Section-by-Section Analysis

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Authorization of Appropriations

Sections 101 through 107 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Section 111 authorizes the Secretary of the Navy to enter into multiyear contracts for procurement of F/A-18 Aircraft, E-2C aircraft, the Tactical Tomahawk missile, and the Virginia Class Submarine in accordance with the request contained in the President's budget for fiscal year 2004. In these cases, using a multiyear contract has been determined to be the most cost-effective method for these platforms.

Section 112 amends section 131(a) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 to increase the procurement quantity of C-130J aircraft in the CC-130J configuration for the Air Force. The number is being increased from 40 to 42 and is required in order to execute the current budget plan.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments; the Defense Agencies; and the Defense Inspector General in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Subtitle B—Ballistic Missile Defense

Section 211 extends the availability of funds to provide for community assistance in areas affected by the building of Missile Defense test beds. In section 235(b)(1) of the Fiscal Year 2002 National Defense Authorization Act, the Secretary of Defense is authorized to use fiscal year 2002 Research, Development, Test, and Evaluation (RDT&E) funds to assist local communities in providing municipal or community services or facilities, where the need results from the construction, installation, or operation of the Ballistic Missile Defense System Test

Bed. Potential impacts that can be remedied include social and educational services, emergency response and other municipal services, utility consumption, waste disposal, business development, and communication needs.

This authority is similar to that available to the Department under 10 U.S.C. § 2391 to provide assistance to communities that are directly and significantly affected by a new or expanded military installation, which is funded through Operations and Maintenance appropriations.

The Missile Defense Agency does not have O&M funding, but RDT&E funding for community assistance related to the Test Bed is appropriate because the assistance will be required as a result of research and development activities. Community assistance projects totaling $18.3 million are programmed for Ft. Greely, Alaska, all to be funded using FY 2002 RDT&E funds that are available for two years. The projects include a landfill, a fire station upgrade, an ambulance and fire truck, additional emergency response capabilities, heating necessary to maintain an existing but vacant school for future use after the test bed is operational, and replacement of a library and municipal building lost to test bed construction.

Subtitle C—Other Matters

Section 221. Section 3136, the so-called PLYWD legislation, prohibits the Secretary of Energy from conducting any research and development which could potentially lead to the production by the United States of a new low-yield nuclear weapon, including a precision low-yield warhead..

This legislation has negatively affected U.S. Government efforts to support the national strategy to counter WMD and undercuts efforts that could strengthen our ability to deter, or respond to, new or emerging threats.

A revitalized nuclear weapons advanced concepts effort is essential to: (1) train the next generation of nuclear weapons scientists and engineers; and (2) restore a nuclear weapons enterprise able to respond rapidly and decisively to changes in the international security environment or unforeseen technical problems in the stockpile. PLYWD has had a "chilling effect" on this effort by impeding the ability of our scientists and engineers to explore the full range of technical options. It does not simply prohibit research on new, low-yield warheads, but prohibits any activities "*which could potentially lead to* production by the United States" of such a warhead.

It is prudent national security policy not to foreclose exploration of technical options that could strengthen our ability to deter, or respond to, new or emerging threats. In this regard, the Congressionally-mandated Nuclear Posture Review urged exploration of weapons concepts that could offer greater capabilities for precision, earth penetration (to hold at risk deeply buried and hardened bunkers), defeat of chemical and biological agents, and reduced collateral damage. The PLYWD legislation impedes this effort.

Repeal of PLYWD, however, falls far short of committing the United States to developing, producing, and deploying new, low-yield warheads. Such warhead concepts could not proceed to full-scale development, much less production and deployment, unless Congress authorizes and appropriates the substantial funds required to do this.

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 2004.

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 2004.

Section 303 authorizes appropriations for fiscal year 2004 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Subtitle B—Environmental Provisions

Section 311 would clarify the Secretary of the Navy's authority to provide salvage facilities and to assert claims for salvage services encompassing environmental response equipment and activities.

Marine salvage has evolved in modern times, both domestically and internationally, to include environmental response and pollution prevention. This is reflected in the text of the International Convention on Salvage, 1989, to which the United States is a party. Article 14 of the Convention expressly provides for special compensation to salvors whose operations prevented or minimized damage to the environment, but it does not apply to warships or other public vessels. In addition, chapter 637 (Salvage Facilities) of title 10, United States Code, currently contains no specific references to environmental response activities or related equipment even though pollution response equipment has been a part of the Department of the Navy's essential salvage capability and inventory for decades. Due to the inapplicability of the Convention, coupled with the lack of specific statutory language on the subject, it is uncertain whether the Department of the Navy has the legal authority to seek and accept appropriate compensation for valuable pollution response services in the absence of a "successful" salvage.

This section would clarify the United States' authority to assert claims for appropriate compensation when pollution response services are provided by the Department of the Navy

within the context of a marine salvage operation.

Section 312 would allow the Secretaries of the military departments to participate in wetland mitigation banking programs and consolidated user sites ("in-lieu-fee" programs) that have been approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, as an alternative to creating a wetland for mitigation on federal property for construction projects.

Currently, the Department of Defense (DoD) must mitigate on-site for wetland impacts, which encroaches on the ability of the military to train and otherwise perform its mission. Costs and requirements associated with mitigation include development of a mitigation plan, construction, and monitoring for at least five years at each site. If the mitigation does not meet the requirements, more funds are necessary to bring the mitigation site up to required specifications. Currently, the Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) recognize the importance of this type of mitigation and offer it as an option to onsite mitigation. By giving DoD the authority to pursue mitigation banking and consolidated user sites, land could be used for other mission essential programs.

Section 404 of the Clean Water Act (CWA) requires mitigation in order to replace aquatic resource functions and values that are adversely impacted under the CWA. The Corps, EPA, FWS, and NMFS issued final policy guidance on mitigation banking (Fed. Reg. Vol. 60, Nov. 28, 1995) and "in-lieu-fee" arrangements for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. (Fed. Reg. Vol. 65, No. 216, Nov. 7, 2000), and may update it in conjunction with the Corps as appropriate. DoD seeks authority to participate.

This provision would not result in increased cost to DoD, and may result in substantial savings due to an anticipated decrease in mitigation costs.

Section 313. This new clause would simply exempt Restoration Advisory Boards from application of the Federal Advisory Committee Act. For nearly a decade, DoD has administered some 330 restoration advisory boards (whose purpose are to provide input when the Secretary of Defense is planning or implementing environmental restoration activities (RABs)) around the country in accordance with guidelines first established jointly by DoD and Environmental Protection Agency (EPA) in 1994. Last December, however, in response to a lawsuit concerning the Army's decision to terminate the RAB at Fort Ord, California, DoD agreed to promulgate (as required by 10 U.S.C. § 2705(d)(2)(A)) regulations governing the "establishment, characteristics, composition, and funding of restoration advisory boards."

DoD has 18 months to complete the rule-making process for these regulations. To meet this schedule, and to allow DoD to promulgate a regulation that will cause the least disruption to this successful and generally well-regarded program, DoD believes it would be advisable to

exempt RABs from the requirements of the Federal Advisory Committee Act (FACA). DoD's long-standing RAB guidelines, upon which DoD will base the regulation it must develop, already embrace most of the relevant FACA requirements. To require strict and complete FACA compliance would add burdens and costs, primarily administration costs, to the process of administering RABs without adding any appreciable benefits.

Section 314. This provision, which Congress recently passed, is unnecessary. DoD has appointed a corrosion official and is collecting relevant data requested by Congress. DoD would prefer to provide Congress with the relevant data as needed.

Section 315. The two amendments to title 42, United States Code, included in this section would make it clear that civil actions and criminal prosecutions brought under the Clean Air Act and Safe Drinking Water Act against Federal agencies as well as those against Federal officers brought in either an individual or official capacity may be removed to Federal district court. 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, and the Federal courts are better situated to strike a proper balance between competing local and national interests.

The amendment in subsection (a) would incorporate into the Federal facilities provision of the Clean Air Act (42 U.S.C. 7418) language from section 313 of the Clean Water Act (33 U.S.C. 1323) regarding the ability to remove actions affecting Federal interests to Federal district court. This amendment would fulfill the clearly expressed congressional intent that questions concerning the exercise of Federal authority, the scope of Federal immunity, and Federal-State conflicts be adjudicated in Federal court. It also would clarify that suits against Federal agencies, as well as those against Federal officers sued in either an individual or official capacity, may be removed to Federal district court. This section 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*, the U.S. Court of Appeals for the Ninth Circuit decided that section 304(e) of the Clean Air Act 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 Air Force already has been adversely affected by this decision. On March 18, 2002, a state court in California ruled that McClellan AFB was subject to civil penalties for violations of the Clean Air Act. The Air Force may be required to pay a fine of $235,000 as a result of this ruling.

This holding will have severe 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.

Subsection (b) of this section would amend the Federal facilities provision of the Safe Drinking Water Act (42 U.S.C. § 300j-6) in a manner consistent with the above discussion to make it clear that actions brought under this law also are subject to removal to Federal district court. Such an amendment is necessary because the Safe Drinking Water Act contains language in section 300j-5(e) similar to that found in section 304(e) of the Clean Air Act, which the Ninth Circuit relied upon in denying the Federal defendant a Federal forum.

Section 316 would ensure that the armed forces of the United States are combat-ready from the first day of combat while defining some of the environmental stewardship responsibilities of the military departments.

Military readiness is essential to the security of the United States, to the protection of the lives and well-being of our citizens, and to the preservation of our freedoms, economic prosperity, and our environmental heritage. A well-trained and well-equipped military is a principal component of military readiness, and to be well-trained and prepared, it is imperative that soldiers, sailors, Marines, and airmen train in the same manner as they fight. Testing of military equipment, vehicles, weaponry, and sensors is also a principal component of military readiness. In this regard, live-fire testing and training are an integral and necessary part of realistic military operations, testing, and training. Military lands and test and training ranges (including land, sea and air training, testing, and operating areas) exist to ensure military preparedness by providing realistic test and training opportunities.

The shield of military readiness protects our Nation's environment—our land, air, and water, as well as the fish, wildlife, and plant species that inhabit them. In addition to defending against foreign threats, the military acts as trustee, helping to protect the environment by its prudent and conscientious management of the natural resources of our military lands. Largely as a result of this stewardship, military lands present acceptable habitat for plants and wildlife, including protected species.

The Department of Defense (DoD) is proud of its record of environmental stewardship and is committed to maintaining and improving its stewardship in future. Our successful stewardship reflects not only the conscientious efforts of the men and women of the Armed Forces but also the overall compatibility of the DoD's mission with environmental protection.

In recent years, however, novel interpretations and extensions of environmental laws and regulations, along with such factors as population growth and economic development, have significantly restricted the military's access to and use of military lands and test and training ranges, and limited its ability to engage in live-fire testing and training. This phenomenon —

often referred to as "encroachment" — has markedly restricted the military's ability to test and train realistically and, unless checked, promises to produce further restrictions in the future. Encroachment already has negatively affected military readiness and will continue to erode it unless this trend is halted. In some cases, environmental litigation threatens to thwart the primary mission of key military facilities.

National security concerns mandate that the military be able to train effectively, test systems adequately and realistically before fielding, and conduct military operations. Environmental litigation seeking to extend existing laws and regulations into contexts for which they were not designed, and which frustrate the use of military lands and test and training ranges for their intended purposes, requires focused legislation to ensure that military readiness receives appropriate consideration.

This proposal is narrowly tailored to protect military readiness activities, not the entire scope of DoD activities. The thrust of the proposal is to prevent further extension of regulation rather than to roll back existing regulation.

Section 2015. Purpose.

This section would set out the purpose of this chapter and would direct the Secretary of Defense to implement the chapter consistent with those purposes. The chapter would promote military readiness by addressing problems created by encroachment on military lands, airspace, and training and testing while ensuring that the DoD remains mindful of its stewardship responsibilities. It would reaffirm the principle that military lands and airspace exist to ensure military preparedness. Finally, it would establish the appropriate balance between military readiness and environmental regulation and would establish a framework to ensure the long-term sustainability of military test and training ranges.

Section 2016. Definitions.

This section would provide definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department," military readiness activities also apply to the Coast Guard, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Homeland Security.

Section 2017. Military readiness and the conservation of protected species.

This section would clarify the relationship between military training and a number of provisions in various conservation statutes, including the Sikes Act and the Endangered Species Act. This section would provide that Integrated Natural Resources Management Plans under the Sikes Act provide the special management considerations or protection required under the Endangered Species Act and would obviate the requirement for designation of critical habitat on military lands for which such Plans have been completed. The Sikes Act requires military installations to prepare plans that integrate the protection of natural resources on military lands

with the use of military lands for military training. DoD must consult the U.S. Fish and Wildlife Service and the concerned State wildlife agency in the preparation of such plans and must seek their concurrence, as well as public comment on the final plan. Thus, the planning process offers adequate opportunity for consideration of the use of such lands for species conservation.

Section 2018. Conformity with State Implementation Plans for air quality.

This section would clarify the application of the conformity provisions of the Clean Air Act to make them more cooperative and not prohibitory when DoD activity is undertaken. The section would maintain DoD's obligation to conform its military readiness activities to applicable State Implementation Plans but would give DoD three years to demonstrate conformity. Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.

Section 2019. Range management and restoration.

Subsection (a) would define the circumstances in which explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof are included in the definition of "solid waste" under the Solid Waste Disposal Act, and would exclude explosives, munitions, munitions fragments, or constituents thereof from the definition of "solid waste" under the Act when DoD deposits such items on an operational military range incidental to normal use, and such items remain thereon. Explosives, munitions, or munitions fragments removed from a range for reasons other than disposal, such as fragments removed for testing to determine weapon function, similarly, would be excluded. In addition, as noted above, this provision ceases to apply to such items when and if the operational range on which they were deposited ceases to be operational. This provision would clarify and confirm the Environmental Protection Agency's (EPA) Military Munitions Rule.

Subsection (b) would provide that the presence of explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof off an operational range, or the migration off an operational range of such items, constitutes a "release" under the Comprehensive Environmental Restoration, Compensation, and Liability Act (CERCLA), and would exclude from the definition of "release" under the Act the presence of explosives, munitions, munitions fragments, or the constituents thereof that DoD deposited incidental to normal use on an operational military range and that remain thereon. This provision ceases to apply to such items when and if the operational range on which they were deposited ceases to be operational. The provision explicitly would preserve the President's authority to address an imminent and substantial endangerment to the public health, welfare, or the environment under section 106(a) of CERCLA, and the DoD's authority to protect the environment, safety, and health on operational ranges.

The effect of these two provisions would be to establish the governing authorities under which DoD would manage its operational ranges, including the cleanup thereof. Explosives, munitions, munition fragments, or their constituents that land on and remain on an operational range, or land off range but are promptly rendered safe or retrieved, would be regulated

exclusively under the Military Munitions Rule promulgated by EPA. Those that migrate off the range would be addressed under CERCLA.

As noted above, neither of these two provisions would have any effect on the legal requirements applicable to such items once the range on which they were deposited ceases to be an operational range.

Subsection (b). Military readiness and marine mammal protection reconciliation.

This subsection is narrowly tailored to protect military readiness activities, not the whole scope of Defense Department activities. It creates a regulatory regime for military readiness activities that differs in a number of respects from current MMPA provisions of general applicability.

This proposal clarifies the definition of "harassment" for purposes of military readiness activities under the Marine Mammal Protection Act. To be considered "harassment," any military readiness activity must injure or have the significant potential to injure a marine mammal; disturb or likely disturb a marine mammal, causing a disruption of natural behavioral patterns to the point of abandonment or significant alternation; or be directed toward a specific individual, group, or stock of marine mammals, causing a disruption of natural behavioral patterns.

The new definition will provide greater clarity and notice regarding application of the Marine Mammal Protection Act (MMPA) to military readiness activities. It will also spare military readiness activities from the regulatory burden of seeking MMPA permits for relatively benign operations. The new definition will also bring about more certainty of application by regulatory agencies.

Additionally, the new definition reflects the position of the National Research Council (NRC). In a report published in 2000, the NRC stated there was no valid reason for regulating minor changes in behavior having no significant impact on the viability of the marine mammal stock. Rather, regulation should be focused on minimizing injury and biologically significant disruptions to behavior critical to survival and reproduction.

This proposal also provides definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department of Defense," military readiness activities of the Coast Guard are covered, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Homeland Security.

