Sectional Analysis

Sections 101 through 106 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments and the Defense Agencies in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

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 2002.

Section 302 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 303 authorizes appropriations for fiscal year 2002 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 304 would amend section 5(a) of the Multinational Force and Observers (MFO) Participation Resolution, to authorize the President to approve contracting out logistical support functions in support of the MFO that are currently performed by U.S. military personnel and equipment. The resolution was enacted in December 1981, in order to authorize the United States to deploy peacekeepers and observers to Sinai, Egypt to assist in the fulfillment of the Camp David Accords. In this regard, it should be noted that section 5(a) authorizes any agency of the United States to provide administrative and technical support and services to the MFO without reimbursement when the provision of such support or services would not result in significant incremental costs to the United States.

Administrative and technical support is provided under section 5(a) by the U.S. Army's 1st Support Battalion pursuant to international agreements with the Arab Republic of Egypt, the State of Israel, and the MFO. These agreements stipulate the types of unit functions required to be performed by the MFO in order for it to comply with its treaty verification mission. The two primary support functions currently provided by the United States to the MFO, are aviation and logistics support. Aviation support is provided to the MFO by ninety-nine soldiers and ten U.S. Army UH-1H helicopters. General logistical support to the MFO is provided by one hundred and fifty soldiers assigned to the U.S. Logistical Support Unit.

Section 305 would authorize the Secretary of Defense or designee to enter into multiple-year operating contracts or leases or charters of commercial craft, where economically feasible, in advance of the availability of funds in the working capital fund. The contract authority is

available for obligation for one year and cannot exceed in its entirely $427,100,000. In subsequent years, the Department may submit requests for additional contract authority. This authority is appropriate for working capital funds where a history of use indicates an annual utilization of these items by DoD customers will be more than sufficient to pay for the annual costs. The use of annual leases, charters or contracts is not cost effective in obtaining capital items, or the use of commercial craft. To reduce the overall costs for DoD, authority to enter into multiple-year leases and charters is needed. Additional annual appropriated funds, however, are not needed, since the revenues generated from the use of these items to fill customer orders will cover these costs.

Section 1301 of title 31, United States Code, discusses the application of appropriations and requires, in subsection (d), that to authorize making a contract for the payment of money in excess of an appropriation a new law must specifically state that such a contract may be made. As the change specifically addresses only multiple-year leases, charters or contracts by working capital funds, the contract authority granted by this proposal would not impact other programs.

Similar authority, successfully utilized by the Navy Industrial Fund in connection with the long term vessel charters of T-5 tankers, was approved by Congress as part of the Supplemental Appropriations Act of 1983. That program and the use of contract authority was favorably reviewed by the Comptroller General in B-174839, March 20, 1984. As indicated in the opinion, working capital funds are precluded from negotiating cost effective multiple-year contracts for capital items or associated services without posting obligations for the entire amount, even though no appropriations are likely to ever be needed.

The Military Sealift Command (MSC) provides world-wide capability for sealift, prepositioning assets, and a wide arrange of oceanographic services. They operate approximately 125 ships worldwide with civilian mariners. Because the Military Sealift Command is a Working Capital Fund activity, their funding is provided through customer orders for sealift services, generally on an annual basis. Contract authority is required to allow MSC to enter into multiple year leases in advance of appropriations. The legislative proposal provides that authority.

It is advantageous for the Government to have MSC enter into multiple year leases for these charter and associated services for a number of reasons, including:

> The 29 prepositioned ships carry a variety of items, including ammunition, fuel, medical supplies, and heavy armored equipment. The offload and onload of this cargo requires significant logistics infrastructure and is a costly undertaking. The DoD infrastructure is sized for that operation to take place concurrent with the required maintenance schedule for the ships, which ranges from two to five years depending on the type of ship and type of cargo. The contract period is established to coincide with this schedule. If these contracts were required to be annual contracts,

there could be significant operational degradation and excessive demand on the DoD infrastructure due to offload and onload requirements at potentially annual periods.

The commercial market standard is for multiple year charters. There are savings to DoD by negotiating multiple year leases, consistent with commercial practices. In addition, DoD would not be able to effectively compete for annual contracts because foreign flag carriers are not interested in competing for short-term contracts due to the costs they incur to re-flag the vessels and to prepare or modify ships to meet DoD needs. Past experience indicates that the costs to DoD would be significantly higher if competition were limited to currently U.S.-flag vessels on an annual basis.

If the legislation is not enacted, MSC will be required to negotiate the contracts on an annual basis, resulting in increased costs and potential disruptions to military operations.

Section 310. The Navy and the U.S. Environmental Protection Agency (EPA) entered into an agreement in January 2001 for payment of EPA response costs at the Hooper Sands Site, South Berwick, Maine for EPA's remaining past response costs incurred by the agency for the period from May 12, 1992 through July 31, 2000. Activities of the Navy are liable under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as generators who arranged for disposal of the hazardous substances that ended up at the site, and there are no other viable responsible parties. Under the agreement, the Navy would pay for EPA's final response actions that were undertaken to protect human health and the environment at this site. The agreement also stipulated that the Navy would seek authorization from Congress in the FY02 legislative program for payment of costs previously incurred by EPA at the site. Should Congress approve this legislative proposal, the Navy would pay EPA with funds from the Navy's "Environmental Restoration Account, Navy" in an amount equal to the principle ($809,078.00) and interest ($196,400.00), or a total of $1,005,478.00.

Section 311 would extend the authority to conduct the pilot program from September 30, 2001 to September 30, 2003. The original legislation authorized the pilot program to run for two years from the date of enactment on November 18, 1997. Section 325 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat.512) extended that two-year deadline an additional two years.

The initial extension was requested because the Department of Defense implementation guidance, required by the statute, had not been completed as of the fall of 1998. In order to fulfill the purpose of the legislation and adequately assess the feasibility and advisability of the sale of economic incentives, the pilot program was extended another two years from its original deadline. We are requesting an additional two-year extension to allow further opportunity for the Department to assess the feasibility of the program. States have been slower to develop emission-trading programs than initially anticipated and more time is desired to allow military installations to become familiar with the benefits of economic incentive programs.

Section 351 also provides authority to the Department of Defense (DoD) to retain proceeds from the sale of Clean Air Act emission reduction credits, allowances, offsets, or comparable economic incentives. Federal fiscal law and regulations generally require proceeds from the sale of government property to be deposited in the U.S. Treasury. These authorities preclude an agency from keeping the funds generated by reducing air emissions and selling the credits as does private industry. This inhibits the reinvestment of those funds to purchase air credits needed in other areas and eliminates any incentive for installations to spend the money required to generate the credits in order to sell them.

The Clean Air Act (CAA) mandates that states establish state implementation plans (SIPs) to attain and maintain the national ambient air quality standards (NAAQs), which are health based standards established for certain criteria air pollutants, e.g., ozone, particulate matter, carbon monoxide. To further this mandate, the 1990 Clean Air Act Amendments provided language encouraging the states to include "economic incentive" programs in their SIPs. Such programs encourage industry to reduce air pollution by offering monetary incentives for the reduction of emissions of criteria air pollutants.

A significant and growing number of state and local air quality districts have established various types of emission trading systems. Absent the proposed legislation, the military services would be required to remit any proceeds from the sale of economic incentives to the U.S. Treasury. The proposed legislation grants military installations authority to sell the economic incentives and to retain the proceeds in order to create a local economic incentive to reduce air pollution above and beyond legal requirements. Retention and use of proceeds at the installation level is a key component of the pilot program.

Section 312 would remove the requirement for the Department of Defense to submit an annual report to Congress on its reimbursement of environmental response action costs for the top 20 defense contractors, as well as on the amount and status of any pending requests for such reimbursement by those same firms. This reporting requirement was slated to end in December 1999 pursuant to section 3003(a) of the Federal Reports Elimination and Sunset Act of 1995, Pub. L. 104-66; however, it was reinstated by section 1031 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65.

The Department strongly recommends removal of this statutory reporting requirement because the data collected are not necessary, or even helpful, for properly determining allowable environmental response action costs on Government contracts. Moreover, the Department does not routinely collect data on any other categories of contractor overhead costs.

This reporting requirement is very burdensome on both the Department and contractors, diverting limited resources for data collection efforts that do not benefit the procurement process. Not only are there 20 different firms involved, but for most of these contractors, data must be collected for multiple locations in order to get an accurate company-wide total. In many cases the data must be derived from company records because it is not normally maintained in

contractor accounting systems. After the data is collected, Department contracting officers must review, assemble, and forward the data through their respective chains of command to the Defense Contract Audit Agency for validation. After validation, the data is provided to the Secretary of Defense's staff for consolidation into the summary report provided to Congress.

In addition, the summary data provided to Congress in this annual report have shown that the Department is not expending large sums of money to reimburse contractors for such costs. The Department's share of such costs in FY99 was approximately $11 million. In the preceding years the costs were, $13 million in FY98, $17 million for FY97, and $4 million for FY96.

Section 315 would amend section 2482(b)(1) of title 10, to extend its reach to all Defense working capital fund activities that provide the Defense Commissary Agency services, and allow them to recover those administrative and handling costs the Defense Commissary Agency would be required to pay for acquiring such services.

Currently, section 2482(b)(1) restricts the amount that the United States Transportation Command could charge to the Defense Commissary Agency for such services to the price at which the service could be obtained through full and open competition, as section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)) defines such terms. These same restrictions, however, do not apply to other Defense working capital fund activities and preclude the United States Transportation Command from recovering "freight forwarding" costs that the Defense Commissary Agency would ordinarily have had to pay a commercial contractor.

If enacted, the proposed amendment would end this inequity, by applying a single cost-effective guideline for such charges to all Defense working capital fund activities. It should also be noted that the last sentence of the proposed amendment continues the current policy of insuring that costs associated with mobilization requirements, maintenance of readiness, or establishment or maintenance of the infrastructure to support mobilization or readiness requirements, are not passed on to the customers of the Defense Commissary Agency.

This proposal will not increase the budgetary requirements of the Department of Defense.

Section 316 requires that the Defense Commissary Agency surcharge account be reimbursed for the commissary's share of the depreciated value of its stores when a Military Department allows the occupation of a facility - previously acquired, constructed or improved with commissary surcharge funds - to be used for non-commissary related purposes.

Section 317 would permit the Defense Commissary Agency (DeCA) to sell limited exchange merchandise at locations where no exchange facility is operated by an Armed Service Exchange. Under Section 2486(b) of title 10, United States Code, the Secretary of Defense may authorize DeCA to purchase and sell as commissary store inventory a limited line of exchange merchandise. This amendment is required to obtain the necessary authority for DeCA to procure the exchange merchandise items from the Armed Service Exchange. The Armed Service

Exchange selling price to DeCA for such items would not exceed the normal exchange retail cost less the amount of the commissary surcharge, so that the amount paid by the patron would be the same. If the Exchange cannot supply the items authorized to be sold by DeCA, DeCA may procure them from any authorized source subject to the limitations of section 2486(e) of title 10 (i.e., that such items are only exempt from competitive procurement if they comply with the brand name sale requirements of being sold in the commercial stores). Regardless from whom such items are procured, they must be sold in commissaries at cost plus the amount of the surcharge.

Section 318 would amend a portion of section 2482 (a) of title 10 that is entitled "Private Operation" to delete overly restrictive language. The current section authorizes Commissary stores to be operated by private persons under a contract, but prohibits the contractor from carrying out functions for the procurement of products to be sold in the Commissary or from engaging in functions related to the actual management of the stores. Consequently, the Department is precluded from realizing the potential benefits that can be derived from contracting out the operation and management of the stores. By deleting this language a private contractor selected to operate Commissary stores would be allowed to apply best commercial practices in both store operations and supply chain management, and to achieve economy of scale savings in procurement, distribution, and transportation of products to be sold in the Commissary stores. This change will allow the Department to initiate pilot programs to test these potential benefits at selected Commissary stores.

Section 320 would establish permanent authority for active Department of Defense units and organizations to reimburse National Guard and Reserve units and organizations for the expenses incurred when Guard and Reserve personnel provide them intelligence and counterintelligence support. For the last five years, Congress has authorized such reimbursement in each year's defense appropriations act. *See e.g.*, section 8059 of the Department of Defense Appropriations Act, 2001 (Public Law 106-259; 114 Stat. 656, 687). For the past several years the language of these annual provisions has remained unchanged, and the Department proposes to establish authority for such reimbursement on a permanent basis.

Such reimbursement constitutes an exception to the general principle that funds for active DoD organizations may not be expended to pay the expenses of Guard and Reserve units, and vice versa. By their training and experience, reserve intelligence personnel make unique contributions to the intelligence and counterintelligence programs of active DoD units and organizations. They also provide invaluable surge capability to help respond to unforeseen contingencies. Guard and Reserve units do not program funds for such support of active DoD units and organizations, which makes it essential that the supported active units and organizations have the authority to reimburse the affected Guard and Reserve units and organizations for the expenses they occur in providing personnel to perform such support. The practical effect of this reimbursement authority is in fact to further implement the principle that active units and organizations should pay for the expenses of their own programs and activities, while Guard and Reserve units and organizations should do the same.

A January 5, 1995 Deputy Secretary of Defense memorandum, "Peacetime Use of Reserve Component Intelligence Elements" approved a DoD "Implementing Plan for Improving the Utilization of the Reserve Military Intelligence Force" dated December 21, 1994. This plan explicitly recognized the requirement for an arrangement under which active units and organizations receiving reserve intelligence support would reimburse the affected reserve units for their expenses in providing such support.

This memo was superseded by DoD Directive 3305.7, "Joint Reserve Intelligence Program (JRIP)," February 29, 2000. Under section 3.1 of this Directive, "The JRIP engages [reserve component] intelligence assets during periods of active and inactive duty to support validated DoD intelligence requirements across the entire engagement spectrum from peacetime through full mobilization, coincident with wartime readiness training." Reimbursement of the affected reserve units is a cornerstone of this arrangement, and such reimbursement is absolutely essential to success of the JRIP. Five years of experience with this arrangement have made it a mature program that should be permanently authorized.

Section 321 will authorize for sale the remaining materials in the National Defense Stockpile for which there is no Department of Defense requirement and which have not yet been authorized for sale.

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 2002.

Section 405 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 2002.

Section 406 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 2002.

Section 407 prescribes the minimum end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2002.

Section 408 prescribes the maximum end strengths for the reserve components of the Army and Air Force for non-dual status military technicians for fiscal year 2002.

Section 409 would replace the current sections 12011 and 12012 of title 10, United States Code, with new sections 12011 and 12012, which would accommodate both senior grade officers (O-4, O-5, O-6) and senior grade enlisted members (E-8, E-9) of the Active Guard and Reserve force. These new sections would include tables for each Reserve component, vice each Service, for senior grade officer (12011) and enlisted member (12012) ceilings. This proposed

amendment would provide for a non-static method of authorizing senior grade Active Guard and Reserve members, thus eliminating the requirement to request changes in legislation when the size of the Active Guard and Reserve force changes. The methodology would be consistent with that used for Active component senior grade officers, and tie the number of senior grade authorizations to the size of the Active Guard and Reserve force.

Section 410. The proposed amendment to section 523 of title 10, United States Code, increases Defense Officer Personnel Management Act-authorized end strength limitations for active duty Air Force officers in the grade of major. This would continue progress toward achieving an appropriate distribution of officers within the Air Force. An appropriate distribution may be achieved by increasing the authorized strengths of commissioned officers in the grade of major by seven percent starting in fiscal year 2002. This proposed amendment would not increase the total number of commissioned officers authorized for the Air Force and would not affect the officer-to-enlisted ratio.

The budgetary impact of this proposal on Air Force Military Personnel appropriation budget requirements would be a net increase of $10 million in FY 2002, as the grade relief is phased in, and a net increase of approximately $20 million per year thereafter.

Section 501 would repeal subsection 1074a(d) of title 10, United States Code, which requires certain health care for Selected Reserve members of the Army assigned to units scheduled to deploy within 75 days after mobilization. Since this provision was enacted, the Department has implemented several programs to ensure Reserve component members are medically ready.

The Army has implemented a program called FEDS-HEAL, which is an alliance with the Department of Veterans Affairs (DVA) and the Department of Health and Human Services (DHHS) that allows Army Reserve and National Guard members to complete physical examinations, receive inoculations and complete other medical requirements in DVA and DHHS healthcare facilities across the country. This significantly enhances access for Reserve component members of the Army to meet medical and dental readiness requirements.

DoD policy now requires an annual dental examination. To track Reserve component dental readiness, the Department has developed a standard dental examination form that can be completed by a member's personal civilian dentist. Moreover, the recently expanded TRICARE Dental Program provides Reserve component members with an affordable means of completing dental examinations and receiving dental care through a much larger provider network. The cost to the member to participate in this insurance program is only $7.63 per month with the Department paying the remaining 60 percent of the premium share.

The current statutory requirement to conduct a full physical examination every two years for members over the age of 40 and dental care identified during the annual dental screening is difficult to implement for a select population that is very fluid with a relatively high turnover of

individuals each year. Those Reserve Component units and individual Reserve Component members identified as early-deploying change frequently. The annual cost to the Department to meet this over-40 physical examination requirement for early deploying unit members every two years is $3.8 million, or over four times the annual cost if an exam were provided every five years as required for other members of the Reserve force. Additionally, requiring a complete medical examination every two years exceeds the recommendations of the U.S. Preventive Services Task Force, a 20-member non-federal panel commissioned by the Public Health Service in 1984 to develop recommendations for clinicians on the appropriate use of preventive measures. The Task Force does not consider such frequency of examinations cost effective in terms of identifying disease or determining deployability. The use of yearly health assessment questionnaires and appropriate age specific tests during the five-year periodic medical examination provide sufficient medical screening of the population over age 40. Finally, providing medical and dental services for a specific population in only two of the seven Reserve Components creates an inequity among members of the Selected Reserve and among Reserve Components.

This recommendation was contained in the Secretary of Defense report to Congress on the means of improving medical and dental care for Reserve Component members, which Secretary Cohen sent to Congress on November 5, 1999.

Section 502 would amend section 640 of title 10, United States Code, to afford members whose mandatory dates of separation or retirement were delayed due to medical deferment, a period of time to transition to civilian life following termination of medical deferment. It would afford active duty members whose mandatory separations or retirements incident to Chapter 36 or Chapter 63 of this title, a period of time, not to exceed 30 days, following termination of suspensions made under section 640, to transition to civilian life.

As currently written, section 640 requires immediate separation or retirement of those medically deferred members who would have been subject to mandatory separation or retirement under this title for age (section 1251), length of service (sections 633-636), promotion (sections 632, 637) or selective early retirement (section 638). An abrupt termination, especially of a medical deferment, could cause undue hardship on those whose planned departure to civilian life was unexpectedly interrupted and now must be resumed posthaste. Depending upon the nature of the medical deferment, there may be some problems with employment opportunities should the member be thrust back into civilian life without a reasonable preparation time. The 30-day period would allow individuals sufficient time to transition to civilian life, without the distractions of the circumstances of their deferments. This leeway must be provided for these members to reschedule the many details incident to final departure from military life.

Section 503 would add a new section to title 10, United States Code, to provide for the detail of an officer in a grade not below lieutenant commander to serve as Officer-in-Charge of the United States Navy Band. While so serving, an officer who holds a grade lower than captain (O-6) would have the grade of captain. The officer's permanent status as a commissioned officer

would not be changed by his detail under this section.

Navy has one Limited Duty Officer captain (O-6) Bandmaster (6430) billet -- the position of Officer in Charge/Leader, U.S. Navy Band. The United States Navy Band, Washington, D.C. is the Navy's premier musical representative. As such, Navy established this prestigious position at the captain level because of its extremely high visibility; its importance to Navy representation; the enormous demands of command as well as the technical skill required of the incumbent; to provide proper recognition and compensation for the officer serving as the Band's leader; and to elevate and maintain this organization's status at an appropriate level.

Army, Marine Corps, and Air Force premier Service-band Commanding Officers/Commanders are also 0-6 billets and selection for those positions is accomplished in a manner similar to that used by the U.S. Navy Band. Upon assignment to these positions, leaders of the Army, Marine Corps, and Air Force bands are specifically "selected" for promotion to 0-6. That is not the case with the Officer-in-Charge/Leader of the U.S. Navy Band because selection for and appointment to this position is limited to the Limited Duty Officer community. As such, those selected for this special appointment are generally officers with 28-32 years of total active service at the time of selection and appointment as Officer-in-Charge/Leader, U.S. Navy Band. However, the established career path of Limited Duty Officers typically results in selection for this position while serving in the grade of lieutenant commander (O-4) or commander (O-5) and flow points normally do not provide an opportunity for promotion to 0-6 prior to statutory retirement.

