Section-by-Section Analysis

TITLE I—PROCUREMENT

Authorization of Appropriations

Sections 101 through 104 provide procurement authorization for the Military Departments and for Defense-wide Activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2005.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Section 201 provides for the authorization of Military Departments and Defense-wide research, development, test, and evaluation appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2005.

Subtitle B—Ballistic Missile Defense

Section 211. Presidential guidance directs the Department of Defense to begin to field a missile defense capability in 2004, and to improve continuously on that capability over time. The presidentially-directed missile defense mission, conducted by DoD through the Missile Defense Agency (MDA), requires a range of activities that cross traditional fiscal lines. Necessary expenses related to fielding would otherwise be funded as RDT&E, Military Construction, Operation and Maintenance, or Procurement under certain circumstances.

MDA is funded, however, almost entirely by Defense-wide RDT&E funds. The FY04 Defense Authorization Act answers the President's directive by authorizing the FY04 RDT&E funds appropriated to MDA to be used for fielding initial capabilities.

This authority must be renewed for FY05 and subsequent years. Fielding of initial capabilities will begin in FY04 and continue in FY05.

This section would extend existing authority to all missile defense capabilities to allow for continued development of initial capabilities in FY05 and development and fielding beyond the "initial" capabilities. DoD is employing an evolutionary approach to the development and deployment of missile defenses over time. This means there is no final or fixed missile defense architecture. Rather, the composition of missile defenses, including the number, type, and location of system elements deployed, may change rapidly to meet changing threats and take advantage of technological developments.

By authorizing the Secretary of Defense to approve the use of RDT&E funds for all fielding purposes, DoD would receive increased flexibility to research, develop, procure and

field a layered missile defense system, taking full advantage of spiral development and capabilities-based acquisition. This section would not result in taking over normal procurement for missile defense. Ballistic Missile Defense System elements would be transferred when ready to the Military Departments, and procurement would remain the responsibility of the Military Departments. Developmental assets, however, could be fielded under this authority because they have some capability to protect against threats to the United States, our deployed forces, allies and friends for which presently there is no defense. Fielding of developmental assets would address the Nation's immediate requirement for a defense while development and testing continues. The Secretary of Defense could also use this authority to field an interim defense capability in situations where the limited number of components or items to be acquired makes it impracticable or uneconomical to transfer procurement responsibility to a Military Department, he determines that MDA should undertake the limited procurement.

This section would allow the Secretary of Defense to meet emerging challenges and field militarily useful capabilities within the shortest possible times to defend against significant threats to the United States, our deployed forces, allies and friends for which there is currently no defense.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 provides for authorization of the operation and maintenance appropriations of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2005.

Section 302 authorizes appropriations for the Defense Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2005.

Section 303 authorizes appropriations for fiscal year 2005 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home in an amount equal to the budget authority included in the President's Budget for fiscal year 2005.

Section 304 authorizes appropriations for other Department of Defense Programs for the Defense Health Program; for Chemical Agents and Munitions Destruction; for Drug Interdiction and Counter-drug Activities, Defense-Wide; and for the Defense Inspector General in amounts equal to the budget authority included in the President's Budget for fiscal year 2005.

Subtitle B—Environmental Provisions

Section 311 would amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to delegate authority to the states to make certain

determinations for federal facilities not listed on the National Priorities List.

The Department of Defense, as lead agency under CERCLA for sites on its lands, conducts environmental restoration to protect human health and the environment. When the Department intends to transfer property to private parties, a determination must be made that the remedy selected and implemented by the Department is "operating properly and successfully." As a matter of practice and policy, that determination currently is made by the U.S. Environmental Protection Agency (EPA) for all Defense sites. The intent of the "operating properly and successfully" determination is to provide an objective determination from a regulator that the remedy is operating as intended before the land leaves federal ownership.

CERCLA provides a process by which a regulator determines whether a remedy is "operating properly and successfully" in the case of all proposed transfers, regardless of whether they are listed or not listed on the National Priorities List. In order to make such a determination, the regulator must be involved in the entire restoration process. Normally, the EPA is the primary regulator involved in the restoration process at National Priorities List sites and the affected states are the primary regulators involved in the restoration process at sites not listed on the National Priorities List. However, because CERCLA currently assigns to the EPA the sole authority for making the "operating properly and successfully" determination at National Priority List sites and does not mention such a determination at non-National Priority List sites, the law drives EPA involvement in restoration at sites not listed on the National Priorities List, sites where the states normally provide the primary regulatory oversight. This existing law causes duplication of effort, and wastes EPA and Department of Defense resources resulting in the EPA being involved in the entire restoration process at such sites. At sites not listed on the National Priorities List, the states are in a better position to make the "operating properly and successfully" determination because the state environmental agency is involved at such sites throughout the restoration process. This section would allow a much more efficient use of resources by the Department of Defense, EPA, and all states.

Section 312 would allow Inspectors General the discretion to audit Superfund financial transactions on a periodic basis, using their professional judgment of risk and other factors considered in audit planning.

Section 111(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9611(k)), currently requires all Inspectors General to conduct annual audits of all payments, obligations, reimbursements, and other uses of the Superfund, to ensure that the Fund is being properly administered. This requirement substantially duplicates current audits performed by or under the auspices of the Inspector General of the Department of Defense, of DoD's financial statements as required by the Chief Financial Officers (CFO) Act of 1990 (Public Law 101 -576; 104 Stat. 2838). The Office of Management and Budget additionally has imposed a specific requirement on the Corps of Engineers (Civil Works) to provide a separate financial statement, which is audited annually pursuant to the CFO Act. The CFO Act audit generally would include a review of some Superfund transactions and the systems used to process those transactions.

The Inspector General's recent annual audits have concluded that the Corps of Engineers has properly administered its portion of the Superfund and that management controls over Superfund monies for which DoD is responsible are adequate. The Superfund financial transactions were 99.7 percent accurate in Fiscal Year (FY) 2000, 99.94 percent accurate in FY 1999, and 99.8 percent accurate in FY 1998. To continue mandating annual audits of these highly controlled transactions, in which no material or systemic problems have been discovered, is unnecessary, overly burdensome, and is an inefficient use of limited government manpower and resources.

Section 313 would allow the Department of Defense (DoD) to execute environmental restoration agreements with owners of covenant properties. Under section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, the United States is required to provide a deed covenant guaranteeing it will perform remediation of contamination discovered after a property transfer. There is no current authority for the agency responsible for such contamination to pay an owner of such property its costs in undertaking remedial action for which the United States is responsible. The owner is put to the substantial burden and expense of pursuing its remedy in court.

This section would provide that the owner of a covenant property seeking payment first would enter into an agreement with the United States to perform the required services. The agreement would assure that funds are available to complete the response and that the action is consistent with DoD's cleanup obligations under law and policy. This section also would provide that the appropriate base closure account is the sole source of funding for agreements under this section at base closure sites.

Previously undetected contamination discovered in the course of developing the property may halt construction efforts, at a considerable cost in idle equipment, construction crews, and schedule delays to the owner. While a prompt response by the United States to the contamination is the key to allowing development to continue and minimizing the cost of delays to the owner, circumstances may arise in which the owner is better situated to conduct the response action.

Due to the potential time delays associated with the United States responding to the contamination, the covenant warranties in section 120(h) of CERCLA are potentially burdensome to property owners who subsequently discover contamination. Providing DoD with authority to enter into agreements with such property owners for appropriate costs in responding to newly discovered contamination would be consistent with Congressional intent in requiring agencies to provide the section 120(h) covenant. It would help to assure local redevelopment authorities and developers that purchasing or accepting Federal land will not leave them burdened with the cost of responding to contamination that is the responsibility of DoD.

Section 314 would allow the Federal Government to remove to Federal courts all civil actions and criminal prosecutions brought under the Clean Air Act and Safe Drinking Water Act.

A Federal forum in such cases is vital, because State court actions against Federal agencies and officers often involve complex Federal issues and Federal-State conflicts. The Federal courts are better situated to strike a proper balance between competing local and national interests.

This section would duplicate identical authority already available in Clean Water Act cases. It would not alter the requirement that the ability to remove a lawsuit hinges on the assertion of a defense based in Federal law under 28 U.S.C. 1442(a)(l).

Recent court decisions demonstrate the need for this legislative change. In the case of *People of the State of California v. United States*, 215 F.3d 1005 (9th Cir., 2000), the U.S. Court of Appeals for the Ninth Circuit decided that section 304(e) of the Clean Air Act, 42 U.S.C. 7604(e), was not superseded by or inconsistent with a subsequently enacted 1996 amendment to the Federal Removal Statute (28 U.S.C. 1441 et seq.). Pursuant to this ruling, Federal activities could be enjoined by state courts, and penalties assessed, if these activities are found by a state court to violate provisions of state or local air pollution control laws. The Department of Defense already has been adversely affected by this decision. On March 18, 2002, a state court in California ruled that McClellan Air Force Base was subject to civil penalties for violations of the Clean Air Act. The Air Force paid a fine of $235,000 as a result of this ruling.

In a more recent case, the U.S. Court of Appeals for the Eleventh Circuit issued an opinion directly contrary to that issued by the 9th Circuit. In *City of Jacksonville v. Dept. of the Navy*, No. 03-10570, 2003 U.S. App. LEXIS 21984 (11th Cir. Oct. 28, 2003), the 11th Circuit declined to follow the 9th Circuit and specifically held that section 304(e) of the Clean Air Act did not preclude removal under the Federal Removal Statute of cases brought in state courts. This split between the circuits inevitably would lead to confusion and inconsistency, forcing state and federal entities to litigate the removal issue in each circuit.

In those circuits following the *People of the State of California* opinion, there will be significant consequences. While state and local courts are capable of applying Federal law, State and local judges (who may be untenured, appointed, or elected) may face pressures not present in the Federal courts when adjudicating matters and fashioning remedies involving Federal agencies, especially if the litigation generates significant local public interest. Furthermore, subjecting Federal agencies to State and local court jurisdiction without reasonable recourse to the Federal system could provide local governing bodies the ability to tailor ordinances specifically designed to frustrate Federal activities, while not similarly burdening private, State, or local activities with a similar or greater impact on environmental resources. Without allowing removal of such cases to Federal district court, the United States would be forced to challenge such discriminatory regulation in each local jurisdiction.

Section 315 would authorize the Secretary of Defense to reimburse the U.S. Environmental Protection Agency (EPA) for costs and interest incurred to perform a remedial investigation/feasibility study at the Moses Lake Superfund Site. Moses Lake is the former home of Larson Air Force Base, and apparently the groundwater at this location is contaminated with trichloroethylene.

The EPA has identified the Department of the Air Force, Boeing, and others as potentially responsible parties. In 1999, DoD, EPA, and other interested Federal parties entered an agreement whereby EPA would perform a remedial investigation/feasibility study subject to later reimbursement from the potentially responsible parties. The reimbursement would come from one of two sources: settlement among the parties or, in the event the parties fail to settle, from a new Congressional authorization and appropriation. The Department of Justice has attempted without success to achieve settlement. Consistent with the 1999 agreement, DoD now seeks a new Congressional authorization to allow it to reimburse EPA for costs and interest in the amount of $524,926.54

In the Conference Report accompanying the National Defense Authorization Act for Fiscal Year 2001 (H.R. CONF. REP. NO. 106-945, at 761 (2000)), Congress directed DoD "to continue to seek congressional authorization prior to reimbursing EPA for any oversight costs incurred at environmental restoration sites where DOD or the military departments have incurred liability under CERCLA."

This section would allow DoD to honor its prior commitment to reimburse EPA for its actions at the Moses Lake Superfund Site.

Section 316 would ensure that Federal agencies, including the Department of Defense, receive equal treatment to private actors for the purpose of judicial review under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

CERCLA section 113(h) bars Federal court challenges to cleanup actions until the cleanup is complete. While the bar is applicable to cleanup actions taken under CERCLA sections 104 and 106, the United States Court of Appeals for the Ninth Circuit has ruled that cleanup actions by Federal agencies taken under CERCLA section 120 are subject to judicial review even before cleanup is complete. In the case of *Fort Ord Toxics Project v. California Environmental Protection Agency* (FOTP), the Ninth Circuit held that a State or citizens group may not challenge an ongoing remedial action at privately owned sites, but they may challenge such actions at Federally owned sites. As a result, ongoing remedial actions undertaken at Federal sites in California, including Fort Ord have been delayed by litigation. The Ninth Circuit ruling effectively defeats Congressional intent as set forth in CERCLA Section 113(h), and places Federal agencies in a highly inequitable posture, given that the U.S. Environmental Protection Agency (EPA) and all private parties continue to remain exempt from judicial review until their cleanups are complete. Federal agencies conducting remedial actions within the jurisdiction of the Ninth Circuit now face unnecessary uncertainty, delay, and additional expense in their ongoing clean-up projects. Actual and threatened litigation has significantly increased remediation costs and slowed parcel transfers.

Enactment of this section would remedy the preceding inequitable situation by placing Federal agencies in the same position as the EPA and private parties by allowing the Federal agencies to work on actual remediation instead of wasting substantial resources on unnecessary litigation.

Section 317 would protect sunken United States and foreign government vessels, aircraft and spacecraft ("sunken State craft"), their cargo, as well as the remains and personal effects of their crews and other persons on board, from salvage, recovery, or other disturbance without proper authorization from the U.S. or the appropriate foreign flag State.

Thousands of U.S. and foreign sunken State craft now lie within, and in waters beyond, U.S. Internal Waters (defined by the section as all waters on the landward side of the baseline from which the breadth of the Territorial Sea is measured, which includes rivers, ponds, lakes and other fresh water bodies), the Territorial Sea, and Contiguous Zone. Because of recent advances in science and technology, many of these sunken State craft have become accessible to scientists, researchers, salvors, treasure-hunters, and others. The unauthorized disturbance or recovery of these sunken State craft and any remains of their crews and passengers is a growing concern both within the U.S. and internationally. In addition to deserving respect as gravesites, these sunken State craft may contain objects of a sensitive, archaeological or historical nature. They often also contain unexploded ordnance or other substances, including fuel oil and other hazardous liquids that could pose a danger to human health and the marine environment if disturbed.

This section would clarify the circumstances under which sunken State craft, entitled to sovereign immunity when they sank, remain the property of the flag State until officially abandoned. This section would encourage and authorize the negotiation of international agreements with other nations to protect sunken State craft.

This section would encourage other nations through reciprocal treatment to protect sunken U.S. warships and a broad range of other public vessels potentially including naval auxiliaries, U.S. Army, Military Sealift Command, National Oceanic and Atmospheric Administration (NOAA), National Park Service, and U.S. Coast Guard ships, as well as government aircraft located in foreign and international waters.

It would allow the head of the Federal department or agency with authority over sunken State craft to issue and enforce permits for activities directed at U.S. sunken State craft, including contract salvage. It would not invalidate any permitting system currently in place nor would it affect any prior lawful transfer or express abandonment of title to any sunken State craft. It is intended that management activities, including any permit issued under this section for a proposed activity directed at a sunken State craft of archaeological, historical, scientific, or cultural nature wherever located would be consistent with existing law concerning management of an archeological, historical, scientific, or cultural resources.

It would authorize, but not require, the Heads of Agencies to assess civil penalties for violations of the section. It also would authorize the Attorney General to appear in U.S. courts on behalf of the U.S. or a foreign State to protect the interests of all parties in sunken State craft subject to the jurisdiction of our Courts. It would provide for civil remedies in the same manner as other existing laws, including the Clean Water Act (33 U.S.C. §§ 1251-1387), the National Marine Sanctuaries Act (16 U.S.C. §§ 1432-1445b), the Archaeological Resources Protection

Act (16 U.S.C. §§ 470aa-470mm), and the Magnuson-Steven Fishery Conservation Management Act (16 U.S.C. §§ 1801-1883).

This section would exclude actions taken by, or at the direction of, the United States Government.

Nothing in this section would affect activities not directed at sunken State craft, or the traditional high seas freedoms of navigation, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms such as the operation of ships and fishing, so long as those activities are not undertaken as a subterfuge for activities prohibited by this section.

This section also would provide agencies with express authority to use existing program expertise and resources to cooperatively protect and manage sunken State craft. For example, this would provide express authority for NOAA's national marine sanctuary program to work cooperatively with the Federal, state, and foreign agencies in the protection and management of the Japanese mini-submarine discovered August 28, 2002, just outside Pearl Harbor.