This proposal would also cure deficiencies that currently exist when the authorization provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq) are applied to military readiness activities. Many of these deficiencies were recently highlighted in NRDC v. Evans, 232 F.Supp. 2d 1003 (N.D. Cal 2002), litigation that sought to stop deployment of the

Navy's Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar system.

First, given the multi-mission nature of many platform and sensor systems employed in military readiness activities at sea, it becomes increasingly difficult to single out the "specific activity" of the system that may impact marine mammals. The elimination of this requirement would allow greater flexibility in conducting military readiness activities. Further, the requirement to identify the relevant activity and the underlying rulemaking process that forms the basis for issuing a permit will allow the impacts and scope of military readiness activities to be appropriately scoped and analyzed.

Second, the litigation revealed that the migratory nature of marine mammals and the often varying biological and bathymetric features of geographic regions that migratory marine mammals occupy make it very difficult to identify "specified geographical regions" for military readiness activities that affect large portions of the ocean. The elimination of this requirement would allow greater flexibility in conducting military readiness activities without diminishing substantive environmental protections, since the underlying rulemaking process, which forms the basis for issuing a permit, will allow the impacts and scope of military readiness activities to be appropriately scoped and analyzed.

Third, the litigation also challenged the determination of that the SURTASS LFA sonar system would take no more than "small numbers" of marine mammals. The litigation revealed that Congressional reports on the MMPA have acknowledged that the "small numbers" criterion is incapable of definition from a quantitative point of view. Further, a "small numbers" limitation on the number of takes is inconsistent with the concept of allowing takes via a permit system and the "negligible impact" standard imposed by the MMPA in the permitting process. The "small numbers" limitation reflects a policy-based limitation derived from the moratorium on the take of marine mammals contained in the MMPA. In contrast, the "negligible impacts" limitation reflects a science-based limitation derived from the resource management policy of the MMPA. Given that takes are allowable via permit under the MMPA, the proper standard for measuring takes should be one determined only by science and based only upon resource management principals. Finally, elimination of the "small numbers" requirement would be consistent with the recommendations contained in the earlier- mentioned NRC report. Specifically, the report provided "it would desirable to remove the phrase 'of small numbers' from MMPA Section 1371(a)(5)(D)(i)" and that doing so would prevent the denial of permits for activities that might insignificantly harass large numbers of animals but still have "negligible impacts" on marine mammals.

The new subparagraph (E) makes it clear that although applications for harassment authorization or take permits should remain a public process where possible, in some instances concerning proposals involving military readiness, it may be impossible to disclose all information considered because some information has been properly classified in the interest of national defense. In some instances, it may not be possible to have public hearings because even disclosure of the nature of the proposal may disclose classified information.

Finally, the exemption for national defense addresses the lack of any national security exemption in the MMPA. Most environmental statutes provide authority to exempt certain actions or categories of actions for a limited period of time. Similarly the proposed exemption in the MMPA would allow the Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both, as appropriate, to exempt DoD activities or categories of activities from the requirements of the MMPA for up to two years, with renewable two periods of exemption. This provision is similar to the exemption provision in the Endangered Species Act, which allows the Secretary of Defense to direct exemptions on the basis of national security.

Subtitle C—Workplace and Depot Issues

Section 321 would make permanent existing authority due to expire in 2005. 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 hired pursuant to a public-private partnership. The exemption is limited, however, to funds made available in fiscal years 2002 through 2005. Limiting the exemption to four years inhibits private industry interest in establishing public-private partnerships which, by their nature, are most effective on a long-term basis. The existing time limitation seriously impedes the ability of both public and private sector parties to achieving the benefits envisioned with the enactment of this authority. The time limitation also discourages starting any efforts because of the potential adverse impact when the authority expires, and prevents any significant and often necessary capital investments, the expense of which is normally amortized over longer periods.

Section 322. The proposed amendment to section 2469 of title 20, United States Code, is intended to make it clear that section 2469 does not apply to current depot-level maintenance and repair workload performed under a public-private partnership pursuant to section 2474(b). While section 2474 authorizes the establishment of public-private partnerships to perform work, section 2469 essentially limits performance of current workloads that exceed $3 million to either a depot or a contractor. This section is designed to enable effective consideration of partnerships for current workload. It makes clear that public-private partnerships, as authorized by section 2474(b), may be considered for performance of existing workloads where such partnerships are competitively established so that such arrangement can demonstrate that it offers a cost-effective means of meeting the Government's needs.

Section 323 would exclude workloads for special access programs from the limitations on the performance of depot-level maintenance of materiel by non-Federal Government personnel. Special access programs are typically low-density and highly specialized; therefore, there are few maintenance or sustainment concerns. Leveraging the contractor's investment used for the production of special access programs by contracting to meet sustainment requirements is a prudent approach. These unique characteristics of special access programs are recognized, and other statutes exclude special access programs. For example, section 2464(a)(3) of title 10,

United States Code, requires determination of core logistics capabilities, and that section includes an exemption for special access programs.

The scope of this section is very limited, focusing only on the special access programs, and would affect approximately two to five percent of the total funds made available for depot maintenance.

Section 324 would change the emphasis of section 2466 of title 10, United States Code, from limiting contract performance of depot-level maintenance of materiel to requiring a minimum level of performance of such workloads by Federal Government personnel or at a Government-owned facility.

Currently, section 2466 limits contract performance to fifty percent of funds available for depot-level maintenance and repair workload. This section instead would require military departments and Defense Agencies to use at least fifty percent of their funds for the performance of such workload by Federal Government personnel or at a Government-owned facility. This would allow greater flexibility and foster public-private partnerships for work in public facilities by allowing the military department or Defense Agency to count all resources expended either at a Government-owned facility or for Government personnel at Government- or privately-owned facilities towards the fifty percent threshold.

This section would encourage Government and private industry business partnerships allowing for the sharing of investments in facilities and equipment. It also would foster a combined effort by contractor personnel and Federal Government personnel. In addition, this section would provide for effective utilization of facilities and equipment at Government-owned, government-operated facilities.

This section also would amend section 2474 of title 10 to conform with the proposed change.

Section 325. This technical amendment would remove the existing geographic limitation in favor of a function-based analysis. This would provide a Center of Industrial and Technical Excellence greater flexibility to enter into public-private partnerships.

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 2004.

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 2004.

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 2004.

Section 413 prescribes the end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2004.

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 2004.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would repeal a statutory provision that unnecessarily prohibits the Department of the Navy from transferring Regular officers above the grade of lieutenant commander (O-4) from the line to the staff corps. Repeal of this provision would afford the Secretary of the Navy greater flexibility in managing the career progression of officers in accordance with the needs of the Navy.

Congress enacted the existing law in 1935, and it has since outlived its utility. For example, a line officer who has acquired significant expertise in logistics might prefer assignment as a Supply Corps officer. Conversely, a staff corps officer might possess education, training, and experience in information systems that would be best used as a restricted line officer in the Information Professional community. In both cases, the grade limitation imposed by existing law precludes transfer of qualified officers to the competitive categories in which they might best serve the Navy and the national defense interests of the United States.

Section 502 would require an officer serving in the health professions who was not selected for promotion, but who still has an active-duty service obligation due to medical education, health professions financial assistance programs, or acceptance of fellowships or grants, to complete his active-duty service obligation unless the Secretary of the military department determines that it would not be in the best interest of the military department.

Existing law requires the military departments to discharge such an officer within six months if DoD twice has passed over that officer for promotion to pay grades O-4 and O-5. This section would ensure that such officers fulfill their commitments and allow the military departments to plan their end strengths better.

Section 503 would repeal the existing three separate, nearly identical, provisions of law requiring the members of the military departments to exhibit exemplary conduct in favor of a single provision applicable to all military personnel of the Department of Defense.

Subtitle B—Reserve Component Management

Section 511 would specify the training requirement for all members of the Ready Reserve in terms of days of duty to be performed annually. Currently, the typical member of the Selected Reserve performs 48 periods of inactive duty training (traditionally performed at a rate of four periods over one weekend), and 14 days of annual training exclusive of travel for members in the Reserves or 15 days of annual training including travel for members in the National Guard. For all members of the Selected Reserve, this equals an annual commitment of 38 days annually, exclusive of travel. By policy, the Department only requires Selected Reserve members of the Ready Reserve to meet the training requirements specified in this provision of law.

Presently, there are at least 32 different variations of the terms "active duty", "active duty for training", "inactive duty" and "inactive duty for training" applicable to Reservists. Adding to the confusion is unique service terminology and subcategories for the duty statuses, such as multiple unit training assembly, man-days, temporary tours of active duty, and contingency temporary tours of active duty. Reserve component members are fulfilling their annual participation requirements in a variety of duty statuses. This section would provide one measure for annual participation—days of duty—rather than specifying types and quantity of duty. This change is consistent with how the Department of Defense is employing its Reserve forces and DoD's efforts to streamline management practices.

Section 512 would eliminate the requirement that Secretaries of the military departments convene formal selection boards under section 14101(b) of title 10, United States Code, to continue Reserve component officers on the Reserve active-status list. This section would allow the Secretaries to prescribe regulations governing the continuation of officers beyond a normal mandatory separation point for age or years of service.

In the case of company grade officers, there are some officers who have found their niche in unique fields, such as computer technology, and who may not want to serve in positions requiring greater levels of responsibility. Some military departments, moreover, are experiencing a shortage of company grade officers. This section would make it easier for the military departments to retain such officers who want to continue to serve.

This section would allow the Secretaries to manage the retention of their officer force through policies based on skill requirements rather than grade structure. While youth and vigor are important characteristics of a fighting force, skill sets and desire to serve are also important qualities as we move into an era of highly specialized skills and complex technology. Removing the administratively cumbersome requirements associated with convening a formal board will allow the military departments to respond quickly to emerging requirements and shape the force

needed for the 21st century.

Section 513 would enable retired reservists who are eligible to receive an annuity at the age of 60 to participate in the Federal Long-Term Care Insurance Program. Currently, these individuals are eligible to participate only when they serve in the active Reserves and again at age 60, when they begin drawing an annuity. This section would correct this inequity by making these reservists eligible for long-term care coverage during the interim period as well.

Subtitle C—Military Education and Training

Section 521 would amend section 7102 of title 10, United States Code, to authorize the Marine Corps Command and Staff College's School of Advanced Warfighting to issue a Master's degree in Operational Studies, once the Secretary of Education certifies that the school's requirements for the degree are in accordance with generally applicable requirements for a degree of Master of Arts.

In December 1999, the Marine Corps University achieved a seven-year goal of becoming accredited by the Southern Association of Colleges and Schools to award a Master's degree in Military Studies. In August 2000, the Marine Corps University's Marine Corps War College earned accreditation from the Southern Association of Colleges and Schools to award a Master's degree in Strategic Studies. While this accreditation was awarded to Marine Corps University and its Marine Corps War College, it specifically addressed only the degrees awarded by the Command and Staff College and the Marine Corps War College. The School of Advanced Warfighting now seeks similar authority.

A Master's degree program would enhance the professional reputation and prestige of the School of Advanced Warfighting and more accurately reflect the scholarly effort demonstrated by its student body. In addition, a Master's degree program would facilitate efforts by the Command and Staff College and the School of Advanced Warfighting to sustain and recruit world-class faculty, and further demonstrate that the faculty possesses a high level of competence staffed by first-rate scholars and speakers.

Section 522 would repeal the requirement that the principal course of instruction offered at the Armed Forces Staff College as Phase II joint professional military education must be at least three months in duration. This section would allow the Secretary of Defense to establish a separate, more complete joint professional military education program at all intermediate and senior level military colleges that better serves the needs of the Department of Defense. The Secretary of Defense is committed to ensuring military personnel receive appropriate, high quality joint professional military education.

Subtitle D—Administrative Matters

Section 531 would streamline the current management thresholds and required actions for high deployments, improve the structure, level, and flexibility of high-deployment

compensation to members, and improve the high-deployment information provided to Congress in the Annual Defense Report without increasing the requirements imposed on the military departments.

Subsection (a) of this section would amend section 991 of title 10, United States Code, to eliminate the current 182-day and 220-day thresholds while retaining the current 401-day threshold as the single criteria for high deployment pay. Doing so would reduce significantly the administrative burden of the current program. As a result, the military departments could better focus attention on those members who are truly excessively deployed. In addition, the section would reduce the level of oversight required at the payment threshold to the first general or flag officer (including O-6 "promotables" to these grades) or Senior Executive Service (SES) civilians in the member's chain of command. This reduction in approval authority would push down the deployment decision to the officials with direct oversight of deployment operations. In particular, granting Senior Executive Service civilians approval authority reflects the Department's transition to a "total force" in which civilians play an ever-increasing role in supporting commanders and operations.

Subsection (b) of this section would amend section 436 of title 37, United States Code, to replace the current high deployment per diem amount of $100 with a progressive, monthly high deployment allowance of up to $1,000. The revised payment schedule would expand the authority of the Military departments to compensate members for both excessively *long* and excessively *frequent* deployments. In some cases the revised schedule would provide concurrent payment, within the $1,000 maximum, for surpassing both thresholds. Although the dollar amount a member would receive under this plan would be lower than under the current system, this change would more closely align the payment scheme for high deployment allowance with that of other special pays, such as hostile fire pay. This approach would provide members with additional compensation for excessive deployments or time deployed while affording the Military departments sufficient latitude to require members to exceed the payment thresholds when necessary to meet mission requirements. In addition, the progressive scale increases compensation as the burden associated with more and longer deployments increases. We believe this is more reflective of the hardship imposed on our members. The Military departments envision initially setting monthly payments for the high deployment allowance in the $200-to-$600 range, depending on the frequency and/or duration of a member's deployment. However, setting the statutory limit for the high deployment allowance at $1,000 per month allows the Under Secretary of Defense for Personnel and Readiness to periodically review and adjust the monthly payment without the need for additional legislation.

Subsection (b) also would allow the Military departments, with Under Secretary of Defense for Personnel and Readiness approval, to exempt certain billets from deployment pay and reporting requirements. This authority would be used to exclude individuals on sports teams or in senior officer billets, *e.g.*, Service Chiefs of Staff, from eligibility for the high deployment allowance. Although members in these billets travel frequently as part of their official duties, we don't believe that Congress viewed these trips as "excessive deployments" that need to be monitored or curtailed.

Subsection (c) of this section would amend the requirements in section 487 of title 10 to improve the reporting in the Annual Defense Report. Proposed modifications to the Annual Defense Report would increase the value of the information provided to Congress without increasing the reporting requirements imposed on the Military departments. This revision also would bring the information reported to Congress more in line with the information used by the Military departments to manage their Personnel Tempo (PERSTEMPO) programs.

PAYGO Concerns: This section is subject to the pay-as-you-go (PAYGO) requirement of the Budget Enforcement Act of 1993. The estimated annual cost of this section is $34 million.

NUMBER OF PERSONNEL AFFECTED:

	FY04	FY05	FY06	FY07	FY08
Army	9,200	9,200	8,280	7,452	6,707
Navy	24,500	24,500	24,500	24,500	24,500
Marine Corps	12,194	12,194	12,194	12,194	12,194
Air Force	392	392	392	392	392
Total	46,286	46,286	45,366	44,538	43,793

RESOURCE REQUIREMENTS ($M):

	FY04	FY05	FY06	FY07	FY08
Army	$ 1.7	$ 1.7	$ 1.5	$ 1.4	$ 1.2
Navy	$22.9	$22.9	$22.9	$22.9	$22.9
Marine Corps	$10.0	$10.0	$10.0	$10.0	$10.0
Air Force	$ 0.0522	$ 0.0522	$ 0.0522	$ 0.052	$ 0.0522
Total	$34.6522	$34.6522	$34.4522	$34.3522	$34.1522

The military departments assume a "steady state" execution of Personnel Tempo and also that the increased deployment requirements of the existing contingencies have subsided. Although this section contemplates authorizing the Military departments (with Under Secretary of Defense for Personnel and Readiness approval) to compensate members for excessive deployments based upon the *duration* as well as the frequency of their deployments, in some cases concurrently, the proposed payment schedule will be considerably less costly for the Military departments to implement.

Section 532 would eliminate the requirement for DoD to report earned, but non-taxable, income on each service member's Form W-2.

Section 6051(a)(10), a provision to improve the accuracy of military returns with regard to the Earned Income Tax Credit (EITC), is obsolete. Before the enactment of this section, a small percentage of service members improperly claimed the EITC because of confusion over what constituted earned income. At the time, the law defined earned income to mean all "wages, salaries, tips, and other employee compensation." This definition encompassed non-taxable allowances such as Basic Allowance for Quarters and Basic Allowance for Subsistence.