Section 504. General/flag officers serving above the grade of O-8 serve in a temporary grade that is authorized by the position. Such officers generally hold a permanent grade of O-8. Under current law, for the officer to retire in a grade above 0-8, the Secretary of Defense must determine and then certify to the President and the Congress that such officer served satisfactorily on active duty in the higher grade. Most officers who serve in grades above 0-8 are approved for retirement in the highest grade held. Section 504 would retain the requirement for the Secretary of Defense to certify that the service of an officer on active duty in a grade above 0-8 was satisfactory in order for the officer to be retired in the grade above 0-8, but would do away with the requirement for the Secretary of Defense to provide that certification in writing to the President and the Congress. Further, Section 504 would require the Secretary of Defense to issue written regulations to implement these procedures.

Section 505 would modify sections of titles 10, 37, and 20 of the United States Code to extend temporary military drawdown authorities through Fiscal Year (FY) 2004. Most of these authorities were initially established in the FY 1991 through FY 1993 National Defense Authorization Acts (NDAA). They were designed to enable the Services to reduce their military forces through a variety of voluntary and involuntary programs and to provide benefits to assist departing members in their transition to civilian life. The FY 1994 NDAA extended these authorities through FY 1999. The Department later requested a further extension through FY 2003, but the FY 1999 NDAA only extended them through FY 2001.

Section 505 would add no new or changed programs. Rather, it would extend the expiration date by three years for existing programs. Programs affected include: early retirement authority, enabling Services to offer retirement to members with 15 through 19 years of service; voluntary separation incentive or special separation benefit (VSI/SSB), which offers an annuity or lump sum payment to members separating with between 6 and 19 years of service; waivers of time-in-grade and commissioned service time requirements for officers; and relaxation of certain selective early retirement and reduction-in-force restrictions. Separate, but similar, provisions are included for Reserve and Guard forces. These programs are discretionary and Service Secretaries, when authorized by the Secretary of Defense, may determine whether or not to use the programs.

Transition benefits are otherwise not discretionary. Some apply either to individuals involuntarily separated during the drawdown period or to those accepting VSI or SSB. These include a transition period in which the member and family members continue to receive health care, commissary and exchange benefits, use of military housing, extension of separation or retirement travel, transportation, and storage benefits for up to one year, and extension of the time limitations on the Reserve Montgomery GI Bill. Others provide transition benefits to all departing members during the drawdown period, educational leave to prepare for post-military community and public service, and continued enrollment of dependents for up to one year to graduate from Department of Defense Dependent Schools.

These programs have helped the Services take large reductions in a short time. Although reductions have stabilized and drawdown tools are not currently needed to achieve overall end-strength, they may be necessary to accomplish force-shaping reductions. In FY 1999 and 2000, the Air Force used early retirement, time in grade, commissioned service time waivers, and VSI/SSB to accomplish medical right-sizing and to alleviate a significant field grade imbalance in the chaplain corps. In FY 2001 and beyond, the Air Force anticipates a continued need for drawdown tools (with associated benefit programs) to stabilize non-line end-strengths. Future force-shaping initiatives could also require limited use of drawdown tools.

Section 506. Subsection (a) adds a new section 1558 at the end of chapter 79 of title 10:

Section 1558(a) authorizes the Secretary of the military department concerned to correct the military records of a person to reflect the favorable outcome of a special board, retroactive to the date of the original board.

Section 1558(b) provides that, in the case of a person who was separated, retired or transferred to an inactive status as a result of the recommendation of a selection board and later becomes entitled to retention on or restoration to active duty or active status as a result of a records correction under section 1558(a), the person shall be restored to the same status, rights and entitlements in his or her armed force as he or she would have had but for the selection board recommendation. If the member does not consent to such restoration, he or she will be entitled to appropriate back pay and allowances.

Section 1558(c) provides that a special board outcome unfavorable to the person considered confirms the action of the original board, retroactive to the date of the original board.

Section 1558(d) authorizes the Secretary concerned to prescribe regulations to implement section 1558, including prescribing the circumstances under which special board consideration is available, when it is contingent on application by the person seeking consideration, and time limits for making such application. Such regulations, issued by the Secretary of a military department, must be approved by the Secretary of Defense.

Section 1558(e) provides that a person challenging the action or recommendation of a selection board is not entitled to judicial relief unless he or she has been considered by a special board under section 1558, or has been denied such consideration by the Secretary concerned. Denial of consideration by a special board is made subject to judicial review only on the basis that it is arbitrary, capricious, not based on substantial evidence, or otherwise contrary to law. If a court sets aside the Secretary's decision to deny such consideration, it shall remand the matter to the Secretary for consideration by a special board. The recommendation of a special board, or a decision resulting from that recommendation, is made subject to judicial review only on the basis that it is contrary to law or involved a material error of fact or a material administrative error. If a court sets aside such a recommendation or decision, it shall remand to the Secretary for new special board consideration, or a new action on the special board's recommendation, as the case may be. These limitations on reviewability and remedies parallel those applicable to reserve component selection boards under 10 U.S.C. 14502 and are in accord with current Federal Circuit law regarding review of military personnel decisions. *Murphy v. U.S.*, 993 F.2d 871 (Fed. Cir. 1993). The term "contrary to law" is intended to encompass constitutional as well as statutory violations.

Section 1558(f) provides that the remedies prescribed in section 1558 are the exclusive remedies available to a person challenging the action or recommendation of a selection board, as that term is defined in section 1558(j).

Section 1558(g) provides that section 1558 does not limit the existing jurisdiction of any federal court to determine the validity of any statute, regulation or policy relating to selection boards, but limits relief in such cases to that provided for in section 1558.

Section 1558(h) contains time limits for action by the Secretary concerned on a request for consideration by a special board (six months) and on the recommendation of a special board (one year after convening the board). Failure to act within these time limits will be deemed a denial of the requested relief. The Secretary, acting personally, may extend these time limits in appropriate cases, but may not delegate the authority to do so.

Section 1558(i) provides that section 1558 does not apply to the Coast Guard when it is not operating as a service in the Navy.

Section 1558(j)(1) defines "special board" to encompass any board, other than a special selection board convened under section 628 or 14502 of title 10, convened by the Secretary concerned to consider a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component, in place of consideration by a prior selection board that considered or should have considered the person. A board for correction of military or naval records under section 1552 of title 10 may be a special board if so designated by the Secretary concerned.

Section 1558(j)(2) defines "selection board," for the purposes of section 1558, as encompassing existing statutorily established selection boards, (except a promotion selection board convened under section 573(a), 611(a) or 14101(a) of title 10), and any other board convened by the Secretary concerned to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces, or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces.

Subsection (b) adds new subsections (g), (h) and (i) to section 628 of title 10, the section authorizing special selection boards for promotion of active duty list commissioned and warrant officers (redesignating existing subsection (g) as subsection (j)). New subsections (g) and (h) correspond exactly to subsections (g) and (h) of section 14502 of title 10, the ROPMA provision authorizing special selection boards for promotion of reserve active status list commissioned officers.

New subsection (g) provides that no court or official of the United States shall have power or jurisdiction over any claim by an officer or former officer based on his or her failure to be selected for promotion unless the officer has first been considered by a special selection board, or his claim has been rejected by the Secretary concerned without consideration by a special selection board. In addition, this subsection precludes any official or court from granting relief on a claim for promotion unless the officer has been selected for promotion by a special selection board.

Subsection (h) permits judicial review of a decision to deny special selection board consideration. A court may overturn such a decision and remand to the Secretary concerned to convene a special selection board if it finds the decision to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law. The term "contrary to law" is intended to encompass constitutional as well as statutory violations. Subsection (i) also provides that if a court finds that the action of a special selection board was contrary to law or involved material error of fact or material administrative error, it shall remand to the Secretary concerned for a new special selection board. No other form of judicial relief is authorized.

Subsection (i) provides (1) that nothing in this legislation limits the existing jurisdiction of any court to determine the validity of any statute, regulation or policy relating to selection boards, but limits relief in such cases to that provided for in this legislation, and (2) that nothing

in this legislation limits the existing authority of the Secretary of a military department to correct a military record under section 1552 of title 10.

Subsection (c) provides that the amendments made by this legislation are retroactive in effect, except that they do not apply to any judicial proceeding commenced in a federal court before the date of enactment.

Section 511 would allow the Service Secretaries to routinely transfer Reserve officers to the Retired Reserve—without requiring that the officer request such a transfer—for those officers who are required by statute to be removed from the reserve active status list because of failure of selection for promotion, length of service, or age. This section would add a similar authority with respect to warrant officers and enlisted members who have reached the maximum age or years of service as prescribed by the Secretary concerned. However, this section would allow these members to request discharge or, in some cases, transfer to an inactive status list in lieu of transfer to the Retired Reserve. Giving the Service Secretaries this authority would also help protect those members who entered military service after September 7, 1980. Members who entered military service after that date and are discharged after qualifying for a non-regular retirement (former members) remain eligible to receive retired pay, but that pay is calculated on the pay scale in effect when discharged, rather than the pay scale in effect when they request retired pay. This is significant since the retired pay for a former member in most cases will be significantly less then that of a member of the Retired Reserve because of the pay scale used to determine the amount of retired pay. This amendment would require reservists to make a positive election to be discharged with the full understanding of the possible economic consequences of that decision.

Section 512. A specific definition with respect to Reserve component members was added as section 991(b)(2) of title 10, United States Code, by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The purpose of this definition was to ensure consistent treatment of Active and Reserve component members serving under comparable circumstances and preclude Reserve component members from being credited with deployed days when they could spend off-duty time in their home.

As provided in the National Defense Authorization Act for Fiscal Year 2001, the Active component will count "home station training" for deployment purposes whenever the member is unable to spend off-duty hours in the housing in which he or she resides when on garrison duty at his or her permanent duty station or homeport. To maintain consistency between Active and Reserve component members, the definition of deployment with respect to Reserve component members must be amended.

Absent the proposed change in Section 512, an active duty member who is not able to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, because the member is performing home station training, will be credited with a day of deployment, while a Reserve component member serving

under comparable circumstances will not because they will be within the 100-mile or three-hour limit. Section 512 would ensure consistency between Active and Reserve component members with respect to the PERSTEMPO definition.

Section 513 would eliminate the periodic physical examination requirement for members of the Individual Ready Reserve (IRR), which is required once every five years. In lieu of conducting a physical examination every five years, these members would receive a physical examination upon a call to active duty, if they have not had a physical examination within the previous five years. However, the Secretary concerned would have the authority to provide a physical examination when necessary to meet military requirements. There is little return on investment for any program to conduct physical exams for the more than 450,000 members of the IRR. The annual cost of ensuring that IRR members are examined as to physical condition at least every five years is approximately $2.3 million. This cost reflects approximately 10 percent of what the Department should be spending annually on physical exams for this population. However, the Department is able to provide only about 11,000 of the more than 90,000 required physical exams for IRR members each year. In this period of constrained resources, it would be far more cost-effective to conduct physical exams on these Reserve members at the time they are ordered to active duty. This recommendation was contained in the Secretary of Defense's report to Congress on the means of improving medical and dental care for Reserve Component members, which was sent to Congress on November 5, 1999.

Section 514 would amend titles 10, 14 and 38, United States Code (U.S.C.), to provide the same benefits and protections for Reserve Component (RC) members while in a funeral honors duty status as provided when RC members perform inactive duty training (IDT) or traveling to or from IDT. Sections to be amended are:

1) 10 U.S.C. 802--persons subject to the Uniformed Code of Military Justice. Section 514 would specify that members of a Reserve Component are subject to the Uniform Code of Military Justice while performing funeral honors duty under 10 U.S.C. 12503.

2) 10 U.S.C. 1061--eligibility for commissary and exchange benefits for dependents of a deceased Reserve Component member. Section 514 would specify that the dependents of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty would be eligible for commissary and exchange benefits on the same basis as the surviving dependents of an active duty member.

3) 10 U.S.C. 1475 and 1476--payment of a death gratuity. Section 514 would authorize payment of a death gratuity upon the death of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty.

4) 14 U.S.C. 704--military authority of members of the Coast Guard Reserve. Section 514 would specify that a member of the Coast Guard Reserve would have the same authority, rights and privileges as a member of the Regular Coast Guard of a corresponding grade or rating

when the member is in a funeral honors duty status.

5) 14 U.S.C. 705--benefits for members of the Coast Guard Reserve. Section 514 would specify that a member of the Coast Guard Reserve would have the same benefits as a member of the Naval Reserve of corresponding grade, rating and length of service when the member is in a funeral honors duty status.

6) 38 U.S.C. 101--definitions. Section 514 would add the term "funeral honors duty" and define that term, and then include that term in the definition of "active military, naval, or air service." Including the definition of funeral honors duty in the term active military, naval and air service, would entitle a Reserve Component to healthcare and disability compensation from the Department of Veterans Affairs for a service-connected disability incurred or aggravated while in a funeral honors duty status or traveling to or from such duty.

Amending the various statutes to add funeral honors duty as a duty status in which these benefits are provided is important to ensure a viable program of rendering honors at the funerals of our veterans.

Section 515 would specify that the performance of funeral honors by members of the Army National Guard of the United States or Air National Guard of the United States, while in a state status, satisfies the two-person funeral honors detail requirement. While members of the National Guard would meet this requirement when called to duty under a provision of title 10 or title 32, United States Code (U.S.C.), they are not in a federal status when performing duty in a state military duty status, and therefore would not fulfill the two-person requirement for performing funeral honors when in a state status. Amending 10 U.S.C. 1491 to permit National Guard members to fulfill this requirement when performing duty in a state status would help ensure this important mission is accomplished.

Section 516 would authorize Reserve Component members who have been ordered to active duty under section 12301(d) of title 10, United States Code (U.S.C.), to serve in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)), to be added to the authorized active duty end strength. It would also authorize the ceiling for general and flag officers and officers in the grades of O-6, O-5 and O-4 serving on active duty in those grades to be increased by a number equal to the number of officers in each pay grade serving on active duty in support of a contingency operation. Lastly, it would authorize the ceiling for enlisted members in the grades of E-9 and E-8 serving on active duty in those grades to be increased by a number equal to the number of enlisted members in each pay grade serving on active duty in support of a contingency operation.

Currently, Reserve Component members who are involuntarily called to active duty are exempt from the strength limitations in sections 115, 517 and 523 of title 10. Just as the Services involuntarily call Reserve Component personnel to active duty under section 10 U.S.C. 12304, to meet the operational requirements to support a contingency, the Services also use volunteers

from their Reserve Components to meet the operational requirements of a contingency operation. These volunteers are called to active duty under 10 U.S.C. 12301(d). Regardless of the authority used, a voluntary call to active duty or an involuntary call to active duty, the additional manpower represents an unprogrammed expansion of the force to meet operational requirements. The authority to increase the end strength limits and grade ceilings would permit the Services to meet contingency operation requirements without adversely affecting the manpower programmed for other national security objectives. Finally, absent such an authority, the Services have an incentive to use non-volunteers to support these operations to avoid adversely affecting their end strength. This authority to expand the force by the number of Reserve Component members serving on active duty to support the contingency would encourage the Services to use volunteers to meet these mission requirements.

Section 517 would authorize payment of the financial assistance provided under 10 U.S.C. 16201 to a student who has been accepted into an accredited medical or dental school. Section 517 would further amend section 16201 to authorize payment of subsequent financial assistance to an officer who received financial assistance under this section while a student enrolled in medical or dental school and has now graduated and enters residency training in a healthcare professions wartime skill designated by the Secretary of Defense as critically short. When such a student agrees to financial assistance for residency training, the two-for-one service commitment previously incurred for financial assistance while attending medical or dental school may be reduced to one year for each year, or part thereof, of financial assistance previously provided. However, the service obligation incurred for residency training would remain at two-for-one. Finally, Section 517 would authorize the service obligation incurred for financial assistance for a partial year to be incurred in six-month increments for those agreements that require a two-for-one pay back. Thus, for every six months, or part thereof, of benefits paid under this program the recipient would be obligated for one year of service in the Selected Reserve. Currently, two years of service obligation is incurred for each partial year of financial assistance provided, regardless of the number of months in that partial year.

These amendments would provide a more robust incentive program that recruiters could offer students in the healthcare professions in order to entice them into joining the Guard or Reserve. The current medical recruiting incentives, which originated in the early to mid 1980s, must be updated to enable reserve recruiters to compete with hospitals, HMOs and communities who offer financial incentives to medical and dental students in return for a commitment to work for them once they become a qualified physician or dentist. As an example, both the Army Reserve and the Army National Guard, which account for 65% of Army medical requirements, have not been able to achieve medical recruiting goals and are experiencing serious medical end strength shortfalls.

In summary, Section 517 would enhance the recruiting incentives targeted at students entering the health care profession in four ways: (1) allow medical and dental school students to receive a stipend, (2) allow subsequent financial assistance for officers who have completed medical or dental school and enter residence training in a critically short wartime skill, (3) allow

the service obligation to be reduced to one-for-one when a physician or dentist accepts additional financial assistance for residency training, and (4) allow those service obligations which require a two-for-one pay back to be incurred in six-month increments.

Section 518. Section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) amended section 641(1) of title 10, United States Code (U.S.C.), to exclude certain reserve component officers serving on active duty for periods of three years or less from the active duty list for promotion purposes. The amendment inadvertently excluded a number of reserve officers on active duty for three years or less who should properly be considered on the active duty list. For example, Senior Reserve Officers' Training Corps non-scholarship graduates who attend law school in an educational delay status are ordered to active duty for a period of three years and, as a result of the recent amendment, are placed on the reserve active-status list, rather than on the active duty list. These officers, however, should compete for selection for promotion with their contemporaries on the active duty list, *e.g.*, officers who are ordered to active duty for a period of four years as a consequence of their participation in the Senior Reserve Officers' Training Corps scholarship program.

Section 518 would amend section 641 to provide that reserve officers ordered to active duty for three years or less would be placed on the reserve active-status list only if their placement was required by regulations prescribed by the Secretary concerned and only if ordered to active duty for three years or less with placement on the reserve active-status list specified in their orders. This amendment would provide the Secretaries of the military departments with the authority to prevent an inappropriate application of section 641(1)(D).

However, Section 518 would allow Reserve officers who are called to active duty to meet mission requirements of the active forces to be released to resume a reserve career following a limited period of active duty (three years or less) and to be considered for promotion by a reserve promotion selection board and managed under the provisions of subtitle E of title 10, U.S.C., in the same manner as their contemporaries not serving on active duty. Reserve component general/flag officers would, under service regulations, be retained on the reserve active-status list while serving on active duty for a period of three years or less under the provisions of 10 U.S.C. 526(b)(2).

Finally, Section 518 would allow the service secretary to return a Reserve officer to the reserve active status list who otherwise met the criteria of this exemption, but for the fact that the officer was on active duty and had already been placed on the active duty list at the time section 641(1)(D), as amended by Public Law 106-398, was enacted.

Section 519 would permit Reserve component members on active duty and members of the National Guard on full-time National Guard duty to prepare for and perform funeral honors for veterans as required by section 1491 of title 10, United States Code, without counting against active duty end strength. The delivery of funeral honors to veterans is a continuous peacetime mission that has escalated from its recent inception and mandate in Public Law 105-261.

Further, funeral honors mission requirements are projected to continue their expansive growth in the out years. Section 519 would allow the Services to fulfill the funeral honors mission without adversely impacting readiness and affecting the end strength needed to meet their wartime missions. For the Department to meet the requirements of the law regarding the provision of funeral honors for veterans, it is critical to have Reserve component participation in this Total Force mission. This end strength exemption would remove an impediment to greater Reserve component participation in funeral honors, provide greater latitude in manpower application, and greatly assist the Department in meeting the expanding requirements of the veterans' funeral honors law.

Section 520. Section 555 of the National Defense Authorization Act for Fiscal Year 2000 amended section 12310(b) of title 10, United States Code, to expand the duties that may be assigned to Reserves, who are on active duty, in connection with organizing, administering, recruiting, instructing, or training the reserve components. While the apparent intent of the amendment was to expand the permissible activities of all Active Guard and Reserve (AGR) personnel, practically, the amendment applies only to AGR personnel performing active duty under section 12301(d) of title 10 and does not include AGR personnel performing full-time National Guard duty under title 32 of the United States Code. Therefore, Section 520 seeks to clarify the current law, aligning the current practices in these missions with the legislative authority governing them. This change is necessary because, effectively, there are few distinctions between the roles of AGR personnel serving on active duty and the roles of reservists performing full-time National Guard duty, outside of the different chains of command that each respective group must report to.