Subtitle C—Workplace and Depot Issues

Section 321 would make permanent a provision that encourages the creation of depot maintenance public-private partnerships. The existing provision, Section 2474(f) of title 10, United States Code, excludes all work performed by non-Federal personnel at designated Centers of Industrial and Technical Excellence (certain maintenance depots) from the 50 percent limitation on contracting for depot maintenance, 10 U.S.C. 2466(a), if the personnel performing the work are pursuant to a public-private partnership. This provision is limited to contracts awarded during fiscal years 2003 through 2006. By striking the time limitation, the Department of Defense will be better situated to partner with private industry to accelerate the shift to performance-based logistics agreements for weapons systems support.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 prescribes the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2005.

Section 402 would change the title of the Vice Chief of the National Guard Bureau to the "Director of the Joint Staff of the National Guard Bureau." The new title better reflects the duties of the incumbent now that the National Guard Bureau is a joint organization.

Subtitle B—Reserve Forces

Section 411 prescribes the strengths for the selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's budget for fiscal year 2005.

Section 412 prescribes the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2005.

Section 413 prescribes the end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2005.

Section 414 prescribes the maximum end strengths for the reserve components of the Army and Air Force for non-dual status military technicians for fiscal year 2005.

Section 415 would boost retirement pay and survivor annuities for Reserve Component members. Under existing law, retirement pay and survivor annuities are calculated using the high-36 month average of monthly basic pay out of all the months of a member's active service. Given the periodic nature of Reserve service, unless the member was activated for an extended period, the calculation of the high-36 month average must include service performed very early in the member's military career. This section would treat a Reserve component member as if he or she had been entitled to basic pay for the previous 36 months, regardless of whether the member served the entire period on active duty.

The following example illustrates the existing problem. Assume a Major in the Army Reserve has served just over 20 years in the reserves, but never on extended active duty. Accounting for his last 36 months of active duty would require including duty he performed as an O-1. If the major died in the line of duty on active duty, the current method for determining the high-36 months would generate a monthly annuity to his spouse of about $1,000. By contrast, the method used for non-regular retirements, non-regular disability retirements, and in this section would generate a monthly annuity of approximately $2,000.

Under this section, the effective date for determining the survivor benefit annuity would coincide with the effective date of section 642 of the National Defense Authorization Act for FY 2002, which authorized this new benefit. For reserve component members retiring under section 1201 or 1202, the effective date would be the date of enactment of this section.

Cost implications: Based on the average number disability retirements for the past three years, the Department of Defense projects that the current high-36 month calculation method affects just over 200 retired reservists. Therefore, this section's projected half-year cost to the Department of Defense for the first year is $500,000.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would eliminate inadequacies created by different types of commission sources awarding different types of commissions. Existing law may be adding to the pressure to leave active service immediately upon completion of obligated tours (predominantly after five years), thus potentially harming overall retention. Moreover, different commissions work against the sense of commitment and devotion to a calling that are central to commissioned officer service and have characterized America's career officer corps throughout its history.

This section would allow for enactment of Defense Science Board (DSB) recommendations that all active duty officers be commissioned as regular officers. Section 597 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107) required the Department of Defense (DoD) to define the changes required to comply with the DSB recommendations. In DoD's January 2002 report to Congress, DoD indicated that it concurred with the DSB recommendations and would include any required legislative changes in its Fiscal Year 2005 legislative submission.

Subsection (a). This would enable all active duty officers to be commissioned as regular officers regardless of the source of their commission.

Subsection (b). One problem in achieving the goal of making all officers on the active duty list regular officers is that existing law requires that such officers be U.S. citizens, while reserve officers may be either citizens or permanent resident aliens. This subsection would relax the citizenship and age requirements for an original appointment as a commissioned officer. It would allow the Secretary of Defense to waive the citizenship requirement in the interest of national security. It also would remove the requirement to complete 20 years of active duty before age 55. This is consistent with the Secretary's desire for officers to serve longer careers.

Subsection (c). This would authorize the Military Departments to exceed the current statutory limits for regular officers serving on active duty prescribed by this section:

Army	63,000
Navy	55,000
Air Force	80,000
Marine Corps	17,000

This in effect would allow for transition to an all regular active-duty list (ADL) force. Title 10 limitations on field grade officers (section 523) and constraints on general and flag officers (section 526) would remain in effect.

Subsection (d). This would give the President sole authority to appoint officers in the grades of O-3 and below; existing law requires Senate confirmation of such officers. The President may delegate this authority to the Secretary of Defense. This provision would maintain the requirement for Senate confirmation for original appointments of officers in the

grades of O-4 and above. This would streamline and reduce the overall administrative processing time for these appointments.

Subsection (e). This would provide a secretary of a Military Department flexibility to manage the all-regular force by defining the period of initial service in which the Secretary concerned may involuntarily separate officers for reasons other than for cause, or having twice failed selection for promotion to the next higher grade. The period of time would be up to and including 7 years or until an officer has completed his/her minimum service obligation, whichever is longer.

Subsection (f). This would allow officers discharged or released from active duty to receive separation pay if they otherwise meet the eligibility requirements of section 1174 of title 10, United States Code. This would provide a force shaping tool and would allow service members separated from active duty solely due to force-shaping requirements to remain eligible for separation pay.

Subsection (g). This would delete the requirement for officers to subscribe to the oath of office when transferring from the ADL to the reserve active-duty list (RASL). Because officers must take the oath upon their original appointment, it is not necessary to re-execute the oath with each transfer, provided the service was continuous. This would facilitate the seamless transfer of officers between the ADL and the RASL, thereby reducing the current administrative burden and processing time, and lifting a barrier to total force integration.

Subsection (h). This would lower the level of approval authority for transitioning from the ADL to the RASL to the Secretary of the Military Department concerned. In appointing Reserve Component Officers, current law requires a reappointment and approval by the President and/or Senate, depending on the grade. This subsection would facilitate a more seamless flow between the ADL and the RASL by lowering the level of approval authority, thereby reducing the administrative burden and processing time. This is necessary to support DoD's current transformation effort and total force integration.

Subsection (i). This would allow secretaries of the Military Department to appoint Reserve officers into the regular component. This would facilitate a seamless flow between the Active and Reserve component.

Subsection (j). This would allow officers identified in section 641 of title 10 to continue to serve on the reserve active-status list. Currently, Selected Reserve and certain Individual Ready Reserve members ordered to active duty other than during war or national emergency are exempted from the ADL. This subsection would allow Reserve members serving under section 12302 of title 10 to continue to compete with their respective peer groups in the Guard or Reserve.

Subsection (k). This would delete the requirement that an officer serve his/her last six continuous years in the Reserve Component to qualify for a Reserve retirement. This would

serve as an incentive to those that are departing active duty to transition to the reserve component.

Subsection (l). This would allow all officers at the University of Health Sciences to be commissioned as regular officers, instead of Reserve officers. Currently, officers at the University of Health Sciences are commissioned as Reserve officers and, upon graduation, receive a regular commission. This subsection conforms to the proposed revisions in subsection (a) of this section.

Section 502 would correct a discrepancy in the current law that has limited the strength in grade of Marine Corps Reserve officers in comparison to the Army, Air Force, and Naval Reserve. Section 12005 authorizes strength in grade for each commissioned officer grade below brigadier general in an active status for each of the Reserve components. The sum of the percentages for each grade of the Army Reserve, Air Force Reserve, and Naval Reserve equals 100 percent. In contrast, the sum of the percentages for each grade of the Marine Corps Reserve only equals 87.5 percent. This has the effect of limiting the overall strength of commissioned officers in an active status authorized in 10 U.S.C. 12003. The revised table would remedy this discrepancy.

Section 503 would clarify joint duty credit for promotion to flag or general officer. Existing law makes joint duty a prerequisite for selection to brigadier general or rear admiral (lower half). Beginning in 2008, officers will be ineligible for such selection unless they have served as a Joint Specialty Officer. The Secretary of Defense may waive these requirements only under certain circumstances.

This section would change the terminology pertaining to the waiver for "scientific and technical" officers to "career field specialty" to ensure greater flexibility.

This sectional also would eliminate the requirement that an officer serve in a joint assignment at least 180 days prior to convening of the selection board. Officers seeking to be promoted into the general and flag officer ranks must serve a full 24 months in a joint duty assignment. The existing 180-day requirement is unnecessary because in most every case an officer assigned in a position less than 180 days when the board is convened will complete the full tour of duty.

Section 504 would strengthen the Department of Defense's commitment to assign quality officers to joint assignments and to ensure these officers are promoted at rates equivalent to officers serving in comparable positions with their respective military departments.

The Department of Defense is completely committed to improving every aspect of joint service duty.

Section 505 would allow officers who serve in certain demanding or remote assignments to receive full joint credit.

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, would define the standards for full and partial joint credit.

This section would maintain a 36-month tour length for the majority of officers serving in the joint community, but also would provide recognition for joint service performed by officers who serve shorter tours in remote locations, such as Korea. Additionally, it would grant full joint credit to officers who accumulate 365 or more days in Joint Task Force Headquarters.

Section 506 would streamline joint specialty officer management by eliminating the 50 percent fill rate requirement set forth in the Joint Duty Assignment List (JDAL), as well as Critical Occupational Specialty designations.

By law, the Secretary of Defense must publish a list of billets for which officers may receive joint duty credit. This list, the JDAL, must contain a minimum of 800 positions designated as "critical" positions that must be filled by a Joint Specialty Officer (JSO). In addition to the designated "critical" billets, JSOs or JSO nominees must fill 50 percent of the JDAL positions. The JDAL has varied from 8,900 to 9,400 positions over the last 10 years.

Developing a JSO takes a minimum of four years. Under the existing JSO management scheme, it is impracticable to determine future JSO requirements because the process of designating "critical" positions rarely keeps pace with the "just-in-time" needs of the Department of Defense (DoD).

This section would streamline JSO management by eliminating the requirement for "critical" billet designations as well as the existing 50 percent fill rate requirement. DoD requires greater flexibility to locate officers with specific expertise more quickly, identify appropriate candidates, and fill time- and mission-critical requirements more efficiently.

Section 507 would eliminate the grade distribution limitations for brigadier generals and rear admirals (lower half). Existing law requires 50 percent of general and flag officers to serve in the grade of O-7 and 15-16 percent to serve in the grades of O-9 and O-10. The remaining 34-35 percent of general and flag officers must serve at grade O-8.

Removing the restriction on officers serving at grade O-7 would allow the allocation between officers at O-7 and O-8 to change and would provide the Secretary of Defense with greater flexibility in managing and utilizing senior officers.

Section 508 would eliminate mandatory retirement of active duty general and flag officers after they complete five years in grade or 30 years of service, whichever is later. This would increase the flexibility of the Secretary of Defense in managing the most senior levels of the officer corps. Eliminating such mandatory retirement corresponds with DoD efforts to allow officers to serve longer tours and tenure.

Section 509 would eliminate existing restrictions on the length of terms of the Assistants

to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve Matters. Instead, such officers would serve at the pleasure of the Chairman.

This section would increase the flexibility of the Chairman in managing the most senior levels of the Joint Staff. It also would correspond with DoD efforts to allow officers to serve longer tours and tenure.

Section 510 would eliminate existing restrictions on the length of service of the Chief of Staff of the Army, the Chief of Naval Operations, the Commandant of the Marine Corps, and the Chief of Staff of the Air Force.

This section would increase the flexibility of the President in managing the most senior levels of the officer corps. It also would correspond with DoD efforts to allow officers to serve longer tours and have longer careers.

Section 511 would permit active duty general and flag officers to serve until age 68. It also would permit the Secretary of Defense to defer the retirement of an active duty general or flag officer to the first day of the month following the month in which the officer reaches the age of 72. There would be no change to the retirement age restrictions for commissioned officers serving in grades below brigadier general or rear admiral.

This section would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps. Extending age limits for general and flag officers corresponds with DoD efforts to allow officers to serve longer tours and tenure.

Section 512 would allow the President or the Secretary of Defense to reassign senior leaders to positions of importance and responsibility at the same grade. Assignment to positions established in law, such as Chairman of the Joint Chiefs of Staff, Vice Chairman of the Joint Chiefs of Staff, Chiefs of the military departments, Chief of the National Guard Bureau, Reserve Chiefs and Guard Directors, and military department-specific Chiefs of Branches or Bureaus, would continue to require the advice and consent of the Senate.

This section would increase the flexibility of the President in managing the most senior levels of the officer corps.

Section 513 would eliminate existing restrictions on the length of service of the Chairman and Vice Chairman of the Joint Chiefs of Staff.

This would increase the flexibility of the President in managing the most senior levels of the officer corps. It also would correspond with DoD efforts to allow officers to serve longer tours and tenure.

Section 514 would allow the Department of Defense (DoD) for measurement purposes to include officers in the Joint Staff and officers who have the joint speciality designation among

those officers serving in joint duty assignments. The existing exclusion of these officers in section 662(a)(3) provides an inaccurate view of DoD compliance with the law and causes a misrepresentation of DoD's profound commitment to expand and improve joint duty.

Subtitle B—Reserve Component Management

Section 521 would change the definition of "inactive duty training" to "inactive duty" in order to give unit commanders greater latitude to train and employ Reserve component members in an inactive duty status. Reserve component members gain training and experience while performing both training duty and operational duty. Accordingly, the concept of inactive duty should be broad enough to allow for the performance of operational missions.

This section also would repeal Funeral Honors Duty status because this status no longer would be necessary once Reserve component members on inactive duty for training may perform both training and operational missions.

Section 522 would eliminate existing limitations on the authorized strengths of Navy and Marine Corps reserve flag and general officers.

Presently, the Department of the Navy is the only military department with flag and general officer community strengths defined in law. This situation severely hampers the ability of the Department of the Navy to adapt its flag and general officer inventory to reflect evolving requirements more accurately and efficiently.

Section 523 would clarify that Reserve component members on active duty other than for training who are within two years of qualifying for retired pay under chapter 1223 of title 10, United States Code, are not required to be retained on active duty to ensure such members receive retired pay for non-regular service. The existing law has been a source of confusion to some who have interpreted it to require the military departments to retain reservists on active duty if they are between the ages of 58 and 60, and will qualify for retired pay at age 60. Similarly, some who have more than 18 but less than 20 years of qualifying service for a non-regular retirement believe they must be retained on active duty even though termination of the period of active duty will not affect their eligibility for non-regular retirement. This interpretation exists because the term "purely military retirement" is not defined properly.

This section would <u>not</u> affect a reservist's eligibility for retired pay for non-regular service. Additionally, Guard and Reserve members who are within two years of eligibility for retired pay for non-regular service would continue to be protected from separation from an active status before qualifying for a non-regular retirement under section 12646 in the case of a commissioned officer, and under section 1176(b) in the case of an enlisted member.

Section 524 would clarify the purpose of the Reserve components by eliminating the existing reference to planned mobilizations. National Guard and Reserve forces are an integral part of the total force performing critical operational missions. Since 1996, even in the absence

of planned mobilizations, Reserve components have contributed between 12 and 13 million duty days each year in support of service and combatant commander missions, domestic emergencies, counter drug operations and exercises. They perform this duty in addition to involuntary call-ups. This section would reflect more accurately the way the Department of Defense may continue to employ Reserve forces in the 21st century.

Section 525 provides a new, comprehensive plan for managing and accounting for Reserve component members performing active duty. Strength accounting has been too inconsistent, at times requiring Reserve component members on active duty to be counted as part of the authorized end strength for members on active duty, and at other times exempting them altogether. There also are inconsistencies in counting Reserve component members against controlled grade limitations and placement under a personnel management category that corresponds to a strength accounting category. A reservist on active duty may be exempt from end strength, yet in some cases is counted against the active duty controlled grade structure, or managed for promotion and retention purposes as an active duty member. To complicate matters further, certain types of active duty require Guard and Reserve officers to be managed under the Defense Officer Personnel Management Act for officers on active duty, while other types of active duty permit Guard and Reserve officers to be managed as a Reserve component asset under the Reserve Officer Personnel Management Act.

This section would correct all of the preceding shortcomings by establishing a single, comprehensive management and accounting structure for Reserve component personnel. It would provide the military departments and Combatant Commanders with greater flexibility in employing Guard and Reserve forces, without disadvantaging those same forces.