Because DoD did not reflect these non-taxable allowances as earned income on its members' Forms W-2, however, some service members believed they were eligible for, and would claim, the EITC even though their earned income (when nontaxable allowances were added) exceeded the EITC ceiling.

Section 303(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16; 115 Stat. 38) changed the definition of earned income for purposes of the EITC. The term now includes "wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year." As a result, the Department no longer needs to report earned, but non-taxable, income on each member's Form W-2.

DoD would continue to report such amounts on the member's Leave and Earning Statement.

Section 533 would implement technical changes to existing laws governing retirement eligibility in order to eliminate a disparity between the military departments. Army and Air Force personnel must have "at least" a specified number of years of active service to become eligible for retirement. By contrast, Navy and Marine Corps personnel must complete "more than " a specified number of years of active service to become eligible for retirement. As a result, Navy and Marine Corps personnel must wait one day more than Army and Air Force personnel before they become eligible for retirement. This section would provide equal treatment for all service members.

This section would not become effective until the Defense Integrated Military Human Resources System is deployed throughout the Navy. Changing current systems to accommodate this change would be too expensive.

Subtitle E—Benefits

Section 541 would authorize a Secretary of a military department to transport the remains, or pay the cost of transporting the remains, of certain military retirees and their dependents who die while properly admitted to an armed forces medical facility inside or outside the United States to a place of burial inside or outside the United States.

Currently, section 1490 only authorizes a Secretary concerned to transport the remains, or pay the cost of transporting the remains, of certain military retirees and their dependents who die while properly admitted to an armed forces medical facility in the United States to a place of burial in the United States. Puerto Rico and the territories and possessions of the United States are included. This section would expand the authorization to cover places outside the United States.

Under this section, when a retired member or the dependent of such a member who permanently resides outside the United States dies in a medical facility of the armed forces located in the United States, the Secretary would be authorized to transport the remains to an

overseas point of entry in the vicinity of the permanent residence of the deceased member or dependent. This authority would most often apply when a retiree residing overseas is admitted to an overseas military medical facility and is subsequently transported for special care to a facility in the United States at which location he or she dies.

This section would cost an estimated $28,000 per year for all of the military departments, subject to appropriation. It does not cover costs of the Coast Guard, but those cases are not considered to be significant because the Coast Guard's overseas presence is not high. DoD derived this cost by multiplying the estimated number of currently ineligible retirees and dependents (total eight; two each for the Army, Navy, Air Force, and Marine Corps) who were medically evacuated to an armed forces medical facility and who subsequently died, times all associated transportation costs ($7,000 per individual). Transportation costs include the transfer from the medical facility to a funeral home and from the funeral home to the airport as well as the cost of air transportation using an average weight of 400 pounds. DoD calculated the cost of air transportation by multiplying the total average weight, including the remains and all shipping containers, by the cost per pound.

The recovery, care and disposition of the remains of retirees who die in overseas locations will continue to be governed by sections 1481 and 1482 of title 10.

Section 542 would authorize the Secretary of Defense or other appropriate Secretary (for instance, in the Case of the Coast Guard) to restrict the payment of a family separation basic allowance for housing to service members with dependents serving unaccompanied outside the United States or in Alaska where quarters are not available. Currently, members are entitled to an allowance if they serve unaccompanied in the continental United States or in Hawaii. Prior to 1997, members did not qualify for an allowance unless they were serving unaccompanied tours outside the United States or in Alaska. This section would enable the Secretary to restore that geographic restriction.

Section 543 would allow military dependents who are students to store authorized baggage one time per fiscal year at government expense, instead of just during their annual trip from school to the military sponsor's overseas duty location.

Military dependents who are students presently may store baggage at Government expense only during their annual trip between school and their sponsor's duty station. This section would provide such dependents with flexibility to store baggage at any time during the year. Student dependents could use their annual roundtrip travel entitlement during authorized school holidays while using their baggage storage entitlement during summer break or at any time they choose.

Section 544 would allow the Secretary of Defense to change the effective date for eliminating the requirement for TRICARE Standard beneficiaries to obtain a non-availability statement before TRICARE will pay for nonemergency inpatient hospital care services.

Under 10 U.S.C. 1079(a)(7), TRICARE may not pay for nonemergency inpatient hospital

care services if such services are available at a military treatment facility located within a 40-mile radius of the patient's residence. To document whether the services are available, TRICARE Standard beneficiaries must obtain a non-availability statement. TRICARE Prime beneficiaries, by comparison, have to go through their primary care provider before receiving any specialty care or nonemergency hospital care, which has the same effect of determining if the care first can be provided in a military treatment facility. The most common elective inpatient procedure in a military treatment facility is obstetrical care. Section 721, as amended, eliminated the requirement to obtain a non-availability statement on the earlier of two possible dates: December 28, 2003, or the date that a new contract for health care services under TRICARE Standard takes effect. This section would change the effective date to the date that a new contract for health care services under TRICARE Standard takes effect. This would extend the time period the Secretary of Defense may require a non-availability statement for all nonemergency inpatient care, including maternity care, but only until such time as DoD enters into new contracts to provide health care services under TRICARE Standard in April 2004.

This section would avoid bid price adjustments to current contracts for maternity care and other nonemergency inpatient care currently provided in military treatment facilities, saving the government from $10-$50 million, depending on the number of patients who are retained in the direct care system.

Subtitle F—Military Justice Matters

Section 551 would revise the Uniform Code of Military Justice (UCMJ) offense of drunken or reckless operation of a vehicle, aircraft, or vessel to clarify applicable standards regarding alcohol concentration levels. In the United States, the applicable level is the blood or breath alcohol concentration level prohibited under the law of the state in which the conduct occurred.

If the offense occurred on a military installation located in more than one state, and the states have different standards, the Secretary of the military department responsible for the installation may select between the competing standards, provided he enforces the selection uniformly. Overseas, the applicable level is 0.10 grams or more of alcohol per 100 milliliters of blood and 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis. This section also remedies a drafting error in section 581 of the National Defense Authorization Act for Fiscal Year 2002 that inadvertently changed the applicable level to 0.11 grams or more of alcohol. This revised version restores the applicable level to 0.10 grams or more of alcohol and provides courts-martial participants with needed clarity to ensure just prosecution of this UCMJ offense.

Subtitle G—Other Matters

Section 561 would repeal section 1554 of title 10, United States Code, which requires the Secretaries of the military departments to establish Disability Review Boards. Existing law requires the Secretaries to establish "from time to time" such boards, to review, upon the request

of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the "retiring board, board of medical survey, or disposition board" in the officer's case within 15 years after the date he retires of separates. Each board must consist of five commissioned officers, two of whom must be medical officers.

The Review Board's findings must be "sent to the Secretary concerned, who shall submit them to the President for approval."

Disability Review Boards have a limited function that can be performed by the boards for correction of military records under section 1552 of title 10, United States Code.

During the last eight years, the Department of the Army received only one request for a Disability Review Board. As a further matter of concern, Disability Review Boards are available only to commissioned officers. The only review available to similarly situated enlisted members is performed by a board for correction of military records.

The repeal of section 1554 would save administrative costs and provide equal treatment for officers and enlisted members.

This section also would amend section 221(a) of the Public Health Service Act (42 U.S.C. 213a(a)) by striking a provision that entitles commissioned officers of the Public Health Service, or their surviving beneficiaries, to a review of retirement or separation without pay for physical disability.

Sections (a) and (b) of this section, taken together, would ensure uniform treatment of military service members and commissioned officers of the Public Health Service. Both would have identical access to review of their respective disability cases before an appropriate board for correction of military records.

Section 562 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 medical professionals, engineers, scientists, information technology professionals, and other professionals from very specialized or highly technical fields.

Expedited training may be necessary to allow DoD to meet mission requirements, and would prepare individuals to function effectively and safely as part of a military unit.

Section 563 would authorize the Secretary of Defense to establish the minimum military service obligation for individuals accessed into the Armed Forces under a direct entry program, 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 National Guard or Reserve.

Section 564 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 under each respective Secretary's jurisdiction. The Services expend considerable time, effort and financial resources to maintain current personnel data on their Reserve component members. 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 this 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 will 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 will 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, however, this section authorizes 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.

The disclosures under this section will be subject to the requirements of the Computer Matching Act. The Departments of Defense and Homeland Security will initiate the necessary agreements and Federal Register notifications as required under section 552a of the Privacy Act.

This provision would test the effectiveness of using Internal Revenue Service information to locate service members. No information will be released after September 30, 2006, unless authorized by Congress. The Departments of Defense and Homeland Security would document the effectiveness of this test in deciding whether to seek permanent authority. 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 under section 6103(m)(8)(C); the number of addresses the IRS provided and the number of those addresses that resulted in positive contact with the service member; other data sources that the Secretary of Defense, of a military department, or of Homeland Security believes may be useful in locating service members but is precluded from gaining access to because of regulatory or statutory restrictions; an assessment by the Secretaries of Defense and Homeland Security as to the effectiveness of obtaining address information from the IRS; and any other information that the Secretary of Defense or Homeland Security wishes to include.

The section also modifies current safeguard requirements by increasing the responsibility of agencies with respect to the oversight of contractors or other agents authorized to receive return information under section 6103 of title 26. This section 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 their contractors were in compliance with the requirements of section 6103(p)(4).

Making mailing addresses maintained by the Internal Revenue Service available to the Military Departments and the Department of Homeland Security in support of military requirements would improve military readiness by ensuring timely, accurate information on service members who have a mobilization obligation.

Section 565 would allow the Chairman of the Joint Chiefs of Staff to add joint warfighting to the list of authorized activities for which he may provide funds to combatant commanders. This would provide the Chairman additional means to support critical joint warfighting capabilities.

Section 566 would allow the Secretary of Defense to reappoint both the Chairman and Vice Chairman of the Joint Chiefs of Staff during a national emergency declared by the President or Congress.

Existing law limits the Secretary's reappointment authority to "in time of war" only. This

section would provide the President with increased flexibility during a period of national emergency to re-nominate an officer serving as Chairman or Vice Chairman, subject to the advice and consent of the Senate.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would amend section 1009 of title 37, United States Code, and restructure the pay tables to provide a pay raise ranging from 2.0 percent to 6.25 percent with most members receiving the by-law pay raise of Employment Cost Index (ECI) + 0.5 percent. This initiative provides additional funding for targeted pay raises for mid-career and senior noncommissioned officers and warrant officers. The targeted pay raises build upon the gains made in FY 2002 and FY 2003 towards eliminating the pay shortfall for enlisted noncommissioned officers.

The impetus for establishing targeted pay raises was provided by the Congressionally-mandated Ninth Quadrennial Review of Military Compensation (9th QRMC), which completed a comprehensive analysis of the earnings of military members compared with their civilian counterparts. The 9th QRMC determined that, without significant adjustments to both the level and structure of basic pay, the military would face a decline in recruit quality along with a decrease in retention rates, particularly among the mid-grade noncommissioned officers who are absolutely crucial to unit performance. The 9th QRMC studies concluded that the appropriate benchmark for military compensation should approximate the 70th percentile of earnings of civilians with comparable education and years of experience.

The Department of Defense's most junior enlisted grades are above the targeted 70th percentile and the FY 2003 targeted raise brings all commissioned officers up to the 70th percentile. The FY 2004 pay raise addresses pay rate shortages for the mid-grade and senior noncommissioned officers as well as warrant officers, who remain below the benchmark. Specifically, the FY 2004 pay raise equals the ECI for the E-2 and O-1/O-2 grades, since these grades are above the benchmark (85th percentile for /E-2; 90th percentile for O-1/O-2). The E-1 pay grade would receive a pay raise of 2.0 percent since that grade is above the 85th percentile. Other grades would receive ECI +.5 percent. Personnel in the grades E-5 through E-9 would receive raises of 4.60 to 6.25 percent. The 6.25 percent increase would be for E-9s with over 26 years of service to prolong retention of our best and most experienced senior noncommissioned officers and recognize the greater responsibility they shoulder. Likewise, pay raises of 5.25 to 6.00 percent for warrant officers (W-1 to W-4) are included to maintain a premium on their compensation in relation to mid-grade and senior noncommissioned officers and to attract sufficient numbers of highly qualified applicants from those ranks.

Retaining talented personnel is especially important in current times as the Nation wages the War on Terrorism. Mid-grade noncommissioned officers (6 to 12 years of service) make up the majority of those deploying in support of the war effort and are the primary trainers of junior

personnel. Although reenlistment rates are improving, these year groups are the most profoundly short-handed. Additionally, pay targeting, when applied to senior noncommissioned officers and warrant officers, avoids pay compression, recognizes the significant responsibilities and technical competencies they possess, and serves as an incentive for junior personnel to compete for advancement. Boosting retention of these individuals is a vital component in the transformation of the Department of Defense to meet future challenges.

Members of the Public Health Service and the National Oceanic and Atmospheric Administration would receive a 2 percent pay raise.

Section 602 would modify section 403(f)(2)(C) of title 37, United States Code, to allow two members of the uniformed services in a pay grade below E-6 who are married to each other, have no other dependents, and are simultaneously assigned to sea duty, to each receive a Basic Allowance for Housing at the without dependents rate for the pay grade of the member.

Section 403(a) establishes that, except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing at the monthly rates prescribed under that section or another provision of law with regard to the applicable component of the basic allowance for housing. Section 403(f)(2)(A) provides that, in general, a member of a uniformed service without dependents who is in a pay grade "below pay grade E-6 is not entitled to a basic allowance for housing while the member is on sea duty." However, under section 403(f)(2)(B), the Secretary concerned may authorize members of a uniformed service without dependents who are serving in pay grade E-4 or E-5 and are assigned to sea duty, to receive a basic allowance for housing.

In addition, two members of the uniformed services in a pay grade below pay grade E-6 who are married to each other, have no other dependents, and are simultaneously assigned to sea duty, are jointly entitled to one basic allowance for housing during the period of such simultaneous sea duty at the without dependents rate for the pay grade of the senior member of the couple. However, this limitation does not apply to a member who receives a basic allowance for housing under section 403(f)(2)(B). As a result, the limitation only applies to military couples in which both are members serving in pay grades below E-4.

This section would establish equity between our most junior and often most financially challenged personnel – those in pay grades below E-4 -- and the rest of the force. The current statute reflects a hold-over from the days of the draft when the majority of our junior sailors were considered "one-termers," with little or no military career aspirations. Enactment of this section would reflect an understanding that all sailors are potential careerists, and would reinforce the concept that military service is a profession deserving of a compensation system designed for professionals.

NUMBER OF PERSONNEL AFFECTED:

	FY04	FY05	FY06	FY07	FY08

Navy	901	901	901	901	901

RESOURCES REQUIREMENTS ($M):

	FY04	FY05	FY06	FY07	FY08
Navy	$10.8	$11.6	$12.1	$12.6	$13.0

Cost Implications: Subject to appropriation, this section would cost a total of $60.1 million from Fiscal Year 2004 through Fiscal Year 2008. To calculate this figure, the Department used the available Fiscal Year 2001 data and determined the number of married sailors under pay grade E-4 on sea duty in the Navy who would become eligible for Basic Allowance for Housing upon enactment of this section. The estimated dollar amounts are in Fiscal Year 2004 dollars.

Section 603 would authorize commissioned officers who have accrued at least 1,460 points for reserve service as a warrant officer, an enlisted member, or a warrant officer and an enlisted member, to receive basic pay at the same rate as commissioned officers credited with over four years of active duty service as an enlisted member.

Prior to being amended by section 602 of the National Defense Authorization Act for Fiscal Year 2002, section 203 authorized commissioned officers who were credited with over four years of active service as a warrant officer, or as a warrant officer and an enlisted member, to receive basic pay at the same rate as officers credited with over four years of active service as an enlisted member (O-1E, O-2E, or O-3E). Section 602 amended section 203 to authorize certain officers who have earned at least 1,460 points (the equivalent of four years of active duty) as a warrant officer, or as a warrant officer and an enlisted member, to be paid at the O-1E, O-2E or O-3E pay rate, as appropriate. The amendment did not authorize the higher rate of pay for commissioned officers with 1,460 points credited for enlisted service only. This section would provide that authority.