This section would amend section 12310(b) by inserting language that clearly would make the section applicable to Reserves who are members of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with organizing, administering, recruiting, instructing, or training the reserve components. It would ensure that National Guard AGR personnel are treated in the same manner as AGR personnel of the other reserve components when determining the scope of permissible duties and functions that they may perform. Section 520 would clarify the authority for AGR personnel on full-time National Guard duty to support an increasing number of operations and missions being assigned in whole or in part to the National Guard. Such duties include operational airlift support activities, standby air defense operations, anticipated ballistic missile defense operations, land information warfare activities, and the use of National Guard instructors to train both active component and reserve component personnel. Thus, this section is important because, while some of these duties have been periodically performed by AGR personnel on full-time duty, there has been no explicit, binding, legal authority which would outline the limits governing their actions.

Section 521 would amend section 516 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) to extend the time during which the Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to reserve officers commissioned through the Army Officer Candidate School.

Section 12205(a) provides that no person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Naval Reserve, or be federally recognized in a grade above the grade of lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

Section 516 authorized the Secretary of the Army to waive the applicability of section 12205(a) to any officer who before the enactment of Public Law 105-261 was commissioned through the Army's Officer Candidate School. The waiver may continue in effect for no more than two years. A waiver under the section may not be granted after September 30, 2000.

Section 521 would amend section 516 to permit the Secretary to waive the applicability of section 12205(a) to any officer who was commissioned through the Army's Officer Candidate School without regard to the date of commissioning and would extend the Secretary's authority under the section to September 30, 2003.

This additional period would enable the Army to determine how to alleviate the problems experienced by some officers commissioned through the Army Officer Candidate School in obtaining a baccalaureate degree during the relatively short period before they are eligible for promotion to captain and during times when they may be engaged either in intense training or deployments for long periods.

Section 522 would amend section 12305 of title 10, United States Code, to afford members whose mandatory dates of separation or retirement were delayed due to stop loss action, a period of time to transition to civilian life following termination of stop loss. Specifically, Section 522 would add subsection (c) to afford active duty members whose mandatory separations or retirements incident to sections 1251 or 632-637 are delayed pursuant to invocation of section 12305, a period of time - not to exceed 90 days following termination of suspensions made under section 12305 - to transition to civilian life.

As currently written, section 12305 requires immediate separation or retirement of those affected by stop loss, who, without stop loss, would have been subject to mandatory separation or retirement under this title for age (section 1251), length of service (sections 633-636), or promotion (sections 632, 637). An abrupt termination of stop loss could cause undue hardship on those whose planned departure to civilian life was unexpectedly interrupted and now must be resumed posthaste. For example, the Air Force invoked stop loss in support of Operation Allied Force in 1998. Following the termination of stop loss on 22 June 1998, eight officers with a mandatory (by law) date of separation were required to retire upon their original date of separation (1 July 1998); another three officers were required to separate/retire by 1 August 1998. On the other hand, members with a date of separation set by policy were given the option of either extending their dates of separation up to 6 months or withdrawing them. Some leeway must also be provided for members with dates of separation established by law to reschedule the

many details incident to final departure from military life.

Section 531. The Marine Corps War College seeks Congressional authority and regional accreditation to issue a master's degree in Strategic Studies. The authority to begin this process is vested in the Commanding General of the Marine Corps Combat Developments Command and was authorized on 1 June 2000. In December 1999, the Marine Corps University achieved a seven-year goal by becoming accredited by the Southern Association of Colleges and schools to award a master's degree in Military Studies. While this accreditation was awarded to the Marine Corps University, it specifically addressed only the degree awarded by the Command and Staff College. The Marine Corps War College now seeks similar authority.

The uniqueness of the Marine Corps War College's curriculum and program of study is unparalleled by other civilian universities or Federal War Colleges. Most of the Marine graduates of the Marine Corps War College become faculty members of the Command and Staff College and, since the Command and Staff College already awards a master's degree, it would be very beneficial for these future faculty members to possess the required academic credentials when arriving at their new positions at the Command and Staff College.

A master's degree program would enhance the professional reputation and prestige of the Marine Corps War College. This would facilitate the Marine Corps War College's efforts to sustain and recruit a world class faculty and demonstrate a high level of faculty competence as first rate scholars and speakers. Section 531 is intended only as a technical amendment to the existing legislation. Enactment of this section would not result in an increase in the budgetary requirements of the Marine Corps.

Section 532. Section 206(d) of title 37, United States Code, states that "[t]his section does not authorize compensation for work or study by a member of a reserve component in connection with correspondence courses of an armed force." This is similar to the limitation in the definition of "inactive-duty training" found in 37 U.S.C. 101(22), which states inactive-duty training "does not include work or study in connection with a correspondence course of a uniformed service."

Since the correspondence course restrictions were enacted more than 50 years ago, technological advances affecting instructional methodology have made these restrictions outdated. The law, as currently written, also contradicts recent Congressional directions to maximize the use of technologies such as telecommuting for the federal sector and the National Guard's Distributed Technology Training Project (DTTP).

The Secretary of Defense's training technology vision is to *"ensure that DoD personnel have access to the highest quality education and training that can be tailored to their needs and delivered cost effectively, anytime and anywhere."* The future learning environment created by the application of new technology will extend learning opportunities for Service members, active

and reserve, around the globe. This technology will be available at work (whether at a military base or in the civilian sector), at home, and at individual workstations provided for public use at libraries and military classrooms. Distributed Learning is defined as structured learning that takes place without requiring the physical presence of an instructor. Distributed learning is synchronous and/or asynchronous learning mediated with technology and may use one or more of the following media: audio/videotapes, CD-ROMs, audio/video teletraining, correspondence courses, interactive television, and video conferencing. Advanced Distributed Learning is an evolution of distributed, or distance, learning that emphasizes collaboration on standards-based versions of reusable objects, networks, and learning management systems, yet may include some legacy methods and media.

The awarding of compensation and/or credit involving innovative learning technologies should be for the successful independent completion of the required learning based on Service standards. It is the Service Secretary's responsibility to establish what is "required" learning for the purposes of compensating and/or awarding credit to Reserve component personnel. In this context, "required" learning means education/training that is necessary for individual and/or unit readiness as called for by law, DoD policy, or Service regulation. Required distance/distributed learning and/or advanced distributed learning courses may have some paper-based phases or modules and can be compensated. In addition, it is the Service secretary's responsibility to develop the policies and procedures to ensure successful and accountable implementation of their Reserve component's Distributed Learning programs. Such policies and procedures should include, but not be limited to, such topics as tracking members' participation at a distance, measuring successful performance/participation, failure policies, telecommuting policies, equipment funding and availability, equipment liability, personal liability, virtual training, virtual drilling, scheduling, documentation, accountability, and implementation guidance.

Section 532 would make no change in resource requirements because budgetary decisions associated with the compensation and/or credit for Reserve component members for work performed through non-traditional methods is left up to the discretion of the Service Secretaries.

Section 533 would modify section 2031 of title 10, United States Code, to strike the second sentence in paragraph (a)(1) which reads as follows:

"The total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 3,500."

JROTC is DoD's largest youth program with over 450,000 students enrolled in more than 2,900 secondary schools. The statutory mission for JROTC is to instill in students the value of citizenship, service to the United States, personal responsibility, and a sense of accomplishment. Surveys of JROTC cadets indicate that about 40 percent of the graduating high school seniors with more than two years participation in the JROTC program are interested in some type of military affiliation (active duty enlistment, officer program participation, or service in the

Reserve or Guard). Translating this to hard recruiting numbers, in Fiscal Years (FY) 1996-2000, about 9,000 new recruits per year entered active duty after completing two years of JROTC. The proportion of JROTC graduates who enter the military following completion of high school is roughly five times greater that the proportion of non-JROTC students. Therefore, the program pays off in citizenship as well as recruiting.

Recognizing the merits of the JROTC program, the Military Services have undertaken an aggressive expansion program and are committed to reach the statutory maximum of 3,500 by FY 2006. As a result of this planned growth, the Military Services have witnessed a marked increase in the number of schools seeking establishment of JROTC units. We now face the real potential that DoD and a waiting school might both wish to proceed with an activation, yet face a legislative cap that prevents execution of such a mutually-desirable course of action. Enactment of Section 533 would permit DoD to be responsive to mutually agreeable school needs which might exceed the present 3,500-unit cap set in law.

Section 534 would extend eligibility for the Nurse Officer Candidate Accession Program to students enrolled at civilian educational institutions with a Senior Reserve Officers' Training Program (SROTP) who are not eligible for Senior Reserve Officers' Training Programs.

The Nurse Officer Candidate Accession Program (NCP) is a primary accession source of new nurse officers and provides a hedge against difficulty in the direct procurement market. It provides financial assistance to students enrolled in a baccalaureate nursing program in exchange for an active duty commitment upon graduation.

Market projections indicate increasing difficulty in recruiting students for the NCP due to an increase in civilian career opportunities and declining nursing school enrollment. Evidence from nursing journals and employment industry statistics confirm that a tightening job market for nurses is expected over the next few years.

Section 2130a of title 10, United States Code, currently restricts eligibility for the NCP to students enrolled in a nursing program at a civilian educational institution “that does not have a Senior Reserve Officers’ Training Program.”

Eligibility requirements for the SROTP limit age to 27 years. SROTP scholarships for junior or senior level students are limited to a few quotas each year only to replace students lost through attrition. The NCP age limit is up to 34 years and only bars those within six months of graduation. Recruiters report considerable interest in the NCP program by SROTP-ineligible students.

Extending NCP eligibility to SROTP-ineligible students would expand the potential applicant pool and demonstrate strong Congressional support and commitment to providing future nurse officers with the necessary skills to meet our healthcare mission around the world.

Section 535. The Defense Language Institute Foreign Language Center serves as the Defense Department's primary foreign language teaching and resource center. The Institute has been accredited by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges (Commission) since 1979. The Commission has recommended that the Institute obtain degree-granting status to maintain its accreditation. The Secretary of Education has endorsed that recommendation. Section 535 would provide the authority for the Institute to grant an Associate of Arts degree. There are no resource implications other than the routine administrative requirements to produce a diploma suitable for presentation upon graduation.

Section 541 is pursuant to the provisions and procedures of section 1130 of title 10, United States Code. The Honorable Sherrod Brown of the House of Representatives requested the Secretary of the Army, the appropriate official under section 1130, to review the circumstance of this case. Section 541 follows the determination made under section 1130(b)(2) that the award of the decoration warrants approval. It further recommends a waiver of the specified time restrictions prescribed by law. The Secretary of the Army and the Chairman of the Joint Chiefs of Staff both agree and recommend that Humbert R. Versace be awarded the Medal of Honor. Section 541 would waive the period of time limitations under Section 3744 of title 10 to authorize the President to award Humbert R. Versace the Medal of Honor.

Section 541 would authorize the President to award the Medal of Honor to Humbert R. Versace, who served in the United States Army during the Vietnam War and who was assigned as a Captain with A Detachment, 5th Special Forces Group. It would waive the specific provisions of section 3744 of title 10 that the award be made within three years of the date of the act upon which the award is based. The acts of then-Captain Humbert R. Versace clearly distinguish him conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty, as required by section 3741 of title 10 to merit this legislation and the award.

Section 542 would amend sections 3747, 6253 and 8747 of title 10, United States Code, to provide clear authority for the Secretaries of the military departments to replace certain medals if stolen and to issue medal of honor recipients one duplicate medal of honor, with ribbons and appurtenances.

Sections 3747, 6253 and 8747 currently authorize free replacement of any medal of honor, distinguished service cross, distinguished service medal, silver star, Navy cross, Navy and Marine Corps medal, or Air Force cross that is lost or destroyed or becomes unfit for use without the fault or neglect of the recipient. Enactment of Section 542 would also clarify the intent of these sections to authorize specifically the replacement of medals that are stolen, subject to the limitation that the theft was without the fault or neglect of the recipient.

If enacted, Section 542 would also authorize the Service Secretaries to issue each medal of honor recipient one duplicate medal free of charge. There is no provision in title 10 that

authorizes issuance of a duplicate medal of honor so that the recipient can donate the original medal or otherwise safeguard it and wear the duplicate to functions and events. In fact, sections 3747, 6253 and 8747 of title 10, in conjunction with sections 3744(a), 6247 and 8744(a) of such title, may be construed to prohibit the issuance of a duplicate medal of honor.

If Section 542 is enacted, medal of honor recipients would have to make written application to the Secretary concerned for the issuance of a duplicate medal, which would be marked, as determined by the Secretary concerned, as a duplicate or for display purposes only. The issuance of a duplicate medal under this new authority would not constitute the award of "more than one" medal of honor to the same person. Sections 3744(a), 6247 and 8744(a) of title 10 prohibit the award of "more than one" medal of honor to a person.

Issuance of a duplicate medal of honor for display purposes would allow recipients to place their original medals in safekeeping or donate them to institutions for permanent display while retaining the duplicate for wear at events. Medal of honor recipients are expected to wear their medals at many of the events to which they are invited. According to the Congressional Medal of Honor Society, many of the 152 living recipients would like to donate or otherwise safeguard their original medals because the value of the medals on the "black market" has made them an attractive target for theft. Medals marked as duplicates, by contrast, would presumably have little or no "black market" value and would be less attractive targets for theft.

The cost of issuing duplicate medals of honor would be minimal. The current cost of a medal of honor is approximately eighty-five dollars. If every living recipient requested a duplicate, the cost would not exceed $15,000, including shipping.

Section 543. Section 541 of the Floyd D. Spence National Defense Authorization Act for FY 2001 (114 Stat. 1654A-114) enacted section 1133 of title 10, United States Code (U.S.C.), that restricts eligibility for the Bronze Star Medal to members of the Armed Forces who are in receipt of special pay under section 310 of title 37, U.S.C., at the time of the events for which the decoration is to be awarded or who receive such pay as a result of those events. "Special pay" under section 310 includes both hostile fire pay (HFP) and imminent danger pay (IDP). The reason for the change stemmed from the belief that someone whose duties never took them away from home did not perform the same kind of service as someone who was in the combat zone. The perception was that most people who received IDP or HFP served in a combat zone.

Currently, military personnel serve in 43 areas which qualify for IDP or HFP, but only two areas are further designated "combat zones" -- Yugoslavia (Serbia, Kosovo, Albania, the Adriatic Sea, the Ionian Sea above the 39th parallel, and the airspace above these areas) and the Persian Gulf. Service members qualify for IDP not only in wartime conditions, but also if they are subject to physical harm or imminent danger due to terrorism, civil insurrection, or civil war. HFP is awarded when a service member is subject to hostile fire or explosion of hostile mines; on duty in an area in which he is in imminent danger of being exposed to hostile fire or explosion of hostile mines; or is killed, injured, or wounded by hostile fire, explosion of a hostile mine, or

any other hostile action. The decision to declare an area eligible for receipt of IDP or HFP is not immediate. A recommendation is made by the regional commander in chief, endorsed by the Joint Chiefs of Staff, and then approved by DoD Force Management Policy.

No other higher-level valor award, *e.g.*, the Medal of Honor, Service Cross, Silver Star, or Distinguished Flying Cross, has similar eligibility criteria. Historically, the Bronze Star Medal has been awarded outside of combat areas, such as during the Korean conflict when it was approved for personnel stationed in Okinawa for meritorious service in connection with military operations against Northern Korea. Therefore, limiting eligibility for the Bronze Star Medal to only those members serving in an area where imminent danger pay is authorized or to those receiving hostile fire pay would exclude many deserving members of the Armed Forces.

Awarding of the Bronze Star Medal should be disassociated with any requirement for IDP or HFP and should instead stand alone. The revolution in military warfare has changed the way the U.S. has traditionally viewed force application and the decorations, many of whose origins recognized traditional ground combat operations, must also keep up and recognize the changes in the way the U.S. conducts warfare.

Section 551 would amend the Uniform Code of Military Justice to lower the blood alcohol concentration (BAC) necessary to establish drunken operation of a motor vehicle from 0.1 to 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams per 210 liters of breath. This change would bring military practice in line with the recently enacted nationwide drunk driving standard found in section 351 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2001, Public Law 106-346, 114 Stat. 1356A-34.

On March 3, 1998, President Clinton directed the Secretary of Transportation to develop a plan to promote a .08 BAC legal limit, which would include "setting a .08 BAC standard on Federal property, including . . . on Department of Defense installations, and ensuring strong enforcement and publicity of this standard . . . ."

Consistent with this planning effort, DoD legislation was proposed in its omnibus legislative package in the spring of 1999 to amend the Uniform Code of Military Justice to reduce the blood and breath alcohol levels for the offense of drunken operation of a vehicle, aircraft, or vessel from 0.10 to 0.08 grams. The U.S. Senate adopted section 562 of S. 974 to make corresponding changes to the United States Code. H.R. 1401, as adopted by the U.S. House of Representatives, contained no similar provision. The Senate receded in Conference on this provision. S. 1059 was then substituted and enacted, signed by the President, and became Public Law 106-65.

The Conference Committee Report to S. 1059, National Defense Authorization Act for Fiscal Year 2000, requested the Secretary of Defense to submit a report to the Armed Services Committees "on the Department's efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents. The report should include the Secretary's recommendations

for any appropriate changes." The Conference Report noted that a recent General Accounting Office (GAO) study concluded that statutory reductions, by themselves, did not appear sufficient to reduce the number and severity of alcohol-related accidents.

The GAO study cited by the Conference Report is entitled "Highway Safety: Effectiveness of State .08 Blood Alcohol Laws" (June 1999). This GAO report concludes that ".08 BAC laws in combination with other drunk driving laws as well as sustained public education and information efforts and strong enforcement can be effective, [but] the evidence does not conclusively establish that .08 BAC laws by themselves result in reductions in the number and severity of crashes involving alcohol." GAO Report at 22 - 23.

The GAO report further found that "it is difficult to accurately predict how many lives would be saved if all states passed .08 BAC laws. The effect of a .08 BAC law depends on a number of factors, including the degree to which the law is publicized; how well it is enforced; other drunk driving laws in effect; and the unique culture of each state, particularly public attitudes concerning alcohol." GAO Report at 23. "A .08 BAC law can be an important component of a state's overall highway safety program, but a .08 BAC law is not a 'silver bullet'. Highway safety research shows that the best countermeasure against drunk driving is a combination of laws, sustained public education, and vigorous enforcement." GAO Report at 23.

Since 1983, DoD has pursued a “comprehensive approach” to reduce drunk driving, believing that the best countermeasure against drunk driving is a combination of laws, public education, and enforcement. This comprehensive range of programs currently include: a 0.10 blood alcohol concentration (BAC) statute enforceable by court-martial; strong policies to achieve a reduction in impaired driving; a system for preliminary and mandatory suspension of licenses in cases of impaired driving; innovative education and training programs; a screening program for identifying alcohol dependent individuals; a process to notify State driver’s license agencies regarding licenses suspended for impaired driving; a local awards program for successful impaired driving programs; and a system to monitor and ensure quality control for impaired driving programs.

Together, these programs have resulted in a reduction in alcohol-related traffic accidents for DoD personnel which compares favorably to analogous statistics of the National Highway Traffic Safety Administration (NHTSA) for the 50 states and the District of Columbia.

DoD recommends that the effectiveness of the existing DoD programs be further enhanced through the amendment of Article 111(2) of the Uniform Code of Military Justice, 10 U.S.C. § 911(2), to reduce the enforceable BAC level to 0.08.

Reducing the BAC level to 0.08 would be consistent with statutes or administrative policies already in effect in 19 States, the District of Columbia, and Puerto Rico. Six additional States currently have under consideration legislation to change to the 0.08 BAC level. If enacted, DoD believes the 0.08 BAC limit would be an important component of our overall traffic safety

program and support a significant reduction in the annual number of alcohol-related fatal and non-fatal crashes involving DoD personnel, with corresponding human and economic savings.

Section 601 The primary purpose of military compensation is to provide a force structure that can support defense manpower requirements and policies. To ensure that the uniformed services can recruit and retain a force of sufficient numbers and quality to support the military, strategic and operational plans of this nation, military compensation must be adequate. Comparison of the earnings of military members with their civilian counterparts suggests that without some adjustment to both the level and structure of basic pay, the military will continue to face serious difficulties in both recruiting and retention.

