may authorize their transportation to CONUS, if appropriate. *See* 10 U.S.C. 1599b (authorizing the Secretary of Defense to provide travel and expenses for civilian employees similar to what the Secretary of State provides employees under 22 U.S.C. 4081(5)); and JFTR, paragraphs C6600-6601 (travel and expenses for medical travel pursuant to authority in 10 U.S.C. 1599b).

Pursuant to this authority under section 1599b of title 10, United States Code, the Secretary of Defense has the discretion to authorize civilian employees and dependents the opportunity of traveling to CONUS for obstetrical treatment when adequate care is not locally available. *See* JFTR paragraphs C6600A and C6602.B.2 ("When the Secretarial Process determines that local medical facilities (military or civilian) at a foreign OCONUS area are not able to accommodate an employee's needs, transportation to another location may be authorized for appropriate medical/dental care."); Paragraph C6602B ("Limitation. An eligible individual is authorized health care transportation from the foreign OCONUS PDS to the designated point and return to the Permanent Duty Station (PDS). 2. Obstetrical Patients. An obstetrical patient may elect to travel to a CONUS or non-foreign OCONUS area."). These provisions are similar to the Secretary of State's authority and limitations under 22 U.S.C. 4081(5). The Secretary, as with pregnant civilian employees and dependents, would have the discretion to permit uniformed members' dependent family members to travel with the spouse if the family members are incapable of self-care at the PDS and no suitable care arrangements can be made there. *See* JFTR paragraph C6600-B4.

Cost Implications: Cases under current rules involve the expenditure of transportation and travel expenses (including per diem costs of more than $230 per day in Germany). The actual cost difference between current law and implementation of this section could provide a net savings to the military departments. However, the exact savings, if any, would depend on

whether the dependents elected to travel on to their homes and whether the medical care was then provided under the TRICARE Prime or TRICARE Standard benefit. The DoD estimates that this section would affect 58 dependents per year, based on a DoD population of 2,900 and a 2 percent birthrate in very remote countries that would be affected by this initiative. The military departments would fund this initiative within existing budget authority.

Subtitle B—Other Matters

Section 711 would amend section 546(g)(3) of the National Defense Authorization Act for Fiscal Year 1993 to allow masters-level clinical social workers (MSWs) with an independent license to perform command-directed mental health evaluations.

Under section 546, psychiatrists, clinical psychologists, persons with a doctorate in clinical social work, and psychiatric clinical nurse specialists are the only mental health professionals authorized to perform command-directed mental health evaluations. However, masters-level clinical social workers with an independent practice license are fully-trained for clinical mental health care duties, including mental health evaluations. In addition to two years of post-graduate education, most States require an additional two years of supervision for independent licensure, for a total of seven to eight years of training and supervision.

MSWs routinely perform all of their required duties within the Military Health System (MHS) with this level of training. MSWs comprise a significant proportion of the mental health care professionals available to provide care, including in the deployed setting. The current law is unduly restrictive by requiring a higher level of training -- a doctorate in clinical social work, which is usually reserved for administrators -- to perform command-directed mental health evaluations that are not necessarily more rigorous than routine evaluations performed in mental health clinics, family advocacy, and substance abuse programs.

This section would amend the definition of "mental health professional" by changing "a person with a doctorate in clinical social work" to "a person with a license in clinical social work." This change would allow optimal utilization of MSWs currently working in the MHS by permitting them to perform command-directed mental health evaluations.

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

Subtitle A—Acquisition Policy and Management

Section 801 would revise the existing requirement to wait 15 days between publication of the synopsis of a proposed contracting action and the issuance of the solicitation to which the synopsis refers. The waiting period would be reduced from 15 to 10 days. This change takes into account important changes over the past decade. Those changes include the creation of the "FedBizOpps" website, which is the primary point of entry for all Government contracting. All Federal business opportunities are publicized through "FedBizOpps" and are easily and readily available to interested businesses. This website has essentially replaced the old method of advertising future contracting actions in the hardcopy Commerce Business Daily which ceased

publication on January 4, 2002. Solicitations are now available on-line through "FedBizOpps."

By reducing the time between publication of the synopsis of a proposed contracting action and the issuance of the corresponding solicitation we can leverage technological advances and improvements in doing business and, importantly, expedite the fielding of needed items to Soldiers. With the evolution of electronic communications, the waiting period before posting a solicitation notice does not increase competition. Responsible contractors review relevant websites almost daily, thus minimizing the value of the waiting period. Changing the synopsis waiting period for non-commercial items from 15 days to 10 days will still allow contractors to locate potential subcontractors and respond in a competitive manner to solicitations posted to "FedBizOpps" with a deadline for all bids or proposal within 30 days or 45 days, depending on the type of acquisition.

Section 802. Large businesses have inherent competitive advantages in the marketplace. Small business set-asides are a proven way of providing fair contracting opportunities for large and small business in Federal procurement. However, the Small Business Competitiveness Demonstration Act (Comp Demo) suspends the use of small business set-asides for Federal procurements in five designated industry groups in which there are many small businesses. In an acquisition environment that is dominated by large business it is counter-productive to eliminate any potential competitive advantage for small business.

Repeal of Comp Demo will improve small business prime and subcontracting opportunities through re-establishment of small business set-aside procedures in the designated industry groups in which there are many small businesses. Repealing this legislation will simplify contract data collection and reporting requirements and eliminate the administrative effort necessary to carry out the statute.

The repeal of Comp Demo applies to the small business reserve for Emerging Small Businesses (ESB). Comp Demo has not demonstrated any effectiveness in increasing ESB contracting opportunities in the five designated industry categories. Small business specialists and other acquisition officials will continue to use creative acquisition strategies and outreach to promote ESB's in Department of Defense procurement.

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

The proposed repeal of Comp Demo is consistent with the declared policy of the Congress as expressed in Section 2(a) of the Small Business Act that the Government should aid,

counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, and to maintain and strengthen the industrial base and overall economy of the Nation.

Section 803 would establish a five-year pilot program to allow the Department of Defense (DoD) to license DoD-owned intellectual property that may or may not be patented, and to retain associated royalties compliant with existing statutes on patent licensing (35 U.S.C. 209), including fair public opportunity to seek a license, and royalties (15 U.S.C. 3710c). The proposed legislation would also enhance the DoD's ability to license valuable technologies and intellectual property that it has developed, but which may or may not be eligible for patent protection.

This section would enhance the DoD's ability to license valuable technologies and intellectual property that it has developed, but which may or may not be eligible for patent protection. In today's fast-paced economy, it is essential to keep pace with cutting edge technologies. Many private companies have adapted to this trend by choosing to protect their most valuable intellectual property as a trade secret or copyright, rather than pursue formal patents. The disadvantages of the patent system are that it is relatively expensive and extremely slow; it typically takes from 18 months to several years to receive a patent. In certain fast-paced technology areas such as computer software the technology would be nearly obsolete by the time a patent issues. By contrast, copyright or trade secret protections are available immediately upon development of the technology and for a nominal cost.

Presently, the DoD primarily uses the expensive and slow patent system to protect and license its technologies. There is no copyright protection for Government-developed works, and only extremely limited opportunities for protection that is similar to a trade secret. For example, technologies developed by the Government under a Cooperative Research and Development Agreement (CRADA) may be protected from release under the Freedom of Information Act for up to five years (*See* 15 U.S.C. 3710a(c)(7)(B)). The DoD oftentimes finds it is difficult to identify a private entity that is willing to invest time and money to develop and refine a DoD technology unless that technology would receive some form of intellectual property protection that would prohibit competitors from engaging in unfair business practices or infringement. As a result, many existing DoD laboratories find their cutting edge technologies are not utilized, refined, or commercialized in the most cost effective and efficient manner.

This section would remedy this situation by providing a limited mechanism for DoD organizations to license valuable in-house technologies without incurring the expense and delays of the patent system. DoD organizations would be permitted to license computer software developed at the laboratory for royalties or royalty-free, as they see fit. This section would facilitate the Department's technology transfer effort, and ensures that a licensee's time, effort, and investment is protected, by permitting the DoD to restrict unlicensed uses of that technology, including exemption from any mandatory unlicensed release under the Freedom of Information Act for five years (modeled after 15 U.S.C. 3710a(c)(7)(B)). It also would permit the DoD to

retain and distribute any royalties it receives under these licenses under the same purposes for use that already apply to royalties received for patent licenses (*See* 15 USC 3710c).

Subtitle B—Provisions Relating to Major Defense Acquisition Programs

Section 811 reduces schedule delays and cost increases associated with the research, development, test and evaluation, procurement, and operation of unmanned systems. Current law requires the Secretary of Defense to develop a policy pertaining to unmanned systems. While the intent of the statute is desirable, key items within the language inadvertently create a burden in terms of cost and schedule in the conduct of development, test and evaluation, and procurement of unmanned systems. The proposed language submitted above seeks to satisfy the intent of current law, while avoiding the likely schedule delays and cost increases.

Mission identification, research, development, test and evaluation, procurement, and operation of unmanned systems can be accommodated through existing Department of Defense (DoD) policies. Chairman of Joint Chiefs of Staff Instruction 3170.01E, "Joint Capabilities Integration and Development System (JCIDS)", Department of Defense Directive 5000.1, "The Defense Acquisition System", and Department of Defense Instruction 5000.2, "Operation of the Defense Acquisition System" JCIDS is the policy that guides requirements analysis and identification. The Department of Defense Directive and Instruction guide technology and system development, and system procurement, operation and sustainment. A policy as described above enables the Department to meet the intent of the current law through implementation of the existing JCIDS and DoD 5000 processes.

The primary objective of JCIDS is to identify the capabilities required to successfully execute the Department of Defense missions. The requirements process supports the acquisition process by providing validated capabilities requirements and associated performance criteria to be used as a basis for acquiring the right weapon systems. Additionally, it provides the budgeting process with prioritization and affordability advice. The proposed language supports this impartial process of acquiring the optimal systems, consistent with the urgency of warfighter needs, technical considerations and fiscal responsibility. Current statute does not impose fiscal or technology maturity considerations, thus potentially causing the DoD to pursue an unmanned solution that cannot be matured in a timely manner or within reasonable cost.

Current law requires a preference for unmanned systems in acquisition programs for new systems, and requires certification that an unmanned system is incapable of meeting program requirements. This language potentially imposes cost and schedule burdens. Because it does not allow for consideration of development and ownership costs, it forces the DoD to procure a system that may be more expensive to develop and operate than a manned system which is equally or more effective and provides the same or more protection to service members. It can also potentially delay the DoD's ability to satisfy a capability gap because of the time required to mature unmanned technologies. Conducting the Certification automatically adds to the cost and time needed to initiate all new DoD acquisitions (whether manned or unmanned).

Requiring a preferred materiel solution undermines the integrity of the JCIDS process which mandates rigorous assessment and analysis before a decision is made about what materiel

solution to pursue in satisfying identified mission requirements. Three types of analysis are performed that result in a specific identification of a viable, affordable military solution: functional needs analysis, functional solution analysis, and post independent analysis.

- A functional needs analysis assesses the ability of the current and programmed warfighting systems to deliver needed capabilities and "produces a list of capability gaps that require solutions and indicates the time frame in which those solutions are needed.
- A functional solution analysis identifies potential approaches to satisfying the capability needs including product improvements to existing materiel, adoption of interagency or foreign materiel solutions, and initiation of new materiel programs.
- A post independent analysis independently reviews the functional solution analysis to ensure the latter was thorough and the recommended approaches are reasonable possibilities to deliver the capability identified in the functional needs analysis.

Current law requires the submittal of a report to the Congressional defense committees. It is the Department's position that such a report is unnecessary and that, instead of this report, an Unmanned Systems Roadmap be developed. The Roadmap would address the establishment of programs to address technical, operational, and production challenges, and gaps in capabilities, with respect to unmanned systems. This would enable a portfolio management strategy for unmanned systems, by ensuring funding investments are linked to validated requirements.