This section also would rectify an inequity caused by section 602. With respect to commissioned officers credited with 1,460 points for service as a warrant officer, or as a warrant officer and an enlisted member, section 602 restricted payment of the higher rate of pay to periods when the officer is performing duty paid from funds appropriated for reserve personnel. Further, with respect to commissioned officers on active duty who are credited with over four years of active service as a warrant officer, or as a warrant officer and an enlisted member, section 602 limited the entitlement to the higher pay to periods when the officer is paid from funds appropriated for active duty personnel. These limitations unfairly penalize a member who is credited with either active service or the equivalent Reserve service and who then performs duty that is paid for from the opposite type of appropriations. For example, an Army Reserve First Lieutenant who has been credited with 1,460 points for Reserve service as a warrant officer will receive the pay of an O-2E while performing annual training (paid for from funds appropriated for Reserve personnel), but if the same officer is mobilized—now being paid from funds appropriated for active duty personnel—he only can be paid at the O-2 rate. The same

problem exists with respect to an officer who qualified for the higher pay by serving on active duty as a warrant officer for four years and who subsequently enters the Selected Reserve. That officer cannot be paid at the higher rate when performing annual training—duty paid from Reserve personnel appropriations.

This section would correct that inequity.

There are slightly fewer than 200 officers affected by this section, most of whom are now serving in the paygrade of O-2E. If all 200 officers were called to active duty for the entire year and paid from active appropriations, the additional cost would be approximately $1.3 million annually at the maximum pay differential rate for an O-2 and O-2E. This, however, is very unlikely. Based on data from 2002, approximately one reservist out of four performs an active duty tour of over 30 days, with an average tour length of approximately 150 days. Using this data, a more reasonable cost estimate would be an additional $137,000 annually for the pay differential across all components.

Subtitle B—Bonuses and Special and Incentive Pays

Section 611 would increase the legislative limit for the Selective Reenlistment Bonus (SRB) from $60,000 to $90,000.

This section is necessary to ensure that the military departments have the ability to increase reenlistment incentives for targeted critical skills, if required, to retain sufficient numbers of personnel. In 1999, the statutory limit of the SRB was increased from $45,000 to $60,000 to address retention shortfalls in critical areas such as Nuclear Power Supervisors. Despite the improvement in retention overall, the Navy still is experiencing retention deficiencies of as much as 50 percent below requirements for nuclear-trained personnel in Zones B (7-10 years of service) and C (11-14 years of service) serving aboard nuclear-powered aircraft carriers and submarines. Measured increases in SRB awards towards the current $60,000 limit for these senior nuclear-trained personnel has significantly improved retention. In 1999, senior nuclear retention varied from 20-55 percent depending on rating; by Fiscal Year 2002, nuclear retention varied from 34-71 percent. Retention, however, still remains significantly below senior nuclear retention requirements of 70-90 percent. The ability to further improve retention through further SRB increases is constrained by the $60,000 legislative limit. For example, 13 of 16 senior nuclear categories are now at the $60,000 SRB limit, while retention, though improved, remains substantially below requirements.

Stagnant retention trends for Fiscal Year 2002 indicate that the job market for nuclear-trained individuals in civilian industry remains strong. The screening requirements, advanced education, and high standards of personal performance and integrity required for the Naval Nuclear Power Program produce some of the most highly trained enlisted personnel in the military – an invaluable and irreplaceable national resource. Due to the strength and capabilities of the personnel in the program, the Navy's nuclear-trained Sailors are highly sought after by industries in the electronic and computer fields, manufacturing, and in nuclear and traditional

power generation.

The Navy Nuclear Propulsion Program has achieved an unparalleled safety record in support of national security. Continuing this record of safe and reliable reactor operation demands that sufficient numbers of high quality nuclear enlisted personnel be retained in the program. This is an operational readiness issue as well, since improving the retention of nuclear trained personnel is critical to ensuring all nuclear-powered carriers and submarines will be adequately manned and able to deploy as required in the future. SRB has proven to be the surest and most-cost effective means of achieving this goal. An increase in the retention incentive above the current statutory limit of $60,000 is required to ensure that sufficient senior nuclear-trained personnel are retained in the future. The alternative would be to expand the accession and training base for nuclear-trained personnel, with a cost for training in excess of $100,000. This would be far more costly than using an increased SRB to influence those who already have the training and experience in the Navy to stay. Additionally, the Navy's retention challenge is primarily for those senior Sailors eligible for reenlistment in Zones B and C whose experience, if lost, must be regrown over the next ten to fourteen years.

The magnitude of this increase is intended to negate the need to request more frequent, smaller increases from Congress. While this request raises the legislative authority for SRB to $90,000, actual SRB award levels will remain at the discretion of Secretaries of the military departments to establish within existing SRB budgets. It is projected that SRB levels up to $70,000 may be required in Fiscal Year 2004 to adequately influence senior nuclear retention.

Section 612 would allow individuals appointed in the grade of Warrant Officer (W1) to receive the accession bonus for new officers in critical skills. Section 324 currently allows only service members who accept a commission as an officer to receive the bonus. This language inadvertently excludes Army warrant officers, who are not commissioned until Chief Warrant Officer 2 (CWO2). Making Army warrant officers eligible for the accession pay bonus would enable the Army to exercise this tool for other warrant officer critical skills.

The Army has experienced a marked decline in warrant officer applications in the last five years due to a significant pay compression between enlisted and warrant officer pay scales. In addition, the majority of Army warrant officers with critical skills are accessed from critical skill enlisted members who earn special pays and bonuses that must stop upon their appointment to W1. These military occupational specialties include some Military Intelligence and communication/computer fields, as well as Special Forces. Once enlisted members in such specialties accept appointments as Warrant Officers, their bonuses are stopped and any unserved portion of the bonus that has been received is recouped from the service member. The recoupment directly impacts the number of applicants the Army receives for the warrant officer programs. Service members feel that the immediate financial loss outweighs the benefit of joining the warrant officer corps. This section would enable the Army to offer an enlisted member in a critical specialty an Officer Accession Bonus in an amount equal to the reenlistment bonus he would have received if the member had remained enlisted. As a result, this section would eliminate the financial disincentive for such enlisted members to accept appointments as warrant officers.

Since the other military departments access their warrant officers as W2s, only the Army needs this change to section 324 to enable their warrant officers to receive an accession bonus. At this time, the Army is merely seeking the authority to pay its warrant officers an accession bonus.

Section 613 would authorize the Secretary concerned to offer a lump sum bonus of up to $4,000 to eligible enlisted members in pay grade E-6 (with less than 10 years of service) or pay grade E-5 and below (regardless of years of service), who successfully convert from ratings/occupational specialties designated by the Service concerned as adequately-manned or over-manned to one designated as undermanned. A specialty is considered over-manned if its inventory-to-Enlisted Program Authorized ratio is greater than 102 percent; an adequately-manned specialty has a ratio between 95 and 102 percent. For example, there currently exists within the Navy a significant imbalance between specialties that are over- or adequately-manned and those that are undermanned (specialties with a ratio of less than 95 percent). Balancing the force structure will better position the Navy to enhance fleet readiness.

This section would help alleviate manning imbalances between specialties by offering members a financial incentive to change career fields. Current Navy policy permits members serving in pay grades E-6 and below to convert laterally to specialties for which they have the greatest aptitude or interest; however, the Secretary of the Navy is not authorized to pay them a bonus for converting. The amount of the bonus would be determined by the ratio of the undermanned specialty:

- $2,000 for specialties manned at 90 to 94 percent
- $3,000 for specialties manned at 85 to 89.9 percent
- up to $4,000 for specialties manned at less than 84.9 percent

In return, the member would be required to incur a minimum obligated service of 2 years in his new specialty. If the member fails to complete the prescribed requirements, the bonus would be subject to recoupment on a pro-rata basis.

Normally, a member would be offered a conversion bonus only one time. Once a member has converted into a critical rating/skill area, it is extremely unlikely that manning within that rating/critical skill would improve so dramatically so as to render the member eligible to convert out of that rating/skill area and into another. Additionally, the development of expertise in a given skill is directly linked to the time a member serves in a rating/skill area. Therefore, more than one such conversion would severely inhibit a member's opportunity for upward mobility since the key to advancement is successfully passing a competitive test into limited vacancies. However, the Department does not want to preclude the possibility of ever offering the bonus more than once.

The Department of the Navy currently has approximately 30 skills areas from which it would seek volunteers to convert into about a dozen undermanned ratings. Skills areas currently over-manned include Disbursing Clerk, Illustrator-Draftsman, and Submarine-Qualified Storekeeper. Currently undermanned ratings include Explosive Ordnance Disposal, Cryptologic

Technician, and Aviation Ordnanceman. Based on 3,720 conversions completed in Fiscal Year 2001 and the current personnel shortages in those undermanned specialties, Navy estimates this section would cost $7.5 million (encompassing 2,500 conversions) in the first year of implementation. The other Services have no near-term intent to use this authority. Since the lateral conversion bonus would be a relatively small bonus to attract experienced sailors from over-manned ratings, the Department's return on investment would be favorable. If enacted, this bonus would be more cost-effective -- even taking into consideration retraining costs -- than either increasing accessions or paying a larger Selective Reenlistment Bonus to personnel currently in these undermanned career fields/skills.

In addition to the obvious benefits of balancing the force, this section would enhance members' choices for new career opportunities. Although a conversion program currently exists, the financial incentives associated with this program will entice individuals to consider converting to ratings that they might not otherwise consider. Not only will conversion potentially offer members new career opportunities, increased advancement opportunity and favorable Selective Reenlistment Bonus rates, the increased manning levels will provide the Navy with increased assets in fulfilling fleet requirements.

Under this section, no bonus may be paid with respect to any lateral conversion approved after September 30 of the third fiscal year that began after the date of enactment of this section.

NUMBER OF PERSONNEL AFFECTED:

	FY04	FY05	FY06	FY07	FY08
Navy	2,500	3,000	3,250	3,300	3,300

RESOURCES REQUIREMENTS ($M):

	FY04	FY05	FY06	FY07	FY08
Navy	$7.5	$9.0	$9.76	$9.9	$9.9

Section 614 would ensure that all military personnel, regardless of the type of duty they are performing at the time, are eligible to receive hostile fire or imminent danger pay, as appropriate. Existing law excludes Reserve component members on inactive duty for training from receiving such pay.

Although such members rarely would be eligible to receive such pay, the nature of danger they face, not the nature of their duty status, should govern eligibility for such special pay.

Section 615 would authorize the military departments to use Reserve Officers' Training Corps (ROTC) scholarship funds to pay room and board expenses as well as other expenses, such as required materials for a class. Current law allows payment only for tuition, books, and

fees. This section would provide the flexibility to offer "personalized" incentive packages to students in a variety of situations. For example, some ROTC scholarship winners have other scholarship offers which, due to funding constraints, sometimes overlap to the point of being unusable. In such a situation, this section would allow ROTC funds to cover room and board or other expenses not previously covered, creating significantly greater incentives for students to contract with ROTC for future commissioning.

This section would not increase expenses because it would offer an alternative payment, not an additional one. A student choosing to accept and use ROTC scholarship funds for tuition would not be eligible for further funds toward room and board.

Section 616 would allow the Secretary of Defense and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, to offer a critical skills retention bonus to service members in a more timely and efficient manner. No other comparable bonus authority contains a notice and wait requirement.

Section 617 would extend special benefit eligibility to all service members who extend duty at designated overseas locations. Current law authorizes only enlisted service members to receive such benefits.

DoD conducted a study to determine which incentives would motivate military members to volunteer for overseas locations. Results of the study indicated that officers may be more likely to volunteer to extend overseas duty if offered a funded respite or other benefits as an incentive. Although the primary focus is to encourage more officers to extend their overseas tours, this section also would increase continuity and stability, and reduce the number of permanent change of station moves and related expenses.

Section 618 would extend the authorization for these critical recruiting and retention Reserve component incentive programs that will expire at the end of calendar year 2003. Recruiting remains challenging, and the incentives provided under the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting effort. Absent these incentives, the 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 the required manning levels in skill areas that are critically short.

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

The expanded role of the Reserve components requires not only a robust Selected Reserve force, but also a robust manpower pool—the Individual Ready Reserve. Extending the Ready Reserve enlistment and reenlistment bonus authorities will 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, educational benefits have proven to be a powerful incentive for individuals to join the military. The Montgomery GI Bill for the Selected Reserve is the premier educational assistance program within the Reserve components. Extension of this authority preserves the education assistance program that has proven to be a valuable recruiting tool.

Combined, the Reserve component bonuses and special pays provide an important array of incentives that are necessary if the Reserve components are to meet manning requirements. Extending these authorities through December 31, 2004 (or, in the case of repayment of education loans for certain health professionals who serve in the Selected Reserve, through January 1, 2005), would ensure continuity of these programs through the next fiscal year and help bolster and sustain the recruiting and retention programs of the Reserve components.

The military departments already have programmed funds for these incentives.

Section 619 would extend the authority to employ accession and retention incentives for nuclear officers, an occupation that features extremely high training costs. These incentives help retain such officers, which is much more cost-effective than finding and training new accessions.

Nuclear officer accessions and retention continue to be below that required to safely sustain the existing Department of Defense force structure. Over the past three years, submarine officer retention has been 30 percent, 28 percent and 28 percent for Fiscal Year 1999, Fiscal Year 2000 and Fiscal Year 2001, respectively, far below the target rate of 38 percent. Nuclear trained surface warfare officers have experienced similar retention challenges with 18 percent, 20 percent and 19 percent for Fiscal Year 1999, Fiscal Year 2000 and Fiscal Year 2001, respectively, again below the target rate of 24 percent.

Section 620 would extend the authority for five separate accession and retention bonuses. These bonuses would help retain personnel with critical skills, which is much more cost-effective than finding and training new accessions.

Subtitle C—Travel and Transportation Allowances

Section 621 would allow service members to contract personally for the transportation of

a motor vehicle in permanent change of station moves within the continental United States instead of relying exclusively on the Government to arrange such transport. The amount of the allowance for such transportation would be not more than the amount that would have been paid if the member or a dependent had driven the vehicle between duty stations.

This section would be advantageous to both service members and the United States because it would introduce competition to the process. Existing law limits the Government to specified contract carriers that may not always offer the best available rate. This section would allow service members to contract for the best rate available and receive reimbursement for no more than the amount they would have received if they had driven the vehicle between duty stations themselves.

Subtitle D—Other Matters

Section 631 would amend section 7508 of the Internal Revenue Code of 1986 ("Code"), to allow members of the Armed Forces serving in a "contingency operation," as designated by the Secretary of Defense or by operation of law, to qualify for the automatic extension of time provided by section 7508 for performing certain acts required by the Code.

Section 7508 suspends for individuals serving in a "combat zone," a "qualified hazardous duty area," or deployed overseas away from their regular duty station in support of Operation Joint Endeavor or Operation Allied Force, the requirement to file taxes for at least 180 days after such service ends. Section 7508 includes not only members of the Armed Forces of the United States, as defined in section 7701(a)(15) of the Code, but also Red Cross workers, accredited correspondents, and civilian employees of the Federal Government serving in a combat zone. These taxpayers would also receive filing delays under this section while serving in support of contingency operations.

Like other tax matters that involve the Armed Forces, the Department of Defense would provide information to the Internal Revenue Service to assist in the administration of tax issues involving contingency operations.

The President, by Executive order, declares the existence of a combat zone. Public Laws 104-117 and 106-21 created qualified hazardous duty areas that are treated as if combat zones for purposes of section 7508 (among other provisions). As a result, the provisions of section 7508 are applicable to all individuals of the Armed Forces deployed overseas, away from their regular duty station, in support of Operation Joint Endeavor and Operation Allied Force. Individuals serving in support of these operations were provided filing delays (and other tax relief) because Congress recognized the arduous nature of the missions and the difficulties members would have filing tax returns while deployed overseas.

Individuals deployed overseas, away from their regular duty station, in support of contingency operations also need the protections and benefits of section 7508. Otherwise, they will face the same unnecessary administrative burdens and difficulty in filing a timely Federal

tax return and taking other related actions as individuals serving in combat zones or qualified hazardous duty areas, especially considering that contingency operations involve long-term deployments. In addition, the Department of Defense, with ever-increasing frequency, is called upon to deploy its members on contingency operations that present the same difficulties in timely filing tax returns and performing other acts under the Code that are subject to deadlines as those faced by members serving in a combat zone or qualified hazardous duty area.

By enacting this section, the President will no longer have to declare that U.S. Armed Forces are engaged in "combat" for members to use the provisions in section 7508. Moreover, the Congress will no longer have to declare individuals to be serving in a qualified hazardous duty area for them to qualify for the provisions of section 7508. Instead, section 7508 would apply to those military operations that meet the definition of contingency operations pursuant to section 101(13) of title 10, United States Code.