The results of the military and civilian earnings profile comparisons and the life-cycle earnings analysis conducted by the 9th Quadrennial Review of Military Compensation (9th QRMC) lead to several recommendations that both raise the level of pay and alter the structure of the pay table as well. The structural modifications include targeting pay raises to the enlisted mid-grade ranks that will better match their earnings profile, over a career, with that of comparably-educated civilian counterparts and provide a sufficient incentive for these members to complete a military career. Recommended adjustments:

- Target large basic pay increases for enlisted members serving in the E-5 to E-7 grades with 6-20 years of service. This would alter the pay structure and thus the shape of the earnings profile, increasing the slope of the earnings profile for mid-grade enlisted members to partially achieve the levels suggested by the 9th QRMC.
- Raise basic pay for grades E-8 and E-9, to maintain incentives throughout the enlisted career and prevent pay inversion.
- Provide a modest increase in basic pay for junior enlisted members. This increase reflects the importance of preventing further deterioration in the percentage of high quality recruits.
- Provide for structural changes in selected pay cells for E3, E4, and E5 to motivate members to seek early promotion in the junior grades.
- Raise basic pay for grades O-3 and O-4 to provide increased retention incentives.
- Provide a modest increase for other officers to recognize their contribution to the defense effort.

Subsection (a) waives the adjustment in basic pay that is prescribed in section 1009 of title 37, United States Code. Subsection (b) provides a pay table describing the changes in basic pay. These increases are summarized in the table on the following page:

Grade	Percentage Increase		Grade	Percentage Increase
E-1	6.0		W-1	8.5*
E-2	6.0		W-2	8.5*

E-3	6.0*		W-3	8.0
E-4	6.6*		W-4	7.5
E-5	7.5*		W-5	7.0
E-6	7.5*		O-3	6.0
E-7	8.5		O-4	6.5
E-8	9.0		others	5.0
E-9	9.5*			

* The following pay cells are increased by a different percentage for structural purposes:

E-3 < 2: 7.3
E-4 < 2: 12.0; E-4 > 6 (through > 26): 6.0
E-5 < 2: 13.0
E-6 < 2: 8.0
E-9 > 26: 10.0; M/S: 10.0

W-1 < 2: 15.0; W-1 > 3: 14.0
W-2 > 2: 6.0; W-2 > 3: 11.0; W-2 > 4: 11.0

Section 602 would amend section 407 of title 37, United States Code, to authorize payment of a partial dislocation allowance of $500 to members who are ordered, for the convenience of the Government (including pursuant to the privatization or renovation of housing), to move into or out of military family housing. Section 601 would allow members to receive a partial dislocation allowance for a government-directed move at the current permanent duty station.

Currently, a member directed to move due to privatization or renovation of government housing does so at the member's personnel expense. In line with the current dislocation allowance authority, the member is making an authorized move; however, there is no authority to provide the member a dislocation allowance to set-up the new home. Section 601 would provide a partial dislocation allowance to help members defer moving expenses caused by the government's housing decisions. Section 601 would limit payment in these circumstances to $500 initially. Adjustments would be made annually in a manner consistent with the full dislocation allowance. Section 601 also would specify that payments made under new subsection 407(c) shall not be subject to a fiscal year limitation like other DLA payments.

Section 603 would provide the Service Secretaries with the discretionary authority to pay the funeral honors duty allowance to military retirees who volunteer to perform honors at the funeral of a veteran. If authorized by the Secretary concerned, the retiree would receive this

allowance without forfeiting any retired or retainer pay, disability compensation, or any other compensation provided under titles 10, 37 and 38. This recognizes that military retirees are a valuable personnel resource that can be employed to meet the funeral honors mission. By using retirees to perform this mission, it would allow active duty and reserve personnel to continue to train for and perform other vital military missions. It also recognizes that this minimal level of compensation could be used to encourage retirees to volunteer to perform this mission. Finally, by not requiring any offset of their retired or retainer pay, or any other compensation, Section 602 not only would reduce the administrative burden placed on the Defense Finance and Accounting Service, but it also would provide an incentive to retirees who, in the vast majority of cases, would otherwise actually receive less compensation than that provided by their retired or retainer pay if they had to forfeit that pay in order to receive the funeral honors duty allowance.

Section 604 would authorize Reserve Component commissioned officers in the pay grade of O-1, O-2 or O-3 who are not on active duty, but have accumulated a minimum of 1460 points (the equivalent of four years of active duty) as a warrant officer or enlisted member, to be paid at the O-1E, O-2E or O-3E rate. Currently, a company grade officer with at least four years of prior active duty service as a warrant officer or as an enlisted member is entitled to be paid at a slightly higher rate. The increase in pay recognizes the additional experience these officers have gained while serving as a warrant officer or an enlisted member and rewards them accordingly. A Reserve commissioned officer who has accumulated at least 1,460 points—the equivalent of four years of active duty—has gained significant military experience similar to that of a member who qualifies for this increase in pay because of prior active duty service. Moreover, because of the part-time nature of their service, these officers have gained that experience over a longer period of time and are generally more mature. Allowing these officers to receive this increase in pay recognizes and rewards that experience on the same basis as officers who gained their experience purely through active duty service.

Section 605 would modify section 427 of title 37, United States Code, to authorize the payment of a Family Separation Allowance to those members who elect to serve an unaccompanied - versus accompanied - tour because the member is denied travel of the member's dependents due to certified medical reasons. Currently, the law prescribes that a member who elects to serve a tour of duty unaccompanied by his or her dependents, at a permanent station to which the movement of dependents is authorized, is not entitled to a Family Separation Allowance. The law provides, however, that the Secretary concerned may grant a waiver to that prohibition when it would be inequitable to deny the allowance to the member because of unusual family or operational circumstances. Under existing waiver authority, the Services approve waivers when a member chooses to serve an unaccompanied tour because travel of the individual's dependents to the new station is denied due to medical reasons. This change would remove the statutory requirement for the Secretary concerned to issue a waiver in these circumstances before the Family Separation Allowance is payable. This program efficiency would ease the administration of the Family Separation Allowance program. In addition, adoption of Section 604 would have no effect on expenditures for the Family Separation Allowance program.

Section 606 would amend section 4337 of title 10, United States Code, to authorize a housing allowance for the chaplain for the Corps of Cadets at the United States Military Academy. The chaplain, who is a civilian employee of the Academy, would receive the same allowance for housing as is allowed to a lieutenant colonel. The chaplain would also receive fuel and light for quarters in kind.

Currently, section 4337 reads as follows: "There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed." Although section 4337, read literally, authorizes a quarters allowance for the chaplain at the Academy with fuel and light in kind, the Comptroller General has determined that this part of the section has been effectively repealed.

The source statute for section 4337 was enacted in 1896 and codified as part of title10 on 10 August 1956. The Comptroller General issued an opinion on August 28, 1959, which held that Congress intended the Classification Act of 1949 to supersede the source statute for section 4337. The purpose of the Classification Act was to ensure that Federal employees in like positions received equal pay. The Comptroller General concluded that the provisions relating to a quarters allowance for the academy chaplain were closely related to compensation and, therefore, the reenactment of the quarters provision as part of title 10 in 1956 was “erroneous.” Ms. Comp Gen. B-140003. Consequently, the military academy chaplain, although charged rent for quarters, has not received a quarters allowance, despite the plain language of section 4337.

This situation has, over time, undermined the Army’s ability to attract, hire and retain appointees for the position of chaplain at the Academy, a position mandated by section 4331(b)(5) of title 10. Enactment of Section 605 would ameliorate this problem by providing clear authority to update and restore the academy chaplain’s housing allowance, at a reasonable and appropriate pay grade level.

The cost to implement Section 605 is estimated at $14,000 per year, although a portion of that expenditure would be recouped as rent paid by the academy chaplain.

Section 607 would amend section 18505(a) of title 10, United States Code, by removing the language relating to space-required travel on military aircraft by Reserve component members when the purpose of that travel is to perform “annual training duty.” A statutory authority for Reserve component members to travel in a space required status when performing active duty for training (including annual training duty) is not necessary since these members are already authorized by DoD regulation to travel in a space-required status. Of particular concern with the addition of annual training duty to section 18505 is the applicability of section 18505(b) to members performing such duty. Section 18505(b) prohibits a member from receiving travel, transportation and per diem allowances associated with space-required travel—allowances to which the member was previously entitled before section 18505 was amended by section 384 of Public Law 106-398 (the National Defense Authorization Act for Fiscal Year 2001) to add

"annual training duty."

Since annual training is a requirement for satisfactory participation in the Selected Reserve, the Services budget for those training tours—this includes travel, transportation and per diem allowances. While section 12305 of title 10 allows Reserve component members to consent to perform active duty and active duty for training without pay, it is not appropriate to use this authority in conjunction with annual training. If this authority is being used in conjunction with annual training duty for Reserve component members who do not have an annual training requirement, the Department can address this issue through policy guidance.

If enacted, this proposal would have no cost or budgetary effect.

Section 611 would amend section 301c of title 37, United States Code, to remove submarine duty incentive pay (SUBPAY) rates from law, enabling the Secretary of the Navy to adjust SUBPAY rates when changes are needed to support submarine accession and retention requirements. Section 611 also would establish a maximum monthly SUBPAY rate of $1,000. The effective date for these changes would be 1 October 2002.

Enlisted submarine Sailors receive SUBPAY while on shore duty if they incur at least 14 months of obligated service beyond their shore duty Projected Rotation Date, ensuring they are assignable to future submarine sea duty. SUBPAY, unlike Career Sea Pay or any other enlisted incentive or special pay program, is a direct indicator of how well submarines will be manned with experienced sea returnees as much as three years into the future. Additionally, getting experienced Sailors back to a submarine for 14 months actually encourages experienced Sailors to stay past the 14-month minimum requirement: of those Sailors with between 10 and 14 years of service, who are currently serving on board a submarine and who went back to sea for at least 14 months, 79 percent obligated themselves for at least a two-year minimum activity tour on that submarine.

In 1999, the decline in the propensity of enlisted submarine personnel to incur additional obligated service (and future sea duty service) equated to 776 lost man-years of at-sea submarine service - enough manpower to operate 5 submarines for one year. Higher SUBPAY rates could be used to stem this decline and entice undecided submarine Sailors at the critical 10- to 12-year decision point to choose a 20-year or greater Navy career. In addition, higher SUBPAY rates could help Navy meet submarine non-nuclear enlisted recruiting goals, which have not been met in the last decade.

The current statutory SUBPAY rate tables have been duplicated in SECNAVINST 7220.80E, as well as in Tables 23-3 through 23-5 of Volume 7A, Chapter 23 of the Department of Defense Financial Management Regulations. Thus, removing the SUBPAY rates from law would provide the service secretary with a timely, flexible and pay grade-targeted method to address the looming personnel-related issues that are probable given the uncertain future Submarine Force of Record, which could add as many as 13 submarine crews by FY2004 and 19

crews by FY2015.

SUBPAY was last increased in 1988, when it was raised to restore the approximate value that it had for submarine Sailors when the SUBPAY program was previously revised in 1981. Since 1988, the value of SUBPAY has eroded by approximately 47 percent (based on the Consumer Price Index – Urban Direct Index from 1988 to 1999 and projected to 2001). If granted this new discretionary authority, Navy intends to target first the most critically manned pay grades - mid grade enlisted Sailors and junior to mid grade officers. This would increase the maximum enlisted payment rate from $355 to $425, but would maintain the maximum officer payment rate at $595. Therefore, the budgetary impact of Section 611 would be a net increase of $15.0 million in FY 2003 and a net increase of approximately $14.5 million per year thereafter through FY 2007.

Section 612 would extend the authority to employ accession and retention bonuses for enlisted personnel, and continuation pay for aviators, ensuring that adequate staffing is provided for hard-to-retain and critical skills, including occupations that are arduous or that feature extremely high training and replacement costs. Experience shows that retention in those skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing a replacement. The Department and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in critical military skills.

Section 613 would extend the authority to employ accession and retention incentives to support staffing for nurse and dentist billets which have been chronically undersubscribed. Experience shows that manning levels in the nursing and dental fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing a replacement. The Department and Congress have long recognized the cost-effectiveness of these incentives in supporting effective personnel levels within these fields.

Section 614 would extend the authority to employ accession and retention incentives, ensuring adequate manning is provided for hard-to-retain skills, including occupations that are arduous or feature extremely high training costs. Experience shows retention in those skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing a replacement. The Department and the Congress have long recognized the cost-effectiveness of these incentives in supporting effective manning in these occupations. In the case of the Nuclear Officer Incentive Pay Program, a two-year extension demonstrates support to career-oriented officers.

Nuclear officer accessions and retention continue to fall below that required to safely sustain the post-drawdown force structure. Fiscal Year (FY) 1999 retention for submarine officers was 30 percent (required 29 percent); for nuclear-trained Surface Warfare Officers (SWO(N)s) it was 20 percent (required 21 percent). FY 2000 retention for submarine officers

was 28 percent (required 34 percent); for SWO(N)s it was 21 percent (required 21 percent). Although adequate for now, nominal retention rates must improve by FY 2001 to 38 percent for submarine officers and 24 percent for SWO(N)s to adequately meet growing manning requirements. Likewise, current accession production must improve. Although nuclear accession goals were met for FY 2000 (the first time meeting submarine officer accessions since FY 1991), FY 2001 nuclear officer accession goals have increased to meet the manning requirements for an increased force size.

Inadequate accessions in previous years and continued poor retention only compound the sacrifices incurred by those officers remaining, as demanding and stressful sea tours are lengthened to meet safety and readiness requirements. If the shortfall of officers due to both effects is sufficiently severe, the entire sea/shore rotation plan becomes unbalanced, and officers eventually must rotate directly from one sea tour to the next. This was the case in the 1960s and 1970s when many officers spent as many as 16 or more of their first 20 years in sea duty and nuclear or warfare-related training and supervisory assignments. Eventually, many of these remaining officers find the sacrifices too great and resign from the service. History has shown retention erodes further, requiring even more accessions, and the "vicious cycle" repeats. The success of the Naval Nuclear Propulsion Program is a direct result of quality personnel, rigorous selection and training, and high standards that exceed those of any other nuclear program in the world. Maintaining this unparalleled record of safe and successful operations depends on attracting and retaining the right quantity and highest quality of officers in the Naval Nuclear Propulsion Program.

Representing nearly half the Navy's major combatants and 60 percent of combat tonnage, nuclear-powered warships are repeatedly called upon to protect our vital interests and respond to crises around the world. They represent the cornerstones of our continued maritime supremacy and are an integral part of our national security posture. Adequate manning with top quality individuals is key to the continued safe operation of the program.

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. They also come predominantly from the very top of their classes at some of the nation's best colleges and universities. As a result, these officers are highly sought for positions in career fields, both within and outside of the nuclear power industry, due to their educational background and management experience. The competition for well-qualified, experienced technical personnel coupled with the lowest unemployment rate in over two decades, indicate that the marketability of nuclear-trained officers will likely increase. Officers leaving the Navy after five years of service can expect to transition to the civilian workforce at about the same level of compensation, but with greatly increased potential earnings and without the arduous schedules and family separation.

The Nuclear Officer Incentive Pay program, in its current structure, remains the surest and most cost-effective means of meeting current and future manning requirements. Long-term

program support through a four-year program extension is strongly encouraged. The two-year extension would demonstrate Congressional commitment commensurate with that made by Naval officers who have chosen to reap the rewards and endure the sacrifices of a career in the Nuclear Propulsion Program.

Section 615 would extend the authorization for critical recruiting and retention Reserve component incentive programs. Recruiting has become increasingly more challenging and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting effort. Absent these incentives, the Reserve components may experience difficulty in meeting skilled manning and strength requirements. Moreover, the Reserve components rely heavily on being able to recruit individuals with prior military service. The prior service market is a high priority for the Reserve components since assessing individuals with prior military experience reduces training costs and retains a valuable, trained military asset in the Total Force. The prior service enlistment bonus offers an incentive to those individuals with prior military service to transition to the Selected Reserve.

Equally important to the recruiting effort is retaining members of the Selected Reserve. The Selected Reserve reenlistment bonus, which was increased last year from $5,000 to $8,000, is necessary to ensure the Reserve components maintain the required manning levels by retaining members who are already serving in the Selected Reserve. Moreover, the special pay for enlisted members assigned to certain high priority units provides the Services with an incentive designed to reduce manning shortfalls in critical undermanned units.

The Reserve components have historically found it challenging to meet the required manning in the health care professions. The incentive that targets those healthcare professionals who possess a skill that has been identified as critically short is essential if the Reserve components are to meet required manning levels in these skill areas.

The expanded role of the Reserve components requires not only a robust Selected Reserve force, but also a robust manpower pool—the Individual Ready Reserve. Extending the Individual Ready Reserve bonus authority would allow the Reserve components to target this bonus at individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

Combined, the Reserve component bonuses and special pays provide a robust array of incentives that are necessary if the Reserve components are to meet manning requirements. Extending these authorities would ensure continuity of these programs. Since these incentive programs are recurring Service budget items, there is no additional cost for extending these authorities.

Section 616 would amend title 37, United States Code, by establishing a broad authority for an Officer Critical Skill Accession Bonus to provide needed flexibility for Service Secretaries to recruit officers with critical skills. This is intended to preclude the need to add future

individual statutory bonus provisions for specific officer career categories experiencing an accession shortfall.

Over the past several years, officers with certain critical skills have separated from service at higher than historical rates, and recruitment of officers into these critical specialties has declined. This is, in large measure, likely a result of higher compensation and benefits being offered for these skills in the private sector. Recruitment shortages among officer skills can be expected to further erode absent enactment of statutory authority for monetary incentives that can be utilized to offset the pull on these critical specialties from the civilian marketplace. Examples of specialties currently short (and which have no, or inadequate, statutory bonus authority for use to target the shortages) include the Air Force's declining cumulative continuation rates among officers in communications-information systems (CIS) (35 percent in 1999), some electrical engineers (39 percent in 1999 for developmental engineers, and 31 percent for civil engineers in 1999), scientific (53 percent in 1999), and acquisitions (averaged 38 percent from 1997-1999). Shortfalls in retention in these skills are occurring while Air Force accession rates have also continued to fall below the Air Force goal. As of June 30, 2000, the Air Force accessed 74 percent of its goal for weather officers, 69 percent for developmental engineers, 83 percent for air traffic control and combat operations, and 90 percent for CIS. Authority for the Air Force to offer a financial incentive to boost manning in the Engineering and Scientific career and CIS specialties is particularly critical.

Further, the Navy is experiencing shortages in their Civil Engineer Corps (CEC) career field. The Navy has failed to recruit the required number of CEC officers in the past three fiscal years (1998 through 2000). In Fiscal Year 2000, the Navy only accessed 54 percent of the CEC accession goal; it projects to meet only 67 percent of the Fiscal Year 2001 CEC accession goal, and projects to remain short in the out-years. Shortages of that magnitude translate to under-supervision in an unusually sensitive mission area. Authority to offer CEC officer-recruits an accession bonus is critical if the Navy is to have the compensation tools it needs to increase the number of CEC officer-recruits to levels needed to man future CEC force structure requirements. An accession bonus authority would give Navy the competitive edge it needs to attract the most qualified candidates to the Navy CEC.

Rather than seeking additional individual statutory authorities for these critical officer specialties, and any others that may emerge in the future, this proposal seeks a broad accession pay authority. Under such statutory authority, the Departments would establish program parameters and implementation strategies to ensure the Service Secretaries are provided the flexibility they need to address officer critical specialty shortfalls in a timely manner.

Based on current projections, the net effect of adoption of Section 616 would be an increase of $18.05M in Fiscal Year 2002 ($.05M for Navy and $18M for Air Force). Army and Marine Corps do not anticipate they would utilize this authority in Fiscal Year 2002.

Section 617 would allow the Secretary concerned to target this incentive to individuals

who possess a skill that is critically short to meet wartime requirements and who agree to enlist, reenlist or voluntarily extend an enlistment in the Individual Ready Reserve. The current statute authorizes payment of this bonus to individuals who possess a skill that is critically short in a combat or combat support mission. However, this bonus is not authorized for individuals who possess a critically short skill in a combat service support mission. As a result of the drawdown and restructuring of the force over the past decade, the Reserve components have assumed a variety of new missions across the full range of mission areas. Of particular concern is the ability to meet the expanded combat service support mission requirements in the Army Reserve. To meet manpower requirements in its expanded combat support and combat service support role, the Army Reserve must rely heavily on members of the Individual Ready Reserve. Expanding this authority to allow the Secretary concerned to target this bonus in those skill areas that are critically short, regardless of the type of mission, would help reduce critical mobilization manning shortages. This proposed change is consistent with other active duty and Selected Reserve bonus authorities, which provide the Service Secretary with the authority to identify those skill areas that are critically short and require added incentives to achieve the necessary manning level to meet mission requirements.

Section 618 would amend section 301 of title 37, United States Code, to authorize payment of hazardous duty incentive pay for members of Visit Board Search and Seizure teams conducting operations in support of maritime interdiction operations.