Reserve component members would be accounted for and managed as members of the Guard and Reserve – regardless of the type or duration of duty – unless they are paid from appropriations dedicated to the active force or their status includes continuous or nearly continuous service on active duty, filling active duty requirements.

Also, this section would eliminate the existing 180-day strength accounting requirement and replace it with the requirement to provide positive accounting for reservists on active duty regardless of the number of days of duty.

The accounting metric employed to achieve these changes would be average strength. This section also would specify that Guard and Reserve members serving in support of a contingency operation must be counted as additional authorized strength. This would encourage the use of volunteers, unlike the current system that encourages the use of an involuntary call-up authority since Congress excluded reservists called to active duty involuntarily from active duty end strength limits. Field grade officers still would be controlled under section 12005 of title 10, which prescribes the maximum number of officers that may serve in a particular field grade. Finally, Guard and Reserve officers and warrant officers would not be placed on the active duty list, but would be retained in the reserve management system. This would allow them to compete for promotion against their peers, rather than their active duty counterparts, since they

would return to reserve service at the conclusion of their period of active duty.

Section 526 would make permanent the ability of the Secretary of Defense to waive the requirement that the Reserve Chiefs and the National Guard Directors must have significant joint duty experience to be eligible for appointment.

Reserve and National Guard officers often experience substantial difficulty obtaining significant joint experience due to the voluntary assignment process, geographical location of joint assignments, civilian employment, and the many different career management tracks available to them. Making this waiver permanent would provide the Secretary of Defense with necessary flexibility to select the best officers to fill these important positions.

Section 527 would permit Reserve and National Guard general and flag officers to serve until age 68. It also would permit the Secretary of Defense to defer the retirement of a Reserve component general or flag officer to the first day of the month following the month in which the officer reaches the age of 72.

This section also would repeal the years of service requirement of Reserve and National Guard general and flag officers, as well as term of office requirements currently established in law. These changes would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps. Extending age limits, years of service, and term of office limitations correspond with DoD efforts to allow officers to serve longer tours and tenure.

Section 528 would allow the Department of the Army to initiate a demonstration program using Reserve component members to perform test and evaluation of certain acquisition programs, including developmental testing and now equipment training. Pay allowances and expenses for these members would be paid from previously appropriated multi-year research, development, testing, and evaluation funds and procurement funds, in an amount not to exceed $10 million.

The Department of the Army previously maintained a contingent of active component soldiers dedicated to supporting developmental training. These soldiers were returned to the operating force as a result of the 1997 Quadrennial Defense Review. The Department of the Army now relies almost exclusively on civilian contractors to test and evaluate developmental training. Given the very high cost of these contractors, however, the Department of the Army would prefer to use Reserve component members for this function. Additionally, Reserve component members provide expertise into a program earlier in the development cycle, resulting in the earlier introduction of required engineering changes and reduced overall development costs and time.

Using multi-year research, development, testing, and evaluation funds and procurement funds to reimburse the pay, allowances, and expenses of Reserve component members would be efficient and practical. In contrast, the existing financial arrangement at times is counter-

productive. When Reserve component personnel engage in developmental training and new equipment training, the personnel costs are paid from one-year Reserve component personnel appropriations. When testing or training is accelerated or delayed into another fiscal year, Reserve component units frequently must reprogram funds from other training or mission activities to cover these costs, with adverse impacts on unit training and readiness.

Subtitle C—ROTC and Military Service Academies

Section 531 clarifies 10 U.S.C. § 983, which is commonly known as the Solomon Amendment. The provision reiterates in explicit language the existing requirement of the statute that institutions of higher education must provide military recruiters access that is at least equal in quality and scope to that granted to other employers. For example, if a medical school makes its career development office available to any employer, it must do the same for military recruiters. The last administrative change fixes the reference to Secretary of Transportation, which was pertaining to the Coast Guard, and now properly refers to the Department of Homeland Security.

Section 532 would implement recommendations from the Fowler Commission established to review sexual misconduct allegations at the Air Force Academy. Specifically, this section alters the composition and charter of the Board of Visitors (BOV) for the Military Academies.

More members of the Board would be appointed by the President. In addition, the Board would be required to meet four times each year, up from the current requirement of one meeting, and members may not miss two consecutive meetings without prior permission from the Board Chairman for good cause. Failure to meet this requirement would result in the automatic termination of the individual's membership.

In addition, the charter of the Board would be expanded in this legislation to a more detailed inventory of Academy climate, culture, and procedures for review, and the requirement for Board reports would be increased from one per year to one per meeting, with the report due in 30 days instead of the existing 60 days.

The Fowler Commission considered these changes to be desirable due to the perceived lack of rigorous oversight of the U.S. Air Force Academy by its Board of Visitors. This section would ensure that future oversight is constant, meaningful, and consistent across the Military Departments.

Section 533 would implement recommendations from the Fowler Commission established to review sexual misconduct allegations at the Air Force Academy. Specifically, this section would expand the available pool of potential candidates for the position of Dean of Faculty/Dean of the Academic Board to include both civilian and military officers at both the U.S. Air Force Academy and the U.S. Military Academy. The Naval Academy does not have a statute that deals with the Dean of Faculty.

Section 534 would implement recommendations from the Fowler Commission established to review sexual misconduct allegations at the Air Force Academy. Specifically, this section would change the requirement that each Military Academy Superintendent must retire upon completion of his or her assignment.

It would allow the Secretaries of the Military Departments to exercise the greater flexibility with regard to future utilization of talented senior officers.

Subtitle D—Other Military Education and Training Matters

Section 541 would clarify the loans authorized for repayment under the education loan repayment program for health professions officers serving in the Selected Reserve with wartime critical medical skill shortages. In keeping with the spirit of the law and consistent with the health professions loan repayment programs of the Military Departments, this section would eliminate ambiguity and preserve the viability of this successful recruiting and retention incentive. This incentive accounts for over 30 percent of all health professions critical wartime skill accessions to the Selected Reserve, and has increasingly been utilized to recruit and retain active component health professions officers.

Cost implications: None. The Department of Defense currently is repaying the loans covered by this section and already has budgeted for their cost.

Section 542 would allow the Commander of the Air University to confer associate level academic degrees on graduates of the Community College of the Air Force (CCAF). Under existing law, the Commander of the Air Education and Training Command maintains this responsibility.

This section would bring the CCAF in line with all other Air University programs by ensuring that only the Commander of the Air University is responsible for conferring degrees. Such standardization would alleviate a concern recently articulated by the institution responsible for accreditation of all Air University programs, the Southern Association of Colleges and Schools.

Section 543 would allow members to take a three year educational leave of absence. Existing law limits such leave to two years. The additional year would allow health care professionals to complete required schooling, which in turn would expand opportunities for professional growth and increase retention.

Section 544 would repeal the requirements that Phase II Joint Professional Military Education (JPME) may not be less than three months. The Department of Defense (DoD) would prefer that the Chairman of the Joint Chiefs of Staff exercise discretion to determine the proper duration of Phase II JPME.

DoD's goal is to maximize the number of participants who receive joint duty education

while maintaining the same high quality Phase II JPME instruction.

Section 545 would change the title of the head of the Naval Postgraduate School from Superintendent of the Naval Postgraduate School to President of the Naval Postgraduate School. The new title would be consistent with the title used by civilian universities, particularly those that grant graduate degrees, and with the leadership structure of military war colleges, such as the Naval War College and the National Defense University.

This section also would establish a new civilian position of Provost and Academic Dean at the Naval Postgraduate School. The Secretary of the Navy would appoint an incumbent after consulting the School's Board of Advisors. The term of the appointment would be five years. Although the School presently maintains the position of Academic Dean, the new position created by this section would be more consistent with civilian university practices, and would be a well-received change by the School's accreditation board.

Section 546 would change the mission statement of the Naval Postgraduate School to place greater emphasis on professional education to enhance combat effectiveness in support of national security. It also would expand the eligibility of enlisted members to receive instruction at the School. Presently, enlisted members may only receive instruction at the School on a space-available basis. This section would allow the School to provide advanced level education to all Naval personnel to ensure the force is sufficiently proficient to meet the technology demands of the new era.

Section 547 would allow the Secretary of Defense to provide children of full-time, locally-hired Department of Defense employees who are U.S. citizens or nationals what is in essence a space-required, tuition-free education in Department of Defense Dependents Schools (DoDDS). The Secretary would have the discretion to authorize all, some, or none of the children of locally-hired DoD personnel to enroll under this section. The Secretary also would be able to withdraw such authorizations.

Because of a waiver granted by the then-Assistant Secretary of Defense for Force Management Policy beginning in School Year 2002-2003, locally hired, full-time nonappropriated fund DoD employees could enroll their children tuition-free if DoDDS determined there was space available for such children. Children of locally-hired appropriated fund DoD employees may also enroll in DoDDS on a space-available, tuition-free basis pursuant to a long-standing regulatory waiver.

Cost implications: The Department of Defense Education Activity (DoDEA) can absorb the small resource costs associated with this section due to the limited numbers of students impacted. Enrollment data from School Year 2002-2003 show only a small increase in the number of dependents enrolled in DoDDS as a result of the waiver permitting the enrollment of dependents of locally-hired nonappropriated fund employees.

Subtitle E—Administrative Matters

Section 551 would modify the annual report to Congress concerning joint officer management to highlight key indicators of compliance and eliminate data of little value.

The information reported to Congress would include data that is more meaningful and helpful for judging the status of the joint community. For example, it would indicate: the inventory of joint qualified officers available for use in the joint community; how well joint organizations are manned in comparison to other organizations; the percentage of officers who left joint duty before earning full tour credit; the percentage of Joint Professional Military Education class seats filled; the number of officers who received credit for time served in a Joint Task Force Headquarter by military department, grade, and full/partial credit; and promotion comparison statistics for all promotion selection boards.

Section 552 would provide a minor technical modification to the definition of "joint duty assignment" by specifying that the Secretary of Defense would publish a Joint Duty Assignment List.

This section also would modify the definition regarding the term "tour of duty" to allow officers to continue accumulating joint credit if they serve consecutive joint duty assignments.

Section 553 would allow absent military voters located in the United States to use Federal Write-In Absentee Ballots. Under existing law, only absent military voters located overseas may use such ballots.

Operational considerations and the mobility of military personnel frequently make it difficult for them to anticipate the mailing address they will be using in the period immediately prior to a general election. Members who have provided their current local mailing address to the local election office may, on short notice, receive orders transferring them to another location within the United States. If these members have not received their State absentee ballots prior to departing on such orders, the State absentee ballots may not be forwarded to the members' new addresses in time. Members could miss applicable State deadlines and be disenfranchised for the Federal general election. This section would remedy this inequity by allowing absent military voters located in the United States to use Federal Write-In Absentee Ballots.

Subtitle F—Military Justice Matters

Section 561 would require the Military Departments to waive lost time when a member is acquitted or released without trial, or has his conviction set-aside on legal grounds (as distinguished from clemency) or reversed based upon an appeal. Existing law does not give the Military Departments any discretion to consider a member's confinement if the member is acquitted or if there is another resolution of the case favorable to the member qualifying for service credit.

Existing law requires members to make up time lost for any period of confinement by

civilian or military authorities. In those cases where a member serves a period of confinement but ultimately received legal exoneration, assuring the period of confinement qualifies for service credit is equitable and just.

Section 562 would lower the blood alcohol concentration (BAC) used as a baseline to measure whether a person is drunk for purposes of the Uniform Code of Military Justice (UCMJ). The current BAC limit specified in the Uniform Code of Military Justice is either 0.10 BAC or the limit prescribed in the State where the offense occurred. The new limit would be either 0.08 or the limit prescribed in the State where the offense occurred.

Traffic accidents involving alcohol kill or injure a significant number of Service members. According to studies by the National Highway Traffic Safety Administration (NHTSA), virtually all drivers with a BAC greater than 0.08 are impaired. Moreover, an analysis by NHTSA of five states that lowered the BAC limit to 0.08 showed that significant decreases in alcohol-related fatal crashes occurred in four out of the five states after the 0.08 law was adopted. Two recent national analyses of the impact of 0.08 laws concluded that these laws are effective in reducing alcohol-related fatalities, especially in conjunction with administrative license revocation laws. There was a 12 percent reduction in alcohol-related fatalities in California in 1990, the year 0.08 and an administrative license revocation law went into effect.

The Department of Defense believes the best countermeasure against drunk driving is a combination of laws, public education, and enforcement. As part of this comprehensive approach, the Department believes reducing the BAC limit from 0.10 to 0.08 combined with other existing programs would help to further reduce alcohol-related accidents and save lives. Currently, 34 States, the District of Columbia, and Puerto Rico have enacted laws that set the BAC limit at 0.08. As a result, this section would provide a more consistent UCMJ definition of what constitutes a drunk or impaired driver.

Subtitle G—Benefits

Section 571 would allow members serving outside the continental United States to receive lump sum payments for certain unusual nonrecurring expenses.

In some overseas locations, members experience unusual expenses that are factored into the overseas Cost of Living Allowance Program. Examples include road and radio/television taxes in the United Kingdom, extremely large automobile registration fees in Singapore, and car winterization expenses in Alaska and parts of Canada. Presently, members receive reimbursement for such expenses using a formula that identifies the expected average annual costs of these unusual expenses, prorates the cost to a daily average, and then adds the daily average to normal daily pay. This section would cancel the existing reimbursement scheme and replace it with an immediate lump sum payment covering the full amount of the unusual expense. Immediate reimbursement would improve the quality of life for members serving so very far from their home.

Section 572 would eliminate permanently the requirement for officers and certain enlisted members to pay subsistence charges if they are in the hospital because of an injury incurred as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war.

This section is necessary to effect a relatively simple and inexpensive accounting systems change.

Subtitle H—Other Matters

Section 581 would authorize the Internal Revenue Service (IRS) to release the mailing address of taxpayers to the Department of Defense and the Department of Homeland Security to help locate individuals who have an obligation to serve in the Armed Forces.

Service members incur an initial eight-year service obligation when they enter the military. Generally, a portion of this service obligation is served on active duty with the remainder served in the Ready Reserve. Many members separating from active duty are assigned to the Individual Ready Reserve, which is a manpower pool available for mobilization. Individual Ready Reserve members generally do not participate in regular military training and are not in routine contact with military authorities. Moreover, Reserve component members frequently move while settling into their new civilian careers. As such, they may fail to notify the Secretary concerned of any change in address, marital status, number of dependents, civilian employment or physical condition as required under section 10205 of title 10, United States Code.

Section 10204 of title 10 requires the Secretaries of the military departments to maintain adequate and current personnel records of each member of the Reserve components. The military departments expend considerable time, effort and financial resources to maintain current personnel data. They use commercial sources such as credit reporting agencies as well as Department of Defense, Department of Homeland Security and other government data sources, including the United States Postal Service National Change of Address database, in their efforts to maintain personnel data.

The purpose of the Reserve components always has been to augment the active force in time of war or national emergency. The drawdown of the active forces over the past decade has resulted in a greater reliance on the Reserve components to meet national security requirements. As the Department of Defense executes its global mission, it must have all members of the Armed Forces available for mobilization. There are members in the Individual Ready Reserve who possess critical skills that are needed to support the ongoing war effort. These service members have made a commitment to service, and the Department needs to be able to contact them when the Department requires their service.

This section is focused narrowly to minimize intrusion on taxpayer privacy. Only address information on military members would be released to the Department of Defense or

Department of Homeland Security. Moreover, to safeguard taxpayer privacy to the maximum extent possible, the Department of Defense and the Department of Homeland Security first would attempt to obtain address information from other sources generally available to those Departments. If these attempts do not result in contact with the service member, the Secretary of Defense, Secretary of a military department or Secretary of Homeland Security would be permitted to request address information from the Internal Revenue Service.

If the President has declared a national emergency or the Congress has declared war, this section would authorize the Secretary concerned to request address information from the Internal Revenue Service before or simultaneously with other information sources when a service member possesses a critical skill that is needed for immediate mobilization.