Requiring individuals to serve in a designated contingency operation to qualify for relief under section 7508 of the Code makes its threshold requirement similar to serving in a qualified hazardous duty area or a combat zone. This clear prerequisite would also prevent the amended section 7508 from being either overly broad or applicable to any military exercise or operation.

Making the automatic extension provisions of section 7508 applicable to members of the Armed Forces serving in contingency operations will minimize the distractions from the operational focus of future contingency operations. To maximize the effectiveness of members serving in contingency operations, the provisions of section 7508 of the Code should be applicable to returns due on and after the effective date of the contingency operation.

The section has no effect on the budget of the Department of Defense and a negligible effect, if any, on Treasury receipts and tax expenditures. It does not excuse the payment of taxes. Instead, it merely allows for filing delays and waivers of interest and penalties with respect to taxpayers who are under withheld.

Section 632 would allow cadets who have completed the first year of the Senior ROTC program, but are not on scholarship, to voluntarily contract and receive a subsistence allowance at the same level as scholarship cadets in the second year of training.

Currently, cadets at the sophomore level do not receive a stipend unless they are on scholarship. The military departments historically have interpreted section 209 to mean that there are only two cases in which cadets can receive a stipend: (1) when they are selected for advanced training pursuant to section 2104 of title 10; or (2) when they are contracted for scholarship under section 2107 of title 10. In those cases, cadets may receive stipends; under all other cases, they may not.

Under this section, non-scholarship cadets who desire/intend to stay in ROTC and receive a commission would be allowed to enter the same contract that is currently available at the beginning of the *junior* year in conjunction with advanced training (*i.e.*, they receive no scholarship monies, but are paid a monthly stipend). Allowing second-year students to contract

would create an earlier psychological commitment to completing ROTC and the monthly stipend would provide financial relief for those who must work part-time.

Army ROTC has a low retention rate for non-scholarship cadets in the basic course. Providing a subsistence allowance would provide an additional tool to target and retain quality cadets. It is estimated that this section would increase the number of returning juniors by 15 percent or more, with an additional 150-200 commissions annually (Army only) resulting from early contracting. Currently, only the Army intends to utilize this new authority. The other military departments are not planning to implement this particular program at the present time.

RESOURCE REQUIREMENT($M):

FY04	FY05	FY06	FY07
$1.9	$2.1	$2.2	$2.4

Section 633 would increase the annual amount that an agency can repay a highly qualified employee for a student loan, without increasing the overall limit of $40,000.

Section 5379 of title 5, United States Code, authorizes the head of an agency to repay student loans for highly qualified personnel. The current repayment amount for an employee is limited to $6,000 per year and $40,000 total. This section would raise the $6,000 amount to $10,000 per year, reflecting an increase in annual college tuition costs since the enactment of the original statute. Repayment of student loans, as a recruitment and retention incentive, offsets the higher starting salaries offered by private industry and is a tool for restructuring the Federal civilian workforce to meet changing mission needs. Without this additional authority, the rising cost of tuition would lessen the competitive value of this recruitment and retention tool.

Cost Implications: The estimated cost of this section in Fiscal Year 2004 is $3.1 million, subject to the appropriation.

Section 634 would amend section 5504 of title 5, United States Code, so that Cabinet Secretaries, Secretaries of the military departments, and heads of Executive agencies are paid on the same biweekly basis as most Federal employees.

Pursuant to section 5504, most Federal employees receive their pay on a biweekly basis. Section 5504(a), however, exempts those employees excluded from the definition of "employee" set forth in section 5541(2) of title 5. This category includes Cabinet Secretaries, Secretaries of the military departments, and heads of Executive agencies, who receive their pay on a monthly basis (under section 5505 of title 5) rather than a biweekly one. Because it is not cost-effective to modify the Federal payroll systems to pay them automatically on a monthly basis, civilian pay and disbursing operations utilize special manual procedures and controls to ensure that Secretaries and agency heads are paid accurately and in a timely manner.

This section would include Cabinet Secretaries, Secretaries of the military departments, and heads of Executive agencies as employees under section 5504, unless they are individually

exempted only under exceptional circumstances under guidelines set forth in regulations to be promulgated by the Office of Personnel Management. This would obviate the need for special manual procedures and controls to ensure that they are paid accurately and in a timely manner. It also would eliminate the requirement that senior personnel review and authorize all payment actions for the Secretaries and heads of Executive agencies. If this section is enacted, pay and deductions such as retirement, health benefits, taxes, and insurance will be reconciled and disbursed along with the other pay accounts, eliminating the need for separate manual processes, vouchers, and disbursements.

The overall cost savings for the Department of Defense (DoD) from this section are minimal. If enacted, however, this process would produce cost savings (in reduced work-years) Government-wide because other agencies use similar manual processes to pay the heads of their respective agencies. Furthermore, by streamlining DoD's processes, this section would fulfill one of the Secretary of Defense's legislative priorities for Fiscal Year 2004 (i.e., "Streamline DoD Processes").

TITLE VII—HEALTH CARE PROVISIONS

Section 701 would grant the Secretary of Defense more flexibility in administering the DoD Medicare Eligible Retiree Health Care Fund.

Current law limits the Secretary of Defense to establish only two rates -- one for full-time personnel and one for part-time personnel. This is problematic for the Department of Defense (DoD) because the actuarial values for the Coast Guard, U.S. Public Health Service (USPHS), and National Oceanic and Atmospheric Administration (NOAA) uniformed personnel differ significantly from comparable values for military personnel.

USPHS and NOAA personnel generally access at later ages than do DoD personnel, and have a greater propensity to remain in uniformed service until they are eligible to retire than do DoD officer personnel. As a result, the required per-capita normal cost contribution to the Fund for USPHS and NOAA should be larger than comparable DoD rates.

Under current law, DoD is subsidizing the normal cost contributions of the non-DoD uniformed services due to existing actuarial differences. This section would remedy this situation by providing the Secretary of Defense with authority to engage in more equitable administration of the Medicare Eligible Retiree Health Care Fund.

Section 702 would exempt the Department of Defense (DoD) Pharmacy and Therapeutics Committee from the requirements of the Federal Advisory Committee Act (FACA). FACA applies whenever any statutory committee is not composed wholly of full-time officers or employees of the Federal Government and provides advice and recommendations to the government. It imposes significant notice, record-keeping, and other administrative requirements.

Under section 1074g(b)(1), the DoD Pharmacy and Therapeutics Committee evaluates and makes recommendations regarding the cost effectiveness of pharmaceuticals. The Committee includes representatives who are not full-time officers or employees of the Federal Government, such as contractors who are responsible for the TRICARE retail pharmacy and national mail order programs, and TRICARE network providers.

Relieving the DoD Pharmacy and Therapeutics Committee of the requirement to comply with the FACA would allow the Committee to conduct its discussions and make its recommendations on clinical effectiveness and cost effectiveness without inadvertently disclosing proprietary information from the manufacturers in a public forum, thereby ensuring a full discussion before making its recommendations. Members of the public still would have an opportunity to express views on the recommendations made by the DoD Pharmacy and Therapeutics Committee because meetings of the Uniform Formulary Beneficiary Advisory Panel, which reviews and comments on the recommendations of the Committee, remain open to the public.

Section 703 is a technical adjustment to section 8111(c) of title 38, United States Code, concerning the sharing of Department of Veterans Affairs (VA) and Department of Defense (DoD) health care resources. Section 721 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2589) amended section 8111(c) to create a DoD-VA Health Executive Committee with certain mandates that impair the ability of the two Departments to oversee efficiently the scope of collaborative activities. It limits the oversight of the Under Secretary of Defense for Personnel and Readiness and the Deputy Secretary of VA to health care issues. This section would establish a DoD-VA Joint Executive Committee to oversee the realm of collaborative efforts to include health, benefits, and other areas as determined by the co-chairs and promote increased resource sharing.

Existing law allows each Department to determine individually the number of employees each would designate to support the committee, but requires them to share equally in the cost, regardless of whether there was parity in the numbers. It also requires a permanent staff be assigned to the committee. This section would delete these personnel requirements, thereby enhancing the flexibility of each Department to use their personnel in the most efficient manner possible, while at the same time authorizing the establishment of subordinate committees and work groups as deemed appropriate by the co-chairs.

Existing law limits the recommendations of the committee to sharing of resources to improve access, quality, and cost effectiveness. This section would allow the committee also to identify changes in policies to improve services, efficiencies, and opportunities for collaboration for delivery of benefits and services to beneficiaries of both Departments.

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

Subtitle A—Acquisition Policy and Management

Section 801. The 1994 Federal Acquisition Streamlining Act (FASA), the 1996 Federal Acquisition Reform Act (FARA), and the 1996 Clinger-Cohen Act significantly reformed the Federal procurement process but did not make associated changes in the funding rules that underlie the process. The Department of Defense is able to use commercial practices and simplified acquisition techniques, but still needs funding reform.

System development is an effort that typically requires from five to 10 years. The Department budgets for these programs on an annual basis for obligation over two years for RDT&E or three to five years for procurement (i.e., each year new obligation authority for a program is reviewed and subject to being marked). Likewise, Congress authorizes and appropriates new obligation authority on an annual basis. The result is that while the contracts are essentially multi-year and the Program Manager and contractor know what was requested in each President's Budget, the Program Manager and contractor are often uncertain about what money will be provided to execute the next increment of development after adjustments are made for general reductions. This results in adjusting program content and work package timing that can cause schedule and cost increases.

Milestone authorization, in which Congress would authorize funding allocations consistent with a program's acquisition phase, should allow programs to benefit from lower costs, reduction of administrative burden, and substantial continuity of performance. Milestone authorization would concentrate on event-driven progress and performance. Program Managers and Acquisition Executives will establish long-term budgets to cover work effort within the system development and demonstration phase or the production and deployment phase, based on the program baseline. The Department of Defense would commit at all levels to protect those budgets from milestone-to-milestone provided that the program is meeting its goals.

It would be difficult to tailor the current multi-year authority in statute to apply to development contracts because the essential elements of stability of design and costs do not yet exist for programs still in development. Congress could instead provide the Department of Defense with milestone funding authority for selected programs based upon the defense enterprise program authority previously enacted in section 906 of the Department of Defense Authorization Act for Fiscal Year 1987. This authority was later repealed for lack of Defense Department interest and support, due largely to the Department's inability to appreciate fully the benefits of this statute. With improved acquisition procedures, the Department now is committed to try milestone funding in order to obtain the resulting benefits for a small number of selected high priority programs. This legislation would provide the Secretary of Defense the authority to designate programs to use milestone authorization and request appropriate funding authority from Congress. The programs designated and funded under this authority would have the benefits of more stable funding, which should result in cost savings by establishing long-term relationships with suppliers, and ultimately reduced acquisition cycles by preventing perturbations from funding cuts. Use of milestone authorization is also a means of providing defense contractors with more stable revenue and cash flow, thereby improving the health of the

defense industrial base.

Section 802 would allow the Secretary of Defense to settle the financial accounts for contracts executed prior to September 30, 1996, that have unreconciled balances of less than $100,000.

Settlement of contracts with unreconciled balances often is necessary where a contractor has been overpaid, but neither the contractor nor the Government has any evidence of under or overpayment aside from the fact that the accounts do not reconcile. In many circumstances, the time and effort required to determine the cause of the out-of-balance condition may be disproportionate to the amount of the discrepancy.

This section would allow DoD to terminate further reconciliation efforts or collection efforts if, after analysis, the cost of the effort is disproportionate to the amount of the discrepancy.

Section 803 would clarify the requirements of 10 U.S.C. 2533a in ways that would facilitate timely purchases of many of the products needed to support contingency operations, such as Operation Enduring Freedom, and in situations of unusual and compelling urgency. Other proposed clarifications would make it easier and less expensive for U.S. producers and manufacturers, especially small businesses and small disadvantaged businesses, to sell commercial products to the Department of Defense. The proposed clarifications would eliminate inequities that currently favor foreign sources over domestic sources of specialty metals. In many areas, the clarifications proposed would improve understanding, implementation, compliance, and enforcement of the law among buyers and sellers, while continuing existing preferences for U.S. produced fibers, yarns, textiles, and textile products.

Changes proposed for subsection (b) would preserve the domestic capability and capacity to produce meals ready-to-eat, reaffirming that they must be produced or manufactured in the United States. The section would end coverage of food and other food products to allow for greater use of commercial business practices, such as the prime vendor program, and to ensure that DoD has access to the widest possible selection of food products to meet the peacetime needs and surge requirements of U.S. armed forces. The section would reiterate the domestic preference requirements, as currently provided by the law, for clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), and items of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials. The section would continue to require that hand tools and measuring tools must be of domestic origin. The section would reiterate that specialty metals must be smelted in the United States or in a qualifying country. The section would enhance the ability of suppliers to comply with the intent of the law by allowing them to use auditable records, rather than rely only upon the physical separation of materials inventories, to demonstrate that they have purchased an amount of domestically smelted specialty metals equivalent to what is required to satisfy the needs of national defense.

This clarification would retain the protection of smelters of specialty metals in our national defense industrial base. It would avoid the cost of segregating authorized metals from other inventory; this benefits neither the smelters nor the taxpayers. The section would end coverage of stainless steel flatware, a commercial item. DoD is a minor consumer of such items, which do not embody a capability or capacity needed in case of national emergency or industrial mobilization. Finally, the section would clarify item coverage pertaining to meals ready-to-eat, hand tools, measuring tools, and specialty meals (but not the item coverage pertaining to textiles and apparel) by describing requirements in terms of the Federal Supply Classification numbering system. This system is widely used by the Government to classify items of supply for procurement and logistics purposes.

Changes proposed for subsection (c) would provide for hand tools and measuring tools to be subject to the same exceptions as all other covered items.

The law provides exceptions for procurements outside the United States in support of combat operations and for emergency procurements by an establishment located outside the United States for personnel attached to such establishment. Except for textile and apparel items, the new subsection (d) would modify these exceptions to provide that exceptions would apply to any procurement in support of contingency operations, such as Operation Enduring Freedom vs. "combat operations", and to any procurement of unusual and compelling urgency (vs. "emergencies"). These adjustments would help to ensure the readiness of U.S. armed forces in either situation. The terms "combat" and "emergency" as currently used in the law are subject to interpretation. This creates problems for implementation, compliance, and enforcement of the law. The section would preempt many such problems by replacing these terms with comparable ones that are defined in other statutes and therefore commonly understood. Except for textile and apparel items, the section would enable DoD to avoid the time consuming process of determining whether a covered item is available domestically and, if not, executing a determination of domestic non-availability before the Department can procure within the United States items that are urgently needed by U.S. armed forces. The proposed changes do not alter the original intent of the law in order to accommodate potentially life-threatening situations and other time-critical situations in which it is vital to allow for exceptional procedures. In these very limited circumstances, the proposed changes would not undermine the law's fundamental requirement that DoD purchase certain items from domestic producers and manufacturers in the normal course of business.

Changes proposed for subsection (e) would eliminate an existing anomaly that gives foreign suppliers greater latitude than domestic suppliers in the production and manufacture specialty metals. The section would repeal an exception provided under the law that recognizes offset agreements with foreign countries as a basis for foreign participation in our national security purchases. The section reiterates the current law exception for chemical warfare protective clothing.

Changes proposed for subsections (f) through (h) would reiterate the requirements of the current law.

Changes for subsection (i) would allow an exception for purchases of commercial items or components of meals ready-to-eat, specialty metals, and hand and measuring tools; however, the proposed exception would not apply to commercial items or components of textiles or apparel. In the commercial market for such items or components, DoD would be a relatively insignificant influence on the way suppliers do business. For the limited situations cited, this clarification would allow for the use of commercial business practices by U.S. industry and DoD, and it would attract broader participation by U.S. companies in DoD's procurement of the affected items.

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

Section 811 would amend the existing authority for the Defense Modernization Account (DMA) to provide a direct authorization of funds into this account specifically for projects to improve the life cycle cost of new or existing systems. This would provide a source of start-up funds for ownership cost reduction initiatives. The term "life cycle cost" represents the total cost of a system, including development, procurement, and testing, as well as subsequent operations, maintenance, and disposal costs. It is a more meaningful indicator of a system's true cost than simply measuring development and acquisition costs.