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

Section 821. Currently, contracts for public utility services may be awarded for a period not to exceed 10 years. This section would allow contracts for renewable energy sources and associated services to be awarded for a period of not more than 20 years.

This exception would be useful in the renewable energy arena, when longer pay back periods are necessary for some technologies. The 20-year authority would include associated non-renewable services that are required to provide firm renewable energy.

Twenty-year authority also would increase the number of renewable energy projects which would be developed. It is difficult to get financing for renewable energy projects when the contract term is 10 years or less. The Federal Energy Management Program office has noted that in their work with the renewable energy project experts at the National Renewable Energy Laboratory and Lawrence Berkeley Laboratory that the financiers of renewable energy projects need to have contract terms that allow for the recovery of costs over terms that exceed 10 years for the large capital investments that are made in renewable energy generation. These longer-term contracts would enable the Government to attract developers who are concerned about being able to recover their capital investment during the term of the contract. In addition, long-term energy contracts would allow the Government to insulate itself from price volatility.

Section 822 would modify the current authority in section 2913 of title 10, United States Code, for a military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility to adopt technologies and practices that are consistent with

the energy performance goals for the Department of Defense. The section would expand the authority to permit the acceptance of such incentives, goods, or services from a state or local government or state or local entity.

This section would also provide similar authority to accept financial incentives, financial assistance, and services from a state or local government, or state or local entity, to use or construct an energy system using solar energy or other renewable form of energy if the use or construction is consistent with the energy goals and energy performance plan for the Department of Defense.

Section 823 would impose the same timeliness requirements on post-award protests in the United States Court of Federal Claims (COFC) as now apply to post-award protests before the Government Accountability Office (GAO). The COFC has held that post-award protests are subject only to the general six-year statute of limitations in 28 U.S.C. 2501. (*See United Enterprise & Associates v. U.S.*, 70 Fed.Cl. 1 (2006) and *CW Government Travel, Inc. v. U.S.*, 61 Fed.Cl. 559 (2004)). As a result, while a post-award GAO protest must be filed within 10 days of the discovery of the grounds for protest (or within 10 days of a requested and required debriefing), the COFC may consider a post-award protest months, or possibly years, after a contract has been awarded and performance under the contract has begun. This disparity results in uncertainty and inefficiency in the contracting process. Even long after a contract is awarded, neither a contracting agency nor a successful competitor can be sure that the award will remain unchallenged. This is unlike the situation with regard to pre-award protests, in which the COFC and the United States Court of Appeals for the Federal Circuit have elected to follow essentially the same timeliness requirements as GAO (*See, e.g., Moore's Cafeteria Services, d/b/a MCS Management v. U.S.*, ___ Fed.Cl. ___ (2007), and *Blue & Gold, Fleet, L.P. v. U.S. and Hornblower Yachts, Inc.*, ___ F.3d ___ (Fed. Cir. 2007)).

Use of the GAO timeliness rule has proven both equitable and efficient in thousands of protests. It preserves the right to challenge a contract action while ensuring that the challenge will cause as little disruption as possible to the orderly conduct of acquisitions and performance of contracts.

Subtitle D—Other Matters

Section 831 would retain the fundamental domestic preference requirements of the law, and it would enable the Department of Defense (DoD) and its suppliers to better implement, comply with, and enforce the law, while preserving the national security interest of the United States.

The proposed new subsection (k) of section 2533b would provide authority for an exception from the requirement of this law in those cases where the Secretary of Defense or the Secretary of a Military Department determines in writing that, absent the application of any other exception provided under this law, an exception is in the national security interest of the United States.

Section 804 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law

110-181) contains a national security waiver. However, it will be very cumbersome to employ. It requires that if the Secretary makes a determination to accept delivery of an end item containing noncompliant materials, the Secretary shall require the contractor or subcontractor to develop and implement an effective plan to ensure future compliance. The Department expects there will be situations when the department needs an item for national security reasons, and because defense represents a very small part of its business base, the company will not be willing to modify its commercial business by agreeing to a plan to comply in the future. This new subsection would eliminate that risk by making it clear that the DoD can always acquire items needed for national security.

Section 832 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.

Section 833 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.

Section 834. This section would eliminate a burdensome and uninformative Congressional reporting requirement.

Section 813 of the National Defense Authorization Act for Fiscal Year 2004 directs the Secretary of Defense to establish a process to identify military system "essential items" and create a Military System Essential Item Breakout List. The law then requires the reporting of, among other items, information on the military systems represented; the military and commercial items on the list; and the use of foreign suppliers for the items on the list.

The Department of Defense (DoD) believes that section 813 should be repealed. The Department has produced two annual reports and finds the information to be of limited utility for DoD procurement decisions; the DoD also believes it is not informative to Congress. Complying with the law requires the dedication of a significant amount of scarce resources, particularly in staff time to compile and analyze a vast amount of data, for little benefit.

The Department believes the resources that are necessary to meet the requirements of the law could be directed toward other policy or acquisition-related activities that would better benefit the warfighter. The two previous reports to Congress have noted that the Department finds the information to be not useful and recommended that Congress not use the data for its decision making.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Department of Defense Management

Section 901 would make permanent the current temporary authority of the Secretaries of the military departments and the Secretary of Defense to accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, money, or services made on the condition that the gift, devise, or bequest be used for the benefit of members of the armed forces or civilian employees of the Department of Defense who incur a wound, injury, or illness while in the line of duty. The section would also make permanent the current temporary authority to accept any such gift, devise, or bequest for the benefit of dependents or survivors of such members or employees.

Section 2601 of title 10, United States Code, provides general authority for the Secretaries of the military departments and the Secretary of Defense to accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary. Section 2601 was amended by section 374 of the National Defense Authorization Act for Fiscal Year 2006 to provide the temporary authority described above with regard to gifts, devises, and bequests for the benefit of members of the armed forces, employees of the Department of Defense, and their dependents and survivors. Subsection (b)(4) of section 2601 provides that this temporary authority expires on December 31, 2007. This proposal would strike subsection (b)(4) to make the temporary authority permanent.

Section 902 would amend section 1085 of the Ronald W. Regan National Defense Authorization Act for Fiscal Year 2005 to better meet Congress's intent to maintain the proper level of search and rescue capabilities in an area while at the same time providing the Department of Defense the authority it needs to manage its assets to meet military requirements. Section 1085 currently is too broad and establishes a standard that is not within the discretion of the Department of Defense (DoD) to satisfy. The effect of the current language is to freeze in place any DoD asset that is considered to have search and rescue capabilities (SAR). This prevents the DoD from moving various assets, such as certain types of helicopters, from one base to another to meet military requirements.

Section 1085 currently focuses on SAR "capabilities," rather than SAR "units," without defining "capabilities." The use of the word "capabilities" allows for an overly broad interpretation of the statute, so that almost any DoD asset could be used in a manner that provides SAR capabilities. For example, a JSTARs aircraft could be used to conduct searches for downed aircraft on the ground. A military police unit could be used to conduct a line search through the woods to look for a lost child. By changing "capabilities" to "unit" the procedural requirements would apply only to assets with documented SAR missions, i.e., SAR "units," and avoid an overly broad application of the statute.

In addition, the use of "equivalent" rather than "adequate" in the statute creates the wrong standard with respect to when the Secretary of Defense is empowered to make the required certification to Congress to allow for the reassignment of a SAR unit. The word "equivalent" freezes in place any DoD SAR unit unless the DoD or some other Federal agency will backfill

any move with "equivalent" capabilities. This ignores the fact that situations change over time. For example, even if the state and local government acquired ten new SAR helicopters, the DoD would not be empowered to remove 2 SAR helicopters needed elsewhere for military mission requirements unless the DoD or the Federal government replaces the lost capability. It makes eminently more sense to focus on whether "adequate" SAR capabilities will be provided in a relevant area. Finally, when measuring whether "adequate" SAR capabilities exist in an area, all SAR capabilities should be considered, not just Federal assets.

The current wording of section 1085 results in inefficiencies and the waste of resources. The changes in this legislative proposal would remedy the problem, and provide the DoD with the flexibility it needs to manage its assets, while at the same time ensuring that the goal of Congress (ensuring adequate SAR capabilities throughout the U.S.) is fulfilled.

Subtitle B—Chemical Demilitarization Program

Section 911 would authorize the Program Manager for the Assembled Chemical Weapons Alternatives (ACWA) Program to manage and fund the Colorado and Kentucky Chemical Demilitarization Citizens' Advisory Commissions. This section would transfer responsibility for the existing Chemical Demilitarization Citizens Advisory Commissions in Colorado and Kentucky and provide the appropriate structure in the Department of Defense and ACWA Program Manager rather than the Secretary of Army and Chemical Demilitarization Program Manager. Annual reporting to Congress on travel costs for Citizens' Advisory Commissioners will continue in accordance with current law.

Section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 50 U.S.C. 1521 note), designates the Program Manager for ACWA to "act independently of the program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition, Technology, and Logistics." Section 8122 of the Department of Defense Appropriations Act, 2003 (Public Law 107-248; 50 U.S.C. 1521 note) authorizes the Program Manager for ACWA to be responsible for the management of chemical demilitarization activities at Bluegrass Army Depot in Kentucky and Pueblo Army Depot in Colorado. The current authority for the Citizens' Advisory Commission established in Section 172 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 50 U.S.C. 1521 note) established that the Secretary of the Army is responsible for management of all Chemical Demilitarization Citizens' Advisory Commissions yet the Secretary of the Army no longer has responsibility for the chemical destruction efforts in Colorado and Kentucky as directed by the public laws mentioned above.

Section 912 would remove the limitation on providing assistance to State and local governments for emergency response under the Chemical Stockpile Emergency Preparedness Program (CSEPP) after the completion of the destruction of the United States stockpile of lethal chemical agents and munitions, and provide six months during which the Army and the Federal Emergency Management Agency (FEMA) could close-out CSEPP-related activities.

Subsection (c)(5) of section 1412 of the Department of Defense Authorization Act of 1986 (50 U.S.C. 1521), as amended, authorizes the FEMA Administrator, in coordination with

the Secretary of the Army, to administer a program to provide assistance to State and local governments in developing capabilities to respond to emergencies involving risks to the public health or safety resulting from the storage or destruction of the United States' stockpile of lethal chemical agents and munitions. Subsection (c)(5)(B) prohibits this assistance after completion of destruction of the stockpile. This limitation will impede the ability of the Army and FEMA to ensure the proper close-out of CSEPP activities.

The limitation in subsection (c)(5)(B) was intended to preclude CSEPP activities from continuing indefinitely following completion of stockpile destruction. However, the Army and FEMA believe this language requires modification to ensure that sufficient funding remains available to cover CSEPP close-out expenses that will be incurred after the lethal chemical agents and munitions are destroyed at their respective sites. Such expenses involve the orderly termination or transitioning of emergency preparedness and response capabilities that were operational while the lethal chemical agents and munitions were in storage. This proposal will accomplish that objective by authorizing the Administrator of FEMA to extend assistance to State and local governments for six months when necessary to achieve close-out of CSEPP-related activities.

Subtitle C—Intelligence-Related Matters

Section 921. Over the past several years, different agencies within the Intelligence Community (IC) sought to amend the Freedom of Information Act (FOIA) 5 U.S.C. 552, to exempt operational files from the statutory requirement to search, review and, as required, disclose documents contained therein upon receipt of a FOIA request. These exemptions were sought since information contained in such files is classified and seldom, if ever, released. Thus, agency personnel were spending thousands of hours searching, reviewing and, for the most part, denying access to operational file documents under the FOIA exemption for classified national security information.

The Defense Intelligence Agency (DIA) also sought to achieve an operational files exemption similar to that granted to other IC agencies. Such a measure was included in section 933 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006, which was signed into law by the President on January 6, 2006. Unlike other IC exemptions, this one contained a sunset provision effective December 31, 2007.