This section would test the effectiveness of using Internal Revenue Service information to locate service members. No information would be released after September 30, 2009, unless authorized by Congress. The Departments of Defense and Homeland Security would document the effectiveness of this test in order to determine whether the authority has proven beneficial and if so, would seek an extension of this authority or request that the authority be made permanent. In so doing, the Departments would document the following: the number of individuals, by fiscal year, that each Secretary attempted to locate; the sources (other than the IRS) used in an attempt to obtain address information of service members prior to requesting information from the IRS; the cost associated with the use of those sources; the number of requests submitted to the IRS, and the number of individual names included in each request; the number of incidents and the total number of names included with each request in which address information was requested as an exception; the number of addresses the IRS provided and the number of those addresses that resulted in positive contact with the service member; and an assessment by the Secretaries of Defense and Homeland Security as to the effectiveness of obtaining address information from the IRS.

The section also would modify current safeguard requirements by increasing the responsibility of agencies with respect to the oversight of contractors or other agents authorized to receive tax return information. It would require agencies to conduct regular onsite reviews of their contractors or other agents, submit the findings of such reviews to the IRS, and certify on an annual basis that the contractors were in compliance with the law.

Section 582 would allow the Secretary of Defense to establish an alternate minimum military service obligation for individuals accessed into the Armed Forces who have unique skills acquired in a civilian occupation, such as engineers, scientists, and information technology professionals. The existing mandatory initial military service obligation, ranging from six to eight years, may discourage many of these individuals from joining the military.

This section would provide the Department of Defense (DoD) with greater flexibility in accessing individuals with unique civilian acquired skills that are hard to develop or maintain in the military, but are needed to remain on the cutting edge of technology. These individuals will be older since they obtained the skills the Department is seeking by spending years developing

their expertise in the private sector. However, an initial military service obligation may prove to be more of a commitment than these individuals are willing to make, thus becoming a disincentive to join the military.

At the same time, DoD may not want to retain these particular specialists as technology evolves and advances. By providing the Secretary of Defense with the flexibility to establish a shorter initial military service obligation for these specialized individuals, DoD could better meet emerging requirements for unique, specialized skills.

Section 583 would permit the Secretaries of the military departments to establish expedited basic training (or equivalent training) requirements for certain individuals who possess professional or other critical skills, such as linguists, engineers, scientists, information technology professionals, and other professionals from very specialized or highly technical fields. Expedited training in some cases may be necessary to allow the Department of Defense to meet imminent mission requirements. Even though such training would be expedited, DoD absolutely would ensure that every member is prepared to function effectively and safely as part of a military unit, especially in a combat zone.

This section is similar to existing law that allows DoD to expedite the training requirements for certain healthcare professionals. It would allow the Secretaries of the Military Departments to determine the type, level and duration of the training needed to prepare recruits already possessing unique skills to deploy in time of war or national emergency.

Section 584 would eliminate existing mandatory terms of office for specified general and flag staff officers. Instead, such officers would serve at the pleasure of the President or, in some cases, of the Secretary concerned.

This section would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps.

Section 585 would prohibit state courts from requiring immediate payment of retirement benefits from a property settlement in a divorce action when the effected service member, though eligible, has not yet retired.

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

As a result, a retirement-eligible servicemember who otherwise would remain on active duty may have no choice but to retire in order to comply with the financial liabilities imposed by such courts. Forced retirement under such circumstances is unjust, unwarranted, and harmful to the security of the United States.

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

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS
Subtitle A—Pay and Allowances

Section 601 would prohibit members on terminal leave from receiving Assignment Incentive Pay.

Payment of Assignment Incentive Pay should only be authorized for members who are performing that assignment or who are in an authorized leave status and intend to return to that assignment.

Section 602 would provide more flexible retirement rules for military officers. Specifically, this section would eliminate the three-year time-in-grade requirement for all general and flag officers; eliminate the requirement for the Secretary of Defense to certify in writing to the President and Congress the satisfactory performance of duty for officers serving in grades O-9 and O-10; make permanent the time-in-grade waiver authority for all commissioned officers serving in grades O-5 and O-6; and provide legislative consistency between active and reserve commissioned officer retirement requirements.

Section 603 would allow general and flag officers to receive retired pay that exceeds 75 percent of base pay. This would provide greater incentive and more appropriate compensation for general and flag officers who desire to serve for more than 30 years after October 1, 2003. The same change would be made for grades E-8 through O-6 for service under conditions determined by the Secretary of Defense that such additional credit is in the best interest of personnel management.

This section corresponds with DoD efforts to allow members to serve longer careers.

Section 604 would remove the existing salary cap for general and flag officers that limits their retired base pay to the retired base pay authorized by level III of the Executive Schedule.

This section would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps.

Section 605 would allow members who receive orders within the continental United States to attend professional military education or training lasting 12 months or less to receive basic allowance for housing (BAH) based on the area where their dependents reside or the new duty location.

In many cases, military members assigned to short duration schools find it less disruptive to their families to leave them in place. Allowing members to receive BAH based on either the area where their dependents reside or their new duty location would result in a cost savings to the Government because the higher BAH normally would be less than the cost of relocating the dependents.

Subtitle B—Bonuses and Special and Incentive Pays

Section 611 would extend critical recruiting and retention incentive programs for Reserve components that are due to expire at the end of calendar year 2004. Absent these incentives, Reserve components may experience more difficulty in meeting skilled manning and strength requirements.

The Reserve components rely heavily on being able to recruit individuals with prior military service; approximately half of all accessions are former Service members or members who are separating from active duty. This is a high-priority recruiting market for the Reserve components, since accessing individuals with prior military experience reduces training costs and retains a valuable, trained military asset. The prior service enlistment bonus offers an incentive to those individuals with prior military service to transition to the Selected Reserve.

The Selected Reserve reenlistment bonus, by retaining members who currently are serving in the Selected Reserve, is necessary to help the Reserve components maintain required manning levels in skill areas that are critically short.

The Reserve components historically have found it challenging to meet the required manning in the health care professions. The incentive that targets health care professionals who possess a critically short skill is essential to meet required manning levels.

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

Finally, the health professions loan repayment program has proven to be one of our most powerful recruiting tool for attracting young health professionals who are trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

All of these bonuses and special pays provide an important array of incentives that are necessary for the Reserve components to meet manning requirements. Extending these

authorities another year would ensure continuity of these programs.

The military departments already have programmed funds for these incentives.

Section 612 would create a bonus to encourage officers who are pending release from active duty, or have previously served on active duty, to serve for the first time in the Selected Reserve and address a critical skill or manpower shortage. These officers already are trained, proven performers and constitute the primary recruiting population for a Selected Reserve critically short of company grade officers.

The bonus also would allow the Selected Reserve to address critical skill shortages in such areas as language or civil affairs by encouraging individuals who possess or would train in a critical skill to serve as commissioned officers in the Selected Reserve. Rebalancing the force may shift some skills in high demand between the active and Reserve components or increase the depth of a skill area in a component. Some skill areas, ideally suited for the Reserve components, require additional depth. This bonus would facilitate the rebalancing effort by providing the tool to attract individuals with unique skills to deepen the pool in critically short skills. This section also would enable Reserve components to compete with the private sector for individuals who possess critically needed skills.

The Marine Corps Reserve estimates this bonus would enable them to access an additional 125 officers annually.

Cost implications: Presently, the Marine Corps is experiencing a significant shortage of Reserve officers possessing critical skills. While the authority is discretionary, the Marine Corps has included $750,000 in its budget submission for Fiscal Year 2005 for this bonus, subject to appropriation. The other Reserve components have not included any funds for this bonus in their Fiscal Year 2005 budget submissions.

Section 613 would allow enlisted personnel serving on indefinite reenlistments in designated critical military skills to receive a critical skills retention bonus. The goal is to boost retention of members with designated critical skills.

At present only the Department of the Army has enlisted personnel serving on indefinite reenlistments. Existing law does not address applicability of the critical skills retention bonus to such enlisted personnel because they do not reenlist. This section would clearly establish that indefinite reenlistees may receive the retention bonus on the same basis as enlisted personnel serving under the traditional reenlistment system.

Cost implications: This section would not produce any additional direct cost. Currently, the Army is terminating the member's indefinite reenlistment and allowing the member to "reenlist" in the critical skill. This enables the Army to pay the member the retention bonus. The only additional costs from this section would be a one-time increase in the administrative workload from implementing the legislative change.

Section 614 would allow employees to receive foreign language proficiency special pay when assigned to duties outside of contingency operations. This section also would ensure that the five percent increase in pay is not added to base pay.

By limiting foreign language proficiency pay to "contingency operations," current compensation law hurts the Department of Defense's ability to recruit and retain a multilingual civilian force that can be used in diverse situations. This limitation contributed to the Department of Defense having to contract for several hundred Iraqi translators in the spring of 2003 instead of hiring Federal employees.

NUMBER OF PERSONNEL AFFECTED:

	FY05	FY06	FY07	FY08	FY09
Air Force	275	275	275	275	275
Navy	250	250	250	250	250
Army	350	350	350	350	350
DOD	24	24	24	24	24
Total	899	899	899	899	899

RESOURCE REQUIREMENTS ($M):

	FY05	FY06	FY07	FY08	FY09
DoD	$3.99	$4.07	$ 4.15	$4.22	$4.30

Cost implications: As a discretionary special pay, the annual budget would limit the cost of this section. Employees eligible to receive foreign language proficiency pay are higher-graded employees. For purposes of the cost estimate, this section used the annual salary of a GS-14, step 4 (Rest of United States rate), $87,279. The maximum foreign language proficiency pay is 5 percent of an employee's base pay. For 899 potential employees, this section would cost approximately $3.9 million (899 multiplied by $4,364 ($87,279 x 5 percent)). This section includes a budget inflation factor of 1.8 percent for Fiscal Year (FY) 2005, and 1.9 percent for FY 2006-2009 based on the FY 2004-2009 Program Budget Review Guidance.

Section 615 would create a single statutory provision governing repayment of bonuses, special pays, and educational benefits for members who do not fulfill the obligated service or other terms of the agreements they enter.

Over the years, as Congress has added new bonuses, special pays, and educational benefits, variances in the repayment provisions have grown. Today, recoupment provisions vary considerably across the spectrum of benefit and pay authorities. Some statutes require or permit recoupment when a member fails, for any reason, to complete an obligated period of service. Others require recoupment only if the member voluntarily terminates service before the end of

the obligated period. Still others require a member to enter into a written agreement under which the individual would reimburse the government a pro-rated amount of the pay/benefit if the member "voluntarily or because of misconduct" fails to complete the required period of service (which has caused significant problems in administration). Finally, some have no repayment provisions at all. The lack of consistency among the statutory provisions results in inequities and perceptions of unfair treatment among members.

The Department of Defense (DoD) seeks to establish one simple policy and repayment procedure for all persons who enter into agreements involving obligated military service in exchange for bonuses, special pays, or educational benefits. The Secretary concerned would prescribe standard regulations on applicable procedures including the method for computing the amount of the repayment, the conditions under which an exception to the required repayment would apply and, when repayment is not required, the conditions under which future installments payments would not be made to the member. For DoD, this new authority would be administered under regulations prescribed by the Secretary of Defense. By establishing an effective date of April 1, 2005, DoD seeks to provide adequate time for the Secretary to establish regulations to implement the new authority.

Within the flexibility of the single statutory repayment provision and exceptions to be recognized, DoD would establish a standard policy that is based on sound stewardship of public funds and fairness to recipients. That policy likely would require repayment of unearned compensation or benefits in cases where the member does not for any reason complete the obligated service. It also would ensure that repayment would not be required for an individual who cannot fulfill the obligation (either service obligation or maintenance of skill qualification) because of injury, illness, impairment or death not the result of the individual's misconduct. Finally, it would provide the Secretary flexibility to determine whether repayment would be against equity and good conscience or otherwise would be contrary to the interests of the United States.

This section does not address three title 37 pay authorities DoD has not used for many years: section 312a (Special Pay: Nuclear-Trained and Qualified Enlisted Members), section 315 (Special Pay: Engineering and Scientific Career Continuation Pay), and section 317 (Special Pay: Officers in Critical Positions Extending Period of Active Duty).

Subtitle C—Travel and Transportation Allowances

Section 621 would allow the Department of Defense to reimburse student dependents of military members assigned outside the United States for lodging costs incurred in connection with travel when, through circumstances beyond the student's control, the student is required to procure accommodations while en route.

Cost implications: Although expected to be minimal, the Department of Defense estimates this section would cost $200,000 per year.

Section 622 would provide additional travel and transportation allowances for family members who attend the burial of a member of the armed forces. It would pay for the travel of family members to the same location the deceased member will be transported for burial. This would not impose a significant cost on the Department of Defense because only six times in the past fiscal year were remains shipped to a location where family members' could not be provided travel.

This section also would provide for travel of the member's parents in all cases.

Subtitle D—Other Matters

Section 631 would prevent a State or Territory from imposing sales, use, excise, or similar taxes on the personal property of nonresident service members in the absence of a credit against the tax for sales, use, excise, or similar taxes previously paid to another State or Territory. Currently, the Commonwealth of Puerto Rico imposes its excise tax on nonresident service members who ship personal property that it considers luxury items, such as motorcycles, boats, other watercraft, and mobile homes. Members are transferred to Puerto Rico pursuant to military orders and are absent from their home residence or domicile solely by reason of compliance with military orders. Having already paid sales or use taxes similar in nature to an excise tax to another State or Territory, these service members are being taxed twice on the same property because the Commonwealth of Puerto Rico does not recognize a credit against its excise tax for these prior tax payments. The intent of section 511 of the Servicemembers Civil Relief Act to protect nonresident service members from double taxation and losing their domicile for tax purposes is frustrated where a local taxing authority can impose its own excise tax despite service members having already paid a similar tax on the same property.

Section 632 would allow Intelligence Senior Level employees ro receive the same more flexible annual leave accrual that currently is authorized for members of the Defense Intelligence Senior Executive Service, and certain other senior government officials.

Intelligence Senior Level employees occupy demanding, often technical positions that make it difficult to schedule annual leave to avoid existing "use-or-lose" mandates. Congress recently recognized the contributions of, and the demands placed on, Intelligence Senior Level officials when it made them eligible for Presidential Rank Awards (Section 503 of the FY2003 Intelligence Authorization Act, Public Law 107-306, November 27, 2002).

TITLE VII—HEALTH CARE PROVISIONS

Section 701 would clarify that the Department of Defense Nonappropriated Fund Health Benefit Program (NAF HBP) is a Federal health benefit program not subject to state, local, territorial or other laws, taxes, and health plan mandates. Section 349 of the National Defense Authorization Act for Fiscal Year 1995 requires a single, uniform health benefits program for DoD NAF employees and retirees. The law was passed to end major differences in provisions and premium contribution rates that had previously existed when each of the military

departments had separate programs.

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

Subtitle A—Acquisition Policy and Management

Section 801 would make needed minor changes to the newly revised Defense Acquisition Workforce Improvement Act (DAWIA), chapter 87 of Title 10, United States Code, enacted by Section 831 of the National Defense Authorization Act for Fiscal Year 2004. Specifically, minor changes are necessary to conform the provisions of DAWIA to the new National Security Personnel System (NSPS), grant the ability to recoup scholarship funds, and allow the Secretary of Defense to designate certain positions as Critical Acquisition Positions subject to unique minimum standards.

Sections 1732 and 1733 would be revised consistent with NSPS authority to establish a new pay system, and would eliminate references to obsolete General Schedule grade levels.

Section 1742 would require a signed agreement by scholarship program participants and would allow the Department of Defense to recoup funds should a participant not fulfill the agreement.

Section 1764 would add the position of Deputy Program Manager to the list of Critical Acquisition Positions for which the Secretary of Defense may establish different minimum standards.

Section 802 would permit the Secretary of Defense to delegate to the Defense Contract Management Agency (DCMA) authority to pay defense contractors for restructuring costs associated with business combinations. The Department of Defense believes that the Director, DCMA, is well qualified to make determinations of this sort. In recent years, the volume of high visibility business combinations within the defense industry has decreased significantly. DCMA already has the primary responsibility within DoD for negotiating final overhead rates, which would include any restructuring costs, with the contractors under its cognizance. Measurement of restructuring costs would continue to be based on cost data audited by the Defense Contract Audit Agency.

Section 803 would permit the sale of National Defense Stockpile materials, and is entirely consistent with the authority Congress annually provides to the Department of Defense.

Section 804 would allow the Department of Defense to privatize certain military utility systems present on land that does not belong to the United States. Under existing law, privatization of such systems has proven to be prohibitively complex.