The DMA was established by the FY1996 Defense Authorization Act to provide flexibility in addressing acquisition funding issues. Defense Components may transfer funds that were originally appropriated for procurement or support of installations and facilities into the Account to use for a variety of matters, including: 1) improving the operational capability or technical performance or procuring an upgraded version of an existing system, 2) reducing life-cycle costs of new or existing systems, and 3) increasing production rates to achieve a more efficient production or delivery rate.

The first two authorities track very closely with the purposes of the Reduction of Total Ownership Costs (R-TOC) program and the Value Engineering initiative, which is an advantage of using the DMA as a source of funding.

The enabling legislation for the DMA provides that funds can only be used by the Defense Component transferring the funds into the Account. This amendment would allow any DoD agency to use newly appropriated funds, subject to criteria established by OSD. Appropriations into the account are capped at $25 million per year through Fiscal Year 2006. This account will, thereafter, become self-sustaining.

Recipients of funding under this provision will be expected to reimburse the Account out of savings achieved from the investments, so that these initiatives ultimately will be self-financing. Savings in excess of the original funding will be retained by the Defense Component sponsoring the project for other life cycle cost reduction initiatives.

Finally, the current legislation also sunsets on 30 September 2003 (for receiving funds)

and 30 September 2006 (for expenditures). This amendment extends the sunset date for receiving funds by three years and extends the expenditure date by five years.

Section 812. Existing OTA expires on September 30, 2004. In addition to changing the definition of nontraditional defense contractor, this section would extend OTA for four more years.

Section 813. Commercial companies are developing and implementing many advanced technologies important for national defense. DoD needs to do business with these firms if it is to take advantage of these advanced technologies. Commercial firms are typically unfamiliar with DoD contracting procedures and are reluctant to devote the resources, time, and effort needed to understand and comply with the myriad rules and regulations associated with government procurements. Commercial firms may also want more flexibility with respect to intellectual property than is afforded under the Federal Acquisition Regulation.

Other Transaction Authority (OTA), a term indicating a relaxation of existing statutory or regulatory requirements, makes it much easier for commercial firms to do business with DoD. Currently, OTA can only be used for prototype projects relevant to new systems. This clarifying amendment ensures that OTA can be used for prototype projects relevant to fielded systems as well. Modernizing fielded systems with new technology improves capabilities and reduces operating and support costs. Commercial firms have technology that can be used to modernize fielded systems, and the proposed authority will provide a valuable mechanism that makes it easier for DoD to do business with them. The section will also provide traditional defense contractors the same authority to develop prototypes to modernize fielded systems as they now have for prototypes relevant to new systems. The authority only applies to prototypes in either case. Any subsequent production contract would still be covered under the FAR. The amendment supports DoD's goals to initiate advanced technologies to create the warfighting capabilities, systems, and strategies for the future, and to accelerate technology transition to the warfighter.

Section 814 would provide authority for Intelligence Community elements of the Department of Defense (DoD), any element of the Office of the Secretary of Defense (OSD) designated by the Secretary of Defense for purposes of this section, and - when engaged in certain special operations activities - the United States Special Operations Command to award personal services contracts, similar to the CIA's existing authority for personal services contracts under section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(a)(1).

Intelligence Community elements of DoD, the Special Operations Command, and certain OSD components frequently have a temporary need for additional personnel with specific expertise to meet unanticipated, yet significant operational requirements requiring a bolstering of organizational and personnel efforts created by world events. Current examples include experts on al Qaeda, the countries of the Middle East, chemical and biological warfare, and Islamic militant personalities, along with linguists to support interrogation of detainees and review of captured documents. Under current law, U.S. government agencies generally must choose between hiring additional personnel as government employees or contracting for their services

under the highly restrictive provisions for the temporary or intermittent employment of experts and consultants under 5 U.S.C. 3109. This section would help to optimize the capabilities of Intelligence Community elements of the DoD, the Special Operations Command, and certain OSD components in the performance of their roles in the global war on terrorism and in the execution of future national security missions.

Section 815 would amend section 2306(e) of title 10, United States Code, to eliminate, for contractors with Department of Defense-approved purchasing systems, the requirement to notify the Department of Defense prior to awarding specific types of subcontracts. When a contractor has an approved purchasing system, advance subcontract notification does not provide added efficiencies, and to the contrary, makes part of the acquisition process ineffective and burdensome. Currently, both the Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA) oversee subcontract procedures and policies. In this regard, DCMA conducts periodic reviews of defense contractor purchasing systems and DCAA reviews selected subcontracts, both on an individual basis and during incurred cost audits. Their combined experience shows that out of the thousands of subcontract advance notifications received annually, few ever become the basis for future action.

Elimination of the current requirement would reduce numerous contractor and Department of Defense man-hours expended in the preparation and review of the notifications. The proposed change is consistent with the growing use of commercial practice and greater reliance on contractor self-oversight. Furthermore, the Department of Defense's financial interests are still protected through DCMA purchasing system reviews and DCAA audits.

Section 816 would amend subsection (a)(5) of 10 U.S.C. § 2534, which places limitations on the procurement of ball bearings and roller bearings other than those produced in the national technology and industrial base, by creating an exemption for ball bearings and roller bearings to be used in an end product or a component of non-domestic origin.

For most non-domestic end products or components, the only acceptable source for ball bearings and roller bearings and replacement ball bearings and roller bearings is the non-domestic original equipment manufacturer or its non-domestic supplier. When this occurs, DoD must process waivers to allow procurement of the necessary ball bearings and roller bearings. The proposed change would relieve this requirement. At the same time, the proposed change would be consistent with the intent and purpose of the domestic source restriction in that it does not seek to replace domestic ball bearings and roller bearings normally found in domestic end products or components with non-domestic ball bearings and roller bearings.

Section 817. The Defense Acquisition Workforce Improvement Act (DAWIA) was enacted in 1990. It required the Secretary of Defense to establish education and training standards, requirements, and courses for the civilian and military acquisition workforce. Its purpose was to improve the effectiveness of the military and civilian acquisition workforce and thereby improve the acquisition process. The legislation set specific minimum qualification standards for those performing functions integral to the acquisition process, and defines critical acquisition positions. While the Defense Acquisition Workforce has improved, many cultural

barriers to improvement remain.

The private industry, particularly the commercial business sector in the United States, provides a fertile knowledge base for the development and successful implementation of ideas, worldwide best practices, and business process expertise. The private business sector represents a culture of success worthy of emulation by the Department. The Department has sought to understand the operation of the private sector through the use of existing programs--e.g., training with industry, education with industry, and the Secretary of Defense fellows program. These programs authorize the Department of Defense and the military services to send outstanding Government employees and officers to industry for training purposes. However, there is no authority to import outstanding individuals--and their cultural system--from the private sector into the Government without those individuals terminating their current employment relationship. For various reasons, many individuals in high technology industries will not leave their current positions to work for the Government. A Government Industry Assignment Program would allow those individuals to retain their employment status while assisting the Government in its efforts to streamline and reorganize its business and financial systems.

This Government Industry Assignment Program seeks to bring outstanding individuals into the Government for short-term assignments. This program offers an outstanding opportunity to tap the private knowledge base and establish enduring acquisition and management reform by integrating a pool of talented mid-level business executives into the Government while providing a "developmental program" for those mid-level business industry executives. This program would further provide those private sector acquisition professionals with a unique opportunity to experience and understand the operations of the Department and its process, thereby providing the citizenry with an insight into the workings of their Government. Because of the developmental nature of the program, the Department is willing to provide office space and other direct costs of the program, but not the salaries or other benefits of the individuals involved--those would be borne by their employer.

The Department believes it will benefit from this employee exchange program since it would serve to inculcate private industry, particularly the commercial business sector, cultural practices within the Government while additionally transferring those practices and approaches to the Government. Thus, not only would current governmental issues undergo the rigors of private best practices, but so might subsequent issues.

All non-Federal employees on assignment to a Federal agency would be subject to the laws governing the ethical and other conduct of Federal employees. For example, these individuals would not conduct business with their employer nor competitors while serving with the Federal Government. In addition, they could not lobby or accept bribes. They could not share any compensation received from another for a representation to the federal government, and they would be subject to post-employment restrictions. In order to insure the integrity of Government operations and adherence to the standards of conduct, Federal agencies will enter into agreements with corporate partners that will be designed to scrupulously avoid potential conflicts of interest and violations of law. Agency ethics officials would be integral to the agreement process. DoD intends that its ethics officials would review every proposed

compensation package.

Additionally these private sector individuals would also be subject to the Ethics in Government Act of 1978; 5 C.F.R. Chapter XVI, subchapter B, which regulates employee responsibilities and conduct, and the procurement integrity statutory provisions (41 U.S.C. 423); as well as agency standards of conduct regulations. Consequently, the Federal agency entering into an agreement with a particular private entity and its employee will pay particular attention to any possible conflict of interest.

Section 818. Most provisions of the Defense Production Act (DPA) of 1950 are not permanent law and must be reauthorized periodically to extend the expiration date of critical authorities and to modernize these authorities in response to changing national defense needs.

The proposed amendment to DPA Section 717(a) would extend the termination date for expiring sections of the DPA by five years from September 30, 2003, to September 30, 2008, and would make DPA Section 707 permanent law. DPA Section 707 provides that no person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to the DPA.

During Operation Desert Shield/Desert Storm, most DPA provisions, including Section 707, lapsed due to the termination provisions in Section 717. Civil Reserve Air Fleet air carriers, whose contracts with the Department of Defense are based largely on DPA authorities that were permanent and had not lapsed, were exposed to potential liability for failing to meet commercial transportation commitments because they were using aircraft to support Operation Desert Shield/Desert Storm airlift needs. Making DPA Section 707 permanent law protects against a recurrence of this potential problem in the future.

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

The proposed amendment to DPA Section 711(b) would authorize appropriations to carry out title III for each of the fiscal years 2004 through 2008. The existing DPA language only authorizes appropriations for fiscal years 1996 through 2003 to carry out title III.

Cost Implication: This section would not increase the budgetary requirements of the Department of Defense or the Department of Transportation.

Subtitle C—Acquisition-Related Reports and Other Matters

Section 821. Section (a) adds a new Section 40 to the Office of Federal Procurement Policy Act (OFPPA) to permit an executive agency head to authorize access for a contractor to information protected by section 21 of the OFPPA (41 U.S.C. §418a), or section 2320 of title 10 or section 1905 of title 18 of the U.S. Code, when the contractor needs such information to perform administrative support duties under Federal contracts. Currently, the statutory prohibitions on granting such access discourage Federal agencies from using administrative support contractors, thereby unnecessarily increasing the cost to taxpayers of providing administrative support for Federal agencies. Section b) makes a conforming amendment to the table of contents of section 1(b) of the OFPPA.

The provisions of the new Section 40 of the OFPPA are set forth below.

Under subsection 40(a), an executive agency head may authorize a contractor to have access to, and use, protected information to perform an administrative support function for the executive agency. The executive agency head may authorize such access and use only when the contractor has a need to know and use the information to perform duties under a contract with the United States or an executive agency. The executive agency head may not authorize such access and use if an Executive Order (such as Executive Order 12958 on classified national security information) or a law (other than section 21 of the OFPPA, section 2320 of title 10 of the U.S. Code, and section 1905 of title 18 of the U.S. Code) prohibits such access and use. The executive agency head may authorize contractor access and use of protected information only for the performance of administrative support functions for that executive agency under a Federal contract, but the contract may be with another executive agency. Thus, for example, if a contractor has a General Services Administration (GSA) contract to provide security at GSA-leased buildings occupied in part by the Department of Defense (DOD), the Secretary of Defense could authorize for that contractor access to and use of protected information to the extent the contractor needs to know and use the information to provide security for DOD occupants of the building.

Subsection 40(b) makes clear that an contractor who gains access to protected information under subsection 40(a) must follow the same rules regarding protection of such information as Federal employees must follow, plus any additional rules specified by the relevant contract. Thus, the contractor must follow contract restrictions; regulatory restrictions (unless an exception is granted); restrictions that apply to Federal employees under section 21 of the OFPPA, section 2320 of title 10 of the U.S. Code, and section 1905 of title 18 of the U.S. Code; and restrictions under any other applicable law.

Subsection 40(c) ensures that the authority of executive agency heads to grant access to and use of protected information under this new section 40 does not impair or otherwise affect the intellectual property rights of any person under Federal law. Subsection 40(c) also preserves the rights of any person vested, prior to the date of enactment of this new section, under section 21 of the OFPPA or section 2320 of title 10 of the U.S. Code. Subsection 40(c) thus ensures that this new section 40 cannot be used to limit rights in technical data that vested under either of those two statutes prior to enactment of this new section. However, rights that vest under either of those two statutes after enactment of this new section 40 would be subject to limitation under

this new section.

Subsection 40(d) defines terms used in Section 40.

Paragraph 40(d)(1) defines "contractor." A "contractor" is an individual who is a party to a Federal contract or an employee of a party to a Federal contract -- or an individual who is a subcontractor at any tier (or employee of a subcontractor at any tier) of either of the foregoing. The applicable definition of "executive agency" is the definition contained in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. §403), covering executive departments, military departments, independent establishments and specified wholly-owned Government corporations.

Paragraph 40(d)(2) defines "administrative support function." An "administrative support function" is any of the following: secretarial or clerical support; auditing or audit support; provisioning or logistics support; data entry; document reproduction, scanning, imaging, or destruction; operation, management, or maintenance of paper-based or electronic mail rooms, file rooms, or libraries; installation, operation, management, or maintenance of computer systems, electronic networks, or internet or intranet systems; security services, including facilities or information security; and supervision or legal services in connection with foregoing functions.

Paragraph 40(d)(3) defines the term "information protection statute." Each of the following is an "information protection statute": section 21 of the OFPPA, section 2320 of title 10 of the U.S. Code, and section 1905 of title 18 of the U.S. Code. Section 21 of the OFPPA and section 2320 of title 10 protect rights in technical data and section 1905 of title 18 protects private sector trade secrets and financial information held by the Government.

Paragraph 40(d)(4) defines the term "protected information." The term "protected information" means information for which an information protection statute prohibits disclosure to a contractor.

Nothing in the proposed legislation impairs or otherwise affects the Freedom of Information Act (5 U.S.C. §552) or the Privacy Act (5 U.S.C. §552a).

Section 822 would eliminate the provision that requires contractors providing technical data to the Government to furnish written assurances that the technical data is complete, accurate, and satisfies the requirements of the contract. Eliminating this requirement will not in any way diminish the contractor's clear obligation to provide technical data that meets contract requirements and enforcement of contractual obligations by standard legal process.

In this regard, the Defense Contract Management Agency (DCMA) monitors contractor technical data programs to protect Government data rights and to ensure the Government receives timely and accurate information regarding contractor processes, practice and controls for developing technical data. This ensures conformance to format, reproducibility and content. Such monitoring also enables DCMA to identify deficiencies that could impact technical data

and to resolve problems before delivery to the Government. Due to these oversight activities, elimination of this requirement would reduce unnecessary burdens on industry while ultimately saving the Government both administrative effort and processing costs.

Section 823. Radiation hardened electronics are electronic components that have been designed and produced to withstand the effects of radiation caused by nuclear blasts or high levels of naturally occurring radiation in space. These electronic components are critical for our strategic space and missile systems.

This section authorizes action to be taken to provide production capability for radiation-hardened electronics. An industrial resource shortfall exists when United States production capability is unable to produce or manufacture a component or material needed for our defense needs. This section corrects the industrial resource shortfall for radiation-hardened electronics in amounts not to exceed $200,000,000. Subsection 303(a)(6)(C) of the Defense Production Act of 1950 requires a specific authorization for any action or actions taken under section 303, to correct an industrial resource shortfall, that would cause the aggregate outstanding amount of all such actions to exceed $50,000,000.

The FY 2003 Defense Authorization Bill authorized funding, not to exceed $106 million, to correct the industrial resource shortfall for radiation-hardened electronics.

The current estimate to correct the industrial resource shortfall for radiation hardened electronics is $167 million. However, authority to take action up to $200 million is being requested to provide additional authorization in the event of an unexpected increase in the cost of the project.

This is not a request for additional funds. The requested legislation will simply authorize the use of funds in excess of $106 million if and when such funds are appropriated.

Section 824 would eliminate the existing requirement that the Department of Defense base its competitive sourcing decisions solely on cost. Enactment of this section would improve the DoD's procurement processes by ensuring that DoD considers quality, as well as cost, as a selection factor. It would also allow DoD to take advantage of the newly revised OMB Circular A-76 when it is finalized, which, for example, would allow for best value cost-technical tradeoff source selections for information technology functions.