Boarding crews participating in these operations face several hazards inherent to the duty involved. These include the hazards of physically boarding a vessel at sea from a small boat while carrying weapons, inspection gear, and protective clothing. Further hazards exist in the actual conduct of the inspections, such as hazards connected with crew hostilities, pest infestations, and numerous unseen dangers. For example, containers must be accessed, which often requires climbing considerable distances above the deck, balancing in precarious positions while opening the container, and facing the risk the container contents may have shifted during the transit. In addition, cargo may have mixed, causing a hazard (for example, bulk cargo such as fertilizer, when mixed with salt water or oil, can emit hazardous fumes). Hazardous Duty Incentive Pay would provide a financial recognition to personnel participating in these operations for this unusually hazardous duty.

The net effect of adoption would be an increase of $0.2 million for the Navy.

Section 621 would amend section 430 of title 37, United States Code, to extend the entitlement to funded student dependent travel to members stationed outside the continental United States with dependents under the age of 23 who are enrolled in a school in the continental United States but are attending a school outside the United States as part of a school-sponsored exchange program. At present, members stationed overseas are entitled to funding for this program, but only if the student is physically located in the United States. This creates an inequity for those members whose dependents attend a school in the United States, but are part of a temporary exchange program located outside the United States. Both sets of members deserve

equal treatment.

Section 621 would reimburse travel expenses for student dependents under the age of 23 of a member stationed outside the continental United States when the dependents are enrolled in a school in the continental United States but are attending a school outside the United States as part of a school sponsored-exchange program for less than a year. Section 621 would further limit reimbursement in these cases to the cost of travel between the school in the continental United States where the student dependent is enrolled and the member's overseas duty station.

Section 622 would amend section 2634 of title 10, United States Code, by adding a new subsection 2634(b)(4) authorizing payment of vehicle storage costs in advance. Section 2634 authorizes the Secretary concerned to store a member's vehicle at government expense under certain circumstances, but does not provide for advance payment of these costs. Vehicle storage costs at a commercial facility can range from $100 to $300 per month, and many of these facilities require deposits equal to two or three times the monthly storage rate. The Military Traffic Management Command estimates there are approximately 20,000 vehicles that are stored in commercial facilities annually.

Having to pay for these advance payments out of pocket comes at the worst possible time for the military member - during a permanent change of station move. The variety of expenses associated with a move put a significant strain on the financial condition of members, often requiring them to acquire significant debt while they wait for government reimbursement to catch up. At no additional cost to the Government, Section 622 would eliminate one portion of this burden, reducing to some degree the hardship associated with a military life that requires frequent moves.

Section 623 would amend section 411f of title 37, United States Code; strike subsection (d) of section 1482 of title 10, United States Code; and repeal the Funeral Transportation and Living Expense Benefits Act of 1974 (Public Law 93-257).

Currently, the three statutes cited above authorize allowances for family members and others to attend burial ceremonies of deceased members of the armed forces. The statutes differ in scope and application. For example, section 1482(d) prohibits the payment of per diem, while per diem may be paid under the other two sections. The purpose of Section 622 is to establish uniform authority.

Section 411f of title 37 authorizes round trip travel and transportation allowances for "dependents of a member who dies while on active duty or inactive duty in order that such dependents may attend the burial ceremonies of the deceased member." Allowances under the section, including per diem, are limited to travel and transportation to a location in the United States, Puerto Rico, or United States possessions and "may not exceed the rates for two days." If a deceased member was ordered to active duty from a place outside the United States, allowances may be provided for travel and transportation to and from such place and may be extended to

account for the time necessary for such travel. Dependents include the surviving spouse, unmarried children under 21 years of age, unmarried children incapable of self-support, and unmarried children enrolled in school and under 23 years of age. Section 411f(c) provides that if no person qualifies as a surviving spouse or unmarried child, the parents of a member may be paid the travel and transportation allowances authorized under the section.

Section 1482(d) of title 10 applies when, as a result of a disaster involving multiple deaths of members of the armed forces, the Secretary of the military department has possession of commingled remains that cannot be individually identified and must be buried in a common grave in a national cemetery. Under section 1482(d), the Secretary may pay the expenses of round trip transportation to the cemetery for a person who would have been authorized under section 1482(c) to direct the disposition of the remains of the member if individual identification had been made. Also, the Secretary may pay the expenses of transportation for two additional persons closely related to the decedent who are selected by the person who would have been designated under section 1482(c). No per diem may be paid.

The Funeral Transportation and Living Expense Benefits Act of 1974 applies only to families of deceased members of the armed forces who died while classified as a prisoner of war or as missing in action during the Vietnam conflict and whose remains are returned to the United States after January 27, 1973. Family members may be provided "funeral transportation and living expenses benefits." Benefits include round trip transportation from the family member's residence to the place of burial, "living expenses, and other such allowances as the Secretary shall deem appropriate." Eligible family members include "the deceased's widow, children, stepchildren, mother, father, stepfather and stepmother." If none of the family members in the preceding sentence "desire to be granted such benefits," then the benefits may be granted to the deceased's brothers, sisters, half-brother, and half sisters.

For members of the armed forces during World War II and the Korean War whose remains have recently been recovered and identified, there may be no family members who can be provided travel and transportation allowances to attend the burial. As noted above, under section 411f, dependents who may receive travel and transportation allowances include a surviving spouse, certain unmarried children, primarily those under 21 years of age, and parents if there is no surviving spouse or qualifying child. However, in these cases, the surviving spouse and parents may be deceased and no child may qualify because of their age. Section 623 would amend section 411f and add a new provision similar to the provision in section 1482(d) of title10, concerning the burial of remains that are commingled and cannot be identified. Under Section 623, if there is no surviving spouse, no qualified child, and no parent, then the person designated to direct disposition of the remains could receive travel and transportation allowances along with two additional persons closely related to the deceased member selected by the person who directs disposition of the remains. In many cases, this would likely include an adult child or children of the deceased member.

Section 623 would also amend section 411f to authorize the payment of travel and

transportation allowances for a person to accompany a family member who qualifies for travel and transportation allowances but who is unable to travel alone to the burial ceremonies because of age, physical condition, or other justifiable reason as determined under uniform regulations prescribed by the Secretaries concerned. Allowances would be payable under these circumstances only if there is no other person qualified for allowances available to assist the family member.

Section 623 would also amend section 411f to provide a new basis for authorizing travel and transportation allowances outside the United States, Puerto Rico, and United States possessions. Currently, the only exception is when the member was ordered to active duty from a place other than in the United States, Puerto Rico, or the United States possessions. Section 623 would amend section 411f(b) to authorize the payment of travel and transportation allowances to a cemetery maintained by the American Battle Monuments Commission outside the United States.

Section 623 would amend section 411f(b) to make uniform the rule concerning the time period for which allowances may be paid. Currently, section 411f (b) restricts the period to two days for travel within the United States, Puerto Rico, and United States possessions. For travel outside these areas, the two-day period may be extended "to accommodate the time necessary for such travel." Under Section 623, all travel and transportation allowances, regardless of where the travel occurs, would be limited to two days and the time necessary for travel.

Section 623 would also strike subsection (d) from section 1482 of title 10, relating to the burial of commingled remains in a common grave. Section 411f would be amended by adding a new subsection (d) to define burial ceremonies as including "a burial of commingled remains that cannot be individually identified in a common grave in a national cemetery." Thus, the authority in section 411f would provide the basis for travel and transportation allowances under these circumstances. Unlike section 1482(d), this authority would include the payment of per diem.

Finally, Section 623 would repeal the Funeral Transportation and Living Expense Benefits Act of 1974. The Act, enacted in 1974, authorizes travel and transportation allowances for the family of any deceased member of the armed forces who died while classified as a prisoner of war or missing in action during the Vietnam conflict. Section 411f was enacted in 1985. Both statutes provide similar authority. The Act's authority is somewhat broader because eligible family members include the surviving spouse, all children (regardless of age), parents, and siblings. The Act would be repealed to provide uniform treatment among all family members of persons who die while on active duty or inactive duty.

Section 624 would modify section 2634 of title 10, United States Code, to authorize service members to ship a privately-owned vehicle (POV) from the old Continental United States (CONUS) duty station to the new CONUS duty station when the cost of shipment and commercial transportation would not exceed the cost of driving the POV to the new station as is currently authorized.

Currently, when executing a permanent change of station move in CONUS, service members are allowed to ship POVs between CONUS duty stations only when physically incapable of driving, there is a change of a ship's homeport, or there is insufficient time to drive. Members with dependents who possess two POVs would be authorized to ship one POV and drive the other if the cost of driving one POV and shipping the other did not exceed the cost driving two POVs. Cost comparisons would take into account mileage rates by the most direct regularly traveled route, per diem, cost of commercial transportation and the cost of shipping the car by commercial car carrier. Section 624 would be cost-neutral, and enhance force protection by minimizing the number of miles driven by members making permanent changes of station, thereby limiting exposure to accidents. Civilian employees of DoD are currently authorized to ship POVs in CONUS when it is determined to be more advantageous and cost-effective to the Government.

Section 631 would extend the maximum period that a member of the Selected Reserve would be authorized to use the educational benefits provided under the Montgomery GI Bill for the Selected Reserve (MGIB–SR) from the current 10-year limit to 14 years. With the increased use of the Reserve components, members of the Selected Reserve are spending more time performing military duties. The additional time spent performing military service reduces the amount of time they have available for other activities—be it a civilian job, time with the family, other leisure activities, or civilian education. Balancing a full-time civilian career and a military career is becoming increasingly more challenging. One area that is likely to suffer is the pursuit of civilian education. Increasing the number of years that a member of the Selected Reserve has to use this benefit would recognize their increased commitment to military service and provide them with an extended opportunity to use this benefit. Additionally, since membership in the Selected Reserve is required in order to use the MGIB-SR educational benefit, it would also serve as a retention incentive for those who have not been able to use the benefit by the current 10-year limiting period.

Section 632 would add overnight health care coverage when authorized by regulations for Reserve Component members who, although they may reside within a reasonable commuting distance of their inactive duty training site, are required to remain overnight between successive drills at that training site because of mission requirements. Some Reserve Component members are required to remain overnight in the field when performing inactive duty training. Others may be training late into the evening or performing duty early in the morning, which could make commuting to and from their residence impractical. On those occasions when it is not feasible for members who live in the area to return to their residence between successive drills because of mission requirements, they are currently not protected should they become injured or ill during that overnight stay. The Secretary of Defense report to Congress on the means of improving medical and dental care for Reserve Component members, which was sent to Congress on November 5, 1999, recognized this shortcoming and recommended that the law be amended to provide medical coverage when the member remains overnight between successive training periods, even if they reside within reasonable commuting distance.

Section 633. Section 2004 of title 10, United States Code, authorizes the Secretary of a Military Department to detail selected commissioned officers at accredited law schools for training leading to the degree of bachelor of laws or juris doctor. No more than 25 officers from each Military Department may commence such training in any single year. Officers detailed for legal training must agree to serve on active duty following completion of the training for a period of two years for each year of legal training. This service obligation is in addition to any service obligation incurred by the officer under any other provision of law or agreement.

Section 2603 of title 10 authorizes any member of the Armed Forces to accept a scholarship in recognition of outstanding performance in the member's field, to undertake a project that may be of value to the United States, or for development of the member's recognized potential for future career service. Section 2603(b) requires a member of the Armed Forces who accepts a scholarship under section 2603 to serve on active duty for a period at least three times the length of the period of the education or training.

Section 2004 does not specifically authorize an officer attending law school under the Funded Legal Education Program to accept a scholarship from the law school or other entity. Also, section 2603 does not indicate that the authority to accept a scholarship to obtain education or training under the section can be used in conjunction with the authority in another section authorizing education or training, such as section 2004. Moreover, if the authority in section 2004 for a funded legal education can be used in conjunction with the authority in section 2603 to obtain training or education through a scholarship, the resulting service obligation for an officer participating in the Funded Legal Education Program who accepts a scholarship is unclear. The statutes could be interpreted to require consecutive service obligations in excess of twelve years or concurrent service obligations of much less.

An officer who accepts a scholarship would reduce the expenditure of appropriated funds of the military department concerned. Obtaining a scholarship may also benefit an officer participating in the funded legal education program. For example, in the Army, to minimize the costs associated with the funded legal education program, an officer must attend a law school in the officer's state of legal residency that will permit the Army to pay in-state tuition rates or a law school that will grant in-state tuition rates to out-of-state students. This effectively prohibits officers from seeking admission into many of the most highly rated law schools in the United States. If an officer could accept a scholarship to cover all or part of the costs of attending law school, it may be unnecessary to require the officer to attend a school at which the officer qualifies for in-state tuition rates.

Section 633 would amend sections 2004 and 2603 to authorize an officer detailed to law school for legal training under section 2004 to accept a scholarship from the school or other entity under section 2603, with the service obligations incurred under both sections to be served consecutively.

Section 701. As a result of studies done in response to direction in Section 912 of the

National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85), Defense Science Board reports, and General Accounting Office reports, as well as a desire to implement best commercial practices, the Department rewrote its acquisition policy documents. The purpose of the rewrite was to focus on providing proven technology to the warfighter faster, reducing total ownership cost, and emphasizing affordability, supportability, and interoperability. As part of the rewrite, the Department created a new model of the acquisition process that separates technology development from system integration, allows multiple entry points into the acquisition process, and requires demonstration of utility, supportability, and interoperability prior to making a commitment to production. As part of the model, milestone names were changed to Milestone A (approval to begin analysis of alternatives), Milestone B (approval to begin integrated system development and demonstration), and Milestone C (approval to begin low-rate production). The phases of acquisition were changed to Concept and Technology Development (in which alternative concepts are considered and technology development is completed), System Development and Demonstration (in which components are integrated into a system and the system is demonstrated), and Production and Deployment (in which the system is produced at a low-rate to allow for initial operational test and evaluation, creation of a production base, efficient ramp-up of production to full-rate, and deployment). Within the Production and Deployment phase is the Full-Rate Production Decision Review at which the results of operational test and evaluation and live-fire test are considered.

The purpose of this proposed legislation is to make changes in current statutes, which was based on the old milestone 0/I/II/III model, so that they correspond to similar events based on the new milestone A/B/C model. There is no intent to diminish congressional oversight or to change the content or amount of reporting requirements to the Congress, although the timing of some reports will change.

Under the new milestone A/B/C model, program initiation begins later than under the old milestone 0/I/II/III model. The reason for this is that the new model anticipates more extensive technology development before committing to a new program using those technologies, while the old model completed technology development after program initiation. Approval to begin analysis of alternatives that previously occurred at Milestone 0 (that now corresponds to Milestone A) will continue to be done in Concept and Technology Development. Work that was previously done in Demonstration and Validation (or Program Development and Risk Reduction) is split around Milestone B with the technology development work being done in Concept and Technology Development (before Milestone B) and the system prototyping and engineering and manufacturing development being done in System Development and Demonstration (after Milestone B).

Requirements identified in law for Milestone I or prior to Demonstration and Validation phase, intended to apply to an initiated program, are changed to be required at Milestone B or prior to System Development and Demonstration. Likewise, requirements identified in law for Milestone II or prior to Engineering and Manufacturing Development, intended to apply to system engineering work, are changed to be required at Milestone B or prior to System

Development and Demonstration, both of which encompass this work effort. All requirements identified in the law for Milestone III or prior to production would be required at the full rate production decision.

Sections 2366, 2400, 2432 and 2434, are essentially unchanged in reporting requirements.

Section 2435 of Title 10 requires an acquisition program baseline be developed prior to entering work following each of the milestone I, II, and III decisions. In the case of the acquisition program baseline, a new baseline description will be generated at program initiation, and at each major transition point (from system development and demonstration to low-rate production, and from low-rate production to full-rate production). The first and second program baselines will be completed later than baselines generated under current statute. The first baseline will continue to describe the system concept at program initiation and will also serve to describe the program through engineering development. The second baseline will describe the system as engineered prior to beginning production. There will be no change in the description for the third baseline.

Section 8102(b) of Public Law 106-259 and Section 811(c) of Public Law 106-398 require Information Technology certification at each major decision point (i.e., milestone). These requirements have been translated from the milestones I/II/III of the old model to milestones A/B/C of the new model.

Section 702 conforms the nuclear aircraft carrier exclusion from the statute to actual practice by specifying that the exclusion from maintaining core logistics capabilities, with respect to nuclear aircraft carriers under section 2464 of title 10, United States Code, applies only to the nuclear refueling of an aircraft carrier. The term "core logistics capabilities" is used to define those maintenance and repair standards which should be continually met by the Armed Forces so that it will be able to maintain and repair, on its own, a variety of military equipment. These requirements are adhered to as an assurance that, in times of emergency, the military can meet mobilization, training and operation requirements without requiring outside (contractor) intervention or hindrance.

While the current law reads to exclude a nuclear aircraft carrier, in its entirety (including all maintenance processes), from a requirement to maintain a core logistics capability, this revision intends to apply this exclusion solely to the process of refueling. Nuclear aircraft carrier work, other than nuclear refueling, is currently -- and will continue to be -- a core logistics capability that is maintained in accordance with the provisions of 10 U.S.C. § 2464. Furthermore, every other type of naval surface combatant currently utilized is required to maintain core logistics capabilities. To completely exclude these carriers from the requirement to maintain these capabilities would be to set the carrier apart from other naval surface combatants, which was not the intention of the Navy in formulating its original legislation.

Therefore, this amendment is meant to both clarify the original intent of the drafters for

10 U.S.C. § 2464 and to discourage situations which could result in future problems, such as the privatization of unique carrier items which were not meant to be excluded from the requirement for maintaining core logistics capabilities.

Section 703. The Department is committed to fully utilizing its organic depots in order to maintain a core logistics capability. There are circumstances, however, when a depot is utilized to its maximum capability and, because of the limitations imposed by 10 U.S.C. 2466, the Department is prohibited from contracting out the work. The work must still be performed by in-house depots, resulting in delays and excess costs. This provision would expand the waiver authority, permitting the Secretaries to waive the limitation once a depot has achieved full utilization. This will result in savings to the customers and in more timely accomplishment of the work. In situations where multiple depots can perform the same type of maintenance activity, it may not be economical to transfer the work from a fully-utilized depot to one that is operating at less than maximum capacity but in a different geographic region. The Secretary may waive the limitations if he makes a determination that it would be uneconomical, due to reasons such as cost or logistical constraints, to transfer such workload.

Section 705 would clarify the intent of amendments to section 1724 of title 10, United States Code, that were made by Section 808 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001(Public Law 106-398; 114 Stat. 1654A-208). It would also establish a Contingency Contracting Force, and authorizes the Secretary of Defense to establish one or more developmental programs for contracting officers, employees and applicants for the GS-1102 series, and recruits and military personnel in similar occupational specialties.

Section 808 established strict minimum qualification requirements for contracting officers and civilian employees in GS-1102 positions. It also made these requirements applicable to military members in similar occupational specialties. Section 808 also amended the exception provision in section 1724 of title 10, United States Code, to except from the new requirements persons "for the purpose of qualifying to serve in a position in which the person is serving on September 30, 2000." The legislative history accompanying this change stated that the new requirements were intended to apply only to new entrants into the GS 1102 occupational series in the Department of Defense and to contracting officers with authority above the simplified acquisition threshold, but not to current employees. This proposal would make clear this intent by excluding from the new requirements military and civilian personnel who were serving, or had served, as contracting officers, employees in the GS-1102 series, or military personnel in similar occupational specialties on or before September 30, 2000. This proposal would also reinstate the qualifications requirements that were previously contained in section 1724 for current employees that are excluded from the new qualifications requirements.

This proposal would also provide the Secretary with flexibility to establish one or more developmental programs, which would educate people to meet the statutory minimum qualification requirements of a degree and 24 credit hours in business. Their purpose would be to enable personnel to obtain the education necessary to meet the performance requirements of

the future acquisition workforce. A significant number of the Department's current, seasoned acquisition workforce personnel will be eligible to retire within five years. This makes it imperative that the Department have access to the maximum number of superior applicants. We anticipate that the Office of the Secretary of Defense would establish one or more programs in which candidates that meet some, but not all, of the minimum requirements could be educated to meet the remaining requirements within a specified period of time. For example, a candidate may have a four-year degree, but not the twenty-four credit hours in business-related courses. Another candidate may be close to a degree, including 24 credit hours in business. Each would be provided a specified period of time (in no case more than three years) to meet all of the statutory requirements. We would anticipate that any person who failed to meet all of the statutory requirements within the time specified would be subject to separation from federal service. This flexibility will give the Department the necessary mechanisms for accessing the greatest number of superior applicants, while retaining its goal of maintaining a high-quality, professional contracting workforce.