This section would allow, but not require, privatization of a utility system under sole

source conditions when the underlying land is not owned by the United States (lands withdrawn for military purposes are still owned by the United States). Many Reserve and Guard locations are on land leased from the local airport authority under long-term leases. These conditions frequently prevent or severely hinder the ability to carry out a privatization action. If a utility company, the potential conveyee would have to: (1) be located adjacent to the installation; (2) be regulated; (3) have a franchise for the service area; and, (4) have the franchise granted by the state. If an adjoining airport, the potential conveyee would have to: (1) be a governmental entity, (2) operate a public airport adjoining the installation, (3) own the property underlying a substantial part or all of the installation, and (4) own the utility system for the adjoining airport. Requiring the conveyee already to be operating in the immediate area and, in the case of a utility company, to be regulated would provide assurance that the conveyee is reliable. In the event there are two or more local utility providers that meet the requirements, competition could be limited to those qualifying entities. The requirement that the conveyance be economical would continue to apply.

This section also would recognize that if the military departments seek to engage in a sole source conveyance and the recipient is a governmental entity, there is no point in requiring the conveyee to pay for the system. To require such payment only would require the affected military department to pay that purchase price back with interest in its utility rates. This would be counterproductive when dealing with a governmentally owned utility provider, since the tax laws would not apply to the transaction.

Should the conveyance to a governmentally owned entity occur at no cost (or $1.00), the system would automatically revert to the ownership of the United States if the entity later should become private. Since the conveyance would have been without cost to begin with and the military department would have paid in rates for any upgrades accomplished after conveyance, returning it at no cost would avoid any unjust enrichment of the utility company.

The additional definitions are necessary to implement the changes that would be made elsewhere in this section. The definitions are identical to those in the Federal Acquisition Regulation.

This section would ensure the Department of Defense only would use sole source authority where it would result in a reliable provider, and not simply as a means to dispose of utility systems without regard to the ability of the conveyee to perform.

Section 805 would allow the Department of Defense (DoD) to transfer or convey property for public benefit uses in the same manner it conveys property for non-Federal correctional facilities under 40 U.S.C. § 553, public airport uses under 49 U.S.C. §§ 47151–47153, and wildlife conservation under 16 U.S.C. § 667b-d.

The existing process for disposing of property for public benefit uses often results in long and unnecessary delays in the disposal of surplus federal property. Under existing law, surplus property to be conveyed for educational uses, health purposes, or parks and recreation, is

assigned to a Federal sponsoring agency—the Department of Education, the Department of Health and Human Services, the Department of Interior, or the Department of Housing and Urban Development—for disposal. These sponsoring agencies at times have developed concerns regarding their responsibility for environmental conditions on property assigned to them for disposal due to their temporary "ownership" of the property and role as disposal agent. Despite the execution of a Memorandum of Understanding between DoD and every sponsoring agency that clearly places responsibility for environmental issues on DoD, several sponsoring agencies have resisted accepting assignment of property with environmental contamination issues. In order to support the public benefit use of such properties, DoD has resorted to long-term leases with the non-Federal recipients to enable their use until the property can be transferred by deed. During this interim period, the sponsoring agencies often provide little oversight and several recipients have failed to operate in accordance with the terms of their applications, resulting in defaults and involuntary lease terminations, and the necessity to engage in new disposal planning.

After Congress authorized early transfers by deed pursuant to section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the same sponsoring agencies still refused to accept assignments of such property based on the same concerns regarding potential environmental responsibility; this despite the fact that the regulators and State governors agreed that the property was suitable for transfer by deed.

This section would allow DoD to transfer property by deed to approved public benefit use recipients as soon as the existing regulatory review process determines the property is suitable for transfer. It would facilitate more rapid reuse of base closure property by eliminating delays in transfers or conveyances of property for public benefit use, thereby accelerating job creation and economic redevelopment efforts.

Section 806 would designate military installations undergoing closure, realignment, transfer, conversion or redevelopment as HUBZones.

The HUBZone Program was enacted into law as part of the Small Business Reauthorization Act of 1997 and designates the Department of Labor and other agencies to identify counties and urban census tracts with either low income or high unemployment levels as HUBZones. Goals associated with award of federal contracts to small businesses located within designated HUBZones have been established. In addition, mechanisms to promote placement of contracts with qualified small businesses in such areas are in place. Currently, military installations do not qualify as HUBZones.

Providing HUBZone designation to these military installations may motivate small businesses to locate on military installations and stimulate economic development.

Section 807 would repeal section 8124 of Public Law 103-139 and section 8093 of Public Law 103-335 concerning totally enclosed lifeboats because both provisions are redundant and unnecessary. Existing law found at section 2534(a)(3)(B) of title 10, United States Code,

achieves precisely the same purpose. This section therefore is an appropriate "housekeeping" measure that would eliminate potential confusion.

Section 808 would streamline and simplify Department of Defense contract data collection and reporting requirements, and reduce the associated administrative effort. It is designed to carry out the Congressional intent of providing significant "full and open" prime contracting opportunities in the four designated industry groups while providing some measure of small business preference and yet achieve the 40 percent goal in each of the four designated industry groups.

Section 809 would allow the Secretary of the Army and the Secretary of the Navy to conduct demonstration programs involving expanded use of design-build contracts.

Design-build contracts are a proven industry strategy that include accelerated completion of projects, cost containment, reduction of complexity, and reduced risk to the owner. They shift liability and risk for design errors, ambiguities in design, cost containment and project completion to the design-build entity. Presently, the many advantages inherent in the use of design-build contracts cannot always be realized because of time and opportunity cost implications resulting from the restrictive language of 10 U.S.C. 2305a, 2807, and 18233.

In a design-build contract, there is one contractor who is responsible for both the design and construction. Typically, the design-build contractor utilizes proven construction methods and design concepts, resulting in both shorter construction time frames and lower change order rates. Disputes between the designer and the builder are eliminated, since the sole responsibility for the design rests with the design-build contractor. In addition, the use of a design-build contract reallocates the effort in contract administration to more productive activities earlier in the process. The contractor and government focus efforts more on communicating expectations and requirements up front rather than settling disputes in claims and change orders once misunderstandings surface in the field during construction.

This section would add to existing authority of 10 U.S.C. 2305a to allow the Navy and the Army to enter into design for design-build contract (fast-track design funding) prior to authorization and appropriation of the project, using design funds made available under the authority of 10 U.S.C. 2807 (active components) and 10 U.S.C. 18233 (reserve components) for the design portion of the contract, under the following conditions:

- The contractor to whom the contract would be awarded would be selected using design-build selection procedures established under 10 U.S.C. 2305a.
- The request for authorization and appropriation of construction funds already would have been submitted to Congress as a part of the Department of Defense's annual budget request.
- The Government's liability in a Termination for Convenience would not exceed costs above that attributable to the final design of the project. The Brooks Act exclusion for design-build requires a non-severable effort.

The exceptions to 10 U.S.C. 2807(a) and 18233(e) clearly would establish the authority for the Secretaries to use authorized design funds for all architect and engineer services and construction design, both before and after the authorization of a project and for the design portion of a design-build contract.

Although the actual construction time frames for design-build acquisitions are shorter than those associated with traditional design-bid-build acquisitions, the elapsed time from the date of the initial award until the completion of the construction is typically longer for a design-build acquisition because of the time period, prior to the actual start of construction, that is required to complete the final design. In a traditional design-bid-build acquisition, final design can be accomplished prior to the enactment of the project using design funds appropriated for that purpose. If the design phase of a design-build contract could be initiated prior to the authorization and appropriation of the project, the project could be completed sooner than would be possible via a traditional design-bid-build acquisition.

At present, there is no statutory authority that would allow the award of an early design effort design-build contract such that design could be completed prior to the authorization and appropriation of a project. In addition, the current statutory language governing the use of design funds does not specifically allow design funds to be used for the design portion of a design-build contract.

Section 810 would extend the Department of Defense's Laboratory Revitalization Demonstration Program for two more years through the end of Fiscal Year 2005.

In the early 1990's, the Department of Defense recognized a need for its laboratory industrial base to adapt facilities quickly to meet emergent requirements. The speed at which change is required often exceeds the ability of the current military construction program to provide required facilities. In 1996 Congress authorized the Department of Defense Laboratory Revitalization Demonstration Program to increase the flexibility of Defense laboratories to modernize antiquated facilities. In 1998 Congress reauthorized the program through the end of Fiscal Year 2003. This flexibility has proven invaluable in allowing the laboratories to meet emergent requirements to support transformational initiatives, and merits the requested two-year further extension.

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

Section 821 would allow the Department of Defense (DoD) flexibility to contract with all eligible, qualified air carriers for transport of DoD passengers or supplies. Existing law precludes DoD from entering into contracts with air carriers that are not effectively controlled by U.S. citizens. while laudable in intent, the existing law presents substantial difficulties in practice. DoD contracting officers must determine whether an air carrier "receives 50 percent or more of its operating revenue over the most recent three year period from a person not a citizen of the United States…." To determine an air carrier's controlling interest is questionable since

detailed data regarding source of operating revenues is usually not available. Such information is not readily available or transparent, so contracting officers are forced to assume the risk of unknowingly violating the law.

The Department of Transportation (DOT), as part of the application review process, looks at the ownership structure to ensure compliance with statutory citizenship provisions. The provisions may be informal or formal, before the Department of Transportation, or an Administrative Law Judge. DOT has the authority to deny the certification, or, if one was already issued, to revoke it if the citizenship tests are not met. Repeal of the existing law would eliminate the unanticipated problems associated with these determinations.

Section 822 would extend for one year the special authority permitting the use of simplified procedures to acquire commercial items up to $5,000,000. Section 4202 of the Clinger-Cohen Act of 1996 established this authority for an initial period of three years. Since that time, Congress has extended the authority four times, most recently until January 1, 2006.

The test program enables contracting officers to apply simplified procedures to the purchase of property and services above the simplified acquisition threshold but less than $5,000,000 when the contracting officer reasonably expects to receive offers concerning only commercial items. The Department of Defense believes that the use of these procedures has resulted in reduced procurement cycle times and faster deliveries. These procedures have increased flexibility in the acquisition process and reduced paperwork for the Government and contractors. Use of these procedures has encouraged commercial firms to enter the DoD market.

In 2003, Congress directed the Government Accounting Office (GAO) to report on the extent, benefit, and impact of the simplified acquisition test program. Regrettably, GAO was unable to determine the actual effectiveness of the program because the Federal Procurement Data System and the Defense Contract Action Data System databases contain unreliable test program data. While anecdotal evidence based on GAO interviews with procurement officials supports the success and benefits of the test program established in 1996, such evidence alone is not sufficient to determine whether to make the test program permanent. GAO, therefore, recommended that the Department of Defense work with the Office of Federal Procurement Policy to develop evaluation mechanisms for measuring test program benefits. Extending this program until 2007 would enable the Department to improve data reporting and collection, and with more reliable data, Congress would then be in a better position to determine whether to make this test program permanent.

Section 823 would establish a pilot program to allow the Department of Defense to award follow-on production agreements to non traditional defense contractors who wish to remain involved in the next stage of certain prototype projects. This authority would recognize that the follow-on activity may require some additional limited development prior to production by authorizing use for pre-production, as well as production. It would provide additional incentive for non-traditional firms to engage in business relationships with DoD.

With this authority, DoD could award transactions other than contracts, grants or cooperative agreements for prototype projects directly relevant to proposed weapons or weapon systems. For prototype projects, this authority is commonly referred to as "other transaction" authority (OTA) and resulting transactions are generally not subject to laws and regulations limited in applicability to standard contracts (e.g., the Federal Acquisition Regulation (FAR)).

In an environment where commercial industry is leading in many technological areas, it is imperative that the Department have a streamlined business mechanism for continuing beyond prototyping with nontraditional defense contractors or in other situations where a contract is not feasible or appropriate. Some companies or segments have been reluctant to do business with the government because of the perceived complexity and oversight associated with a standard FAR contract. Though waivers can accommodate some concerns of industry, many companies or segments are not inclined to submit offers if the only contractual instrument available is a standard FAR contract. In order to attract such companies or segments to perform prototype projects, there must be a contractual instrument other than a standard FAR contract available for continuing into production, if warranted. Without this authority, DoD's ability to attract nontraditional defense contractors or implement innovative business arrangements could be diminished, impacting DoD's access to cutting edge technology.

This section also would allow for advance payments, require competition to the extent practicable, and permit protection of certain information from disclosure. It would recognize that some follow-on awards may justifiably be sole source due to intellectual property restrictions, complexity of the requirement, or the incumbent's capabilities.

Section 824 would permit the Defense Logistics Information Services (DLIS), a division of the Defense Logistics Agency, to develop a fee schedule for charging public and private entities for copies of materials from the Federal Logistics Information System (FLIS). FLIS is a management system designed to collect, store, process and provide item-related logistics information. This information often is used by private entities doing or seeking business with the Department of Defense.

Since 1994, and in an effort to recover full costs, DLIS has charged subscription fees for information dissemination products, such as compact discs. This is in accord with OMB Circular A-130, "Management of Federal Information Resources", and Revised (Transmittal Memorandum No. 4) (2000), which permits agencies to set user charges for information dissemination at a level sufficient to recover costs. Notwithstanding this system, DLIS information currently may be obtained at a cheaper rate through a request under the Freedom of Information Act (FOIA) (5 U.S.C. §552). FOIA, however, provides that its provisions do not supercede fees chargeable under a statute specifically permitting the establishment of a level of fees for particular types of records. This section would permit FLIS material to fall within this FOIA exception.

Section 825 would allow the Department of Defense to sell missile propellants and electricity when it would be in the public interest to do so, exchange missile propellants and

electricity, and waive provisions of law in the purchase of missile propellants when market conditions have adversely affected the acquisition of missile propellants and electricity. Existing law provides similar authority with regard to petroleum, natural gas, coal and coke. The section also would clarify that the definition of petroleum, as used in the statute, includes additives.

With the completion of the Titan missile program, the Defense Energy Support Center (DESC), a division of the Defense Logistics Agency, anticipates that it could have excess inventory of missile propellants. Other changes in the space programs affect the location, volume and specification requirements for missile propellants and cause the missile propellants to become either malpositioned or excess. Allowing sale or exchange of missile propellants would be more economical and efficient than disposal. The missile propellants could be reprocessed into other chemical products. Additionally, the missile propellants market is relatively small and highly specialized. It currently is being affected by adverse conditions in the natural gas market, due to high energy costs, and the fertilizer market, due to low demand for related products.

In deregulated electricity markets, DESC may sometimes buy blocks of power for future delivery. If Government requirements change, it may be advantageous to resell the power, resulting in a better price than that realized by either a termination for convenience or termination settlement. Moreover, if there are shortages or spikes in the electricity market, it may be useful for DESC to be able to waive certain contracting procedures.

Section 826 would amend companion provisions of the Small Business and Office of Federal Procurement Policy Acts to eliminate, under certain conditions, the requirement of a 15-day wait period between publication of the synopsis of a proposed contracting action and the subsequent publication of the solicitation to which the synopsis refers.

Initially, the 15-day wait period was designed to ensure that small businesses, competing for Government contracts, would have sufficient time to respond to solicitations. At the time of the passage of the current provisions, small businesses did not necessarily have instant access to information regarding contracting opportunities. During a wait period, these businesses could use the time either to locate these opportunities themselves or to use outside locator services to bring contracting opportunities to their attention. Then, small businesses could contact contracting activities either to ensure that they were on pertinent mailing lists or to request that a hard copy of the solicitation be sent to them upon issuance.

In today's business environment, businesses, both large and small, have electronic access to Government contracting opportunities. With the establishment of "FedBizOpps" as the single Government-wide point of entry for all Government contracting, contractors now have instant access to view notices of contracting opportunities. Hence, the reason for a wait period no longer exists. Elimination of this period would shorten lead-times and streamline the Government acquisition process, without disadvantaging any potential Government contractor. Furthermore, the limitations placed on the use of this procedure, as well as the addition of days for the submission of offers, ensures adequate protection of small business interests.

Section 827 would authorize a pilot program wherein the Secretary of a military department could enter into a contract or other agreement for local governmental services at a Defense Department installation with the local government responsible for serving the area. This is a continuation of the program authorized in section 816 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, in which the Secretary of Defense was authorized to engage in similar support agreements for the Presidio of Monterey. The Department seeks additional data on this type of support contracting before it considers seeking permanent authority from Congress. The six projects authorized in this section would provide that data.