Section 705 of the National Security Act of 1947 states that the Director, DIA, in coordination with the Director of National Intelligence (DNI), may exempt operational files of the DIA from the provisions of the FOIA, which require publication, disclosure, search, or review in connection therewith. Operational files are limited to Directorate of Human Intelligence (DH) files that "document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services" and to Directorate of MASINT and Technical collection (DT) files that document "the means by which foreign intelligence or counterintelligence is collected through technical systems."

Due to the sunset provision included in section 705, it is now necessary to seek an

extension of this authority or removal of the sunset provision in its entirety.

Section 922. 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.

Section 923 would make no change to existing law beyond technical changes to bring the United States Code and other laws into line with the agency name change from National Imagery and Mapping Agency to the National Geospatial-Intelligence Agency, as provided for in section 921(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1568). This proposal has been submitted to Congress under the Intelligence Authorization process the last two years, but has not become law due to the failure of enacting an Intelligence Authorization Act.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 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. The 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 four years, legislatively-directed cash transfers have affected DWCF cash accounts by $823.0 million, $967.2 million, and $100.0 million in fiscal years 2004, 2005, and 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, the 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.

Section 1002 clarifies that payments received by the United States in settlement of an admiralty claim for damage or loss to property that is operated and maintained using monies from a Department of Defense working capital fund account will be credited to the working capital fund which was used to operate and maintain the damaged or lost property.

This clarification is consistent with U.S. Comptroller General policy, which supports monetary reimbursement of working capital funds for damage losses caused by third parties. *See, e.g.,* Matter of: National Archives and Records Administration's Records Center Revolving Fund - Property Damage Recovery, B-302962, 2005 U.S. Comp. Gen. LEXIS 105 (June 10, 2005). Under section 2208 of title 10, United States Code, the Transportation Working Capital Fund (USAF-USTRANSCOM) and the Navy Working Capital Fund (USN-Military Sealift Command) are intended to be self sufficient (after initial funding by Congressional appropriation). The maintenance and any repair of working capital fund property, including vessels that are damaged by third party tortfeasors, is paid for with working capital fund account monies rather than current year appropriations from Congress. Crediting of receipts from admiralty claims to these accounts is in keeping with the purpose of 10 U.S.C. 2208.

Section 1003 would clarify the authority of the Secretary of Defense, with respect to matters concerning the Defense Agencies and Field Activities, and the Secretary of Homeland Security, with respect to matters concerning the Coast Guard, to retain and expend fees received from trademark licensing. The military departments and Office of the Secretary of Defense (OSD) Agencies collectively own several hundred registered trademarks. The Trademark Act (15 U.S.C. 1051 *et. sec.*) requires the owners of trademarks to police and enforce their trademark rights by preventing unauthorized use of their marks. Further, those trademark owners who authorize third parties to use their trademarks on products or services must establish and enforce certain quality standards on their licensees. Failure to establish such quality standards through a licensing agreement or to protect these marks can result in cancellation of the trademark's registration. Prior to 2005, all Department of Defense (DoD) agencies had to pay these costs entirely with appropriated funds. This was because the Miscellaneous Receipt Act (31 U.S.C. 3302) required any royalty fees earned by such DoD agencies to be paid over to the U.S. Treasury.

Congress addressed this problem in the National Defense Authorization Act for Fiscal Year 2005 by providing a specific exemption to the Miscellaneous Receipts Act for DoD trademark licensing. The new legislation (10 U.S.C. 2260) provides that pursuant to regulations prescribed by the Secretary of Defense, the "Secretary concerned" is authorized to license trademarks controlled by the "Secretary concerned" and use the funds to pay the costs of operating the trademark licensing program. The excess funds (profits) are to be paid over to an MWR active of the Secretary.

The term "Secretary concerned" is defined in 10 U.S.C. 101(a)(9) as being the secretaries of the Army, Navy, Air Force and Homeland Security. This language would appear to deny the Secretary of Defense, and thus, OSD Agencies and Field Activities the ability to retain licensing fees from their trademark licensing activities. The amendment recommended in this section would allow OSD level agencies to retain fees from the licensing of trademarks owned by their agencies under the same authority currently granted the military departments. The recommended amendment would also permit the Secretary of Homeland Security to develop regulations governing the licensing of trademarks by the United States Coast Guard. Counsel for the Department of Homeland Security has specifically requested that DoD address this issue in its proposed amendment to 10 U.S.C. 2260.

Trademark licensing fees generated by OSD agencies could exceed $1 million per year. These fees would cover the costs of operating the program and generate significant public goodwill for those agencies licensing their trademarks. The profits from the program would also help support the existing OSD level MWR activities.

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.

With the decommissioning of the USS JOHN F. KENNEDY (CV 67) in early 2007, the number of aircraft carriers Navy operates dropped to 11. In 2008, the USS KITTY HAWK (CV 63) will be decommissioned and replaced with the USS GEORGE H.W. BUSH (CVN 77), keeping the force structure at 11 carriers. Maintaining the 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 deployed in the summer of 2007 and, upon her return, is scheduled 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 affirm that neither the existing Vessel Hull Design Protection Act nor proposed amendments thereto impact the Government's rights in the designs of Department of Defense (DoD) vessels and that those rights are now and will continue to be governed by section 2320 of title 10, United States Code, or by the instrument under which the design was developed for the Government.

Historically, the DoD's right to use designs of Naval vessels has been governed by section 2320, which provides three categories of Government rights in data. First, the Government shall have unlimited rights in technical data (which would include vessel hull and deck designs) that pertain to items, components, or processes developed exclusively with Government funds or created exclusively with Government funds in the performance of a Government contract. Second, the Government shall have Government Purpose Rights in technical data that pertain to items, components, or processes developed with mixed funding (Government and contractor funding) or created with mixed funding. Third, the Government shall have Limited Rights in technical data that pertain to items, components, or processes developed or created exclusively at private expense. Section 2320 also permits the Government to enter into Special License Rights under a contract provided that the Government obtains at least the rights available under Limited Rights.

This proposed section also anticipates that the Navy would obtain special license agreements for technical data within the instruments under which vessel design development or creation takes place, regardless of the type of instrument used, because there are instances when the Government uses instruments other than contracts to establish the legal relationship between the Government and designers. For example, Government laboratories often perform work under agreements that are not subject to section 2320 because they are not contracts, but that are

another type of instrument. These would include a Cooperative Research and Development Agreement authorized by 15 U.S.C. 3710a, which is not a Government contract within the meaning of 10 U.S.C. 2320, but instead is a type of assistance agreement. An "Other Transaction" agreement under 10 U.S.C. 2371 is another form of assistance arrangement that does not result in a Government contract. Also, a grant agreement authorized by the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 et seq., similarly does not result in a Government contract.

Government Purpose Rights allow the Navy to use, modify, reproduce, release, perform, display, or disclose the technical data within the Government without restriction and outside the Government, for example to Government contractors, for United States Government purposes without infringement on the rights of the designer. More specifically, Government Purpose Rights allow the Government to use the designs developed under or for a Government contract and funded at least partially with Government funds for competitive re-procurement of the construction of vessels or components thereof and to reuse the designs for later ship types and models. Unlimited Rights allow the Government to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

The Digital Millennium Copyright Act of 1998 (Public Law 105-304; 112 Stat. 2860) was enacted on October 28, 1998. Title V of the Act, the Vessel Hull Design Protection Act (VHDPA), was codified as part of chapter 13 of title 17 of the United States Code. The VHDPA provides exclusive ownership protection to the designer of vessel hulls, including decks, which gives the designer exclusive right: (1) to make, have made, or import for sale, or for use in trade, any useful article embodying that design; and (2) to sell, or distribute for sale or for use in trade, any useful article embodying that design. If the design of the VHDPA's protected parts of a vessel were registered with the Library of Congress pursuant to the VHDPA, then the VHDPA could operate to cut off the Navy's rights in technical data that it obtained under prior contracts and to prevent the Navy from using the design of a hull, a deck, or components thereof developed for the Navy unless the Navy went back to the original source (at increased cost to the Navy) or the shipyards contracted with the original source to reuse the prior design (at increased cost to the Navy). The Vessel Hull Design Protection Act Amendments of 2007, currently before Congress, would specify that both the vessel hull and decks are separately protected and would define "deck" as the horizontal surface of the vessel that covers the hull, including exterior cabin and cockpit surfaces, and exclusive of masts, sails, yards, rigging, hardware, fixtures, and other attachments. It also would clarify the distinction between a hull and a deck.

Essential to national security is the Navy's ability to purchase data rights to a design once, in the original contract as provided for in 10 U.S.C. 2320, and, pursuant to those rights, to reuse the design as often as possible for later ships in order to reduce the cost of future ships. It should be noted that the VHDPA was never intended to cover designs of Naval vessels, but instead was intended to cover pleasure craft such as ships that sail in the America's Cup races. It is in the best interests of the Government not to be forced to purchase ownership of the design, nor to have to force its shipbuilders to purchase ownership or rights to use the design multiple times, nor to be required to purchase future ships from the original designer without access to competition, nor be forced to defend itself in a VHDPA infringement action. This section would

ensure that the Vessel Hull Design Protection Act is not used in that manner.

Subtitle C—Counter-Drug Activities

Section 1021 would make several changes to the authority in section 1033 of the National Defense Authorization Act for Fiscal Year 1998.

This section would extend the current authority to the same year of expiration -- fiscal year (FY) 2001 -- as the other significant counterdrug authorities, such as section 1004 of the National Defense Authorization Act for FY 1991, as amended. Having companion authorities with a common timeframe will allow for better planning and effective CN efforts.

This section also would add nine additional nations to the list of countries eligible for support. These countries are situated either along key drug smuggling routes or are facing an increasing threat of narcoterrorism. Enhanced interdiction capabilities for the countries listed in this legislation are critical to U.S. efforts to stem the flow of illicit drugs, and to reduce the threat of narcoterrorism to struggling democracies.

In addition, this section would remove the reference to the Foreign Assistance Act of 1961, 22 U.S.C. 2291c(a). This lease-or-loan only rule is counterproductive because many countries cannot afford to operate U.S. aircraft and must rely on less costly non-U.S. aircraft. Conversely, the U.S. Government should not be expected acquire more costly U.S. aircraft, for which U.S. forces are competing, and operate them for host nations when much less expensive non-U.S. aircraft are acceptable. It makes little sense to require the U.S. to retain ownership of non-standard and less sophisticated non-U.S. aircraft, which would not be useful to the United States if returned at the end of the lease or loan period.

Increase the spending cap on assistance from $60 million to $80 million. As the list of nations eligible to receive this assistance has increased, the cap has not increased proportionally. By limiting the ability to spend Defense Drug Interdiction and Counterdrug Activities funding on these efforts, the Department's ability to fight narcotrafficking is diminished.

Subtitle D—Matters Related to Homeland Security

Section 1031 would amend section 12304(b) of title 10, U.S. Code, to permit the President to authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy, to order any unit or member of the Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and the Coast Guard Reserve to active duty for a major disaster or emergency, as those terms are defined in section 5122 of title 42, U.S. Code.

This section would make available to the President and the Secretaries of Defense and Homeland Security the significant capabilities of the Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and the Coast Guard Reserve in major disasters and emergencies. In times such as now, when active duty forces are strained by operations abroad, it is critical that the significant capabilities of the Reserves be available to assist civil authorities in

the case of major disasters or emergencies. Such capabilities, under the authority of section 12304(b) of title 10, U.S. Code, are already available for incidents involving the use or threat of weapons of mass destruction or a threat or attack by terrorists, incidents that are far less likely than major disasters or emergencies; therefore, it is reasonable to expect that such capabilities would be effective and desirable in domestic disasters and emergencies. For example, a third of the Army's medical capabilities are resident within the Army Reserve. By enacting this section, these medical capabilities also would be available in the case of a domestic disaster or emergency.