Section 825 would make permanent the authority of the Secretary of Defense to enter into personal services contracts to carry out health care responsibilities, such as the provision of Military Entrance Processing Stations, at locations outside medical treatment facilities. This would allow the U.S. Military Entrance Processing Command (USMEPCOM), to hire Fee-Basis Practitioners to meet surge requirements. Existing authority expires on December 31, 2003.

USMEPCOM has used Fee-Basis Practitioners for decades, resulting in substantial savings for the U.S. Government. Fee-Basis Practitioners presently charge on average $275 per day, during which they typically complete 25 medical examinations. Alternative medical

examinations typically cost from $125 to $250 each. Additionally, Fee-Based Practitioners already understand the medical processing procedures of the Military Entrance Processing Stations and are familiar with the medical standards required by the Services. Continuing the use of Fee-Basis Practitioners is in the best interests of the government. Besides saving the government money, it will prevent many of the challenges associated with starting-up new programs and hiring doctors unfamiliar with the requirements and procedures of applicant medical evaluations.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Duties and Functions of Department of Defense Officers

Section 901 establishes the Secretary of Defense as the permanent chairman of the Economic Adjustment Committee (EAC).

Section 902 gives the Department of Defense much-needed flexibility in constructing various types of on-base unaccompanied housing. In 1991, during a time of significant defense industry downsizing and base realignment and closure, Congress established the EAC in law and mandated that the chairmanship would rotate among the Secretaries of Defense, Commerce, and Labor. The original purpose of the EAC, as stated in Executive Order 12788 is "to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities". The EAC staff, the Office of Economic Adjustment (OEA), is a Defense Field Activity. As such, EAC activities are inherent defense functions. The Secretary of Defense properly should serve as the permanent chairman of the EAC.

Subsection (a) allows DoD greater flexibility in constructing various types of on-base unaccompanied housing.

Subsection (b) merges two separate funds established for family and military unaccompanied housing privatization: the DoD Family Housing Improvement Fund and the Military Unaccompanied Housing Improvement Fund. The result is a single DoD Housing Improvement Fund. The current existence of two separate funds hinders the planning and execution of privatization projects that encompass both types of housing. Similar authority for the Coast Guard (14 U.S.C. § 687) provides for a single fund covering both family and unaccompanied housing.

Additionally, this proposal raises the limitations on budget authority for military housing privatization projects to $1.7 billion for family housing and $300 million for military unaccompanied housing, respectively. Title 10, United States Code, imposes separate limits on the total value of budget authority of all contracts and investments undertaken in conjunction with military housing privatization. These limits are $850 million and $150 million for family and unaccompanied housing, respectively. These lower limits impede the Services' ability to

use privatization in improving living conditions for military members and their families as quickly as possible. This proposal extends existing authorities until 2012.

Subtitle B—Space Activities

Section 911 would authorize the Department of Defense or a delegated component such as the Air Force Space Command to provide space surveillance data support to non-United States governmental entities if it is "consistent with the best interests of national security." Non-U.S. governmental entities would include state and local governments, foreign governments, and U.S. and foreign companies. Under this section, the Secretary of Defense may require non-United States governmental entities to reimburse the Department for the costs of providing this support. This section also would authorize the Department of Defense or a delegated component to deposit the funds received into the operating accounts that funded the services provided.

The Space Surveillance Network is a vital element of the United States space program and contributes to the United States' leadership in space research, technology, and development. It is the primary space surveillance system for both United States' national security and civil government missions. It contributes to the expansion of United States private sector investment and involvement in space and, therefore, should serve commercial users. On March 31, 2000, the Deputy Secretary of Defense-sponsored Space Control Broad Area Review directed the Air Force to develop a plan for providing space surveillance support to non-United States governmental entities.

Making the Space Surveillance Network available to foreign users for peaceful purposes would promote international, cooperative activities in the national interest and maintain access to space for activities that enhance the security and welfare of mankind. A fully operational and cost-effective Space Surveillance Network that provides routine access to space surveillance data for non-United States governmental entities, when consistent with the interests of national security, would maximize the national economic benefits of the system. Furthermore, a stable and predictable pricing policy for the satellite tracking services would further both the goals of the United States and the goals of the Space Surveillance Network.

Currently, the Aerospace Corporation, a federally-funded, non-profit research and development center that provides technical expertise for Air Force space programs, is providing limited support to the PANAMSAT and INTELSAT companies' consortia. The Department of Defense, using Aerospace Corporation's experience in this area as a guide, believes there is sufficient additional demand within the commercial space community to warrant expansion of this service. The Department of Defense proposes this pilot program to define further precisely the types of services/data products that would be made available to non-United States governmental entities. Traditionally, the Space Surveillance Network provides two types of data to United States government users: (1) Space Track, metric data in the form of time, elevation, azimuth, range, and range rate that enables the determination of a satellite's orbital position; and (2) Space Object Identification, data in the form of signatures and imagery that provides information about a satellite. This data--along with analytical support–likely would be provided

to non-United States governmental entities on a case-by-case basis.

The Department of Defense also proposes to use the pilot program to develop the reimbursement procedures for services and data products requested by non-United States governmental entities. Depending on the option selected, this section may or may not have cost implications. Currently, the Department of Defense merely is seeking authority to provide space surveillance services and data to non-United States governmental entities. Therefore, the Department of Defense is not planning to request money in Fiscal Year 2004 to fund this effort. If this effort requires funding in Fiscal Year 2005 and beyond, the Department of Defense will address that issue while developing its budgetary requirements for Fiscal Year 2005 through Fiscal Year 2009.

Section 912. Since the enactment of the Commercial Space Launch Act in 1984, Congress has consistently recognized that the economic growth and national security of the United States are dependent on a robust U.S. commercial space industry. Congress has found that the interests of the United States Government and the U.S. commercial space industry are mutually promoted by allowing the commercial use of Government space launch and reentry property and services on a non-interference and reimbursable basis. Accordingly, the Executive branch and Congress have taken significant steps to enhance private sector launches, reentries and associated services.

U. S. Government agencies have employed the resources and statutory authorities provided by Congress to develop a strong and mutually beneficial partnership with members of the commercial space industry. Nevertheless, nearly two decades of experience has demonstrated that there are legal impediments to the optimal use of U.S. Government property and services to support commercial space launch and reentry operations. Enactment of the proposed amendments will enable important improvements to U.S. Government launch facilities that will increase the robustness and competitiveness of the commercial space industry while protecting and promoting national security and other public interests at no additional cost to the taxpayer.

The existence of legal impediments was addressed in the February 2000 report of the interagency working group on "The Future Management and Use of the U.S. Space Launch Bases and Ranges," after which the House Armed Services Committee requested that the Secretary of Defense submit a report identifying them in detail. In compliance with this request, on April 16, 2001, the Department of Defense submitted its "Report on Legal Impediments to Non-Federal Funding of Spacelift Range Improvements and Maintenance." The current legislative section was developed by representatives of the agencies participating in the Space Transportation Working Group of the Space Policy Coordinating Committee to provide statutory relief from the most significant of these legal impediments.

One significant legal impediment is the fact that under current law there is no mechanism by which non-federal entities (e.g., corporations or state or local spaceport authorities) can contribute funds with any confidence that they will be used to improve U.S. Government launch and reentry property and services to better meet the needs of commercial space operations. Such

contributions would be intended to finance improvements that are useful for commercial launch or reentry operations but that are not funded by Congress to fulfill the primary mission of the launch facilities to assure access to space for DoD, intelligence, and civil government launches. Currently, any contribution of funds received by a U.S. Government agency must generally be deposited in the Treasury as a miscellaneous receipt. The agency has no authority to use such funds unless Congress specifically authorizes and appropriates them for the purpose contemplated. Furthermore, U.S. Government agencies generally may not lawfully solicit donations. The proposed legislation would authorize U.S. Government agencies to enter into agreements with non-federal entities whereby contributions of funds or property would be used to improve the capabilities of certain launch or reentry facilities or services, and it would authorize the contributed funds to be used by the agencies for such improvements.

A similar legal impediment arises from the fact that U.S. Government agencies are authorized to collect from commercial space operators the "direct costs" of using U.S. Government facilities and services, but the amounts collected must be deposited into the Treasury and are not available to the agency unless they are later authorized and appropriated by the Congress. The proposed legislation would make such funds available to the agencies to cover the costs of providing such support to commercial space operators. No change is proposed to the definition of "direct costs", although the current definition would be relocated to Section 70102, where other definitions appear.

Additionally, current law generally prohibits the acceptance by U.S. Government agencies of voluntary services. This section would authorize the acceptance of voluntary services from non-federal entities as part of an agency program established for the purpose of providing improvements and additions or modernization of space launch infrastructure, so long as no employee is displaced.

Moreover, state and local governments have also devoted significant resources to improving the conduct of commercial space operations. This section would enhance the abilities of the U.S. Government to cooperate with state and local governments.

The non-federal investments authorized by these changes in current law could decrease the timeline to implement the Range Standardization and Automation program as well as provide support to the commercial space industry that could not be otherwise provided.

Finally, the proposed legislation would amend the stated criteria under which launch or reentry property and services may be provided at "direct cost" to commercial space launch operators. Currently, such property and services may be provided only if they are "excess" to Government needs. The proposed amendment to 49 U.S.C. 70103 would authorize the provision of such property and services when such action is "consistent with public health and safety, national security, international treaty obligations, and the missions of those Federal agencies." In practice, the "excess capacity" limitation has been applied in a manner that has accommodated commercial launches whenever they have not unreasonably interfered with government launches. The proposed change would realign the statutory language with established practice, and it would also provide more useful guidance for the provision of items

such as utilities.

Subtitle C—Reports

Section 921. The Department of Defense seeks to repeal various recurring reports required by the Congress. This section would allow the Department to employ its finite resources more efficiently, particularly during this time of war, and would improve Congress's ability to conduct effective oversight by focusing that effort on reports of substantial importance and utility.

To facilitate review, this section lists each report that the Department seeks to repeal by the order it appears in title 10 of the United States Code. Subsection (a) provides the specific reference to title 10. The Section-by-Section Analysis appears immediately following each amended section and indicates the title of each report or reports, the stated purpose of the report, and the Department's rationale for seeking repeal.

Subtitle D—Other Matters

Section 931. The primary focus of the CINC Initiatives Fund (CIF), which would be renamed the combatant commanders initiatives fund, is to support unforeseen contingency requirements critical to the combatant commanders' joint warfighting readiness and national security interests. The fund provides a means for the combatant commanders to react to unexpected contingencies and opportunities by seeking funding authority from the Chairman. It is not intended to subsidize ongoing projects, supplement budget shortfalls, or support Service component expenses that are normally the responsibility of the parent Service.

In two of the last three fiscal years the $7M cap on funds used for procuring items with unit costs in excess of $15K was reached and during FY02 the $2M ceiling on authority to provide military education and training was reached. This resulted in legitimate combatant commanders' initiatives being denied. Specifically, a SOUTHCOM initiative focused on counter-terrorism efforts in Colombia could not be supported and additional CENTCOM needs related to the rebuilding/retraining of the Afghan National Army could not be considered due to the statutory limitation.

The environment in which today's combatant commanders operate is vastly different from that which existed when the statutory limitations were established. The pace and type of operations post 11 September are such that the current limitations could result in adverse consequences by tying the hands of the Chairman in his ability to effectively and efficiently support the combatant commanders. The execution of the CIF authority is unnecessarily constrained and by adjusting the statutory limitations, the Chairman can be more responsive to the requirements of the warfighters.

Section 932 would streamline financial management arrangements by allowing all

facilities, managed by Washington Headquarters Services (WHS), to be financed through one combined account instead of the current two. It also would allow the Secretary of Defense to assign space, and oversee, manage, and maintain facilities as required for the relocation of the DoD Command and Control leadership to an alternate site or sites in the event of emergency or extraordinary circumstances.

The two accounts are: the $662.1 million Pentagon Reservation Maintenance Revolving Fund, which finances real property operations and renovation on the Pentagon Reservation and force protection in the National Capital Region; and the $34.5 million Buildings Maintenance Fund, which finances real property operations and force protection in the National Capital Region. Incorporating National Capital Region real property operations and force protection into one fund would support the President's Management Agenda and the DoD Financial Management Modernization program by providing more flexibility to WHS to respond to emerging real property and force protection requirements. It would provide better cost visibility for WHS-managed facilities. It also would allow WHS to change existing business practices to account for personnel reductions. In the process, merging National Capital Region real property operations and force protection into one fund would eliminate a minor financial account that requires a comparatively disproportionate share of resources to manage.

DoD budget requests would identify separately Pentagon Reservation costs from those costs required to manage other WHS-managed facilities in the National Capital Region. This section would not require new funds.

This section also would enable the Secretary of Defense to designate certain relocation facilities for Pentagon Continuity of Operations Plans that fall under the Secretary's direct jurisdiction, custody, and control. Currently, only facilities physically part of the Pentagon Reservation are under the jurisdiction, custody and control of the Secretary of Defense. The Office of the Secretary of Defense, through WHS, manages operations, maintenance, and control of the Pentagon Reservation on the Secretary's behalf. As the events of September 11, 2001 have shown, the Secretary of Defense must have "turn key" alternatives to the Pentagon Reservation that are ready to serve as fully operational alternatives to the Pentagon without advanced warning.

This section would place the designated alternate site or sites under the direct control of the Secretary of Defense and which the Director, Washington Headquarters Services would manage and operate as a part of the Pentagon Reservation. It also would allow the Pentagon Reservation Maintenance Revolving Fund to fund these operations by charging rent to each of the DoD organizations using space at the alternate site or sites, as currently is done at the Pentagon. Rather than have different military departments responsible for management and funding of such different Pentagon continuity of operation sites, this section would allow the Secretary in his discretion to manage such facilities as if they actually were on the Pentagon Reservation and to spread the costs on a user-fee basis to all DoD tenants of such sites for their maintenance, repair, and operations for Continuity of Operations Plans purposes. This would allow the Secretary to assign space, and oversee, manage, and maintain facilities as required for relocation of the Command and Control leadership of DoD that normally operates at the

Pentagon Reservation.

Section 933. The operational files exemption proposed as Section 105E of the National Security Act of 1947, as amended, will allow the Director of the National Security Agency ("NSA" or "Agency"), in coordination with the Director of Central Intelligence, to exempt limited categories of sensitive NSA files from the search, review, and disclosure provisions of the Freedom of Information Act, 5 USC 552. This authority parallels authority currently enjoyed by the Central Intelligence Agency, the National Imagery and Mapping Agency, and the National Reconnaissance Office.

The authority to exempt operational files will allow NSA to better focus on its signals intelligence mission. Currently, when NSA receives a FOIA request for records that document the means by which foreign intelligence or counterintelligence is collected through technical means, the Agency almost invariably withholds them on the bases that they are classified and pertain to core Agency activities. The federal courts rarely overturn the Agency's withholding of these types of records. Yet, processing these requests may require Agency personnel to be diverted from key mission areas, such as fighting the war on terrorism.

The authority to exempt operational files will also improve security. The act of withholding records allows requesters to piece together a mosaic that ultimately may reveal the Agency's intelligence capabilities against or interests in its specific targets. A "no records" response adds to the mosaic by highlighting the fact that the Agency does not have the requested information, which may reveal intelligence vulnerabilities. The Agency could attempt to "Glomar"(i.e., refuse to deny the existence or non-existence of the requested records for classification reasons or because they reveal NSA's functions or activities) requests across the board, including those for which NSA previously acknowledged having records, but it is not clear that the courts would uphold such a response. In addition, exemption authority will help prevent the inadvertent release of sensitive information about the Agency's operations to adversaries of the United States.

The proposed exemption contains many safeguards. Nothing in the legislation will allow the Agency to use the exemption mechanism to conceal any impropriety or violation of law, Executive order, or Presidential directive in the conduct of an intelligence activity from investigation by the Intelligence Committees, the Intelligence Oversight Board, the Department of Justice, or appropriate Agency personnel. If enacted, the legislation will only allow the Director to exempt NSA files concerning signals intelligence or counterintelligence from search, review, or disclosure under the FOIA. In addition, the Director's authority to exempt files would be limited to those that document the means by which foreign intelligence or counterintelligence is collected by technical means; i.e., files whose disclosure would undermine, or tend to undermine, the effectiveness of the sources or methods that NSA employs to perform its assigned signals intelligence or counterintelligence duties. The exemption does not authorize the Director to exempt other categories of files that, although possibly classified, do not directly relate to NSA's signals intelligence or counterintelligence activities. For example, the authority is not intended to reach the Agency's routine personnel or security files.