Faced with multiple missions and finite resources, the Secretary of Defense is committed to ensuring the Department focuses its efforts on core competencies. This section would provide an opportunity for the military departments to partner with local governments in six separate locations to provide services at reduced cost to the Government with less procurement process time. Because those services essentially would be the same as those already provided to local citizens, this would further the integration of our Defense installations into the local community.

Section 828 would clarify and simplify the existing provision of law that precludes the Secretary of Defense from procuring ball and roller bearings from manufacturers who are not part of the National Technology and Industrial Base.

The current restriction on acquisition of foreign ball and roller bearings is not clear because it restricts ball bearings and roller bearings "in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement (DFARS), as in effect on October 23, 1992." The DFARS in effect on October 23, 1992, is not readily available to the public. Furthermore, there have been many changes to the DFARS since 1992. For example, does "small purchase" equate to "simplified acquisition"?

This section would remove the reference to subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992.

Additionally, this section would delete the existing limitation on the micro-purchase exception. It would add an exception for commercial items, unless the end item is ball or roller bearings. This is consistent with the domestic source restriction on ball and roller bearings imposed in the annual Department of Defense Appropriations Acts.

Section 829 would raise from 50 million to 75 million the threshold for awarding contracts under other than competitive procedures.

Raising the dollar threshold from 50 to 75 million would increase efficiencies by eliminating unnecessary layers within the chain of review that ultimately lengthen processing time. This section would also consolidate and standardize the level of decision-making approval authority. Currently, senior procurement executives have power to delegate the Milestone Decision Authority under major programs, but are not permitted to delegate authority to approve

justifications for non-competitive procurements above $50,000,000. Furthermore, many of the non-competitively procured requirements within the proposed $75,000,000 threshold do not warrant visibility at the senior procurement executive level.

The existing threshold has not been changed by Congress since 1991. The new, higher threshold takes into account 13 years of inflation. Moreover, the proposed $75,000,000 threshold was calculated using the Bureau of Labor Statistics inflation calculator adjusting from 1989 ($73,800,000) and rounding up to a "common" threshold. Increasing the threshold at this time is both reasonable and necessary in the interest of good government.

Section 830 would increase the threshold at which contractors must provide to Cooperative Agreement Holders a listing of the names and contact information of each contractor employee who has authority to enter into contracts, including subcontracts. The threshold would change from $500,000 to $1,000,000. This threshold was established in 1984 and represents approximately $875,000 in current year dollars based on the Bureau of Labor Statistics inflation calculator. Raising the present threshold to $1,000,000 would ease the administrative burden on contractors while still maintaining the originally contemplated level in inflation-adjusted dollars.

Section 831 would repeal the existing limitations of 5 years on the length of task and delivery orders contracts. It would allow the Department of Defense more flexibility to develop contractual arrangements tailored to specific acquisition situations.

The Department uses task and delivery order contracts to obtain needed products and services in a timely fashion with the benefit of streamlined and simplified procedures. Multiple award task and delivery order contracts offer the additional benefit of competition to help the Government secure good pricing and quality for the taxpayer. Longer term contracts may provide stability, increased contractor capital investments, and productivity enhancements, and can lead to overall cost savings for the Government. However, to ensure the competitive process is used effectively and consistently, the Department will establish appropriate controls in regulation to limit the length of individual orders placed under these contracts.

Section 832 would provide contracting officers greater authority to direct performance bond sureties to honor the terms of the bonds they have guaranteed. At the same time, it would preserve the right of the performance bond surety to recover monetary damages after honoring its bond if the default was improper or the surety incurred liability beyond the scope of its bond. Should the performance bond surety fail to comply with the directives of the contracting officer, the Secretary of the Treasury shall remove that surety from the list of approved sureties eligible to do business with the U.S. Government.

This section is necessary to ensure that performance bond sureties honor their performance bond commitments in a timely fashion and without delay or additional cost to the United States. Experience has shown that performance bond sureties are reluctant to honor their bond especially when default is based on post-acceptance breach of warranty or gross mistake

amounting to fraud. This typically leaves the Government with the option of spending additional funds to correct the deficiency or suing the surety and/or contractor for specific performance, a costly, tedious, and often unsuccessful course of action. Instead, the burden properly would shift back to the performance bond surety to carry out its obligations and to see that the work contracted for actually gets done.

Subtitle C—Acquisition-Related Reports and Other Matters

Section 841 would equate the notification threshold for real property transactions to the Military Construction Act funded unspecified minor military construction. Should the minor construction threshold change, the real property transactions threshold also would change. This section would simplify real property transactions, make them more uniform, reduce the number of notifications, and eliminate the need for repeated legislative adjustments.

Section 842 would repeal an obsolete annual reporting requirement concerning the Department of Defense's management of depot employees. Presently, the Secretary of Defense must provide to the Committees on Armed Services a report, not later than December 1 of each year, on the number of employees employed and expected to be employed by the Department of Defense during that fiscal year to perform depot-level maintenance and repair of materiel. The report is overly burdensome and provides information of limited utility. The Department always is prepared to provide Congress more relevant information in response to specific requests.

Section 843 would simplify and improve the two separate annual reports the Department of Defense prepares relating to the percentage of funds expended or projected to be expended for depot maintenance and repair workloads in the public and private sectors. One report is due February 1 and covers the two previous years. The other report is due April 1 and covers the next five years.

In its most recent audit of these two reports to Congress, the General Accounting Office (GAO) identified opportunities to improve these reports. GAO suggested that only the previous, current and budget years be reported because that data is more reliable and potential impacts are more immediate. The Department of Defense fully agrees, and this section would implement the GAO's recommendation.

Section 844 would change the title of the Department of Defense's "Office of Small and Disadvantaged Business Utilization" to the new "Office of Small Business Programs." The name would not reflect a change in emphasis or support for "disadvantaged" businesses, but rather would clarify that the Office of Small Business Programs has the full range of authority over many other Small Business Programs that presently are not reflected in the Office's title. The current title emphasizes only two elements of the program. In contrast, the preferred title would capture the overarching nature of the program which encompasses the "small disadvantaged business, service-disabled veteran owned small business, qualified historically underutilized business zone (HUBZone) small business, women-owned small business, and the very small business" programs. The new title would more clearly represent the office's span of

authority.

Section 845 is a "housekeeping" measure that would consolidate five sections of chapter 159 of title 10 dealing with real property into two sections.

Subsection (a)(1): Section 2661 contains general provisions governing the use of appropriated funds in real property actions. The current sections 2666 and 2673 also address the general use of appropriated funds and appropriately should be consolidated with section 2661, thereby avoiding the excessive, unnecessary, and undesirable partitioning of the chapter. An additional correction would change "appropriations…for maintenance or construction" to "appropriations…for operation and maintenance or construction" in the relocated section 2673; the original language appears to be a reference to the operation and maintenance and military construction accounts, but left out the full reference to operation and maintenance.

Subsection (a)(2): Section 2670 would be moved and added to section 2679. These two sections deal with polling places and support to private organizations that engage in activities of public benefit to the military and to the civilian community. The new section would be re-titled to cover these types of functions and also to allow any future additions for other organizations Congress might deem desirable. Otherwise, the language of section 2670 is unaltered except for changing the reference to "Secretary of any military department" to the more appropriate, "Secretary concerned".

Subsection (a)(3): Section 2664 would be repealed. This section addresses the acquisition of property such as sawmills, standing or fallen timber, machinery, etc., used in the production of lumber. The genesis of the provision is an act from July, 1918, designed to ensure immediate access to timber for "aircraft, vessels, dry docks, or equipment for them" as well as for military housing. Since these types of weapons systems are no longer produced using timber and since it is unlikely the military would utilize this provision to construct housing, the utility of this provision is obsolete.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Duties and Functions of Department of Defense Officers

Section 901 would allow the Assembled Chemical Weapons Alternatives (ACWA) program (formerly known as the Assembled Chemical Weapons Assessment program) to exercise management responsibility over the Pueblo Chemical Depot, Colorado, and Blue Grass Army Depot, Kentucky, chemical weapons destruction programs.

The ACWA program would transfer from the Under Secretary of Defense for Acquisition, Technology and Logistics to the Department of the Army no later than January 1, 2005.

Section 902 would expand eligibility for the positions of Deputy Chief of Naval Operations and Assistant Chief of Naval Operations to staff corps officers. Existing law allows only line officers to fill these positions.

Under this section, the Secretary of the Navy would have the authority to assign any officer from throughout the entire Navy who is best qualified by education, training, and experience to either of these executive level positions. As an example, the Navy could consider assigning a Supply Corps officer with years of logistics expertise to the position of Deputy Chief of Naval Operations for Logistics and Readiness.

In the continuing transformation of the Navy to a more capable combat force, the selection of the best leader for senior leadership positions is essential. The historic restriction requiring the assignment of only line officers to these positions runs counter to the needs and the best interest of the Navy. Moreover, this section would align the Department of the Navy with the other Military Departments which have no equivalent limitation or restriction.

Section 903 would repeal the requirement that the Department of Defense Inspector General conduct periodic audits of contractual actions under the jurisdiction of the Secretary of Defense, including the Defense Logistics Agency, and to submit to Congress a report on the management of undefinitized contractual actions by the Secretaries of the military departments. The report is overly burdensome and produces information of minimal utility. The Department of Defense would prefer that the DoD Inspector General use his finite resources to plan and conduct special audits based on greatest program risk and highest potential return

Section 904 would repeal the requirement that the Inspector General of the Department of Defense review waivers granted by the Director of Operational Test and Evaluation to the prohibition contained in subsection (e)(l) regarding contracts for advisory and assistance services. The Inspector General is to include in his semiannual report an assessment of waivers made since the last semiannual report.

This reporting requirement is unnecessary. In the fourteen years since the provision was enacted, the Director of Operational Test and Evaluation never has issued a waiver to allow a contractor that participated in development or production of a weapon system to provide advisory or assistance services with regard to the test and evaluation of that system. In each semiannual report to Congress, the Inspector General reports that no waivers were issued and, therefore, none were reviewed. Because the Director of Operational Test and Evaluation also is required by subsection (g) to include a description of waivers granted under subsection (e)(2) in the annual report required by section 139 of title 10, United States Code, this section effectively would eliminate two entirely unnecessary reporting requirements..

Section 905 would establish a new chain of succession for the position of Chief of the National Guard Bureau. It would specify that the more senior officer of either the Army National Guard or Air National Guard of the United States on duty with the National Guard Bureau would assume responsibility as the acting Chief of the National Guard Bureau if the

Chief vacates the office or if he or she otherwise is unable to perform his or her duties.

Existing law pertaining to the chain of succession for the senior leadership of the National Guard Bureau mandates that the Vice Chief of the National Guard Bureau serve as the acting Chief until a successor is appointed or the Chief once again is able to perform his or her duties. This arrangement is problematic because the Vice Chief is junior in pay grade to both the Directors of the Army National Guard and the Air National Guard. The Vice Chief is a major general while both Directors are lieutenant generals.

Accordingly, the law should change to ensure the most senior officer in the National Guard Bureau assumes responsibility as Acting Chief whenever required.

Subtitle B—Reports

Section 911 would repeal the requirement that the Inspector General of each Federal department, establishment, or agency receiving water or sewer services from the District of Columbia submit quarterly reports analyzing the promptness of payments with respect to such services. The reports are overly burdensome and produce information of minimal utility. The interagency billing disputes that were the original impetus for requiring the reports have been resolved for some time. The Department of Defense has been making quarterly payments promptly to the Department of the Treasury for District of Columbia water and sewer services and the Inspector General considers future non-payment to be a low-risk. Since its enactment, the Office of Inspector General has spent $810,743 on the required audits. These resources could be better utilized to audit higher risk programs and activities.

Section 912 would repeal a reporting requirement related to the Cooperative Threat Reduction (CTR) program that has become obsolete. The report duplicates information provided in the CTR annual report and in the program justification materials provided in the Departments OP-5 submission. The report is an administrative burden requiring a dedicated employee approximately 25 days to complete. This section would eliminate a redundant report without compromising any flow of information to Congress concerning the CTR program.

Section 913 would repeal the requirement that the Secretary of Defense submit to Congress by January 30 of each year, a report on the threats posed to the United States and allies of the United States: (1) by weapons of mass destruction (WMD), ballistic missiles, and cruise missiles; and, (2) by the proliferation of weapons of mass destruction, ballistic missiles, and cruise missiles.

This report is unnecessary because it repeats information already provided by the Department of State. The Department of Defense coordinates with the Department of State prior to issuance of this second report. Furthermore, the report is an administrative burden, requiring a dedicated employee some 70 days to produce. Congress already receives a substantial amount of useful and meaningful data on the proliferation of weapons of mass destruction (WMD) from annual reports provided by the State Department, as required under section 1097 of the National

Defense Authorization Act for Fiscal Year 1992 and 1993, and section 508 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. The Executive Branch has been responsive to Congress' need for vital information on the proliferation of WMD. In addition to the annual State report, DOD periodically updates its "Proliferation: Threat and Response" report, and the intelligence community provides current intelligence assessments on the worldwide proliferation threat.

Repeal of this report would not impact the flow of this vital information to the Congress concerning the threat posed to the United States by weapons of mass destruction, ballistic missiles, and cruise missiles.

Subtitle C—Other Matters

Section 921 would remove a highly unique provision of law enacted in 2003 that restricts the management authority of the Secretary of Defense by mandating specified manpower and funding for the Defense Prisoner of War/Missing Personnel Office. The Department of Defense (DoD) seeks to remove these restraints to maximize management flexibility and to ensure efficient use of resources. DoD remains entirely committed to the aggressive pursuit of information concerning the whereabouts and status of every member of the Armed Forces classified as either a prisoner of war or missing. This section would not affect DoD's commitment to provide adequate manpower and funding for this Office, it only seeks to counter perceived micromanagement.

Section 922 would extend the Department of Defense's (DoD) Mentor-Protégé Program for three years. DoD has found the Mentor-Protégé Program to be a valuable tool in expanding the number of qualified small disadvantaged business (SDB) firms. The Program has allowed DoD to achieve the statutory 5% SDB goal. DoD is hopeful that the recent expansion of the Program to include women-owned small business (WOSB) firms can provide similar success in achieving the statutory 5% WOSB goal.

Extending the Mentor-Protégé Program for thee more years would contribute to DoD's continued progress in meeting these and other small business participation goals.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 repeals the requirement for a separate budget request for procurement of reserve equipment.

Section 1002 repeals the requirement for a two-year budget cycle for the Department of Defense.

Section 1003. Subsection (a) of this section would extend for five years the authority of the Secretary of Transportation to provide war risk insurance and reinsurance relating to merchant marine vessels. This extension is essential to preclude a lapse of this wartime essential program. Subsection (b) of the section would update the language to reflect current Treasury practice of investing in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

Section 1004 would allow the Department of Defense (DoD) to extend from two to five years the ability to capture all expired funds from the military personnel and operation and maintenance appropriations.

Existing law allows DoD to transfer funds from military personnel and operation and maintenance appropriations to the Foreign Currency Fluctuations, Defense account only during the first two years after such appropriations have expired. DoD should be able to withdraw funds from an account during all of its expired years; otherwise gains in the last three years of an expired account must lapse because DoD cannot use those funds, including previously transferred Foreign Currency Fluctuations funds, for any other purpose.

The current two-year restriction apparently is a carry-over from the days of the "M" account, when all appropriations carried a two-year expired life. In 1990, Congress amended the current account closing law (section 1552(a) of title 31, United States Code) to extend the expired period to five years, but did not amend section 2779 to accommodate that extension. DoD should be able to take advantage of all expiring, unobligated funds.

This section would not affect outlays because outlays would be computed the same way they are now.

Section 1005 would allow individuals with a validated need for an official government cellular telephone to be paid a flat rate or monthly stipend for use of their personal cellular telephone. Presently, DoD provides government cellular telephones to a number of individuals, but the process of reimbursement for those without government telephones is tedious, redundant and overly burdensome. As a result, many employees now carry two telephones, or absorb the costs of government-related calls. Providing such individuals with a flat rate or monthly stipend for use of personal cellular telephones when used for official government business would be more fair, just, equitable, and efficient.