Section 1032 would amend section 333 of title 10, U.S. Code, to authorize the President to order to active duty units or members of the Army, Navy, Air Force, Marine Corps, and Coast Guard Reserves for the purposes specified in section 333 of title 10, U.S. code, including to "restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States," the President determines that "domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of maintaining public order" and conditions in a State "so hinders the laws of a State or possession, as applicable, and of the United States within that State or possession, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State or possession are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."

Section 333 of title 10, U.S. Code, already provides the President the authority to employ the National Guard in Federal Service and active duty armed forces when certain conditions exist. Enactment of this section would increase the force options available to the President, thereby likely decreasing the President's need to employ State National Guard forces in Federal Service or active duty forces; both the National Guard and active duty could be participating in other State or Federal military operations. In such situations, the President could, under the authority of section 331 of title 10, U.S. Code, order to active duty available Army, Navy, Air Force, Marine Corps, and Coast Guard Reserve forces.

Section 1033 would amend section 332 of title 10, U.S. Code, to authorize the President to order to active duty units or members of the Army, Navy, Air Force, Marine Corps, and Coast Guard Reserves for the purpose of suppressing an insurrection in circumstances wherein the President considers that "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings."

Section 332 of title 10, U.S. Code, already provides the President the authority to employ the State militias in Federal Service and active duty armed forces in circumstances wherein the President considers that "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings." Enactment of this section would increase the source of force options available to the President, thereby likely decreasing

the President's need to employ State National Guard forces in Federal Service, or active duty forces; both the active duty and National Guard forces could be participating in other State or Federal military operations. In such situations, the President could, under the authority of section 331 of title 10, U.S. Code, order to active duty available Army, Navy, Air Force, Marine Corps, and Coast Guard Reserve forces.

Section 1034 would amend section 331 of title 10, U.S. Code, to authorize the President to order to active duty units or members of the Army, Navy, Air Force, Marines Corps, and Coast Guard Reserves for the purpose of suppressing an insurrection, at the request of a State's legislature or governor.

Section 331 of title 10, U.S. Code, already provides the President the authority, at the request of a State legislature (or governor if the legislature cannot be convened), to employ the National Guard in Federal Service and active duty armed forces to suppress an insurrection. Enactment of this section would increase the source of force options available to the President, thereby likely decreasing the President's need to employ State National Guard forces in Federal Service, or active duty forces; both the active duty and National Guard forces could be participating in other State or Federal military operations. In such situations, the President could, under the authority of section 331 of title 10, U.S. Code, order to active duty available Army, Navy, Air Force, Marine Corps, and Coast Guard Reserve forces.

Section 1035 would amend section 381 of title 10, United States Code, to expand the equipment available to States and local governments to include counter-terrorism and consequence management equipment.

The Department of Defense has, and is developing, significant capabilities that may be useful to State and local governments in counter-terrorism and consequence management activities. Section 381 of title 10 currently limits such authorized support to counter-drug activities.

Section 1036 amends section 130d of title 10, United Sates Code, to conform with section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482) and section 1016 of Intelligence Reform and Terrorism Prevention Act (6 U.S.C. 485), and the authorities of the President, therein, concerning the treatment and sharing of homeland security information.

Section 482 of title 6, United States Code, defines "homeland security information," and provides that homeland security information shared with a State or local government will remain "under the control" of the Federal agency that provided the information and that no State or local disclosure laws shall apply to that shared information.

Section 130d ensures that such information, though shared with State and local personnel who are involved in the prevention or response to terrorist activity, is not subject to disclosure under the Freedom of Information Act (5 U.S.C. 552) because the information was shared.

Under section 130d, "confidential business information and other sensitive but unclassified homeland security information" in the possession of the Department of Defense

does not lose any protection or exemption from disclosure under the FOIA simply because the information was shared with State and local personnel pursuant to 6 U.S.C. 482.

Currently 10 U.S.C. 130d states:

> Confidential business information and other sensitive but unclassified homeland security information in the possession of the Department of Defense that is shared, pursuant to section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482), with State and local personnel (as defined in such section) shall not be subject to disclosure under section 552 of title 5 by virtue of the sharing of such information with such personnel." (emphasis added).

Limiting this protection to information "in the possession of the Department of Defense" could have harmful, unforeseen consequences for intergovernmental information sharing and create operational as well as legal obstacles for other Federal agencies that share homeland security information with State and local personnel.

To resolve the tension between section 130d and the Homeland Security Act, this proposal would amend section 130d in two ways. It would amend section 130d to apply to ***all*** Federal agencies and not just DoD by amending the phrase, "in the possession of the Department of Defense," to refer to "any Federal agency." This amendment eliminates both the negative implications and potential operational distortions created by limiting the application of section 130d only to the Department of Defense.

This proposal also would clarify that applicable FOIA exemptions for confidential business or homeland security information are not waived because the information was shared with State and local personnel. *See generally Students Against Genocide v. Dep't of State*, 257 F.3d 828, 836 (D.C. Cir. 2001) (noting that, generally, the government may not rely on an otherwise valid exemption to justify withholding information that already has been officially released to the public).

In addition, this proposal would replace "other sensitive but unclassified homeland security information," with "Homeland security information," to reflect the terminology used in 6 U.S.C. 482.

Subtitle E—Miscellaneous Authorities and Limitations

Section 1041 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.

Subtitle F—Other Matters

Section 1051. Section 1482 of title 10, United States Code, permits the Department of Defense to provide ceremonial burial flags to the Person Authorized to Direct the Disposition (PADD) of a deceased service member's remains and to that service member's parent or parents if they are not the PADD. Section 1482 does not require that the spouse be designated as the PADD and does not provide for a flag for spouses of deceased service members in instances when the spouse is not designated as the PADD. This proposal would allow the presentation of a ceremonial flag to the spouse in instances when he or she is not the PADD.

Section 1052. Most provisions of the Defense Production Act (DPA) of 1950 are not permanent law and must be reauthorized periodically to extend the expiration date of critical authorities and to modernize these authorities in response to changing national defense needs.

The proposed amendment to DPA Section 717(a) will extend the termination date for expiring sections of the DPA by five years from September 30, 2008, to September 30, 2013.

Five years is the preferred period for extending the DPA sections covered by this extension (Sections 104, 707, 708, and 721 are permanent law) because it would provide for the timely periodic review and update of the DPA authorities, while providing stability for ongoing DPA programs. A shorter extension will hamper the effective use of Title III authorities to contract for needed industrial resources and critical technology items, and will increase the risk that critical authorities provided by the DPA might lapse at a time when they are needed to respond to emergency requirements.

The proposed amendment to DPA Section 711(b) will authorize appropriations to carry out Title III for each of the fiscal years 2009 through 2013. The existing DPA language authorizes appropriations only for fiscal years 2003 through 2008 to carry out Title III.

The proposed amendments to Sections 303 and 304 of the Defense Production Act will ensure that the authorities of the Act can be applied in an efficient and timely manner to address domestic industrial base issues for technologies and materials essential for national security needs. The proposed language clarifies that certain funds received by the Government pursuant to Title III actions under section 303 are returned to the DPA Fund, specifically provides for the modification or expansion of privately-owned facilities, and clarifies that government-owned equipment installed in privately-owned facilities may be transferred to the owners of such facilities in a manner that benefits the Government.

Paragraph 303(a)(6) requires: (1) the President to identify proposed Title III action in the Budget or Budget amendment submitted to Congress; (2) that such notification to Congress be made at least 60 days in advance of such assistance; and (3) obtain authorization, in law, for any assistance that would create an outstanding Government obligation exceeding $50,000,000.

This process is inefficient, cumbersome, and time-consuming, and delays the timely application of Title III authorities to address urgent industrial base shortfalls for technologies and materials that impact national defense requirements. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation on actions under Title III from $50,000,000 to $200,000,000 before specific authorization in law is required. The process for obtaining specific authorization in law for projects exceeding $50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. 1984 amendments to the DPA added language requiring specific Congressional authorization for Title III actions in excess of $25 million. 1992 amendments to the DPA increased this threshold to $50 million. The statutory limitation has not been adjusted for inflation which has the effect of requiring authorization in law for relatively modest Title III actions. The proposed changes will preserve Congressional oversight of Title III actions while making application of Title III authorities more efficient. Additionally, Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

Subsection 303(e) authorizes the President to install equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities to aid the national defense. A sentence is added at the end of this subsection to clarify that this authority includes, but is not limited to, the modification or expansion of privately-owned facilities including the modification or improvement of production processes. Additionally, new language is included that clarifies that government-owned equipment that was installed in a privately-owned facility, pursuant to actions under Title III of the DPA, may be sold to the Contractor at fair market value or transferred to the Contractor, in a manner that benefits the Government, for the purpose of maintaining a viable production capacity after Government assistance has ended. Absent such authority, government-owned property at a Contractor's facility must be returned to the Government or processed for disposal upon the termination of a contract. This is contrary to the objectives of Title III of the DPA which is to establish and maintain economically viable domestic production capacities for items and technologies needed to meet national security requirements.

Subsection 304(b) is amended to clarify that all moneys received by the Government in connection with Title III actions pursuant to Section 303 shall be credited to the DPA Fund. The current subsection 304(b)(2) language refers to "moneys received by the Fund". Since moneys are actually received by the Federal Government, not by the Fund, it is unclear whether such funds can be credited back to the Fund. This technical amendment replaces the word "Fund" with the words "Federal Government". This revolving fund allows the Title III Program to recoup any moneys received from the liquidation of items or material received pursuant to financial commitments entered into through section 303 (e.g., the resale by the program of items or material purchased using section 303 purchase authority by the Program).

Section 1053 would synchronize the information the Department of Defense (DoD) provides to both the Congress and the Office of Management and Budget (OMB) regarding major DoD information technology (IT) investments.

The current statutory requirement for major (or significant) IT budget documentation applies to any IT capital asset with an estimated total cost for the fiscal year for which the budget is submitted in excess of $30 million and an estimated total life cycle cost greater than $120 million (computed in fiscal year 2003 constant dollars). This change will not affect the Congressional reporting of non-major IT investments.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would increase the maximum number of Defense Intelligence Senior Executive Service (DISES) employees by 100. The Administration's draft FY2006 defense authorization bill proposed increasing the maximum number of DISES employees by 150 over two years. Section 1125 of the FY2006 Defense Authorization Act increased the maximum number of DISES employees by 50, to 594. Subsequent proposals to include the remaining requested 100 DISES allocations in both the FY2007 and FY2008 Defense Authorization Acts were not accepted. Congressionally requested evaluation of use of DISES in DoD (Section 1102 of the FY2007 Defense Authorization Act), completed in April 2007, demonstrates continued need for additional DISES allocations. Enactment of this proposal would complete the

Department's planned increase in DISES employees serving in the USD(I) and eight DoD components.

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. Even with authority to upgrade these 100 positions, the Department will still have 78 unfilled, validated DISES requirements. The number of defense civilian intelligence authorizations increased from 35,800 in 2001 to 42,500 in 2005. The Department projects the authorization level will increase further to 51,800 by 2011.

With an increase to 694, DISES employees as a percentage of the total civilian intelligence authorizations will reduce from 1.5 percent in 2001 to 1.3 percent through 2011. No significant budgetary impact is foreseen because the positions will be elevating existing GGD-15 positions to senior. No new funds or additional end strength of civilian employees are requested. Components that upgrade existing positions will absorb the incremental costs (the difference between GG-15 and DISES salaries and the associated benefits tail) in their civilian personnel accounts. Costs will be split between four budgets—MIP, NIP, ISSP and departmental budgets—with the majority of the position increase funding paid from NIP. Estimated costs for FY2009 and FY2010 are $446,528 per year using a starting salary average of GGD-15/5, assuming a 6 percent increase upon promotion (not required) and estimating benefits increases as 19 percent of the pay increase.