This proposal would also addresses the need to recognize a contracting force whose mission is to deploy in support of contingency operations and other Department of Defense operations. This force, which consists primarily of enlisted personnel, but which includes both military officers and civilian employees, meets a unique need within the Department and has unique training and qualification requirements.

This proposal would maintain the requirement for 24 semesters hours of business–related course work or the equivalent and give the Secretary flexibility to establish other minimum requirements to meet the unique needs of persons performing contracting in support of contingency and other Department operations.

Section 706. The current language in section 1734(a) of title 10, United States Code, applies to the tenure requirement of over 13,500 critical acquisition positions (caps). This proposal would retain the qualifications to occupy a CAP. The proposed change would require tenure only for personnel in those critical acquisition positions where continuity is especially important to the success of DoD's acquisition programs. Ensuring the tenure of these individuals assigned to program offices and the associated system acquisition functions like systems engineering, logistics, contracting, etc., therein provides the stability originally sought by section 1734. This change would allow more flexibility to meet organizational mission priorities; enhance career development programs for those holding the remaining critical acquisition positions who perform either functions outside of a program office or functions not related to systems acquisitions (such as procuring spare parts or policy formulation); and would ensure DoD develops the best-qualified individuals for CAPS in program offices and systems acquisition functions.

The current section 1734 undertakes to improve the quality and professionalism of the DoD acquisition workforce in part through a career development program for acquisition professionals. This proposal would retain that intent, while emphasizing the importance of

specific job experience and program continuity, responsibility, and accountability for acquisition personnel working in program offices or supporting system acquisition programs who are performing critical acquisition functions. This proposal also would expand career-broadening opportunities for personnel in other CAPS and would result in a reduction of waiver reporting requirements. The proposal balances the needs for program continuity, responsibility, accountability, and career development, while eliminating an unnecessary administrative burden, increasing productivity, and allowing the workforce to be responsive to changing organizational needs.

Section 710 would amend section 2855 of title 10, United States Code, to repeal a provision of law that prevents the Department of Defense (DOD) from achieving its goal of 40 percent of the dollar value of architectural & engineering (A&E) service contracts awarded to small businesses. This goal was established by section 712(a) the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 Note).

The Small Business Competitiveness Demonstration Program was established to see if small business concerns could maintain a reasonable percentage of dollars awarded in four Designated Industry Groups (digs) in an unrestricted competitive environment. A&E services is one of the DIGS. The Program establishes a small business participation goal of 40 percent of the dollars awarded in each of the aforementioned DIGS. The statute further states that if small business concerns fail to achieve the 40 percent goal during a twelve month period, the agency shall re-establish set-aside procedures to the extent necessary to achieve the 40 percent goal (Section 712(a) of Pub. L. 100-656).

Notwithstanding the authority of the Demonstration Program, section 2855(b) generally prohibits DOD from using small business set-aside procedures in the awarding of A&E service contracts when the estimated award price is greater than $85,000. Section 2855(b)(2) provides for revision of the $85,000 threshold if the Secretary of Defense determines that it is necessary to ensure that small business concerns receive a reasonable share of A&E contracts. DOD estimates that they would need to increase the threshold to over $1 million to accomplish this end. This would be so disproportionate to the $85,000 statutory threshold that it is more appropriate to seek a legislative change.

Further, DOD would need to continually readjust the threshold over time to reflect changes in small business participation. For example, in fiscal year 1999, DOD achieved a small business A&E participation rate of 16.4 percent, significantly below the 40 percent goal established by the Demonstration Program. Historically, approximately 30 percent of A&E awards were made to small businesses. Continual adjustments to the threshold to reflect such changes in small business participation would be impractical and confusing to both contracting officials and small businesses.

Repealing section 2855(b) will eliminate the $85,000 threshold. As a result, A&E contracts for military construction and military family housing projects could be set aside

exclusively for small businesses to achieve the small business competitiveness demonstration A&E goal mandated by 15 U.S.C. 644. Accordingly, this proposal would eliminate conflicting statutory provisions that currently are making it unnecessarily difficult for DOD to achieve the small business goal for A&E contracts.

Section 711. Section 2534 of title 10, United States Code provides that ball and roller bearings must be acquired from domestic sources even when such a restriction is not in the Government's interest. This amendment would provide an exception to this restriction if a determination is made that the purchase amount is $25,000 or less; the precision level of the ball or roller bearings is lower than Annual Bearing Engineering Committee (ABC) 5 or Roller Bearing Engineering Committee (RBC) 5, or their equivalent; at least two manufacturers in the national technology and industrial base capable of producing the required ball or roller bearings decline to respond to a request for quotation for the required items and the bearings are neither miniature or instrument ball bearings as defined in section 252.225.7016 of title 48 of the Code of Federal Regulations. This exception was developed in conjunction with the Department of Commerce, the agency with primary oversight for this area.

If enacted, this amendment would significantly reduce the burdensome administrative process Department of Defense purchasers must follow for small procurement that do not impact the industrial base. It would also provide needed flexibility for readiness concerns. The large procurement that will have an impact on the industrial base remain reserved for domestic suppliers.

Section 712 relates to congressional interest in the Air Force Contractor Operated Civil Engineering Supply Store (CACAOS) program. This proposal would remove constraints on the Air Force's ability to combine CACAOS with A-76 cost comparisons.

FY 98 & 97 Defense Authorization Acts, (Committee Reports 105 H Rpt. 132, 104 H. Rpt. 563)

In the Committee Report to the 1998 Defense Authorization Act, the House Committee on National Security specifically directed the Secretary of the Air Force not to combine CACAOS functions with other service functions when considering multi-function service contracts until a thorough analysis is conducted. Such analysis would include an economic analysis that would assess the merits of combining these services to increase efficiencies at Air Force installations. The committee also directed the Secretary of the Air Force not to change the current operation of any CACAOS, or to permit any combinations of supply and services functions in upcoming procurement, that would violate or circumvent the tenets of any current CACAOS contractual agreement. The Committee had similar language in its report on the 1997 Defense Authorization Act (and also directed the Secretary of the Army and the Secretary of the Navy to consider the application of the CACAOS program as a means to further reduce the cost of essentially non-governmental functions).

FY 99 Defense Authorization Act

Congressional concerns over CACAOS made its way into section 345 of Public Law 105-261, which, in addition to extolling the virtues of CACAOS, established two requirements if the Air Force wishes to combine a CACAOS with an A-76 study. First, the Secretary of Defense has to notify Congress of the proposed combined competition or contract, the agency has to explain why a combined competition or contract is the best method by which to achieve cost savings and efficiencies to the Government. The Act also established a mandatory GAO Review of the Secretary of Defense's explanation of the projected cost savings and efficiencies. The Comptroller General reviews the report and submits to Congress a briefing regarding whether the cost savings and efficiencies identified in the report are achievable.

The CACAOS law was based upon the assumption that the government would be running an inefficient supply operation for materials to be used in Government operations. The environment today is entirely different. Due to A-76 emphasis, Civil Engineering (CE) is being competitively source; hardware super stores and the International Merchant Purchase Authorization Card (IMPACT) make it unnecessary to maintain supply inventories; and greater competition is obtained when the supply function is included in the CE effort. CACAOS was designed to replace inefficient government management of commercial supply inventories. As we contract out CE and other base support functions, the users of these supplies will be contractors instead of government organizations. The Department will end up creating situations where the CE contractor, or the Most Efficient Organization (MFO), will be required to obtain supplies from the CACAOS contractor in order to do their work. These common commercial items would become Government Furnished Property (HFP) under the contract and the CE contractor cannot be held fully responsible for all aspects of project completion. If CACAOS fails to provide suitable materials on schedule, the CE contractor could be entitled to an equitable adjustment for late or defective HFP.

As a general rule, the Department should only provide HFP when the government owns or has available unique or specialized materials that the contractor would not be able to obtain. CACAOS materials are common commercial items readily available through multiple sources. The requirement to provide these materials should be made a part of the CE contract to keep the government out of the middle of two separate contracts and avert the transfer of performance risk to the government. Also, with the advent of today's hardware super stores (Home Depot, HQ, etc.) with their large inventories and low prices, it doesn't make sense to establish a CACAOS-style operation. With the speed and convenience of the IMPACT, even the MFO would not choose to establish a large supply infrastructure for the common commercial items.

Section 345(b)(6) states that "Ninety-five percent of the cost savings realized through the use of contractor-operated civil engineering supply stores is due to savings in the actual cost of procuring supplies." This statement is no longer accurate and seems to apply to Form 9 processing costs, not IMPACT card costs.

Section 713. The National Defense Authorization Act for Fiscal Year 1996, included the Federal Acquisition Reform Act of 1996 (FAR) and the Information Technology Management

Reform Act of 1996 (ITMRA). FARA and ITMRA were subsequently renamed the Clinger-Cohen Act of 1996. This proposal would modify section 4202 of the Clinger-Cohen Act to extend the test program for certain commercial items.

Section 2304(g) of title 10, United States Code, and sections 253(g) and 427 of title 41, United States Code, permit the use of special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold (SAT). Section 4202 of the Clinger-Cohen Act, Application of Simplified Procedures to Certain Commercial Items, extended the authority to use special simplified procedures to purchases for amounts greater than the SAT but not greater than $5 million if the contracting officer reasonably expects, based on the nature of the supplies or services, and on market research, that offers will include only commercial items. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administration costs for both Government and industry.

The test program was enacted into law on February 10, 1996. Final changes to the Federal Acquisition Regulation (FAR) to implement the test program were issued on the statutory deadline of January 1, 1997. The due date for the Comptroller General report does not provide sufficient time to process a legislative proposal that would prevent the test program from expiring once the Comptroller General has submitted the report. This proposal would extend the test program authority to January 1, 2003, to provide sufficient time to assess this potentially valuable acquisition reform authority based on the GAO's findings and, if warranted, seek to make this authority permanent.

Section 714 eliminates the prohibition on using funds to retire or dismantle Peacekeeper intercontinental ballistic missiles below certain levels. This provision is in specific support of the amended budget and will result in considerable savings.

Section 715. The proposed change would provide the Services the flexibility to proceed with construction contracts without disruption or delay by excluding the cost associated with unforeseen environmental hazard remediation from the limitation on cost increases. Unforeseen environmental hazard remediation refers to asbestos removal, radon abatement, lead-based paint removal or abatement, and any other legislated environmental hazard remediation that could not be reasonably anticipated at the time of budget submission.

Currently, section 2853 of title 10, United States Code only excludes the settlement of a contractor claim from the limitation on cost increases. The Senate Appropriations Committee Report (106-290) which accompanied the Military Construction Appropriation Bill for Fiscal Year 2001 (S. 2521) allows the Services to exclude unforeseen environmental remediation costs from the application of reprogramming criteria for military construction and family housing construction projects. However, this report language presents a conflict with the unqualified

language of the statute. A reprogramming action is required when the cost increase for a military construction or military family housing project will exceed 25 percent of the amount appropriated for the project or 200 percent of the minor construction project ceiling specified in Section 2805 (a)(1), Title 10, United States Code, whichever is less. A reprogramming action refers to the requirement to provide an advance congressional report and seek congressional approval before proceeding with the work.

Section 716. The revised language raises the threshold on unspecified minor construction projects performed with operations and maintenance funding. Thresholds are increased to $750,000 for general projects (from $500,000) and to $1,500,000 for projects involving life safety issues (from $1,000,000). The O&M unspecified minor construction thresholds were last raised in 1997.

The current thresholds limit the Services' ability to complete projects in areas with high costs of construction, such as overseas and in Alaska and Hawaii. The reality is $500,000 does not buy much construction, even in "normal" cost areas, at a time when the average regular military construction (MilCon) project costs $12 million. On these small construction projects, labor costs cut heavily into the amount of tangible "brick and mortar" which any project must deliver to make a facility usable to its customer. Without this relief, there may be a two or three year delay in completing needed small construction projects if MilCon appropriations must be used, as unspecified minor construction funds within this appropriation are very limited and regular MilCon projects must be individually authorized and appropriated in advance.

Section 717. The proposed legislation seeks authority for Federal tenants to obtain facility services and common area maintenance directly from the local redevelopment authority (LRA) or the LRA's assignee as part of the leaseback arrangement rather than procure such services competitively in compliance with Federal procurement laws and regulations. This authority to pay the LRA or LRA's assignee for such services under this authority would be allowed only when the Federal tenant leases a substantial portion of the installation; only so long as the facility services or the specific type of common area maintenance are not of the type that a state or local government is obligated by state law to provide to all landowners in its jurisdiction for no individual cost; and only when the rate charged to the Federal tenant is no higher than that charged to non-Federal entities. The proposed legislation also expands the availability of using leaseback authority for property on bases approved for closure in BRAC 1988.

A leaseback is when the Department of Defense transfers nonsurplus base closure (BRAC) property by deed or through a lease in furtherance of conveyance to an LRA. The transfer requires the LRA to lease the property back to the Federal Department or Agency (Federal tenant) for no rent to satisfy a Federal need for the property.

Current leaseback legislation does not exempt Federal tenants from Federal procurement laws and regulations when they attempt to obtain facility services and common area maintenance, such as janitorial, grounds keeping, utilities, capital maintenance, and other services that are

normally provided by a landlord. Compliance with the procurement laws and regulations may result in a third party contractor providing such services for facilities leased from the LRA and for common areas shared by other tenants of the LRA. In many cases, this may conflict with the LRA's or its assignee's arrangements for providing such services to the various tenants on property owned or held by the LRA. The LRA usually prefers that its contractor perform such services on behalf of the LRA's tenants. LRAs have been hesitant in using leaseback arrangements due to the Federal tenants' inability to obtain these services directly from the LRAs or share the common area maintenance costs with other tenants of the LRAs.

Under current law, only property at BRAC '91, '93, and '95 closure installations can be transferred under the leaseback authority. To help minimize small Federal land holdings within larger parcels transferred to the LRA on BRAC '88 bases, the leaseback authority should be expanded to apply to BRAC '88 installations.

Section 718. The proposed change would allow the Military Departments to reimburse the Military Personnel appropriations from Military Construction, Family housing appropriations during the first year of execution of a military family housing privatization project. Members occupying privatized housing are entitled to, and receive, housing allowances. Since housing allowances are paid from the Military Personnel appropriations, the Military Department needs to reimburse these appropriations for the increased housing allowance bill caused by privatization from the funds previously programmed and budgeted in the Military Construction, Family Housing appropriations. Providing the flexibility to reimburse these funds at the time of execution will enable the Services to accurately determine how much should be reimbursed to meet housing allowance requirements.

It is extremely difficult to predict when the project will be awarded and therefore to program the correct amount of funds at the correct time. Transferring funds into military personnel appropriations early has proven to be premature and led to shortfalls in the Family Housing appropriation. For example, the Army estimates that Family Housing, Army will lose approximately $100 million from FY98 through FY01 due to the premature transfer of funds to Military Pay and subsequent slippage in privatization awards. Such losses cannot be reversed since there is no mechanism to reprogram from Military Personnel appropriations back into Family Housing following the passage of the respective appropriation bills into law. This proposal precludes unnecessary shortfalls in the family housing appropriations created when premature transfers leave the Military Departments without the resources to continue funding installations experiencing privatization slippage.

Section 719. The report requires an extensive manpower effort. The Department's budget submission, budget testimony and responses to other report and statutory requirements, etc., provide Congress with much of the same information as required in this report. The Services can provide specific data more efficiently on an as-needed basis.

In addition, this report was recommended for termination in 1995 based on survey data

collected in response to the Paperwork Reduction Act, with estimated cost savings of at least $50,000 per year.

Section 801 amends section 5038(a) of title 10, United States Code, which requires that there be a Director for Expeditionary Warfare within the Office of the Deputy Chief of Naval Operations for Resources, Warfare Requirements and Assessments.

A recent organizational alignment split the functions of the Deputy Chief of Naval Operations for Resources, Warfare Requirements, and Assessments into two distinct Deputy Chiefs of Naval Operations. In this alignment, the Director for Expeditionary Warfare maintains the same role and responsibilities but now falls under the Deputy Chief of Naval Operations for Warfare Requirements and Programs.

This proposal reflects that organizational change.

Section 802 amends chapter 6 of title 10, United States Code, by adding a new section 169 to consolidate the various existing legal authorities governing the DoD Regional Centers to ensure each of the Regional Centers can operate under the same set of authorities, which will ensure they can operate effectively.

The Department of Defense Regional Centers for Security Studies are an important national security initiative developed by Secretary Cohen and his predecessor, William Perry. These Centers, which serve as essential institutions for bilateral and multilateral communication and military and civilian exchanges, now exist for each major region — Europe, Asia, Latin America, Africa and most recently for the Middle East.

The Regional Centers are very important tools for achieving U.S. foreign and security policy objectives, both for the Secretary of Defense and for the regional CINCs. The Centers allow the Secretary and the CINCs to reach out actively and comprehensively to militaries and defense establishments around the world to lower regional tensions, strengthen civil-military relations in developing nations and address critical regional challenges. The Department has had extremely good results with the Centers in each region. For example, more than twenty Marshall Center graduates are now ambassadors or defense attaches for their countries and another twenty serve as service chiefs or in other similarly influential positions.

Currently the five Regional Centers operate under a patchwork of existing legal authorities. As each new center was established, new legislation was passed to govern each center. As a result, no single center has the same set of legal rules guiding how it can operate. The patchwork of authorities hinders effective management and oversight of the Centers, and provides broad authority for some Centers but only limited authority for other Centers.

A central component of the department's proposal would ensure that all DoD Regional Centers are able to waive reimbursement of the costs of conferences, seminars courses of

instruction and other activities associated with the Centers. The proposal also would ensure that all Centers could accept foreign and domestic gifts, hire faculty and staff, including directors and deputy directors, and invite a range of participants to the Centers. Without these authorities, the Regional Centers will not be able to operate at maximum effectiveness.

Both the Marshall Center and the Asia-Pacific Center for Security Studies, the oldest of the five Centers, have specific authority to waive reimbursement of costs associated with participating in center activities. The Center for Hemispheric Defense Studies also has authority to waive costs, but its authority falls under a different provision of title 10, United States Code, than the similar authorities for the Marshall Center and the Asia-Pacific Center. The Africa Center for Strategic Studies and the Near East-South Asia Center can waive some costs under section 1051 of title 10, but this authority is more limited than the authorities under which the other three Centers operate.

The ability to waive reimbursement of certain costs associated with participating in center activities is absolutely critical to the effectiveness of the Regional Centers as engagement tools for both the Secretary of Defense and the regional CINCs. Many participants in center activities are from developing countries that cannot afford to send personnel to institutions like the regional Centers. Without the authority to waive reimbursement of certain costs, most participants from developing countries would not attend the Centers. In contrast, consistent with existing authorities, most participants from developed nations, whose contributions provide balance, shared regional leadership and non-U.S. perspectives, pay for their own travel, lodging, meals and expenses in connection with Center courses.

Section 802 would provide the authority to waive reimbursement of certain costs associated with the Centers to all of the Regional Centers by repealing the diverse set of existing authorities concerning cost issues and instead providing a single legal provision concerning cost waivers for all of the Centers.

In addition to providing a single authority for the Centers to waive reimbursement of costs, the proposal also ensures that other existing authorities governing the Regional Centers apply to all of the Centers. By ensuring that all of the Centers can accept foreign and domestic gifts, hire faculty and staff, and invite participants from defense-related government agencies and non-governmental organizations, the proposal will improve the Centers in several ways. First, by gaining the authority to accept gifts, all Centers will be able to cover a greater percentage of their operating costs using funds from outside the Department budget. Allowing both public and private foreign institutions to contribute to regional Centers operations also will enhance the involvement of those donor countries in the Centers and strengthen their commitment to the missions of the Centers. In terms of participation, the Centers in many cases are unique in their ability to bring together participants from across the spectrum of the national security establishment in their respective countries. Broadening this pool to include participants from non-governmental organizations and legislative institutions will further strengthen the quality of discussion at the Centers and help establish additional important professional relationships

among participants from the various regions.

Finally, enactment of section 802 would confirm the authority of the Secretary of Defense to manage all the Centers effectively. The combination of diverse legal authorities and unique organizational structures has made effective management and oversight of the Centers quite challenging. To address this management challenge, the Department created a Management Review Board last year (2000). The MRB is comprised of the Assistant Secretary of Defense (International Security Affairs) and the Director of the Joint Staff, or their designees, and members from the Comptroller, Program Analysis and Evaluation, General Counsel, Joint Staff and the Services. The DoD proposal to consolidate existing legal authorities concerning the Regional Centers and apply them to all of the Centers will further improve the ability of the MRB to ensure that the Regional Centers are thoroughly incorporated into the Department's broader engagement strategy and funded appropriately.