Section 1006 would authorize the Secretary of Defense to purchase promotional items of nominal value to promote job opportunities at career and job fairs and to prescribe guidelines regarding such purchases. Granting this authority to the Secretary would enable the Department of Defense to compete more evenly with private sector firms for entry-level civilian personnel. The intelligence elements of the Department of Defense (10 U.S.C. 422(b)) and the Department of Veterans Affairs (38 U.S.C. 7423(f)) currently possess similar authority.

Section 1007 would authorize the Secretary of Defense or his designee to waive indebtedness when the cost of processing the transaction exceeds the amounts recoverable. Waivers are not mandatory and third parties are not considered beneficiaries of the section. Maximum amount that may be waived under this statute would be the micropurchase threshold, currently $2500. By way of example, local government jury duty pay for federal employees not in annual leave status is payable to the Treasury (5 U.S.C. 5537; 2 U.S.C. 130b). For a one-day trial or jury call the amount may only be $5 or $10, however, the cost to process the check and forward the proceeds to the Treasury appear to be in excess of $75.00. In another example, cellular telephone long distance charges or roaming fees for personal use of a government cell phone while traveling are reimbursable to the government. However the cost to process the $1 check from the individual costs far more than the amount received. This authority should be applied wherever savings may be made through the judicious application of the waiver and would be based on a cost benefit analysis. The Department of Defense would be authorized under subsection (c) to waive indebtedness owed to the Government and arising out of the activities of, or referred to the Department of Defense or normally processed through it to the Treasury (such as jury fees), but not indebtedness that arises out of other agencies' activities and that is not referred to the Department of Defense. Due to the labor intensive actions required by 31 U.S.C. 3711, the subjective nature of many of the required determinations, and their inherently governmental characteristics, a more simplified process, executable at lower levels, possibly by even contractor personnel, is needed.

Cost Implications: The actual cost of this section is unknown. It is anticipated that the authority to waive to avoid excess processing costs would actually result in overall cost savings to the Department of Defense. Thus, the section would not increase the budgetary requirements of the Department of Defense or any other agency.

Subtitle B—Naval Vessels and Shipyards

Section 1011 would allow the Secretary of the Navy to use the retained proceeds from the sale of obsolete Navy service craft and boats to pay for the preparation of obsolete service craft and boats for sale or exchange. This would facilitate and accelerate the disposal of obsolete service craft and boats, particularly those with regulated polychlorinated biphenyl (PCB)-containing materials onboard. Another benefit of this section is that it would generate additional proceeds for the acquisition of similar, replacement service craft and boats.

Existing law allows agencies to exchange or sell computers or other personal property and use the exchange allowance or sales proceeds partially or fully to pay for similar replacement property. The Department of the Navy (DoN) seeks equivalent authority concerning its obsolete service craft and boats. At present, DoN may use proceeds from the sale of obsolete service craft and boats to purchase replacements. DoN may not, however, use the proceeds to prepare service craft and boats for exchange or sale.

Such preparation is essential and costly. It includes de-fueling, removal and disposal of

hazardous wastes, environmental surveys to determine the presence of regulated PCB-containing materials, and if found, the removal and disposal of regulated PCB-containing materials. Enabling DoN to use sale proceeds to pay preparation costs would expedite sales and exchanges, prevent the further deterioration of inactive vessels, hold down preparation costs, and maintain the commercial sale value of these vessels.

Service craft and boats are located throughout the world, many in remote locations such as Guam, Japan and Cuba. Although the exceptions listed in section 3709 of the Revised Statutes often apply to sales of service craft and boats, waiving the requirements completely would provide DoN maximum flexibility to deliver obsolete service craft and boats to potential buyers, particularly those in remote locations.

Cost implications: No budget data is available because no centrally-managed funds are programmed for the preparation of service craft and boats for disposal. The exchange and sale of obsolete service craft and boats generated $3.0 million in proceeds in Fiscal Year 2002. The amount of exchange and sale proceeds necessary to prepare additional service craft and boats for disposal would average $500,000 annually, depending on the number and type of vessels designated for disposal and the findings of environmental surveys. This represents cost avoidance of an unprogrammed requirement to the benefit of the Fleet custodians.

Section 1012 would allow the Secretary of the Navy to accept bids for domestic warship dismantling contracts based on the estimated cost of performance as well as the estimated value of the scrap and reusable equipment. This section also would allow contractors to retain the proceeds from the sale of such scrap and reusable equipment.

Existing law requires contractors to dismantle the ships, remove and sell the scrap and reusable equipment generated, and credit the sale proceeds against invoices they submit for the cost of performing the contract. The Department of the Navy (DoN) cannot award contracts based on the estimated value of the sale proceeds. As a result, contractors lack any incentive to maximize the proceeds from selling the scrap and, thus, ensure that DoN is paying the lowest net cost possible.

This section would encourage contractors to employ scrap processing and sale methods that result in a lower overall cost to the Government, and would allow DoN to award contracts to such contractors. The contractor would assume all of the risk of misjudging the actual value of the scrap and reusable equipment and all of the reward from maximizing the value of these sales.

Cost implications: This section could result in savings to the United States. However, there are many variables involved in determining actual savings, such as scrap metal prices, the type and condition of the ship, the type of salvageable equipment remaining on board, and contract competition for a particular project. Considering all of these variables, this section could save the United States approximately $900,000 per fiscal year based on current budget projections.

Subtitle C—Counter-Drug Activities

Section 1021 would extend for two years, through fiscal year 2006, existing authority for the Department of Defense (DoD) to use funds available for drug interdiction and counterdrug activities to provide assistance of the Government of Columbia in support of that nation's ongoing counter-terrorism efforts. The duration of this authority would mirror the authority enacted by Congress in sections 1004 and 1033, of the National Defense Authorization Acts for fiscal years 1991 and 1998, respectively. The existing law that authorizes DoD to use counterdrug funds for counter-terrorism activities in Columbia is section 1023 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

The three major groups in Columbia designated by the United States as terrorist organizations, the Revolutionary Armed Forces of Columbia, the National Liberation Army, and the United Defense Forces, each have well-established, inextricable links to illegal narcotics trafficking. This section would allow the United States and Columbia maximum flexibility to continue to combat the nefarious scourges of drugs and terrorism that these three organizations are foisting upon the people of Columbia. Neither the United States nor Columbia can afford to fail in this endeavor. The defeat and elimination of "narco-terrorism" in Columbia will have profound beneficial effects for Columbia, the entire Andean region, and the national security of the United States.

Subtitle D—Other Department of Defense Provisions

Section 1031 would incorporate technical and clerical amendments to reflect that the Secretary of Defense now exercises control and supervision of transportation within the Department of Defense. Previously, control and supervision of such transportation was divided between the Secretaries of the Military Departments, creating the potential for unnecessary competition or disputes.

Subtitle E—Other Matters

Section 1041 would allow the Department of Defense to bid and compete contracts for the performance of security-guard services at military installations in the continental United States. Such contracts would be more cost-effective and would provide DoD a necessary tool to respond more effectively and rapidly to contingencies and other exigent situations, such as the need for enhanced security of military installations following September 11, 2001. Existing law has degraded military readiness by decreasing the commander's ability to reallocate civilian personnel in response to changing requirements and has acted as an impediment to efficient and cost-effective operations.

Section 1042 would enable private citizens and military retirees to support the Armed Forces without engaging in full-time military service.

The Air Force and the Coast Guard already have organizations that provide a more formal structure in which private citizens may contribute to their respective missions. The

Army, Navy, and Marine Corps presently have no similar organizations.

Additionally, DoD is developing programs to partner with business, the education community and others to gain access to cutting edge technology or highly specialized skills, which are difficult to maintain because of rapid technological advances. This includes areas such as super-computing, biotechnology, communications technology, disaster management, and acoustics.

DoD would benefit from a readily available pool of volunteers to augment staffs in all functional areas or for assignment in a specific mission area.

Auxiliaries would enable DoD to provide an organized, systematic approach to managing volunteers.

Section 1043 would establish a nonprofit charitable foundation to accept and administer gifts and grants from private sector donors to assist the Department of Defense (DoD) in its efforts to preserve, maintain, and use its historic properties. This section is modeled on the existing authorities that established the National Natural Resources Conservation Foundation (Chapter 78 of Title 16; 16 U.S.C. §§ 5801-5809), the National Fish and Wildlife Foundation (Chapter 57 of Title 16; 16 U.S.C. §§3701-3709), and the National Park Foundation (Subchapter III of Chapter 1 of Title 16; 16 U.S.C. §§19e-19o).

Many historic properties in DoD's portfolio are undercapitalized and threatened with physical deterioration and obsolescence. Deferred maintenance ultimately results in higher repair and maintenance costs, deteriorating building stock, and prolonged consultations. While specialized financial and management tools such as donations and trust establishments are available to private-sector developers as incentive for historic rehabilitation projects, such tools presently are not available or are severely limited for DoD and the Military Departments. This section would remedy that situation. A Heritage Foundation would offer a mechanism for a Trust Fund wherein the military could build equity for historic property recapitalization, foster public and private partnerships for preservation, reduce the need for appropriated funds, and offer the military an opportunity to preserve important historic properties.

Section 1044 would allow the Department of Defense (DoD) to use military aircraft with less than full loads to transport mail and parcels to, from, and between overseas locations.

DoD would ensure the following conditions apply: 1) no degradation of mail service; 2) no overall cost increase to DoD; 3) no diversion of such military aircraft during contingencies or other events; and 4) the U.S. Transportation Command would pay the cost of transporting mail from United States Postal Service to customs clearance facilities to military debarkation locations at rates not to exceed Department of Transportation rates for commercial airlines.

Section 1045 would authorize access to the National Driver Register (NDR) by Federal agencies for use in personnel security investigations and determinations under Executive Order

12968, "Access to Classified Information," August 2, 1995, and for use in personnel investigations and determinations with regard to Federal employment under Executive Order 10450, "Security requirements for Government employment," April 27, 1953, as amended. Under the Economy Act (35 U.S.C. 1535), the National Highway Traffic Safety Administration has authority to be compensated for any work performed for any Federal agency that seeks access to the NDR, through fees or reimbursable agreements.

The NDR is a cooperative system managed by the Secretary of Transportation under which the chief driver licensing officials of the States provide information concerning the contents of driver licensing records. Access to the information contained in this system currently is authorized for the chief driver licensing officials of other states to carry out duties related to driver licensing, driver improvement, or transportation safety programs (49 U.S.C. 30305(a)); the Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration to obtain information about an individual who is the subject of an accident investigation conducted by the Board or the Administrator (49 U.S.C. 30305(b)(1)); employers or prospective employers, at the request of an individual employed, or seeking employment, as a driver of a motor vehicle (49 U.S.C. 30305(b)(2)); the Administrator of the Federal Aviation Administration, at the request of the individual concerned, for individuals who have received, or are applying for, an airman's certificate, (49 U.S.C. 30305(b)(3)); employers or prospective employers, at the request of an individual employed, or seeking employment, by a rail carrier as an operator of a locomotive (49 U.S.C. 30305(b)(4)); the Secretary of the department in which the Coast Guard is operating, at the request of an individual who holds, or is applying for, a license or certificate of registry as a merchant mariner (49 U.S.C. 30305(b)(5)); the heads of Federal departments or agencies, for individuals applying for a motor vehicle operator's license from such department or agency (49 U.S.C. 30305(b)(6)); the Commandant of the Coast Guard, at the request of an individual concerned, for applicants or members of the Coast Guard (49 U.S.C. 30305(b)(7)); and prospective employers or the Secretary of Transportation, at the request of the individual concerned, for applicants seeking employment by an air carrier as a pilot (49 U.S.C. 30305(b)(8)).

NDR information would be very helpful to personnel security investigators. For several years Federal agencies' personnel security clearance programs have been burdened by a considerable backlog, and in many cases investigators have elected not to prolong initial background investigations or periodic reinvestigations to review State driver records when they have no indication that the subject has been convicted of an offense that is normally recorded in the States' driver records, and when review of the State's driver records would generate excessive delays because the State requires investigators to travel to a dedicated computer terminal or when investigators would have to review manual data entries. Convictions for more serious offenses such as driving under the influence of alcohol may appear in State criminal history records, which are routinely reviewed by personnel security investigators, but convictions for less serious types of conduct recorded in the NDR are often not reflected in criminal history records. Enactment of this provision would provide personnel security investigators the same expedited access to information available through the NDR that is provided for the other purposes mentioned above. For the increasing number of States that provide electronic access to

driver records through the NDR, obtaining such information would be especially quick and easy. Most importantly, allowing personnel security investigators to access such information would make it much more likely that they would discover information important to security clearance determinations.

Section 1046 is a "housekeeping" measure that would clarify certain important definitions. Subsection (a) would change the definition of "operational range" enacted in the National Defense Authorization Act for Fiscal Year 2004. That definition, enacted at the request of the Department of Defense, was changed during the legislative process to recognize explicitly what the Department had intended—that the definition was a geographical definition. It was intended and only applies to the geographical designation of lands as ranges. This is a real property function assigned to the military departments under the Goldwater-Nichols Act. Additionally, the definition speaks of "jurisdiction, custody, or control" which is a term normally applied to real property accountability, also a real property function. The definition would accord more accurately with the assigned functions within the Department of Defense if it referred to the "Secretary concerned" since it is the Secretaries of the Military Departments who actually manage the Department's real property and designate ranges. This change would not dilute the Secretary of Defense's responsibility or authority over these matters because the Secretaries of the Military Departments are required by law to perform all their functions under the authority, direction, and control of the Secretary of Defense. This change would bring the language of the definition into line with the actual practice of the Department.

In the National Defense Authorization Act for Fiscal Year 2004, the Congress adopted general definitions for the terms "congressional defense committees" and "base closure laws" located in 10 U.S.C. § 101. With that enactment, much of the now unnecessary repetition was also corrected in conforming amendments to other sections of title 10. This section would make the remaining conforming amendments that were not made in the 2004 Act.

In subsection (b), the most extensive clerical changes with regard to "congressional defense committees" are in chapter 169 on Military Construction and Military Family Housing. In that chapter, the practice has been to use the term "appropriate committees of Congress" to mean the same four committees now defined generally as "congressional defense committees." To obtain the greatest benefit from this use of a single uniform term, chapter 169 should conform to the rest of the title. Because that chapter also included the two Intelligence Committees as appropriate committees of Congress for projects carried out by or for the use of DoD intelligence components, these conforming amendments continue to include those two committees in chapter 169 for purposes of such projects (see paragraph (a)(2) above). The proposed amendment to section 2694a would delete the now redundant definitions of "appropriate committees of Congress", "base closure law", and "Secretary concerned" (which has long been defined in 10 U.S.C. § 101). It also would change the definition of "State" to be more accurate, since the current definition refers to "territories and possessions", which, with few exceptions, do not have organized governments to which this section would apply, e.g., Wake Island, Midway Island, Johnston Atoll, and Palmyra Reef. Substituting "Territories" uses the term already defined in 10 U.S.C. § 101(a) and accurately applies to those territories with organized governments such as

Guam, American Samoa, and the U.S. Virgin Islands.

In subsection (c), the conforming amendments for purposes of the definition of "base closure laws" are only to those previously enacted statutory provisions still in effect.

Section 1047 would allow Government contract workers to use Department of Defense fitness facilities. Increasingly, such workers are part of the Total Force used by the Department of Defense to accomplish its mission. In such a circumstance, their health and fitness is as much a concern of the Department as the health and fitness of its own employees. This section would demonstrate the Department's commitment to health and fitness for its entire workforce community.

The waiver of liability provision ensures that the Government would not have to bear increased risks from claims arising from the use that would be authorized by this section.

TITLE XI—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Section 1101 would allow the Secretary of Defense to design and establish a priority placement program for certain displaced civilian employees.

Section 1102 would expand the employment preference to spouses of Department of Defense (DoD) civilian employees who have been reassigned pursuant to a mandatory mobility agreement or similar mandatory mobility program. It would place spouses of civilian employees in an equivalent position to spouses of military members who already receive employment preference under section 1784 of title 10, United States Code. This section would be appropriate because, more than ever, DoD is assigning civilian employees world-wide and these employees are making vital contributions to mission success.

This section also would clarify that the hiring preference under section 1784 applies only to DoD civilian positions that do not fall under the authority of a Chief of a U.S. Mission. DoD civilian positions that fall under Chief of Mission authority thus shall be available equally to spouses of service members and U.S. Government civilian employees of any agency assigned to such mission.