Elevation from Mid-Band, 15/5	
$125,078 X 0.06 = $7,505	Pay increase of 6% on accession to senior
$7,505 X 50 = $375,234	Increase x number of new positions
$375,234 X 0.19 = $71,294	Benefits, calculated at 19% of increase
$446,528	Total pay and benefits increase for FY

The most the increase in DISES authorizations could cost would be in the event that all candidates were elevated from GGD-15/10. Using the same estimation process, total estimated cost for all candidates elevated from GGD-15/10 to DISES with 6 percent increase is $512,191 per FY. Cost would still be largely NIP expense.

Section 1102 would strike paragraph (5) of section 3502(f) of title 5, United States Code, to make the Voluntary Reduction in Force (RIF) authority permanent. This authority allows an employee who is not affected by RIF to volunteer for RIF to save another employee from losing their job. If, at any point in the RIF process, it is determined that the voluntary separation would

not result in saving a RIF-affected employee, the voluntary separation authority is not used.

Making this authority permanent would allow Department of Defense activities and installations to minimize the negative impact of downsizing by encouraging employees to volunteer for RIF separation in place of employees who are scheduled to be involuntarily separated by RIF procedures. It is an essential part of the downsizing toolkit to assist installations offset the hardships experienced by employees who would otherwise be involuntarily separated.

Section 1103 would correct unintended consequences of section 9902(j) of title 5, United States Code, and reestablish retirement provisions for individuals who were separated from Federal service under a Discontinued Service Retirement (DSR) and later reemployed. This section also would grant authority to the Secretary of Defense to waive provisions of section 8344 and 8468 of title 5 on a case-by-case basis for the reemployment of retired civilian employees within the Department of Defense (DoD).

Prior to enactment of section 9902(j), reemployed annuitants were able to contribute to the retirement fund and receive additional service credit toward their retirement annuity. Under the current provisions of section 9902(j), reemployed annuitants are not considered employees for retirement purposes. Therefore, upon their reemployment, those separated under DSR provisions cannot contribute to the retirement fund or receive additional service credit. Despite many subsequent years of service, they will never be eligible to receive a full annuity. In addition, they cannot contribute to the Thrift Savings Plan (TSP).

This section would allow the DoD to exercise discretion in determining when an annuitant, upon reemployment, would receive both their full salary and their annuity from the Civil Service Retirement and Disability Fund. Authorizing annuitants to receive both their full salary and their annuity would occur under specific circumstances (*e.g.*, when filling hard-to-fill or critical positions). Otherwise, the DoD either would offset a reemployed annuitant's salary or terminate their annuity, as established under chapters 83 and 84 of title 5.

The Department needs this technical fix to the law to reemploy annuitants and ensure that reemployed annuitants who retired through no fault of their own (*i.e.*, discontinued service retirements) may receive additional credit toward future retirement and contribute toward their TSP accounts. This section would correct the unintended consequence of current law. Without this legislation, the Department would have severely limited flexibility to fill critical hard-to-fill positions.

Upon enactment, the Department will update its current policy, guidance, and procedures, and implement these changes within 30 calendar days.

Cost Implications: This section would allow the Secretary to determine circumstances under which the Department could offset the salary of reemployed annuitants who wish to earn additional retirement credit (*e.g.*, annuitants who took early retirement under the discontinued service retirement provisions). Subject to appropriation, this section would assist 70 DoD reemployed annuitants in fiscal year (FY) 2009 at a cost of approximately $352,203. It would

assist 532 reemployed annuitants from FY 2009-2013 at a cost of approximately $2.511 million. This section would be funded from the Operation and Maintenance Accounts for the Army, Navy, Air Force, and Defense-wide Activities. Overall, this proposed change would permit the Department to remedy the unintended consequences of existing law.

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
DoD	70	93	106	122	141

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
DoD	.352	.413	.490	.572	.684

COST METHODOLOGY

The DoD calculated the costs using the following formula: we assumed 15.5 percent of the average number of Federal Employees Retirement System (FERS) reemployed annuitants (who were not subject to salary reduction) from 2004 – March 2007 that could fall under the purview of the revised provision. We multiplied this number by the average salary of FERS annuitants during the same time frame. We then multiplied this amount by the Department's calculated costs for mandatory payment into the Thrift Savings Plan and FERS retirement plan, which totaled 16.2 percent of each employee's salary as a result of discretionary use of the provision change. We increased the average number of FERS reemployed annuitants by 15.5 percent from 2009 to 2013 in recognition of the increase in the number of projected retirements within the Department due to Base Realignment and Closure or under other circumstances. In addition, we increased the average salary of reemployed annuitants from 2009-2013 by three percent to capture the average General Pay Increase (GPI) within the Department.

We assumed that five percent of CSRS annuitants would fall under this new provision. The total additional cost to the agency for each CSRS annuitant is .8 percent. We multiplied .8 percent times the average CSRS reemployed annuitant salary times the estimated number of affected CSRS annuitants. We then added the total CSRS and FERS costs to determine the additional costs to the agency that will be incurred for discretionary use of the provision change. The total amount that will be incurred for FERS and CSRS annuitants hired under the provision change increases by three percent for GPI during subsequent fiscal years. In addition, we increased the number of CSRS-eligibles under this provision by five percent from 2009 to 2013.

Section 1104 would provide specific authority to appoint persons in specified healthcare occupations and professions to positions within the Department of Defense without regard to the appointment procedures in subchapter I of chapter 33 of title 5, United States Code. The section would authorize so-called "direct hire" appointments for various types of healthcare occupations and professions. The Secretary of Defense could also identify individuals in other healthcare occupations and professions who could be appointed under the "direct hire" authority if the Secretary determines that use of the authority is necessary because of an expansion or other

change in the healthcare mission of the Department of Defense or because of difficulty in employing a sufficient number of qualified healthcare personnel in a specific occupation or profession as a result of competing sources of employment or other reasons.

Section 1105 would amend section 5595(i)(4) of title 5, United States Code, to extend from 2010 until 2014 the permissive authority of the Department of Defense (DoD) and the military departments authority to grant, upon request by the employee, payment of the employee's severance pay in one lump sum. This payment option would enable employees scheduled for separation to receive severance pay in one payment in lieu of bi-weekly payments.

This option allows the employee additional financial flexibility in preparing for their separation from Federal service. If an employee who received a lump-sum payment becomes reemployed by the Federal government or the District of Columbia during the severance pay time period, they are obligated to return to the DoD that portion of the payment they would not have received under the bi-weekly option.

Section 1106 would update the definition of "professional accounting position" in section 1599d of title 10, United States Code, to reflect the establishment of the National Security Personnel System.

Section 1599d(e) of title 10, United States Code, defines a professional accounting position as "a position or group of positions in the GS-510, GS-511, and GS-505 series that involves professional accounting work." When enacted in 2002, section 1599d(e) accurately referred to the General Schedule (GS) pay plan in reference to which the Department of Defense's professional accounting positions were classified (assigned a title, an occupational series designation, and a pay grade).

In 2003, section 1101 of the National Defense Authorization Act of Fiscal Year 2004 (Public Law 108-136, codified at 5 U.S.C. 9902), authorized the Department to establish the National Security Personnel System (NSPS), an alternative personnel system with new position classification and pay systems governed by regulation. A description of the final rules governing these new systems was published in the Federal Register of November 1, 2005 (5 CFR Chapter XCIX and Part 9901).

NSPS established a new "pay schedule" designated "YA" for Professional and Analytical positions, such as professional accounting positions. The Department's professional accounting positions, formerly classified as GS-510, GS-511, and GS-505, now are classified as YA-0510, YA-0511, and YA-0505 (or YC-0510, YC-0511, and YC-0505, respectively, if supervisory positions) on conversion of the position incumbents from the GS pay plan to the YA (or YC) pay schedule.

During an extended transition period, the Department will convert all of its professional accounting positions from the GS pay plan to the YA (or YC) pay schedule and, thus, needs this technical change to allow the Department to use either or both GS and YA (or YC) pay system designations, or any other authorized comparable designations. By providing for designations that are "equivalent to" GS pay plan classification designations, this section would enable this

activity.

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Subtitle A—Assistance and Training

Section 1201 would allow the United States Air Force Academy, the United States Military Academy, and the United States Naval Academy to pay the travel, lodging, and subsistence of officers and students from foreign countries, as well as other expenses the service academies consider necessary for international cooperation. It also would allow each service academy to determine appropriate "other" rates of per diem for its faculty and staff and cadet/midshipman international language and cultural study abroad programs. This new section would closely reflect language in sections 1050 (Latin American Cooperation: Payment of Personnel Expenses) and 1051 (Bilateral or Regional Cooperation Programs: Payment of Personnel Expenses) of title 10.

Following the broad guidelines in Department of Defense Directive 1322.22, "Service Academies," and Air Force policy directives, the service academies have established their international language and education programs as one of the primary objectives of their International Programs to enhance the "international understanding through foreign military and cross cultural interactions" of service academy and other countries' cadets and midshipmen. Accordingly, the United States Air Force Academy (USAFA), for example, hosts in excess of 500 foreign visitors, primarily cadets and escort officers from foreign military academies around the world, per year for up to a week at a time. Occasionally, the USAFA uses Official Representation Funds (ORF) to host these visitors, but ORF funds generally are limited to visits by high-ranking delegations, and the USAFA's visitors typically are foreign cadets or escort officers below the rank of Colonel.

Therefore, this section would designate a portion of the service academies' language and cultural funds to be used in the same fashion as Latin American Cooperation Funds. The cost of this program would be about $120,000 per year and would be used to host visitors from 40 or more foreign service academies from around the world. This is not a programmatic change, an additional program that must be funded, nor an addition to any existing programs. This legislative initiative simply would authorize the service academies to use their existing and limited International Programs and Foreign Languages operations and maintenance funds in the same manner that section 1050 authorizes the Secretaries of the military departments to provide meals, lodging, and entertainment for visiting foreign military cadets and officers.

In addition, the new section would authorize the service academies to determine a rate of per diem lower than that prescribed by the Joint Federal Travel Regulations. The service academies' language and cultural immersion programs around the world generally include cadets and midshipmen staying with families or living in university dormitories. Some meals are provided in each situation, but money must be provided to the travelers for the other meals. Proportional per diem rates in all countries are much higher than that required by a traveler to pay for missed meals and incidentals, and the service academies believe that they can determine an adequate compensation rate that will satisfy the traveler, save the U.S. Government a

significant amount of money, and subsequently use those savings to enable a greater number of cadets and escorts to gain valuable experience in a foreign country.

Cost Implications: Although this section requires an additional $120,000 per year to host foreign visitors to the service academies, this is well below the threshold for a budgetary proposal. The additional cost would be funded within the existing budget authority.

Subtitle B—Nonproliferation Matters and Countries of Concern

Section 1211 authorizes the President to waive certain sanctions in the Arms Export Control Act, in order to permit the conduct of vital nuclear disablement, dismantlement, and verification activities in North Korea.

The United States seeks the earliest fulfillment of North Korea's commitment in the September 2005 Six Party Joint Statement to "abandoning all nuclear weapons and existing nuclear programs." However, under current law, the Department of State's Nonproliferation and Disarmament Fund covers the majority of costs for disablement actions, while other U.S. agencies are prohibited from providing financial assistance to North Korea. This provision would provide additional flexibility, which would support the United State's ability to reduce proliferation risk in North Korea.

Subtitle C—Other Matters

Section 1221 would benefit U.S. industry and the U.S. Government by allowing the Department of Defense (DoD) to better provide needed support for direct commercial sales that are in the national interest of the United States. Current law allows the President to sell defense articles overseas, as well as government services to U.S. companies engaged in those sales, but limits the services sold to services provided in the continental United States. This hinders direct sales by U.S. companies to friendly foreign nations and international organizations to the detriment of U.S. national security interests. This section would allow the sale to U.S. companies of government services to be provided overseas. This change would assist in building partnership capacity by increasing the availability of services supporting U.S. defense articles, thereby facilitating the use of such articles, and increasing interoperability between partners and U.S. forces.