This proposal provides no new spending authority. No additional resources are needed to implement these changes and as the existing departmental management structure matures, the Department expects to realize greater efficiencies in the management of the Regional Centers.

Section 803 would amend all references to the former "Military Airlift Command" contained in title 10 and title 37 to refer to the command by its current designation as the "Air Mobility Command." By Special Order AMC GA-1, 1 June 1992, Air Mobility Command replaced the Military Airlift Command as a United States Air Force Major Command. This change was previously recognized to a certain extent in title 10, United States Code 130a (Management headquarters and headquarters support activities personnel; limitation), subparagraph (d) (Limitation on Management Headquarters and Headquarters Support Personnel Assigned to United States Transportation Command), which specifically identified Air Mobility Command as a component command of United States Transportation Command. That provision in section 130a was deleted by section 921 of Public Law 106-65, 5 October 1999. As Military Airlift Command no longer exists and Air Mobility Command is not referenced in any statute, updating the listed provisions of the United States Code is appropriate.

Section 804 would amend section 1606 of title 10, United States Code, to increase the number of Defense Intelligence Senior Executive Service (DISES) positions authorized within the Defense Civilian Intelligence Personnel System (DCIPS) from 517 to 544. Enactment of the proposed amendment would enable the Secretary of Defense to allocate the 27 additional DISES positions to the National Imagery and Mapping Agency (NIMA), as the Director of Central Intelligence (DCI) simultaneously cuts 27 Senior Intelligence Service (SIS) positions from the Central Intelligence Agency (CIA).

When section 1606 was inserted into title 10, United States Code, by section 1632(b) of the Department of Defense Intelligence Personnel Policy Act of 1996 (Public Law 104-201; 110 Stat. 2745, 2747) the number of DISES positions was set at 492. This ceiling, however, was raised to 517 positions by section 1142 of the Floyd D. Spence National Defense Authorization

Act for Fiscal Year 2001 (Public Law 106-398; 114 Stat. 1654).

The conference report accompanying the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, however, states that these "25 additional positions are authorized for the entire defense intelligence community and are not intended to be allocated to any single agency within the defense intelligence community." See H.R. REP. NO. 106-945 at 865 (2000). The report also directed "the Secretary of Defense to report to the Committees on Armed Services of the Senate and the House of Representatives, not later than March 15, 2001, on how the additional senior executive service positions are allocated within the defense intelligence community." H.R. REP. NO. 106-945 at 865 (2000).

Based on this guidance, the 25 new DISES positions are being reviewed for use and distribution within the DCIPS community as a whole. This expansion of DISES positions within the general DCIPS community, however, does not address a pressing need to allocate an additional 27 DISES positions to NIMA as part of a Congressionally mandated administrative transfer intelligence positions from CIA to NIMA.

Since DCIPS and NIMA were created in 1996, NIMA has been staffed at senior levels by DISES personnel, Defense Intelligence Senior Level (DISL) personnel, and SIS personnel. It should be noted in this regard, however, that when the initial DCIPS cap was set at 492, the 27 positions that CIA filled with SIS personnel on temporary detail were not included in the 492 figure.

One of the complex aspects of the establishment of NIMA, was the commingling of intelligence officials from the Department and other federal agencies that was needed to staff the new agency. But, in establishing NIMA the Congress made it clear that this unique staffing arraignment would be temporary. In section 1113 of the National Imagery and Mapping Agency Act of 1996 (Public Law 104-201, 110 Stat. 2675, 2684) the Congress expressly provided that: "Not earlier than two years after the effective date of this subtitle, the Secretary of Defense and the Director of Central Intelligence shall determine which, if any, positions and personnel of the Central Intelligence Agency are to be transferred to the National Imagery and Mapping Agency. The positions to be transferred, and the employees serving in such positions, shall be transferred to the National Imagery and Mapping Agency under the terms and conditions prescribed by the Secretary of Defense and the Director of Central Intelligence."

In keeping with this congressional mandate, the Secretary and the DCI signed an Memorandum of Agreement (MOA) in February 2000 that set the total number of positions to be transferred from CIA to NIMA. Under the agreement, CIA personnel that are currently temporarily detailed to NIMA would be permanently detailed to NIMA; These employees, however, would remain as CIA employees. Budget agreements implementing the MOA also provide that the previously discussed 27 SIS positions would be included in the total number of positions to be transferred from CIA to NIMA. These agreements also provide that in conjunction with the transfer of these 27 senior level positions to NIMA, CIA would cut 27 SIS

positions. Consequently, the enactment of the proposed amendment would have no budgetary impact, because the increase of the DISES ceiling is offset by the corresponding reduction of SIS positions at CIA.

Section 811 would amend section 10541 of title 10 concerning the annual report to Congress on National Guard and Reserve Component equipment. During the preparation of the budget year 2000 National Guard and Reserve Component Equipment Report, it became clear that changes were needed to both the report and process in order to make the report more relevant to Congress. As a result, a joint working group was commissioned from the Office of the Assistant Secretary of Defense for Reserve Affairs to analyze the report and process. Key changes were coordinated with all Services and are included in the legislative proposal above.

Specifically, subsection (a) would adjust the date of the report from February 15th to March 1st of each year. This would allow time to incorporate the President's budget projections into the report, thus making the report a more meaningful and up-to-date report during the Congressional legislative process. It would also officially require data from the U.S. Coast Guard Reserve, which has been provided in past years but is not required by law.

Subsection (b) would eliminate the requirement for data that is no longer viable, such as the full wartime requirement of equipment over successive 30-day periods and non-deployable substitute equipment. It would also expand the requirement for the current status of equipment compatibility to all Reserve Components, instead of just for the Army. Overall, the revised subsection (b) is written to expand the scope and remove the restrictive nature of the language. This would provide the Reserve Components the ability to present a clearer and more complete picture of the Reserve Component equipment needs.

Section 812 would repeal subsection 153(b) of title 10 and amend section 118(e) to consolidate redundant reporting requirements related to the assessment of service roles and missions. Subsection 153(b) requires the Chairman to submit to the Secretary of Defense, a review of the assignment of roles and missions to the armed forces. The review must address changes in the nature of threats faced by the United States, unnecessary duplication of effort among the armed forces, and changes in technology that can be applied effectively to warfare. The report must be prepared once every three years, or upon the request of the President or the Secretary.

Section 118 of title 10 established a permanent requirement for the Secretary to conduct a Quadrennial Defense Review (QDR) in conjunction with the Chairman. The Department of Defense has designed the QDR to be a fundamental and comprehensive examination of America's defense needs from 1997-2015; to include assessments of potential threats, strategy, force structure, readiness posture, military modernization programs, defense infrastructure, and other elements of the defense program. Amending subsection 118(e) would explicitly require the

Chairman's review of the QDR to include an assessment of service roles and missions and recommendations for change that would maximize force efficiency and resources.

Simultaneously preparing the QDR and the roles and missions study requires the concentrated efforts of many Joint Staff action officers for a period of more than eighteen months. Eliminating this duplication of effort, however, will significantly enhance the Joint Staff's ability to meet an expanding list of congressionally or Department of Defense mandated reporting requirements on a wide variety of sensitive defense topics. These topics include joint experimentation, training, and integration of the armed forces, examination of new force structures, operational concepts, and joint doctrine; global information operations; and homeland defense, particularly with regard to managing the consequences of the use of weapons of mass destruction within the United States, its territories and possessions.

Section 813 would change the due date for the Commercial Activities Report to Congress, required by section 12461(g), title 10, United States Code, from February 1st of each fiscal year to June 30th of each fiscal year. The Commercial Activities Report is developed using the same in-house inventory database as the Department's Federal Activities Inventory Reform Act (FAIR Act) submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each Fiscal Year. That inventory is subject to challenges by interested parties. In order to ensure that the Commercial Activities Report is as accurate as possible and consistent with other reports submitted to Congress covering the same Fiscal Year, it is necessary to consider the FAIR inventory challenges when compiling it. This process is normally not complete until April or May of each year. In past years, the Department has submitted an interim response to Congress regarding the Commercial Activities Report indicating that the report would not be submitted until June.

Section 821 would amend section 2572 of title10. Section 2572(a) authorizes the Secretary of a military department to lend or give certain types of property described in section 2572(c) that are not needed by the department to specified entities, such as municipal corporations, museums, and recognized war veterans' associations. Section 2572(b)authorizes the Secretary of a military department to exchange the items described in section 2572(c) with any individual, organization, institution, agency, or nation if the exchange will directly benefit the historical collection of the armed forces.

Section 821 would expand the categories of property that the military departments may exchange under section 2572(b). Currently, the military departments may exchange books, manuscripts, drawings, plans, models, works of art, historical artifacts and obsolete or condemned combat materiel for similar items. Property may also be exchanged for conservation supplies, equipment, facilities, or systems; search, salvage, and transportation services; restoration, conservation, and preservation systems; and educational programs. The amendment would expand the current authority to exchange "condemned or obsolete combat material" and authorize the military departments to exchange any "obsolete or surplus material" of a military department for "similar items" and for the enumerated services if the items or services will

directly benefit the historical collection of the armed forces.

Section 822 would amend section 2640 of title 10, United States Code. This section requires the Department of Defense to meet safety standards established by the Secretary of Transportation under section 44701 of title 49, United States Code and requires air carriers to allow the Department of Defense to perform technical safety evaluation inspections of a representative number of their aircraft. This amendment would require the same safety standards be applied to foreign air carriers as to the domestic air carriers in an effort to provide better protection to members of the armed forces.

Section 822(2) would require "check-rides" to be accomplished on carriers. As DOD personnel conducting the inspection are usually not qualified pilots in all the various types of aircraft they are required to inspect, the term “cockpit safety observations” more accurately describe the process involved.

Section 822(3) of the proposal would designate authority within the Department of Defense to delegate a representative to make determinations to leave unsafe aircraft. This change is a technical change to update the command name from “Military Airlift Command” to its successor "Air Mobility Command".

Section 822(4) of the proposal would authorize the Secretary of Defense to waive the requirements of the statute in an emergency, based on the recommendation of the Commercial Airlift Review Board. As paragraph (1) would extend the inspection requirements to foreign air carriers, there may be instances that do not constitute an emergency but because of operational necessity a waiver may be appropriate. An example would be where there is only one carrier available in a foreign country but the host government will not allow an inspection on sovereignty principals. If all other information available to the Commercial Airlift Review Board indicate a safe air carrier, a waiver may be appropriate.

Section 822(5) would amend subsection (j) of section 2640 title 10 United States Code that states certain terms listed therein have the same meanings as given by section 40102(a) of title 49 of the United States Code. “Air Carrier” is listed in subsection (j) and is defined in title 49 as a “citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.” Deleting “air carrier” from the definition section in addition to the changed in paragraph (1) will allow the safety standards to be applied equally to foreign and domestic carriers.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

Section 901 would amend title 10 by adding a new section 2350l to authorize the Secretary of Defense, with the concurrence of the Secretary of State, to enter agreements, at reasonable cost, with eligible countries and international organizations, for the reciprocal use of

ranges and other facilities where testing may be conducted. As military equipment becomes more complex, so does the need for more advanced, complex, and costly test and evaluation capabilities. In this environment, it is increasingly difficult and expensive for one nation to fulfill all of its legitimate research, development, test and evaluation (RDT&E) requirements at ranges and facilities under its control.

One way to reduce the cost of developing the next generation of U.S. weapons, and those of our friends and allies, is to take full advantage of the unique test capabilities available here and abroad. For example, the United Kingdom has a unique Artillery Recovery Range in Shoeburyness where we may recover rounds undamaged after firing for engineering evaluation. This uniqueness of the range comes from its geography. Shoeburyness lies on a gently sloping shoreline that extends for several miles before terminating in a large tidal basin from which undamaged spent rounds may be recovered with ease. No other facility in the world provides this capability. Similarly, the United States has unique test capabilities not available in other countries. The 8+ Mach test track at Holloman Air Force Base in N.M. is unequaled anywhere in the world. Unfortunately, under current authority, it is often cost-prohibitive for the United States and the United Kingdom, for example, to reach an agreement that would allow each country to use the other's facilities to develop superior weapons to meet 21st Century challenges.

To obtain access to foreign ranges and facilities at reasonable rates, the Department needs new authority to provide eligible countries or international organizations reciprocal access, at reasonable rates, to U. S. facilities; and the enactment of this proposal would provide that new authority.

As the Secretary of Defense observed in a memorandum dated March 23, 1997: "International Armaments Cooperation is a key component of the Department of Defense Bridge to the 21st Century. We already do a good job of international cooperation at the technology end of the spectrum; we need to extend this track record of success across the remainder of the spectrum."

Reciprocal use of test and evaluation ranges and facilities is the next step in this process, and one that will expand long-standing international partnerships the United States has enjoyed in the equipment acquisition process. In this regard, the Department notes that the Congress "has supported a number of [Department of Defense] initiatives to help offset the growing burden of [RDT&E] infrastructure support cost." *See* S. REP. NO. 104-12, at 176-77 (1995). It is also worthy of note that the Congress has encouraged the Department to engage in such cooperative ventures by stating in the same report: "our allies are showing a much greater interest in using U.S. test ranges and facilities because of encroachment problems overseas, and the Department should be more aggressive in encouraging and facilitating such request." *See* S. REP. NO. 104-12, at 177 (1995).

Enactment of the authority granted in subsection (a) of this proposal would also enhance interoperability at all weapon system and force levels; and interoperability is the cornerstone of

Joint Vision 2020. It is axiomatic, that interoperability between U.S. forces, and coalition or allied forces, enhances the effectiveness of the combined force to act in concert to deter or defeat aggression. Accordingly, continued success in regional conflicts depends on continuous improvement of U.S. interoperability with our friends and allies around the globe.

No additional funds are required to implement the authority granted in subsection (a) of this proposal. Testing services will be paid for by customers according to the principles and provisions prescribed in the proposal and negotiated in a Memorandum of Understanding. Pricing principles call for reasonable and equitable charges between partner countries. Matters concerning security, liability and similar issues will be fully addressed in Memorandums of Understanding (or other formal agreements) entered based on this proposal.

Section 901(c) would amend Section 2681 of title 10, United States Code, "Use of Test and Evaluation Installations by Commercial Entities." Section 2681 was enacted in 1994 to provide greater access for commercial users to the Major Range and Test Facility Base Installations. The section requires a commercial entity to reimburse the Department of Defense for all direct costs associated with the test and evaluation activities. In addition, commercial entities can be charged indirect costs related to the use of the installation, as deemed appropriate.

The Major Range and Test Facility Base (MRTFB) is a set of installations and organizations operated by the Military Departments principally to provide T&E support to defense acquisition programs. Historically, defense acquisition programs used the MRTFB for testing, with the Department of Defense component serving as the actual customer. The acquisition program approved the work statement and provided funding through a funding document issued directly to the test organization. In response to acquisition reform initiatives, most program managers now leave the decision of where to perform (developmental) testing to the contractor. Nonetheless, many contractors choose to test at MRTFB activities because of the facilities and expertise available. In other cases, technical requirements drive them to the MRTFB as the only source of adequate T&E support. Under section 2681, defense contractors are charged as commercial entities, even though the use of the range is in direct support of the Department of Defense component.

In the past, MRTFB Installations did not charge defense contractors a fully burdened rate to use their facilities when conducting test in association with a defense contract. A Service audit finding opined that the MRTFB installations had misapplied the law and determined defense contractors to be commercial users, thereby requiring them to be charged the fully burdened rate. However, weapons programs have prepared their budgets under the assumption that the fully burden rate would not be charged to the defense contractors acting on their program's behalf. The amendment proposed in subsection (c) of this proposal would make MRTFB test and evaluation services available to defense contractors under the same access and user charge policies as applied to the sponsoring Department of Defense component. This would assure that the MRTFB is able to perform its fundamental role of support to defense acquisition programs under the same policies as existed prior to section 2681, while continuing to leave the

choice of "where to test" to the defense contractor. In addition, the amendment proposed in subsection (c) of this proposal would extend this concept to the contractors of other U.S. government agencies. If section 901(c) is not enacted, there may be a cost increase to specific research and development programs.

Section 902 would amend 10 U.S.C. §2350a to improve the Department's ability to enter into cooperative research and development projects with other countries. This amendment would incorporate references to the term: "Major non-NATO ally" to allow countries like Australia, south Korea or Japan to be recognized, not just as other friendly foreign countries, but as major allies.

Section 903 would amend chapter 53 of title 10, United States Code, to provide the Secretary of Department the authority to recognize superior noncombat achievements or performance by members of friendly foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.

Currently, the Department's authority to recognize superior achievements and performance by foreign nationals is limited to awarding military decorations to military attaches and other foreign nationals for individual acts of heroism, extraordinary achievement or meritorious achievement, when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign of the Armed Forces of the United States. See sections 1121, 3742, 3746, 3749, 6244-46, 8746, and 8749-50, of title 10, Untied States Code, and Executive Orders 11046 and 11448.

The vast majority of engagement programs conducted by the Department of Defense, in support of the national Security Strategy, however, do not involve diplomatic contacts, or heroic acts, but unit-level engagement and cooperation between U.S. servicemembers and foreign nationals, in a variety of training, exercise, and peacetime operational settings. In these instances, many of these expenses that would be authorized by this proposal are currently being paid out of the pockets of soldiers, sailors, airmen, Marines, and members of the Coast Guard.

One of many examples of how this gap in legislative authority adversely impacts on American servicemembers is the experience of the United States Army Special Forces Command (Airborne). Since the first Special Forces unit was activated on June 19, 1952, Special Forces personnel have routinely deployed overseas to: train U.S. allies to defend themselves and counter the threat of dangerous insurgents, in so doing, Special Forces personnel often serve as teachers and ambassadors. As a result, the Special Forces Command is often called upon by regional combatant commanders, American Ambassadors, and other agencies to participate in a wide variety of peacetime engagement events, because of its global reach, regional focus, cultural awareness, language skills and military expertise.

During Fiscal Year 2000, the command had 2,102 personnel deployed on 81 missions in 51 countries. The activities conducted during these deployments included peace operations in

the Balkans, humanitarian demining operations worldwide, deployments in support of the Department of State, African Crisis Response Initiative, joint and combined exercise training, counterdrug operations, and mobile training team deployments. In addition, elements of the command host annual marksmanship and other international competitions involving military skills.

During this period of time members of the Special Forces Command participated in 328 deployments that required the purchase or production of plaques, trophies, coins, certificates of appreciation or commendation and other suitable mementos for presentation to foreign nationals. These items were used to recognize achievements such as placing first, second or third in competitions, graduating at the top of formal training courses, and other acts meriting recognition by U.S. officials. Since the authority to present military awards for valor, heroism or meritorious service as outlined above generally does not apply to such expenses, the men and women of the command have a long tradition of paying such expenses out of their own pockets, or from funds received from private organizations such as the Special Forces Association.

Assuming that the expenditures for such items during the 328 deployments conducted by the Special Forces Command in fiscal year 2000, averaged $260.00 per deployment (the current "minimal value" threshold set by section 7342(a)(5) of title 5, United States Code), the men and women of that command would have spent $85,280.00 out of their own pockets, or obtained donations from private organizations such as the Special Forces Association, in order to carry out these missions.

Enactment of this proposal would enhance the execution of Department engagement programs, by providing another means of establishing goodwill today that will contribute to improved security relationships tomorrow. But most importantly, it would relieve servicemembers from the need to pay such expenses out of pocket, by authorizing commanders to pay for these expenses from the budgets allocated to them to conduct these critical missions.

Section 904 would give the Department of Defense (DoD) the personal service contract authority currently exercised by other agencies with overseas activities. It would allow DoD to hire the in-country support personnel necessary to carry out its national security mission, particularly in the newly independent states.

In those countries where the DoD does not have a Status of Forces Agreement or does not have a major military presence including a program for civilian personnel administration of local national employees, that service has traditionally been performed on a reimbursable basis by the Department of State (DOS). DOS has used its personal service contract authority to provide workers for DoD units such as Defense Attache Offices, Security Assistance Offices, and Military Liaison Teams, that are frequently co-located with the U.S. Embassy and may come under Chief of Mission authority. DoD does not have personal service contract authority and DOS counsel recently determined DOS is prohibited from using its personal service contract authority to provide workers for an agency that does not have such authority.