Section 1103 would allow the Department of Defense (DoD) to set Defense Intelligence Senior Executive Service (DISES), Intelligence Senior Level, and other Department of Defense Civilian Intelligence Personnel System (DCIPS) employees' pay in relation to pay set for their nonintelligence counterparts in the Department. It would also mandate the adoption of a meaningful performance appraisal system for DISES employees, parallel to the requirement for Senior Executive Service personnel in 5 U.S.C. § 5382. In the FY2004 Defense Authorization Act, Congress authorized the Secretary of Defense, in regulations prescribed jointly with the Director of the Office of Personnel Management, to implement the National Security Personnel System (NSPS), which includes pay banding, a pay for performance program, and other management flexibilities. As the NSPS develops as the personnel system for DoD, as a matter of

equity, morale, and effective operations of DCIPS, it is essential that the Department have the authority to set the pay of DCIPs employees in relation to the pay of other equivalent DoD employees.

Section 1104 would authorize the Secretary of Defense to ensure that the pay cap for DoD nonappropriated fund (NAF) executives remains consistent with that of the Senior Executive Service (SES). With the possibility of raising the SES pay cap from Executive Level III to Executive Level II of the executive schedule (proposed in the Human Capital Performance Fund in the National Defense Authorization Act for Fiscal Year 2004) NAF executives would be left behind because the NAF cap is set at Executive Level III.

There are currently 21 senior executives in NAF instrumentalities; for example, the Chief Operating Officer of the Army and Air Force Exchange Service. Because of their NAF employment status, they are not in the Senior Executive Service. As a result, their compensation is regulated by the Department of Defense, not the Office of Personnel Management. Section 5373 of title 5, United States Code, caps their pay without regard to changes in the SES pay cap, even though the intent of section 5373 with regard to NAF executives is to provide for pay cap parity. This creates a situation where any increase in the SES pay cap automatically would create an inequity that regulation could not correct.

NUMBER OF PERSONNEL AFFECTED:

	FY05	FY06	FY07	FY08	FY09
Army	1	1	1	1	1
Navy	7	7	6	5	4
Air Force	0	0	0	0	0
AAFES	13	13	11	11	11
TOTAL	21	21	18	17	16

RESOURCE REQUIREMENT ($K): This section does not require appropriated funds. Under a worst-case scenario, NAF costs could increase as follows:

	FY05	FY06	FY07	FY08	FY09
Army	$12.2	$12.2	$12.2	$12.2	$12.2
Navy	$85.4	$85.4	$73.2	$61.0	$48.8
Air Force	$0	$0	$0	$0	$0
AAFES	$158.6	$158.6	$134.2	$134.2	$134.2
TOTAL	$256.2	$256.2	$219.6	$207.4	$195.2

Cost implications: There are 21 NAF executives capped at $142,500 (Executive Level III). If the SES pay cap is raised to $154,700 (Executive Level II), and the pay of all 21 NAF executives is raised to $154,700, the total increase in NAF cost would be $256,200 (21 x $12,200) in FY05. The total estimated NAF cost for FY05 through FY09 is $1,134,600.

Section 1105 would prohibit the manufacture, sale, or wearing of insignia or awards for civilian employees of the Department of Defense that the Secretary of Defense has not authorized. It would maintain the integrity of these various decorations.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Matters Related to Arms Control and Monitoring

Section 1201 would clarify existing law by separating authority to conduct humanitarian mine action from the authority to conduct humanitarian and civic assistance. It also would permit the Department of Defense to provide training in the detection and clearance of unexploded and unexpended ordnance ("explosive remnants of war") in addition to landmines.

Humanitarian mine action is a sufficiently separate activity from humanitarian and civic assistance to warrant a separate section under Title 10. Humanitarian and civic assistance are activities conducted in conjunction with authorized military operations, and are funded through the Operations and Maintenance funds of the specific military department involved. DoD participation in humanitarian mine action activities is conducted as part of the United States Government's humanitarian mine action program and in accordance with its security cooperation objectives, and is funded through the Overseas Humanitarian, Disaster and Civic Aid account. The multiple references in existing law to restrictions addressing only the landmine detection and clearance activities bears witness to the ill fit. Establishing a separate section for humanitarian mine action would eliminate recurring confusion between humanitarian mine action and humanitarian and civic assistance.

Adding the references to "explosive remnants of war" will permit DoD's humanitarian mine action efforts to take advantage of real-world situations and address real-world needs. Minefields alone are not the only residue of war that threatens civilian populations. Unexploded or unexpended ordnance-in the form of submunitions, artillery shells, improperly maintained or abandoned arms caches and other explosive remnants-are causing significant numbers of civilian casualties in war-affected countries worldwide. The proposed addition of "explosive remnants of war" would permit United States forces to provide education, training, and technical assistance in explosive ordnance disposal, proper handling of ordnance and related skills.

Subtitle B—Matters Related to Allies and Friendly Foreign Nations

Section 1211 would allow for the upgrading of air traffic control of the east/west air corridor from the Caucasus to Afghanistan. The authorized funds would support the procurement of goods and services in the countries of Georgia, Azerbaijan, Armenia, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, and Afghanistan to accomplish this effort. Improved airspace control and management would increase the global reach and power of U.S. military forces into Afghanistan and other front-line states, improve force

protection for U.S. military forces deployed in Central Asia and Afghanistan, increase the sortie generation rate for U.S. military forces deployed in Central Asia and Afghanistan, and foster the rebuilding of Afghanistan by allowing the expansion of air traffic through Afghani airspace by aircraft transiting from Southeast Asia to Europe.

Section 1212 would expand the Secretary of Defense's authority to waive participation costs to any foreign participant in Marshall Center programs when attendance by such personnel is in the national security interest of the United States.

The current limitation excludes participation in Marshall Center programs by many countries that are key for achieving U.S. foreign and security policy objectives in the region, such as Afghanistan, Iraq, Bosnia-Herzegovina, Serbia and Montenegro (including Kosovo), and Mongolia. This change would allow the U.S. to fund key non-government participants in Marshall Center programs such as media and non-governmental organizations involved in defense and security issues. Having such influential people participate in Marshall Center programs likely would have a positive long-term strategic impact on U.S. goals and interests, including regional stability, enhanced security, democratization, transparency, and the creation of civil society and market economies.

Subtitle C—Other Matters

Section 1221 would repeal the annual report the Department of Defense must prepare for the Congress concerning the activities of Chinese military companies operating in the United States.

The FY 1999 National Defense Authorization Act defines the term "Communist Chinese military company" as any person that is owned or controlled by the People's Liberation Army (i.e., "land, naval and air military services, the police, and the intelligence services of the Communist Government of the People's Republic of China (PRC), and any member of any such service or of such police") and "is engaged in providing commercial services, manufacturing, producing, or exporting." The Defense Intelligence Agency has determined that there were no "Communist Chinese military companies" operating directly or indirectly in the United States.

In contrast, research revealed Chinese commercial corporations affiliated with government ministries and the PRC defense industrial base (e.g., China State Shipbuilding Corporation and the China Overseas Shipping Corporation (COSCO)) are legally operating branches in the United States.

Section 1222 would repeal an annual reporting requirement concerning special operations forces training with friendly foreign forces. Section 2011 of title 10, United States Code, authorizes DoD special operations forces to train and train with armed and other security forces of foreign countries. It also requires prior approval of the Secretary of Defense before conducting these training activities.

The Department of Defense has submitted this report as required for the past ten years. The report is difficult to coordinate, time-consuming, and places a significant administrative burden on the U.S. Special Operations Command, and its component commands. The expenses of foreign countries participating in training, especially developing countries, are extremely difficult to identify accurately. It is estimated that a total of two man-years are expended in the collection and verification of the data contained in the report.

Section 1223. Since FY01, DoD has received appropriations and has been conducting HIV/AIDS prevention and awareness activities with foreign militaries and international peacekeepers without clear authorizing language. April 2003 SECDEF Security Cooperation Guidance specifically calls for DOD HIV/AIDS prevention activities with foreign militaries and peacekeepers.

The above-mentioned appropriations have been unbudgeted congressional earmarks within the Defense Health Program RDT&E account. Fiscal specialists have pointed out that this is an inappropriate account as the prevention and awareness activities being conducted are not RDT&E activities. Additionally, use of the Defense Health Program budget for an international security cooperation activity is atypical and opens the door to questions of shortchanging funds for care of our own forces and beneficiaries.

The goal of the proposed authorization language is to avoid further, confusing use of the Defense Health Program account. The OHDACA account is the most appropriate existing funding mechanism for international HIV/AIDS prevention activities, in keeping with its humanitarian and security cooperation mandate and its two-year spending flexibility. This authorization language would affirm DoD's authority to conduct these valuable security cooperation activities, establish funding in the most appropriate account, and ensure reliability of funding critical to developing a sustained effort.

Section 1224 would eliminate the requirement that the National Defense University maintain a separate Center for the Study of Chinese Military Affairs. Given the multitude of other resources that the Department of Defense (DoD) dedicates to the study of China's military, the Center no longer is necessary.

Since the establishment of the Center, the Department of Defense has taken concrete steps to enhance the study of China's military. Over the past two years, the Defense Intelligence Agency has increased the number of military analysts dedicated to China and plans to hire more civilian China analysts. DoD also has increased the number of personnel dedicated to China policy issues in the Office of the Secretary of Defense has increased. Finally, the Office of Net Assessment is looking at more effective ways for DoD to enhance its understanding of the Chinese military in the long term.

The National Defense University Institute for National Security Studies is capable of conducting detailed research on China military affairs without a separate Center.

Further, the U.S.-China Security Review Commission has assumed the function of informing Congress on the national goals and strategic posture of the People's Republic of China.

Section 1225 would allow the Department of Defense to use property donated by any person, foreign government, or international organization for the purpose of providing humanitarian assistance to friendly developing countries.

This section would provide the Secretary of Defense additional authority to enhance U.S. national and regional security in each combatant command's area of responsibility, and successfully prosecute the war against terrorism through its humanitarian assistance program.

Such humanitarian assistance may help friendly developing countries to eradicate terrorist organizations, advance freedom and democracy, and foster goodwill and improved foreign relations.

Section 1226 would allow the Department of the Navy to assign foreign Navy personnel to U.S. Navy submarine safety research and development programs. The United States Government would pay for the official travel of those foreign Navy personnel.

One of the U.S. Navy's submarine commands, Commander, Submarine Activities Atlantic, soon will become a North Atlantic Treaty Organization (NATO) command, redesignated as the Allied Submarine Command. This command anticipates assignment of at least three foreign Navy officers on its staff. Spain, Norway, Germany, and Canada all have expressed interest in assigning one of their officers to the new Allied Submarine Command. Pending the long-term process of converting some U.S. Navy billets into NATO billets, this section would greatly facilitate the assignment of these foreign Navy officers.

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

Section 1301 would grant the President permanent authority to waive congressionally-imposed conditions on construction of a chemical weapons destruction facility in Russia under the Cooperative Threat Reduction program. Congress originally prohibited construction of this facility in the National Defense Authorization Act for Fiscal Year 2000. Subsequently, Congress lifted the prohibition in 2002, provided the Secretary of Defense could certify that Russia had met six specific conditions. Since that time, the Department of Defense has requested and received authority to waive the conditions on an annual basis to support negotiations with Russia regarding one of the conditions. This section would vest authority to waive the conditions with the President, and would clarify that funds obligated prior to lapse of a previously executed waiver could be expended in order to limit the risk of significant additional expense to the U.S. Government.

TITLE XIV—HOMELAND SECURITY

Section 1401 would repeal existing restrictions on Department of Defense (DoD) allocation of funds to develop, research, and evaluate medical countermeasures to biological warfare. Current law specifies that not more than 80 percent of such funds may be obligated and expended for product development, or for research, development, test, or evaluation, of medical countermeasures against near-term validated biological warfare threat agents, and that not more than 20 percent of such funds may be so obligated or expended for medical countermeasures against mid-term or far-term validated biowarfare threat agents.

Current law defines biological warfare threats primarily in intelligence terms. This is overly restrictive because intelligence on biological warfare threats is inherently limited due to the ease with which biological warfare programs can be concealed and the case to which dangerous pathogens and toxins can be acquired. This situation is exacerbated by the rapid advances in bio-technology which are widely available around the globe. For these reasons, DoD is applying a more capabilities-based approach to biological warfare defense which affords greater weight to the vulnerability of U.S. forces to the range of biological warfare agents that adversaries are capable of employing.

Additionally, current law categorizes biological warfare agents by the time period in which they may become threats, i.e., near-, mid-, and far-term. For the same reasons that make it difficult to define biological warfare agents in terms of available intelligence, it is difficult to project the time periods during which such agents may become threats.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXVIII–GENERAL PROVISIONS

Subtitle A–Military Construction and Military Family Housing

Section 2901 would raise the limitations on budget authority for military housing privatization projects to $1.85 billion, up from $0.85 billion, for family housing. Title 10, United States Code, imposes limits on the total value of budget authority of all contracts and investments undertaken in conjunction with military housing privatization. These lower limits impede the Services ability to use privatization in improving living conditions for military members and their families as quickly as possible.

Subtitle B–Real Property and Facilities Administration

Section 2911 would authorize the Secretary of the Army to establish the Museum Center of the National Museum of the United States Army at Fort Belvoir, Virginia. The section will

also authorize the Secretary to enter into *an* agreement with the Amy Historical Foundation, a nonprofit organization, to support the design, construction, and operation of facilities for the Museum Center through gifts.

In the 106th Congress, the Senate Armed Services Committee, in Senate Report 106-292 (page 417), recognized that the Navy and the Air Force have "designated official museums," but that the Army did not have such a facility. The Senate Report indicates the Committee "supports the establishment of a museum dedicated to honor the 225-year history of the Army." The Committee directed the Secretary of the Army to initiate a site selection process for the Museum Center of the National Museum of the United States Army.

In response to the direction of the Senate Armed Services Committee, the Secretary of the Army provided the Committee with a report entitled *"Study Regarding the Location of the National Museum of the United States Army" and,* on 11 October 2001, announced that Fort Belvoir had been selected as the site for the Museum Center of the National Museum of the United States Army. Concurrently, the Secretary notified concerned Members of Congress of the selection.

Although the Secretary of the Army has announced the selection of Fort Belvoir as the site of the Museum Center, the Army has never received formal authorization for the construction of faci1ities for the Museum Center at Fort Belvoir. This section will enable the Army to develop the National Museum of the United States Army and construct the Museum Center at Fort Belvoir with financial support from the Army Historical Foundation. The section would also authorize the Commander of the United States Army Center of Military History to receive gifts of a value of $250,000 or less for the benefit of the Museum Center. The

Commandant of the Army War College has this authority for the United States Army Heritage and Education Center at Carlisle Barracks.

The section authorizes the Army Historical Foundation to engage in fundraising activities on the grounds of the Museum Center. The Secretary of the Army could approve logistical support to these fundraising activities. The section also authorizes the limited use of appropriated finds for advertising, marketing, and promotion of the National Museum of the United States Army.

Section 2912 would allow the Secretary of Defense to exchange or sell existing Reserve component facilities in return for replacement facilities. Such facilities include any interest in land, armories, readiness centers, storage or other facilities needed for administration and training.

This section would require that the Government receive fair market value for an existing facility. It also would require that any amounts received from the exchange or sale of a facility would be used to acquire, construct, expand, rehabilitate, or convert a replacement facility and ensure that the replacement facility is fully equipped and operational in all respects. Any amount

in excess of the amount expended on the replacement facility could be used at other Reserve components facilities.

This section would benefit the Department of Defense by permitting a more flexible real property exchange process that would result in greater success in leveraging valuable non-excess government real property.

Subtitle C–Other Matters

Section 2921 would provide Secretaries of the military departments added flexibility to ensure timely funding of force protection. Current events have shown that many force protection measures are needed on an expedited basis even though their costs exceed current statutory limits for unspecified minor construction. Imminent force protection needs cannot wait for the normal military construction cycle and the military construction act funds available for unspecified minor construction are rarely sufficient in amount to cover all necessary force protection measures as well as already anticipated minor military construction requirements.

To eliminate potential costly delays, this section also would change the current notice-and-wait period for such minor military construction projects from 21 days to 5 days.