An increasing proportion of U. S. defense exports are made through direct commercial contracts between U.S. companies and friendly foreign countries or international organizations. These sales help promote foreign policy and national security interests; help to maintain the U.S. defense industrial base; keep open production lines; and boost economies of scale that can beneficially affect prices the U.S. military services pay to acquire and maintain equipment. The Department of Commerce, under its Golden Key program, provides support directly to U.S. industry in support of sales of non-defense items. Often, U.S. industry requires specialized defense support that is only available from DoD military members and civilian employees. However, defense services needed to be performed overseas to support direct commercial sales of defense equipment to foreign countries currently can only be performed overseas through FMS to the countries. This section would allow the DoD to provide such services under

contracts between the DoD (or other agencies) and U.S. companies.

TITLE XIII—MATTERS RELATING TO BUILDING PARTNER CAPABILITIES TO COMBAT TERRORISM AND ENHANCE STABILITY

Subtitle A—Building Security Capacity and Non-military Stabilization Support

Section 1301 would amend and make permanent the authority of the Secretary of Defense, with the concurrence of the Secretary of State, to direct programs to build the capacity of foreign forces. This authority was first provided under section 1206 of the National Defense Authorization Act for Fiscal Year (FY) 2006 and extended in section 1206 of the John Warner National Defense Authorization Act for FY 2007.

This section would expand the type of forces that may be trained and equipped under this authority. Counterterrorism and stability operations are often conducted by security forces in addition to the military forces of partner nations. Provision of such assistance to military and security forces would still have to meet the criteria in subsection (a) of proposed section 409 of title 10, United States Code, and support human rights and legitimate civilian authority as prescribed under subsection (b)(2).

To meet the goal of reducing stress on U.S. forces, subsection (a)(1) would enable the Department of Defense to train or equip forces in countries where doing so advances U.S. security interests, as determined by the Secretary of Defense with the concurrence of the Secretary of State, but without a requirement for such forces to deploy with U.S. forces.

The operational tempo of the Global War on Terror (GWOT) constrains the ability of commanders to conduct critical training and exercises, and combatant commanders have identified the ability of conventional forces to participate in such training and exercises as mission critical. Increasingly, conventional forces need to both benefit from and provide critical training with partners. Subsection (b)(3) would enable this by allowing conventional forces to participate in training activities authorized by section 2011 of title 10 where such training is on-going and when such participation will assist the forces carrying out missions under this section.

Based on proposals received from the Combatant Commands, more than $200 million's worth of programs could be executed in FY 2006, more than $500 million in FY 2007, and more than $900 million in FY 2008. Given the tremendous need for capacity-building to implement the GWOT campaign plan and meet emerging threats and opportunities, this section would provide a permanent annual funding ceiling of $750 million. The joint approval process and advance congressional notification will ensure transparency and that respect for human rights and civilian authority remain a key component of programs under this section without sacrificing flexibility critical to United States national security. Additionally, subsection (c)(2) of proposed section 409 would authorize the President or the Secretary of State to waive restrictions on such military or security force assistance, in accordance with existing applicable waiver standards, or otherwise when it is in the national security interest to do so. Such waivers could be exercised *in extremis* should a critical need arise to train and equip a country under restrictions that would

otherwise prevent such assistance.

Subtitle B—Enhancing Partners' Capacity for Effective Operations

Section 1311 would meet a critical need to provide interoperability and adequate personnel protection to coalition partners in combined operations with U.S. forces. Congress provided similar authority on a temporary basis for operations in Iraq and Afghanistan under section 1202 of the John Warner National Defense Authorization Act for Fiscal Year (FY) 2007. Section 1252 of the National Defense Authorization Act for FY 2008 extended this authority for an additional year and expanded it to encompass situations outside Iraq and Afghanistan where partners are participating in combined operations with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.

This proposed change would make permanent the authority of the Department of Defense to transfer under Acquisition and Cross Servicing Agreement (ACSA), on a lease or loan basis, items identified as Significant Military Equipment (SME) for personnel protection or to aid in personnel survivability to nations participating with U.S. Armed Forces in military operations if the Secretary of Defense, with the concurrence of the Secretary of State, determines in writing that it is in the national security interests of the United States to provide such support.

U.S. Armed Forces depend on coalition partners to be able to patrol and engage opposition forces as needed. Due to improvised explosive devices and the weapons and/or weapon systems available to opposition forces, providing use of all reasonably available security measures not only for U.S. Armed Forces, but also for coalition forces of other countries is critical. While currently most important in Iraq and Afghanistan, similar challenges are expected in any other theater in which U.S. and partner forces conduct combined military operations.

Currently, critical assets for force protection and survivability (*e.g.*, counter-improvised explosive device equipment, defusing equipment, and vehicles hardened or with turrets) are designated as SME on the U.S. Munitions List, section 121.1, which prevents a Combatant Commander from providing them even temporarily to coalition partners except as provided for by section 1202 of the John Warner National Defense Authorization Act for FY 2007, as amended. Nations that provide forces in support of Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and the Global War on Terror often do not have the same capability that U.S. Armed Forces have to protect their personnel. Coalition members have often requested temporary U.S. logistical support in the form of items designated as SME to be able to accomplish OEF and OIF missions in concert with U.S. Armed Forces. Though the section allows only temporary use of the items for receipt of reciprocal value under existing ACSAs with partner countries, it will significantly increase coalition partners' effectiveness.

Section 1312 would authorize each geographic combatant commander, with the concurrence of the Secretary of State, to transfer, on a grant basis, a total of $25,000 per year of non-lethal excess defense articles to each country within the commander's area of operations for the purpose of building the capacity of such countries to conduct counterterrorist operations or to participate in or support military and stability operations consistent with the security interest of

the United States.

While the current Excess Defense Articles (EDA) program, administered by the Department of State, is robust, this authority facilitates transfers at the field level, thus enabling combatant commanders, with concurrence of the relevant chief of mission, to meet urgent needs through the quick provision of limited EDA.

The geographic combatant commanders are the nation's eyes and ears around the globe in the Global War on Terror. This section would give them a very limited authority to provide "on the spot" EDA grants when, in the commander's judgment, such a grant would build the capacity of such countries to conduct counterterrorist operations, or to participate in or support military and stability operations in which the United States Armed Forces are a participant. A typical scenario could involve providing a nation's military with computers which are obsolete for the American military, but which would provide important new capabilities for a developing country. By authorizing these small but direct grants by those commanders, this section would promote an efficient and effective way to respond to dynamic challenges.

The language of this section is based on the current authority for transferring EDA in section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j). The definition of "excess defense articles" is the same (by reference) and although the equipment is limited to non-lethal items, we intend by these references to make this EDA subject to the same safeguards and restrictions as other EDA. Because the equipment subject to grant under this section would -- by definition -- be subject to EDA grants under current law, there would be no budgetary effect.

Section 1313 would authorize the President to establish a Defense Coalition Support Account to better support coalition partners in the Global War on Terror. The Department of Defense (DoD) needs to be able to have additional warfighter equipment (such as, night vision devices, communication equipment, and body armor) in its inventory, or to expedite the award of contracts to procure such equipment, so it will be readily available when it is required for transfer to coalition partners. Advance purchases will focus on high-demand warfighter support equipment that has long procurement lead times. Long procurement lead times are often the main limiting factor in our ability to provide coalition partners with critical equipment to make them operationally effective.

This section would create an improved mechanism that builds on aspects of the Special Defense Acquisition Fund (SDAF) (authorized by the International Security and Development Cooperation Act of 1981, Public Law 97-113, and decapitalized in 1993), and on some aspects of the newer Defense Cooperation Account (10 U.S.C. 2608) that was created to be used to support the U.S. military in the Gulf War. This proposed revision to existing SDAF legislation would allow DoD to pre-purchase equipment for sale or temporary use to its partners, using funds that have been made available to DoD through appropriations by the Congress or by using donations from non-U.S. Government sources (*e.g.*, foreign governments, international organizations, and private donors). Under this authority, DoD could accept orders from other federal agencies such as the Department of State to purchase or provide temporary use of equipment to coalition partners for Global War on Terror purposes like counter-terrorism, stability operations, border security and peacekeeping activities. No existing law provides the authorities that are found in

this proposed revision to the Arms Export Control Act.

The proceeds from items sold from stock not to be replaced are normally deposited into Miscellaneous Receipts with other collections, such as nonrecurring cost recoupments, and average $22 million per year. Once the Defense Coalition Support Account is established, it could sustain itself (as a revolving account) without further regular appropriations through collections of sales or transfers made from this account, contributions accepted by the Secretary of Defense, and collections from transfers or sales of defense articles made pursuant to section 21(a)(1)(A) of the Arms Export Control Act of 1976, or the Foreign Assistance Act of 1961, as amended, representing the actual value of defense articles not intended to be replaced in DoD stocks.

Section 1314. The Global War on Terror has created more requirements than can be met with active duty military forces. Members of the Reserves, including the National Guard, provide a ready source of expertise for humanitarian assistance and demining, international military education and training (IMET), and such other security cooperation missions as counterterrorism. However, except in cases of national emergency, Reserve and Guard budgets normally support only two weeks of active duty per year for each Reserve member. As a result, to use Reserve members for security cooperation missions outside of the funded two weeks of active duty, Reserve members must be paid from other funds. Sources of funds from current appropriations, such as Overseas Humanitarian, Disaster, and Civic Aid, IMET and Foreign Military Financing, are available, along with such non-U.S. sources as foreign country national funds. This section would allow Department of Defense to use these other funds to pay Reserve members to perform missions that build global partnerships and help win the war on terror.

Section 503(a) of the Foreign Assistance Act of 1961, as currently written, requires that salaries of members of the Armed Forces of the United States (other than the Coast Guard) be specifically excluded from the price of Foreign Military Sales paid with funds transferred pursuant to paragraph (3) of this subsection or from funds made available on a non-repayable basis under section 23 of the Arms Export Control Act. Section 632(d) of the Foreign Assistance Act of 1961, as currently written, requires that reimbursement be made in an amount equal to the value (as defined in section 644(m)) of the defense articles and defense services provided. Salaries of members of the Armed Forces of the United States are specifically excluded from this requirement.

This proposed section would, during Fiscal Years 2009 and 2010 permit the reimbursement for military salaries to reflect the definition of "value" set out in section 644(m) (22 U.S.C. 2403(m)). "Value" is defined as the cost to the United States Government and, with respect to Military Education and Training Services, includes "additional cost that are incurred by the United States Government in furnishing such assistance." This proposed section would increase flexibility by providing permissive authority for the reimbursement of the salaries of Reserve, National Guard, or other members of the Armed Forces who may be ordered to active duty in situations where Department of Defense Appropriations do not fund their salaries.

Section 1315. Section 2010 of title 10, United States Code, authorizes the Secretary of Defense, after consultation with the Secretary of State, to pay the incremental expenses of a

developing country that are incurred by that country as the direct result of participation in a bilateral or multilateral military exercise if: (1) the exercise is undertaken primarily to enhance the security interests of the United States; and (2) the Secretary of Defense determines that the participation by such country is necessary to the achievement of the fundamental objectives of the exercise and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country.

The proposed language in subsection (e) would provide the Department with the authority to pay for such programs on a reimbursable basis under the Economy Act in the fiscal year when the training program commences. Currently, the requirements of the Economy Act require split payments for programs that cross fiscal years. These requirements cause serious financial difficulties and limit program flexibility by preventing effective scheduling of exercise activities during the transition from one fiscal year to the next.

Subtitle C—Developing Commonality by Expanding Professional Military Education, Training, and Support for Partners

Section 1321. Section 1207 of the John Warner National Defense Authorization Act for Fiscal Year 2007 authorized the Secretary of Defense to expend operations and maintenance funds to provide electronically-distributed learning content and related information technology for the education and training of foreign military and civilian government personnel to enhance interoperability during multinational operations. This authority would enhance the ability of Combatant Commanders to develop the skills of allied and coalition partners to ensure interoperability for multinational operations. This provision would make this authority permanent.