DOS has begun terminating personnel service contracts that support DoD requirements. DoD units have been faced with the need to either use a non-personal service contract or obtain Full-Time Equivalent (FTE) authority. Use of non-personal service contracts may be inappropriate for the type of work performed, cause security and access problems at the Embassy, and be in violation of local labor law. FTE has not been readily available to support time-limited programs such as the Partnership for Peace and Military Liaison Teams. FTE has been particularly difficult to obtain for overseas units that are under headquarters constraints such as for the OUSD (Policy) office that supports arms control delegations in Geneva.

Section 911 would amend section 1153 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (NDAA) to limits on the use of voluntary early retirement authority and voluntary separation incentive pay for fiscal years 2002 and 2003. Section 1153 authorized the Department to use Voluntary Separation Incentive Pay (VSIP) and Voluntary Early Retirement Authority (VERA) for workforce restructuring for three years. In the past, VERA and VSIP could only be used in conjunction with reduction in force. Under this new authority, it is no longer necessary to abolish a position in order to grant early retirement or pay the incentive. The vacant position may be refilled with an employee with skills critical to the Department. This is necessary to shape the Defense workforce of the future.

Section 1153 authorized these programs to be carried out for workforce restructuring in FY 2002 and FY 2003 “only to the extent provided in a law enacted by the One Hundred Seventh Congress.” This provision would satisfy that requirement.

Section 912 would amend section 1044a title 10 to clarify the status of civilian attorneys to act as notaries. Section 1044a(b)(2) authorizes "civilian attorneys serving as legal assistance officers" to perform notarial services. Civilian attorneys have no designation under Office of Personnel Management position descriptions as legal assistance "officers." Within Department of Defense documents, civilian attorneys providing legal assistance services are referred to as legal assistance attorneys. For this and other reasons related to the efficient management of legal assistance offices, subsection (b) would amend section 1044a(b)(2) to refer to legal assistance attorneys.

Section 912(b) would amend section 1044a(b)(4) of title 10 to expand a category of persons who may perform notarial acts under the section. Section 1044a(b)(4) authorizes members of the armed forces who are designated by regulation to perform notarial acts. As amended, subsection (b)(4) would authorize civilian employees of the armed forces to perform notarial acts if they are designated by regulations of the armed forces to have notarial powers. This would alleviate a particular problem overseas, where military notaries are not always available. The change would allow the Service Secretaries, and the Secretary of Transportation with respect to the Coast Guard, to extend notary authority to civilian nonlawyer assistants, *e.g.*, paralegals and legal assistance office in-take personnel.

Section 913 would amend section 2461 of title 10 concerning the conversion of

commercial or industrial type functions to contractor performance. Federal agencies may convert commercial activities to contract or interservice support agreement without cost comparison under Office of Management and Budget Circular A-76 (A-76) when all directly affected Federal employees serving on permanent appointments are reassigned to other comparable Federal positions for which they are qualified. This revision would make the statutory requirements inapplicable under these same circumstances.

The analysis requirements of section 2461 of title 10, United States Code, are met using the commercial activities study procedures of A-76 and the Revised Supplemental Handbook. Such studies typically take two to four years to reach an initial decision. When the result of the study is a conversion of a function to contract performance, affected Federal employees may be subject to reduction-in-force procedures. The proposed statutory revision would permit Department of Defense activities to convert a function to contract performance without incurring the potential length and cost of an A-76 study. This revision would not alter the requirements of section 2641 where an A-76 study is undertaken. It would not alter the rights of employees who are subject to an A-76 study.

Section 914 clarifies that former Defense Mapping Agency personnel transferred into the National Imagery and Mapping Agency pursuant to the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, retain third party appeal rights under chapter 75 for such time as they remain Department of Defense employees employed without a break in service in the National Imagery and Mapping Agency. The section also permits the employees so affected to waive the provisions of this section. However, by doing so, the employee forfeits his or her rights under this section. Personnel who have those rights and who are assigned or detailed by NIMA to positions of the CIA or other agencies would retain those rights vis-a-vis NIMA while assigned or detailed to those positions.

Section 915 would allow the Secretary of Defense to provide the Director, NIMA the authority to set up a critical skills undergraduate training program parallel to those authorized to NSA, DIA, CIA, and the military departments. These programs are intended to further the goal of enhanced recruitment of minorities for careers in the Intelligence and Defense Communities. Under these programs agencies recruit high school graduates who otherwise would not qualify for employment and then send them to obtain undergraduate degrees in critical skills areas such as computer science. These employees are required to commit to remaining in the Government for specified payback periods. No costs are anticipated in fiscal year 2002. Fiscal year 2003 costs are currently estimated at less than $1,000,000. This proposal imposes no costs on other organizations.

Section 916 would add a new section to title 10, United States Code, and would establish a three-year pilot program permitting payment of retraining expenses for DoD employees scheduled to be involuntarily separated from DoD due to reductions-in-force or transfers of function. In the National Defense Authorization Act for Fiscal Year 1995, a pilot program of this nature was established for employees affected by BRAC. (See Public Law 103-337, Section

348.)

The program, which may be created at the discretion of the Secretary of Defense, focuses on permitting a company to recoup the costs it incurs in training an employee for a job with that company. The purpose of this incentive is to encourage non-Federal employers to hire and retain individuals whose employment with DoD is terminated. To be eligible for the reimbursement, a company must have employed the former DoD employee for at least 12 months. In short, this proposal allows payment for training for a specific job; it is not designed towards generic, non-job specific training.

Expanded use of incentives such as contained in this proposal would provide DoD with an enhanced management tool to reduce adverse impacts on employees. Availability of this option would also reduce costs associated with VSIP payments and the placement of employees through the DoD Priority Placement Program.

Section 921 responds to section 1051 of the Strom Thurmond National Defense Authorization Act for Fiscal year 1999 (Public Law 105-261), which identified the need for improved procedures for demilitarizing excess and surplus defense property. The proposal would amend Title 10, United States Code, to permit the United States to recover Significant Military Equipment (SME) that has been released by the Government without proper demilitarization. In recent years, the possession of improperly demilitarized Department of Defense property by individuals and business entities has caused grave concern both in the media and in Congress and has been a topic of study for the Defense Science Board.

Questions on the amount of compensation due a possessor of these materials have arisen in those cases where confiscation has been permitted. This proposal, if enacted, would provide needed clarification on several issues. First, it would codify in law the type of material subject to recovery by specifically adopting the definition of SME as is contained in the Code of Federal Regulations. Second, it would permit a possessor to be compensated in an amount covering purchase cost, if any, and reasonable administrative costs, such as transportation and storage costs, assuming the possessor obtained the property through legitimate channels. Note that exceptions are provided for certain categories, including museums and the Civilian Marksmanship program.

Section 922 would revise section 2634 of title 10, and section 5727 of title 5, United States Code, by exempting motor vehicles shipped by members of the armed forces and federal employees from the provisions of the Anti Car Theft Act of 1992, as amended. The Anti Car Theft Act of 1992, (the "Act"), codified at Sections 1646b and 1646c of title 19, United States Code, requires customs officers to conduct random inspections of automobiles and shipping containers that may contain automobiles that are being exported, for the purpose of determining whether such automobiles are stolen. In addition, the Act requires that all persons or entities exporting used automobiles, including those exported for personal use, provide the vehicle identification number (V.I.N.) and proof of ownership information to the Customs Service at

least 72 hours before the automobile is exported. The Customs Service is also required, consistent with the risk of stolen automobiles being exported, to randomly select used automobiles scheduled for export and check the V.I.N. against information in the National Crime Information Center to determine if the automobile has been reported stolen. Customs Service regulations implementing the Act are at Section 192.2 of title 19 of the Code of Federal Regulations.

Motor vehicles shipped under the authority of section 2634 of title 10 and section 5727 of title 5 are owned or leased by members of the armed forces or federal employees and are being transported out of the country pursuant to the member's or employee's change of permanent station orders. The vast majority of motor vehicles shipped under these two provisions of law belong to Department of Defense personnel, and are for personal use while the member or employee is abroad. In most cases, these motor vehicles are returned to the United States along with the member or employee upon completion of duty overseas. These motor vehicles are not being exported for the purpose of entering into the commerce of a foreign country and normally may not be sold to foreign nationals in the country to which the military member or employee is assigned. Their shipment is arranged and normally paid for by the United States government. In addition, in the case of military members and Department of Defense civilian employees, regulations promulgated by the Department of Defense pursuant to authority granted in Section 2634 of title 10, require that the member produce adequate proof of ownership prior to shipment and, in the case of leased vehicles, proof that the lease has at least 12 months remaining. Under the circumstances, the chance that any such motor vehicle may be stolen is extremely remote. In over fifty years of shipping such motor vehicles overseas, there have been few, if any, documented cases in which a stolen vehicle has been shipped overseas by a military member or federal employee.

Application of the Act to motor vehicles transported under these sections has had an adverse impact on shipment times and has resulted in additional expense to the U.S. government in the form of delayed shipments and costs associated with random inspections. In addition, it has imposed a burden on military members and federal employees by requiring unnecessary and duplicative documentation, and delaying the transit times of their motor vehicles. Although these costs and burdens are not extraordinary on an individual basis, they are unwarranted and wasteful in light of the extremely remote chance that stolen vehicles may be shipped.

This proposal would exempt shipments of motor vehicles under these sections from the Act, and provide the authority to continue to regulate such shipments in a manner that is consistent with the needs of the various agencies affected. The revision would also eliminate an ambiguity caused by section 2634(b) and the new Customs Service regulations. The refusal to ship a member’s vehicle because of the Customs regulation would entitle the member to government paid storage for the duration of the overseas tour.

With regard to section 2634 of title 10, Subsection (1) would delete the word “surface” as a limiting factor in allowing shipment of vehicles by the cheapest form of transportation if US

owned or US flag vessels are not reasonably available. This deletion will also align section 2634 of title 10 closer to the provisions of section 5727 of title 5, which does not have such a limitation. Transportation provided to military members would still be limited to a cost no higher than the cost of surface transportation.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense or other federal agencies, and may result in savings from not having to store the vehicles at government expense.

Section 923 concerns Department of Defense gift initiatives. The amendments would clarify items which may be loaned or given under section 7545 of title 10, United States Code, and give the Secretary express authority to donate portions of the hull or superstructure of a vessel stricken from the Naval Vessel Register to a qualified organization. Amendments to section 7545(a) of title 10 would clarify that the Secretary may donate either obsolete ordinance material or obsolete combat material under this section. The proposed new language is consistent with the Secretary's existing authority to lend, give or exchange "obsolete combat materiel" to qualified organizations under section 10 U.S.C. § 2572, a statute which is similar, but not identical, to section 7545. Addition of the term "obsolete shipboard material"covers items such as anchors and ship propellers, which are frequently sought from the Navy for use as display items.

The deletion of "World War I or World War II" and replacement with "a foreign war" would allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of "soldiers'" and replacement with "servicemen's" would clarify that associations related to any branch of military service are qualified organizations.

A new subsection (d) is added because currently no federal statute expressly addresses the loan or gift of a major portion of the hull or superstructure of a Navy submarine or surface combatant. The Navy has received two requests for large portions of vessels currently slated for scrapping. These requests pertain to the sail of a Navy submarine (the uppermost part of a submarine), and the island of the U.S.S. America (the uppermost part of this decommissioned aircraft carrier). The America's island stands several stories above its flight deck. The Navy anticipates receiving more requests, particularly for submarine sails because the Los Angeles class nuclear submarines, all but one of which are named after particular American cities, are now being decommissioned and scrapped. If a vessel can be donated in its entirety, the Navy should have the authority to donate a portion of the vessel for use solely as a permanent memorial. Also, if there is a reason that a vessel cannot be donated in its entirety (*e.g.*, removal of a reactor compartment), this new subsection would authorize the Secretary to donate any part of the remainder of the vessel to a qualified organization.

The Secretary of the Navy has existing authority under 10 U.S.C. § 7306 to donate vessels stricken from the Naval Vessel Register. The Secretary also has existing authority to donate material and historical artifacts described in 10 U.S.C. §§ 2572 and 7545. A large portion

of a vessel does not fall squarely within the parameters of any of these three statutes, and thus the new subsection (d) authorizes the Secretary to lend, give or otherwise transfer portions of a vessel stricken from the Naval Vessel Register to an organization listed under subsection (a). Terms and conditions of any agreement for the transfer of a portion of a vessel shall include a requirement that the transferee maintain the material in a condition that will not diminish the historical value of the material or bring discredit upon the Navy. Any donation authorized pursuant to this subsection remains subject to all applicable environmental laws and regulations. In accordance with section 7545(a), no expense would be incurred by the United States in carrying out this section.

The amendments to section 2572 of title 10 would clarify the eligibility requirements for political subdivisions of a state to receive condemned or obsolete combat material for static display purposes. The operating instruction for the Aircraft Management and Regeneration Center (AMARC) notes that aircraft for display purposes cannot ordinarily be given or loaned to a county without further administrative paperwork. Since many airports are operated by counties and other state political subdivisions that are not municipal corporations, the law as currently written presents a substantial limitation on the Air Force's ability to provide aircraft and other historical material for static display at such county entities.

AMARC's role in donating or loaning military property for static displays is to be transitioned to the United States Air Force Museum. Clarifying section 2572(a)(l) to include counties and other political subdivisions of a state as permissible recipients of loans and donations would expand the Museum's ability to foster good will and civic pride in the United States Air Force and its history through static displays.

There are several statutes which do treat counties differently from municipal corporations, particularly with regard to taxes and services. Section 5520 of title 10 does list separate definitions for cities and counties for the purpose of withholding income or employment taxes. The proposed legislation would not affect these other statutes nor the distinctions they draw between governmental entities.

Section 924 would repeal section 916 to resolve an incongruous and burdensome reporting requirement for the Chairman of the Joint Chiefs of Staff. The reporting requirements demanded by this language—particularly subsection (c)(3), which the Department is unable to comply with—runs counter to the responsibilities of the CJCS as the Chairman of the JROC, and will prove to be overly burdensome without necessarily producing a positive or desired result.

Section 153 of title 10 establishes the CJCS responsibility to advise the Secretary of Defense on requirements, programs, and budgets. The JROC, established in section 181 of title 10, assists the CJCS in fulfilling these advisory responsibilities and this section further establishes that “the functions of the CJCS, as chairman of the Council, may only be delegated to the Vice Chairman of the Joint Chiefs of Staff.” Other members of the JROC provide inputs to the JROC Chairman in the form of opinions, advice, and recommendations, which represent

extremely useful information. However, having received the JROC member's inputs (including those from the combatant commanders-in-chief) the CJCS is singularly accountable to provide the best military advice on joint requirements to the Secretary.

Appearing before the SASC Subcommittee on Emerging Threats and Capabilities on April 4, 2000, the Commander-in-Chief of U.S. Joint Forces Command amplified the point that the JROC is an advisory body. He provided explicit testimony that his input to the JROC and attendance at selected JROC meeting is what matters—not his vote—since the JROC is not a voting body. Additionally, since JROC deliberations are characteristically conducted in executive session, there is no mechanism to collect the specific advice by individual members.

The CJCS has directed the JROC to refocus on examination of a broader spectrum of future joint warfighting requirements and fully to integrate joint experimentation activities into the requirements, capabilities, and acquisition process. The raw facts required in the semi-annual report that document a brief series of today's decisions will not capture the profound implications of framing operational architectures and operational concepts on which future decisions will be judged. Furthermore, in an era in which the Department is seeking opportunities to reduce the size of management headquarters, the significant workloads driven by these reporting requirements will drive workforce requirements in the wrong direction—and for little return on the investment. In sum, the reporting requirements will likely prove to be overly burdensome without meeting Congressional intent. The intent of this reporting requirement may be met through CJCS, VCJCS, and others' annual or special testimony, and occasional specific reports to Congress.

Section 925 would authorize limited access of sensitive unclassified information for administrative support contractors. Pursuant to the authority granted in section 129a of title 10, United States Code, the Secretary of Defense has promulgated personnel policies that promote the downsizing and outsourcing of administrative support (*e.g.*, secretarial or clerical services, mail room operation, and management of computer or network resources). By employing such measures, the Department has realized substantial savings, as often contracting out these services is the least costly way to perform them consistent with military requirements and the needs of the Department. In many cases, however, additional savings must be forgone, because such duties may require contractors to be exposed to, or require substantive access to, sensitive unclassified information such as third party trade secrets, proprietary information, and personal information protected by the Privacy Act.

Section 926 will allow Andersen AFB to use the sale of water rights located off the main installation as an incentive to pay for a new water system located on Andersen AFB. The authority this proposal would provide to the Air Force could only be used in conjunction with existing utility privatization authority under 10 U.S.C. § 2688. Subject to the specific provisions of this proposal, the rules governing a conveyance under 10 U.S.C. § 2688 would apply to the transaction, including those for competition, fair market value, and reporting to Congress. The Air Force desires to obtain offers to replace the current well system with new wells located on

Andersen AFB (the Main Base or Northwest Field). But this is contingent on there being adequate potable groundwater on Andersen AFB (Main Base or Northwest Field). If there is not sufficient groundwater on Andersen AFB (Main Base or Northwest Field) to allow use of this authority, subsection (d) authorizes the Secretary to allow sale of excess water from the existing wells to help pay for modernization and operation of a new water system.

Andersen AFB's Main Base and Northwest Field properties cover an area roughly 8 miles wide and 2-4 miles long (24.5 square miles). Andersen AFB currently also includes several non-contiguous properties: The two largest are the Harmon Annex, which cover 2.8 square miles and is located along the west side of the Island about 4 miles south of Northwest Field; and Andy South, which includes the Andersen South housing area and dormitories, covers 3.8 square miles, and is located about 8 miles south of the Main Base. The water system at Andersen AFB is currently owned, operated, and maintained by the Air Force. Andersen AFB wells satisfy the base's total water requirements. Andersen's water utility system includes 9 ground water wells (identified as Tumon Maui Well and Wells # 1, 2, 3, 5, 6, 7, 8, and 9), chlorination and fluoridation equipment, air strippers, several ground level storage tanks, several booster pump stations, approximately 481,000 linear feet of piping ranging in size from less than 2-inches to 30-inches in diameter, 353 building services, 48 air relief valves, 717 main valves, 11 post indicator valves, 439 fire hydrants, and 13 meters.

Andersen AFB's nine wells (and associated system components) are located several miles off the Main Base. There is one well at "Tumon" (900 gallons per minute (gpm)) and eight wells at the "Andy South" area (149-440 gpm each, 2090 gpm total). The water is pumped from the wells to the Main Base several miles away crossing non-federal properties. The Air Force's Andy South property is in the process of being declared excess property pursuant to the Federal Property Act, but neither the water rights nor the wells are part of that action.

A new water system needs to be built due to the advancing age (35-50+ years) and corrosive environment that has deteriorated the system components. The logistics involved in performing the maintenance and repair work off-base make it difficult for the mechanics to control the deterioration. As a result, more pipes, valves and pumps are failing. In 1999, the 16" main to the base leaked at a rate of 200-250 gallons per minute and was repaired under pressure. The tank isolation valves are so old they are not used because of fear the valves might break. A major failure to the transmission line or the 50+ year old Santa Rosa Tank could leave the Main Base with only 250,000 gallons of available water (less than 15% of the average daily demand.) This amount is insufficient for fire protection and normal operations.

The base estimates it costs about $800,000 per year for electricity just to produce and transmit water to the Main Base from the off-base wells. Savings of 20-40% are expected if wells on the Main Base or the contiguous Northwest Field are constructed.

Anti-Terrorism and Force Protection would improve if wells were located on the Main Base or Northwest Field. Well House No. 3 already experienced a break-in and theft of electrical

parts. Furthermore, there is no control over groundwater contamination from non-Air Force sources. The Tumon Maui well and Well No. 2 are currently not in operation due to groundwater contamination. Current requirements are about 55 million gallons per month. In the past two years, Andersen used up to 100 million gallons per month.

This provision further will provide an opportunity to meet long term water needs with no USAF capital investment, reduce short range modernization/rehabilitation costs for the aged and reconfigured off-base water supply system (Tumon Maui well and Wells 1-3 were originally built to support off-base sites, for example the old Andy South), eliminate the need to retain real property in Andy South, greatly enhance force protection needs for vital water resources, and increase system reliability and redundancy. Guam is chronically short of potable water supplies. The water from Andy South and Andersen Water Supply Annex, if available for commercial sale, would be of substantial value. The Air Force believes that value would be more than sufficient to pay the cost of installation of a new series of wells on Andersen AFB, either the Main Base or Northwest Field, and repair the existing system on the base.

Section 927 would repeal the requirement for a separate budget request for procurement of reserve equipment by repealing section 114(e) of title 10, United States Code.

Section 928 would repeal the requirement for a two-year budget cycle for the department of defense by repealing section 1405 of the department of defense authorization act, 1986 (31 U.S.C. 1105 note).