The Defense Department has demonstrated the value of being able to provide the training described herein through the Partnership for Peace (PfP) Program. The proposed legislative change would enable operations and maintenance funds to be applied for PfP-type initiatives to a broader coalition of multinational countries.

Increasingly, Combatant Commanders see the need for and receive requests from coalition and allied partners for training which helps partner forces understand the planning processes, organization, and command and control systems used by U.S. warfighters. Providing this type of training allows our foreign partners to develop capabilities in a manner that will improve interoperability with U.S. forces on the battlefield.

Section 1322 would reauthorize and make permanent the authority granted by Congress in section 1205 of the John Warner National Defense Authorization Act for Fiscal Year 2007, which authorized the Secretary of Defense to enter into agreements with North Atlantic Treaty Organization (NATO) alliance members, major non-NATO allies, and other friendly foreign countries to participate in organizations which are centers of excellence established to enhance interoperability, develop military doctrine, and develop and test new concepts. Section 1205 also authorized the expenditure of funds appropriated or otherwise made available for the support of international military organizations and to pay the salaries and expenses of personnel assigned to such organizations. In addition, section 1205 authorized the Secretary of Defense to provide

facilities and equipment for the use of such organizations with or without reimbursement. This section also would clarify that Centers of Excellence (COE) do not have to be approved and accredited by NATO, and remove funding limitations to allow expanded U.S. participation.

Examples of these organizations are the COE and training schools that have been independently formed by NATO alliance partners to support NATO. Following the lead of the United States in transforming training within its forces, during the 2002 Prague Summit NATO announced the creation of Allied Command Transformation whose mission is to lead NATO through transformation to face the operational challenges of coalition warfare against new and emerging threats. In support of this effort, Alliance partners, independent but in support of NATO, have created, through bilateral and multilateral agreements, COE and established schools the purposes of which are to support NATO transformation through doctrinal development, education, training and validation of new concepts through experimentation. This section would clarify the authority of the Secretary of Defense to support those organizations and others that may be established to support common security interests.

The United States benefits from this participation through its ability to influence the commonality of doctrine, education, training and development of new capabilities. The U.S. also gains the synergies associated with working cooperatively with allied/coalition partners in a synchronized effort across international programs and with multinational forces creating a transformed fighting team. This process improves interoperability between U.S. and foreign militaries and enhances security cooperation efforts to prosecute the Global War on Terror. This section would allow U.S. Forces to leverage the specific expertise or experience of some partners while simultaneously assisting all partners to reach shared understandings of doctrine. Building the capabilities of allied/coalition partners increases unity of effort and enhances the U.S. ability to execute multinational operations. Increased interoperability and enhanced capability of allied/coalition partners will result in a reduced strain on U.S. Forces as we operate in a coalition environment addressing common security interests. Strengthening our relationships through participation in organization supportive transformational concepts also strengthens the current transformational efforts of the Department of Defense.

These centers of excellence are multi-year commitments by the U.S. and require permanent funding authority to be successful. The NATO-related COEs have proven to be extremely useful vehicles to develop partnership capacity and the Department of Defense envisions that they will be useful vehicles in other parts of the world outside of the NATO context. The Department is requesting an increase in authorized funding in anticipation of increased COE activity with friendly foreign militaries outside of NATO.

Section 1323. The Regional Defense Combating Terrorism Fellowship Program (CTFP) is the Department of Defense's premier program for partnership engagement in the Global War on Terror. The Program funds the education and training of mid-to-senior level foreign civilians and military officers who have combating terrorism responsibilities.

This proposed amendment to section 2249c of title 10, United States Code, would increase the authorized annual funding level for the Program from $25,000,000 to $35,000,000. This increase would accommodate the expansion and demand that comes with the maturation of

a successful program. In addition, it would address an education and training gap that the Department has identified in overlapping areas of counterterrorism with border control and homeland defense. This increase of $10,000,000 would contribute to the Department's efforts to help partner nations control and secure ungoverned spaces by developing education and training venues tailored to address such threats and increasing existing training programs focused on the entire spectrum of combating terrorism.

Section 1324. Section 1201 of the National Defense Authorization Act for Fiscal Year 2008 expanded section 168 of title 10, United States Code, to permit the Secretary of Defense to waive the reciprocity requirements for personnel exchange programs with foreign governments when it is in the interests of the United States. This proposed amendment would further amend section 168 to provide the Department with the authority to pay for programs on a reimbursable basis under the Economy Act in the fiscal year when the training program commences. Currently, the requirements of the Economy Act require split payments for programs that cross fiscal years. These requirements cause serious financial difficulties and limit program flexibility by preventing effective scheduling of activities during the transition from one fiscal year to the next.

Section 1325 would amend 10 U.S.C. 1051(a) to provide new authority for the Secretary of Defense to pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at multilateral conferences, seminars, and other similar meetings that are in the national security interests of the United States.

This proposal also would amend 10 U.S.C. 1051(b) to provide new authority for the Secretary to pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries only in connection with travel to, from, and within the area of responsibility of the combatant commander in which the multilateral conference, seminar, or similar meeting is located. This provision also would apply in a case in which the headquarters of a combatant command is located within the United States.

Existing provisions for bilateral and regional conferences, seminars, or similar meetings would not be affected by this proposal. In addition, the proposal does not amend the paid expense restrictions prescribed by section 1051(b)(4).

The Global War on Terror (GWOT) spans beyond the area of responsibility of a single unified combatant commander; therefore, cooperation programs that help to build the capability of partner nations across the globe to reduce and defeat the threat of violent extremism should be expanded in scope to include multilateral events and not be restricted to bilateral or regional proceedings.

The Department of Defense needs to have the authority to pay travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at multilateral conferences, seminars, or similar meetings deemed by the Secretary to be in the national security interests of the United States. Without this authority, the Department's ability to engage developing nations to maximize their involvement

in assisting the United States to conduct military operations, including coalition operations, GWOT prosecution, humanitarian operations, and military operations that further counternarcotics activities would be restricted.

Finally, the proposed language in subsection (e) would provide the Department with the authority to pay for such programs on a reimbursable basis under the Economy Act in the fiscal year when the training program commences. Currently, the requirements of the Economy Act require split payments for programs that cross fiscal years. These requirements cause serious financial difficulties and limit program flexibility by preventing effective scheduling of activities during the transition from one fiscal year to the next.

Section 1326. The Department of Defense has worked with the Department of State and the United States Agency for International Development to organize a Center for Complex Operations (CCO) to enhance coordination of the preparation of war fighters and their U.S. Government (USG) civilian counterparts and to increase unity of effort in complex operations. The Center would facilitate the activities of a consortium made up of education and training institutions from across the USG, including relevant centers of excellence, lessons learned programs, and schools (*e.g.*, Service Colleges, Foreign Service Institute, Naval Postgraduate School, etc.). These activities, including conferences, seminars, and other information exchanges, would allow the Center to identify topics of importance for the USG leadership and the complex operations community.

The CCO would produce materials that advance the field of complex operations and inform the development of strategy and doctrine throughout the USG. The CCO would enhance The Department of Defense's (DoD's) ability to partner in and support civil-military operations by integrating and synchronizing civilian and military education, training, and lessons learned for stability, security, transition and reconstruction (SSTR) operations, counterinsurgency (COIN), and irregular warfare (IW), referred to collectively as *complex operations.*

General David Petreaus, in Senate Armed Services Committee testimony, urged Congress to support the CCO, calling it an "intellectual clearinghouse for ideas and best practices in the many facets of irregular warfare" and "a low-cost, but high-payoff, action." The CCO is responsive to the May 2007 Government Accountability Office *Report on Stability Operations and Interagency Planning* recommendations that the DoD develop processes and systems to identify and resolve capability gaps and help reduce redundancies across interagency processes.

Specific CCO functions and objectives include building USG capacity for complex operations by coordinating, integrating, and facilitating education, training, research, and lessons learned analysis among participating USG institutions and centers; serving as the USG information clearinghouse for complex operations; and acting as the hub for redistribution and coordination of education and training services.

Subtitle D—Setting Conditions through Support for Local Populations

Section 1331. Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) provides the Department of Defense (DoD) with a unique capability, enabling DoD Commanders to access

countries and regions that would otherwise be inaccessible to U.S. forces. Unlike the Commanders' Emergency Response Program, OHDACA can be used for planned, programmed activities, making it a key shaping tool. Using OHDACA, Commanders have a non-combat, results-oriented tool to interact with governments, indigenous organizations, and ordinary citizens to establish long-term, positive relationships, mitigating terrorist influence and preventing conflict.

From Afghanistan to Lebanon, we continue to witness the profound influence that humanitarian assistance provided by terrorist organizations has had on the local populace. Including stabilization activities within this authority would enable DoD to expand its interaction with local populations that are vulnerable to violence or other factors. With this proposed change, DoD personnel helping to build clinics or dig wells could also assist by supporting basic economic and infrastructure projects. The Secretary of Defense and Secretary of State agreed to Chief of Mission concurrence to ensure execution of the authority that is responsive as well as accords with foreign policy objectives.

Section 1332 would allow the Secretary of Defense to authorize U.S. military commanders to use Department of Defense funds appropriated to the Commanders' Emergency Response Program (CERP) or other operations and maintenance funds for urgent humanitarian relief and reconstruction assistance to local populations where U.S. forces are operating. Resources under this section would be available for all military and security operations, including humanitarian, civic assistance, disaster relief, and peace operations.

This section would capitalize on the success of the CERP, which has proven to be a high-impact, relatively low-cost program, indispensable to security and stabilization efforts in Iraq and Afghanistan. Providing this capability to military commanders enables them to respond immediately to small-scale but urgent humanitarian relief and reconstruction requirements. The program has built trust and support at the grassroots level and provides results that people can see.

The Secretary of Defense will refine CERP guidance to implement this authority and ensure flexibility and responsiveness and coordination with Department of State country teams. In addition, the Secretary of Defense and Secretary of State agreed to subsection (e)'s requirement to establish jointly procedures to exercise the authority of this section to ensure execution that is responsive with security as well as with foreign policy objectives.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXI—MILITARY CONSTRUCTION GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

Section 2101 would allow the Secretary of a military department to assign members

without dependents to leased family housing units constructed near a military installation within the United States at which there was a shortage of military family housing if such units cannot otherwise be filled with military families. Such housing, when assigned to members without dependents, would be considered to be Government quarters. As such, members who occupy the housing would not be entitled to receive housing allowances pursuant to 37 U.S.C. 403(e).

Section 2835 of title 10, United States Code, authorizes the military departments to enter into a contract for the lease of family housing units constructed near a military installation within the United States at which there is a shortage of military family housing. Leases under this provision are authorized for terms of up to 20 years. The Department of the Navy has leased over 3,000 family housing units at eight locations under this authority. These leases were executed from the early 1980s to the mid-1990s. At the time, there were shortages of military family housing at these locations. However, because of reductions in personnel loading or improvements in military housing allowances, some projects are experiencing significant vacancy rates. Given that the leases will continue in effect for up to ten years, this proposal would explicitly authorize the military departments to assign unaccompanied personnel to such housing if it cannot be filled with military families. This proposal also would allow entire leases, following a notification of Congress, to be converted to long-term leases for military unaccompanied housing if the housing is determined to be excess to long-term military family housing requirements. Such housing then would be supported with installation operation and maintenance, rather than family housing, funds.

Because a number of contracts were executed prior to 1991, when the leasing authority was codified in 10 U.S.C. 2835, this proposal would apply the new authority to contracts entered into prior to 1991. Specifically, it would apply to contracts entered into pursuant to the authority originally provided in section 801 of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat 782), enacted on October 11, 1983.

Section 2102 would increase thresholds for unspecified minor construction projects (new work) for military construction (MILCON) and operations and maintenance (O&M) appropriated funding.

The current MILCON thresholds are obsolete and have not kept pace with construction market cost escalation. The previous MILCON limit for other than life-threatening, health-threatening, or safety-threatening (L/H/S) projects was last raised in fiscal year (FY) 1992 from $1 million to $1.5 million; the separate MILCON limit of $3 million for L/H/S projects was established in FY 1997 and remains unchanged. Limits on new work of $750,000 for O&M and $1.5 million for L/H/S were established in FY 2002. A commonly-accepted industry index of construction market prices, the Engineering News-Record Building Cost Index, has increased 61 percent since 1991, 37 percent since 1996, and 25 percent since 2002.

As a result of this, fewer and smaller projects are possible using the unspecified minor construction authority, severely inhibiting its ability to meet critical mission requirements.

Cost Implications: Increasing the cost limits for unspecified minor construction projects would allow the Secretary to more effectively respond to urgent and unforeseen mission requirements

with properly sized and scoped facilities. The flexibility would also enhance the recapitalization rate by allowing additional projects to be funded from the unspecified minor military construction account instead of the normal military construction programming and budgeting process. Increasing the thresholds would not reduce congressional oversight of the projects affected by these thresholds as congressional notification is required prior to carrying out a project under the unspecified minor construction authority. Increasing the limits increases the flexibility of the Secretary to address requirements using available appropriations.

Section 2103 increases 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 proposal 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 and re-stationing and where economic conditions drive costs significantly above the national average. This proposal 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 proposal.

Cost Implications: This section would have no current impact. However, if exercised, the estimated maximum annual impact to Army funding using fiscal year 2007 adjusted maximums and assuming execution of all Army 600 lease points provided for under this proposal is $7.1 million. This cost will be absorbed within the Army Family Housing, Operations appropriation.

Section 2104 would allow the Secretary of Defense to transfer the proceeds from the sale of Boyett Village Housing Complex into the Family Housing Improvement Fund (FHIF) for carrying out military family housing privatization activities. Boyett Village is located at the Marine Corps Logistics Base Albany, Georgia. The housing is surplus to long-term Marine Corps family housing requirements.

Absent special authority, all of the proceeds from the disposal of family housing property must be transferred to the Defense Military Family Housing Management Account under section 2831 of title 10, United States Code. The funds then would used to carry out operations and

maintenance activities associated with Government-owned military family housing. Because of the extensive privatization of Marine Corps military family housing property, the operations and maintenance requirements for Military Family Housing are greatly diminished.

This section would allow the proceeds from the sale of Boyett Village to be transferred to the Department of Defense Family Housing Improvement Fund (FHIF), which was established to finance military family housing privatization activities. The Marine Corps plans to execute additional military family housing privatization projects to address requirements at Marine Corps installations.

Cost Implications: This section would allow the proceeds from the sale of Boyett Village to be transferred to the Department of Defense Family Housing Improvement Fund to finance military family housing privatization activities. This would help the Marine Corps privatize additional homes, to address requirements at Marine Corps installations, without additional appropriations. Without this section, all of the proceeds would have to be transferred to the Defense Military Family Housing Management Account to carry out operations and maintenance activities associated with Government-owned military family housing.

The estimated proceeds from the sale of this property are $6.6 million. Any increased requirement in the appropriation for family housing maintenance and repair cost resulting from the disposal proceeds no longer being available to defray these costs would be offset by a decrease in family housing construction appropriation requirement due to the use of these proceeds in the FHIF.

Subtitle B—Real Property and Facilities Administration

Section 2111 would improve the process for privatizing utility systems on military installations. Currently, section 2688 of title 10, United States Code, authorizes the Secretaries of the military departments to convey a utility system or part of a utility system under the jurisdiction of the Secretary on a military installation to a municipal, private, regional, district, cooperative utility company or other entity. The Secretary may require as consideration for such conveyance an amount equal to the fair market value of the property in the form of a lump sum payment or a reduction in charges for utility services to be provided to the military installation where the utility system is located.

Section 2688, however, does not specifically address conveyances of utility infrastructure on a military installation to a utility or entity to which a utility system for the installation was earlier conveyed. Thus, for example, if a military department desires to convey utility infrastructure to be used with a wastewater utility system on a military installation to a utility to which the wastewater utility system was earlier conveyed, the only method to convey the infrastructure is to conduct a separate new privatization action. This section would amend section 2688 to provide for a simpler and more expeditious process.

The section would amend section 2688 to authorize the Secretary of a military department to convey, using other than competitive procedures, utility infrastructure on a military installation to a utility or entity to which a utility system for the installation had been

conveyed earlier under section 2688 if the infrastructure will be used as part of the utility system that was conveyed and the military department receives consideration for the infrastructure equal to the fair market value of the infrastructure. The congressional notification and wait procedures required when the utility system was initially conveyed would not be duplicated. The section would also authorize the Secretary, in lieu of carrying out a military construction project to construct, repair, or replace utility infrastructure to be used with a utility system that has been conveyed earlier to a utility or entity, to provide funds authorized and appropriated for the project to the utility or entity to carry out the project if the infrastructure will be part of the utility system. The Secretary could require a reduction in charges for utility services as consideration.

Section 2112 would repeal section 591 of title 40, United States Code, which originally was enacted as section 8093 of the Department of Defense Appropriations Act, 1988 (Public Law 100-202). Section 591 requires the Federal government to follow state law governing the acquisition of electricity.

In some states following section 591 is not disadvantageous to the Department of Defense (DoD) because there really is no established retail market or other, federal sources of electricity. However, some state laws do limit the DoD's options by imposing state restrictions on how we buy our electricity. Texas is a prime example. Although there is retail competition, only certain providers (known as retail electric providers or REPs) may "provide" service. In essence, this means that the DoD has to contract with a REP, who then goes out and contracts for the Department's power. This adds a layer of cost to the provision of electricity as opposed to having DoD personnel procure the power directly from providers. California is another example. When California shut down its retail competition, only those installations that already were purchasing electricity competitively (such as Edwards Air Force Base) were "grandfathered" in and thus allowed to continue such competitive purchases. Other installations do not have the ability to "shop" for the best deal. As a result, those installations must pay whatever the local utility company demands. These days, when electricity costs are such a great concern, the DoD should be able to use competitive procedures to buy power when such a deal is in the government's best interest.

The issue in the 1980's, when Congress initially passed the legislation restricting the DoD's ability to find alternative sources of power, was "stranded investment" should a large customer like the DoD choose an alternate provider. However, the North American Electric Reliability Corporation (NERC) 2006 Long-Term Reliability Assessment has provided a report showing the capacity margins for the eight regional reliability organizations in the U.S. that will help negate any current stranded cost claim made by the utilities. The report states that electric capacity margins in the U.S. of committed resources will decline over the 2006-2015 period for most regions. The projected decline in margins reflects a short-term resource acquisition strategy that has been the norm for most of the past ten years. The minimum target level of 11 percent is the generally accepted level to keep the system operational without serious brownouts or blackouts. For example, the available capacity margins, which include only committed resources, are estimated to drop below the minimum regional target levels in the Electric Reliability Council of Texas, Inc., Midwest Reliability Organization, New England, ReliabilityFirst, and Rocky Mountain regions in the next 2-3 years, with many other areas reaching minimum levels later in the ten-year period. The report indicates that over 50,000

megawatts of "uncommitted" resources exist today NERC-wide that either do not have firm contracts or legal or regulatory requirements to serve load. These uncommitted resources are not contractually committed to the utility, but are needed to address future reserve margins declines.

Since these resources are contractually "uncommitted." the ability of the Federal government to access electricity resources would not result in additional stranded investment by the utilities, but would instead reduce the need for the utilities' to build and/or purchase additional resources to meet these future capacity requirements.

Section 2113 would provide permanent authority for the Secretary of a military department to procure municipal services for any military installation in the United States from a county or municipality for the geographic location where the installation is located. Permanent authority would allow installations across the Department to reap the benefits of municipal services partnerships. Partnerships established under prior pilots have enabled military installations to obtain cost effective service from municipalities representing the best value to the Federal taxpayer. The authority would be used only when other programs, such as the Utilities Privatization Program, are not applicable or have been considered and would not prove beneficial.

Section 325 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) authorized the Secretary of the Army to carry out a pilot program at two installations to procure municipal services from a county or municipal government. The Secretary selected Forts Gordon and Huachuca as the pilot installations. As the Army reported to Congress in January 2007, the partnerships created under the pilot between these installations and their respective municipalities have provided significant benefits to the Army. Fort Gordon estimates that it avoided $7.4 million in capital upgrade and maintenance and further realized an annual $47,500 commodity cost savings by entering into a contract for water/water water treatment with the City of Augusta. Through this partnership, the Army will also reduce its exposure to the risks of environmental liability since Fort Gordon will decommission its water and wastewater treatment plants. Fort Huachuca estimates it will annually save over $300,000 by closing the on-post general library and obtaining library services from the City of Sierra Vista. These pilot efforts followed the model used for the successful municipal services pilot demonstration at Presidio of Monterey which led to special legislation authorizing the Presidio to procure all base operations support from the City of Monterey.

A military installation would be authorized to enter into a contract with a county or municipal government on a noncompetitive basis under certain conditions. The Secretary or the Secretary's designee (to be at a level no lower than the equivalent of the Deputy Assistant Secretary for Installations and the Environment) would be required to consider the availability, benefits, and drawback of alternative sources, determine that a municipality can provide service at a fair and reasonable price, and further establish that performance by the municipality will not increase costs to the federal government when compared to the cost of continued performance by the current provider and represents the best value to the federal government. The Department would be required to provide notice to the Congressional defense committees before entering into a contract with a municipality on a noncompetitive basis.

Section 2114 would clarify the requirement for the Secretaries of the military departments to notify the Armed Services Committees of the Senate and House of Representatives and to wait a specified period before entering into real property transactions listed in section 2662 of title 10, United States Code.

The notice and wait requirement applies to six listed real property transactions, for example, an acquisition of fee title to any real property, if the estimated price is more than $750,000, or a lease of any real property to the United States, if the estimated annual rental is more than $750,000. Subsection (c) of section 2662 provides for limited exceptions. Subsection (c) states that section 2662 does not apply to "real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act."

This section would clarify the current exception for "river and harbor projects or flood control projects" to cover "Army civil works water resource development projects." There has been an informal understanding that section 2662 applies only to military real property transactions based on the current exclusion for river and harbor projects and flood control projects undertaken by the U.S. Army Corps of Engineers. The Army civil works mission, however, now includes more than just river and harbor or flood control projects. This amendment would recognize the intended scope of section 2662 and specifically exclude all Army civil works water resource development projects from the notice and wait requirements.

This section would also clarify the current exception for any real property "acquisition specifically authorized in a Military Construction Authorization Act" to cover any real property "transaction specifically authorized in a Military Construction Authorization Act or other Act authorizing or directing the activities of the Department of Defense." In addition to real property acquisition, real property transactions such as real property disposal are sometimes specifically authorized in a Military Construction Authorization Act or other Act authorizing or directing the activities of the Department of Defense. Real property transactions that are specifically authorized in Acts under the jurisdiction of the Armed Services Committees are carefully reviewed during the legislative process. A notice and wait requirement for these transactions merely delays implementation of the statutory requirement for the transaction.

Subtitle C—Base Closure and Realignment

Section 2121 would eliminate the requirement for the Department to report extensive detail on BRAC realigning installations. The elements of the report required by Section 2907 focus largely on issues that arise when disposing of real property - an action that rarely occurs at realigning installations. Reporting the information requires an unnecessary expense and administrative burden on the Department, without any real benefit to congressional oversight. The current report is 1835 pages long. Eliminating the requirement to report the information on realigning installations will reduce the burden and expense to the Department and assist Congress, communities, other federal agencies, and elected officials to focus on property transfer and disposal issues.

Subtitle D—Other Matters

Section 2131 would authorize the Secretary of Defense and the Secretaries of the military departments to enter into cooperative agreements with State and local 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 proposal would also expand the definition of "cultural resource" under section 2684 to include an Indian sacred site.