Another safeguard is that the Director is required to review exempted operational files for continued exemption not less than once every 10 years. During the review, the Director must consider the historical value or other public interest in the subject matter of the files that have been exempted. This ensures that the Director will not continue to exempt files from the FOIA that are no longer suitable for such unique treatment. Also, nothing in the legislation would prevent NSA from making discretionary releases of information contained in exempt files. It is anticipated NSA will continue to release historically significant records.

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 would allow the head of an agency to use either full replacement value or fair market value for compensating personnel for loss or damage to their personal property incident to service. Because of the budgetary impact, each head of agency would be provided the discretion to determine what standard the agency would apply in settling claims for damages to employee household goods shipments.

Currently, most agencies do not pay their employees or military members for loss and damage beyond a depreciated amount as set forth in the various agencies claims service implementing regulations. Items less than 6 months old are not depreciated. The claims service regulations generally apply common law damage principles to claims filed by employees and members for personal property losses. The Department of Defense settles servicemember claims for household goods shipment loss or damage directly with the service member. Servicemembers generally receive full depreciated value or repair cost, whichever is less, for all approved claims up to a maximum of $40,000 per shipment for both domestic and international movements of their personal property. The Department of Defense, through the military claims services, then attempts recovery from the carrier up to the extent of the carrier's liability. The carrier's liability is established pursuant to a negotiated agreement between the Department and the carrier industry.

Use of full replacement value instead of fair market value may be a more appropriate method for compensating personnel for loss or damage to their personal property. Increasing carrier liability for lost or damaged personal property is an effective means of improving carrier performance and, thereby, reducing government claims costs. Up to, and through the 1980s, carriers handling household goods movements were liable for damage or loss at a rate of .60 cents per pound per article for both domestic and international shipments. The amount of carrier

liability was adjusted for Department of Defense domestic shipments in 1987 to $1.25 per pound multiplied by the net shipment weight. In 1993, the Department of Defense increased carrier liability on international household goods shipments to $1.80 per pound per article. In 1995, the General Accounting Office (GAO) reviewed the changes to carrier liability for loss and damage on Department of Defense household goods shipments. The GAO concluded that by increasing carrier liability, program cost and damage levels declined and carrier performance improved (DOD HOUSEHOLD GOODS – Increased Carrier Liability for Loss and Damage Warranted, GAO/NSIAD-95-48, May 1995). From approximately 1995 to 2001, the Department of Defense initiated several pilot programs to test modifications to the Department's overall service requirements as well as test new processes and procedures for procuring basic household goods moving and storage service. Most promising for both improving the service provided to the employee/military member and reducing claims costs to the government is the use of full replacement value protection for the government employee shipper and having the carrier settle directly with the employee.

In the private sector, the Department of Transportation's Surface Transportation Board (STB) has reviewed use of full replacement value coverage in household goods transportation tariffs. The Household Goods Carriers' Bureau Committee requested elimination of a depreciated value option commonly made available to the general shipping public. The request sought to substitute the depreciated value provision with an option whereby the shipper could obtain "full value protection" for the shipped goods, meaning the carrier would be liable either for the replacement value of the lost or damaged goods (up to a pre-declared value of the shipment) or for restoring damaged goods to their prior condition (at the carrier's option). The STB authorized inclusion in the tariff of a provision substantially similar to the provision being considered by the Department of Defense. The STB noted that "…few shippers of household goods chose depreciated value option." The STB further concluded that in view of the lack of shipper support for the depreciated value option, and the fact that it is often ineffective in providing depreciated value coverage, they did not believe it was necessary for carriers to continue to offer this option. (Released Rates of Motor Common Carriers of Household Goods, 2001 STB Lexis 1003, December 18, 2001).

PAYGO Concerns: This section is subject to the pay-as-you-go (PAYGO) requirement of the Budget Enforcement Act of 1993. The current commercial cost for full replacement value protection as set forth in the commercial tariff, whereby carrier liability is capped at $40,000 per shipment, is $338.00 per shipment. If authorized by the agency head, the costs to the government should be significantly less. Given the volume of shipments, there are several cost saving benefits available to the DOD that are not available to the general shipping public. DOD will require carriers to factor full replacement costs into a single inclusive rate for transportation and related services. Due to shipment weights, many DOD shipments will move at a liability valuation less than $40,000. Reduced carrier exposure on many shipments is also likely to reduce the FRV cost. Further, full replacement value protection will have a positive impact on morale as household goods carriers will use more caution and care in shipping household goods. Most claims settlements pursuant to full value protection provisions will be made directly with carriers resulting in reduced claims administration costs. The ultimate consequence of increasing the carriers potential liability, consistent with full replacement value coverage, will be

an enhancement of overall service member satisfaction and decrease the claims filed with the government for carrier caused loss and damage. The section will also place the government employee/military member on par with private sector employees. In the competition with the private sector for skilled employees, the federal sector needs the flexibility to eliminate obvious impediments to the recruitment and retention of talented personnel.

Section 1004 would enable an agency that furnishes information for use in litigation to which the United States is not a party to deposit the fees they receive into the agency's current year appropriation.

Government agencies must furnish information to parties in litigation to which the United States is not a party. Under the authority of United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951), however, agencies have some control over the manner of responding, and most have issued regulations to govern the process. These regulations typically provide that persons seeking such information may file formal requests without having to seek subpoenas from the court. The regulations also provide for the receipt of service and for responding to subpoenas when served. They also typically allow the agency to impose fees to reimburse the cost of responding.

In practice, reimbursement is of little use to the agencies because the reimbursed funds are deposited into the Department of the Treasury's miscellaneous receipts account. Agency personnel do the work -- frequently on overtime -- and increase their use of agency supplies and materials, but the agency receives no reimbursement for its work because the funds go to the miscellaneous receipts instead of to the agency's appropriation. In qui tam cases involving major contractors, the situation is exacerbated because the contractor is permitted to include the costs of defending such suits (including fees paid to agencies for furnishing information) in its overhead unless it loses the case. Frequently, some or all of these costs are allocated to overhead and charged in whole or in part to cost-reimbursement contracts. As a result, the agency responding with information not only is not paid for its efforts, but it also has to reimburse the contractor for some or all of the contractor's payment that has gone to miscellaneous receipts. The agency's efforts have the side effect of transferring money from the agency's appropriations into miscellaneous receipts, making the money unavailable to the agency.

The solution to this problem is to allow the agencies to keep the money they receive for their efforts. Specifically, this section would direct certain receipts to an agency appropriation rather than to miscellaneous receipts. The agencies incur costs that have no direct relation to their mission, and they should be reimbursed directly by the parties who cause the costs to be incurred. This section would eliminate the financial disincentive agencies have in responding to litigation requests. It also would provide resources to comply with litigation requests.

This section would increase government outlays by $2 million annually. Currently, the Federal government spends $2 million answering the requests, and $2 million in reimbursements goes to the general fund of the Treasury. If this section is enacted, the government still would spend $2 million answering the requests. The $2 million in reimbursements would be spent on program items, with none going to the Treasury. However, this section would assure that

agencies do not expend funds appropriated for program execution in responding to third-party litigation requests.

By its terms this section applies only to matters in litigation and does not apply to requests under the Freedom of Information Act.

DoD expects that agencies will implement procedures to ensure they charge prices that are based on actual costs and are not excessive, and that they grant waivers where appropriate.

Cost implications: The annual budget impact is difficult to gauge because it is dependent on the volume of litigation requests. However, the overall impact is expected to be less than $2 million for the entire Federal Government.

Section 1005 would restore the authority of the Department of Defense to enter into 12-month leases at any time during the fiscal year. A 1997 technical change to this section inadvertently cancelled this authority.

Under current law, all DoD leases for real or personal property expire the last day of the fiscal year and must be renewed the first day of the subsequent fiscal year. This law does not conform with the anniversary date of many current leases and places an unreasonable administrative burden on lease administration, leading to lapsed leases and possible violations of the Anti-deficiency Act.

This section would have no budgetary impact because it would not change correct funding requirements for leases.

Section 1006. Currently, DoD provides government cellular telephones to a number of individuals. Under this language, individuals with a validated need for an official government cellular telephone would be paid a flat rate or monthly stipend for use of their personal cellular telephone.

The current process of reimbursement is tedious, redundant and time consuming for personnel who frequently use their cellular telephone. The alternatives are to carry two telephones, or absorb the costs of government-related calls. Current statutory authority prohibits federal agencies from paying a flat monthly stipend for government calls made on personal cellular phones, only reimbursement for actual calls made. This language would allow DoD and the Services to provide either a flat rate or monthly stipend for use of personal cellular telephones.

Section 1007 would require the Secretary of Defense or the Secretary concerned to reimburse a Reserve or National Guard unit or organization for the expenses incurred when Reserve or National Guard personnel provide intelligence and counterintelligence support.

Reserve intelligence personnel make unique contributions to the intelligence and counterintelligence programs of active Department of Defense units and organizations, as well as

provide invaluable surge capability to help respond to unforeseen contingencies. Presently, the Joint Reserve Intelligence Program (JRIP) engages reserve component intelligence assets during periods of active and inactive duty to support the Department's intelligence requirements across the entire engagement spectrum from peacetime through full mobilization, coincident with wartime readiness training. Reimbursement of the affected reserve units is a cornerstone of this arrangement, and such reimbursement is absolutely essential to success of the JRIP.

Reserve or National Guard units program funds for reserve training, but should not have to budget or expend funds for the support of active Department of Defense units and organizations. Likewise, statutory authority is required because such reimbursement would otherwise contravene the fiscal law principle prohibiting augmentation of one appropriation with funds from another. For these reasons, Congress has authorized such reimbursement in the annual defense appropriations act for the past seven years. The Department now proposes to establish permanent authority for such reimbursement.

Section 1008 would allow DoD to obligate all funds representing energy cost savings, not just two-thirds of such funds, through the end of the fiscal year without additional authorization or appropriation.

Section 1009 would allow the Department of Defense to extend from two to five years the ability to capture all expired funds from the military personnel and operation and maintenance appropriations.

Section 2779 currently allows the Department 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. The Department 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 the Department 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. The Department 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 1010 would permit DoD, on a case-by-case basis, to allocate funds for humanitarian demining operations to cover the costs of pay and allowances for Special Operations Forces (SOF) Reserve Component (RC) personnel participating in humanitarian demining training missions.

Additionally, the section would allow the Department to carry out its expanded humanitarian demining program, one of the combatant commander's most visible and cost-effective peacetime activities, in a more effective and efficient manner. The program is particularly important given the worldwide attention that has been focused on landmines and the need to remedy their effect on civilian populations in affected countries.

This section would alleviate the heavy Operational Tempo (OPTEMPO) requirement of Active Component (AC) Special Forces (SF), Civil Affairs (CA) and Psychological Operations (PSYOPS) forces. Use of SOF RC would be voluntary and only occur when OPTEMPO prevented the Active Component from accepting the mission. Due to current lack of flexibility in using the SOF RC for these operations, some portions of the humanitarian demining missions in the past have been cancelled and projected missions may be in jeopardy. The provision would alleviate the operational tempo requirement of active duty SOF personnel, provide a mission for reserve SOF personnel to hone their readiness and training skills, and allow for improved continuity of DoD's humanitarian demining program.

The section also would increase the readiness and training skills of SOF RC personnel by providing critical mission training (language and cultural skills). A large part of the U.S. Government's Humanitarian Demining Program invests in Infrastructure Development and Mine Awareness. These two areas are integral and critical parts of CA and PSYOPS missions. The infrastructure components focus on important skills for CA soldiers such as program management, administration, logistics management, equipment maintenance, and communications and data processing. Mine awareness focuses on using mass media to educate the public, a critical skill for PSYOPS forces. Humanitarian demining operations provide important opportunities for these levels of the SOF RC personnel to develop and improve these capabilities.

Finally, this legislative section would allow for a continuity of training efforts and program sustainability. Current humanitarian demining training missions often last from several weeks to months. Four funds currently exist to pay for training for RC personnel; Annual Training Funds; Active Duty for Training (Other); Temporary Tour of Active Duty (TTAD); and Active Duty for Special Work. Of these four payment methods only TTAD could be used for humanitarian demining missions. However, because of the length of humanitarian demining missions, paying RC personnel from this fund likely would drain the account before mission accomplishment.

Subtitle B—Naval Vessels and Shipyards

Section 1011 would enable the Navy to provide assistance to governments and private parties in support of certain ship and shipboard equipment transfers. It also would authorize the Navy to be reimbursed for such assistance.

The U.S. Navy maintains decommissioned naval vessels at Government facilities operated by the NAVSEA Inactive Ships On-Site Maintenance Offices (NISMOs), a part of the

Navy Inactive Ships Management Office. These ships include those designated as Mobilization assets; ships which may be donated for use as museums; ships which may be transferred to foreign allies of the United States; and ships pending disposal. The NISMOs are government-owned, contractor-operated sites. Periodically, the Navy is asked to provide services to governments and private parties incidental to the transfer of inactive ships by donation or by other authority, the donation of materials from inactive ships, transfers of Government property pursuant to 40 U.S.C. 481(c), or the temporary use of inactive ships by the motion picture industry or other industries.

Under present law, when such services are provided, any reimbursement received by the Navy must be deposited into the United States Treasury. For example, a drydock located in a nested mooring at the NISMO Pearl Harbor was transferred to the Government of Guam. Guam paid the $70,000 it cost to remove the vessel, but those funds were required to be deposited into the Treasury. In addition, Lockheed Martin was authorized to remove Vertical Launch System components from a decommissioned destroyer pursuant to 40 U.S.C. 481(c). Lockheed Martin used their own personnel to remove the equipment, but required support services from NISMO Philadelphia where the ship was located. Lockheed Martin paid the $18,000 in charges for the support services, but the payment had to be deposited into the Treasury, not provided to the Navy. A similar situation sometimes arises when the Navy donates either a vessel under the authority of 10 U.S.C. 7306, or shipboard material under 10 U.S.C. 2572 or 10 U.S.C. 7545. By statute, transfers or donations made pursuant to these statutes must be at no cost to the United States.

Because these payments for services must be deposited into the Treasury, the NISMOs must absorb the cost of these services out of their Operating Budget. This diminishes the appropriated funds they have available to properly maintain inactive ships. This section would allow the NISMOs to perform such required services in connection with the transfer to governments and private parties of inactive ships or their equipment, such as rigging for tow and ship departure support, or rigging and crane services for removal of equipment. This work must be performed at the NISMO facility because the ship or the material is physically located at that facility. The NISMOs, however, then would deposit funds received for such work into the appropriation responsible for financing the work.

The NISMOs directly work with non-Federal entities and private parties, *e.g.*, states, veterans' groups, non-profit organizations, the motion picture or commercial industry, etc., pursuant to separate statutes or other lawful activities. For the reasons stated above, the Navy should be allowed, under limited circumstances, to receive and retain in Navy accounts reimbursement for the performance of services related to the temporary or permanent transfer of not only vessels under the cognizance of the Navy Inactive Ships Management Office, but also material or equipment aboard such vessels.

This section would result in proceeds being credited to Department of Navy appropriations that were previously deposited with the General Fund of the Treasury. These proceeds are estimated at $50,000 to $100,000 per year.

Cost Implications: Presently, the Navy Inactive Ships Management Office provides periodic services to governments and private parties costing approximately $50,000 to $100,000 annually in connection with ship and equipment transfers. Because any reimbursement received for this work must be deposited into the Treasury's general fund, there is a negative impact on the Navy budget. This section would enable such transfers to be made at no cost to the Navy.

Section 1012 would increase the Navy's incentives to maximize stripping for commercial sale of vessels to be used for experimental purposes.

Currently, section 7306a permits Navy to conduct stripping for commercial sale when the proceeds from the sale of such material and equipment exceed the cost of removal. Such commercial stripping is in addition to the stripping already performed to meet Navy and other Federal government agency requirements. However, section 7306a only permits such proceeds to be applied to the cost of procuring the stripping. Because any excess proceeds must be deposited into the general fund of the Treasury, rather than being used to help pay for the environmental remediation of Navy vessels designated for experimental purposes, Navy has no incentive to maximize such stripping. This section would increase the incentive to maximize stripping of experimental use vessels by applying the excess of amounts needed for procuring such stripping services toward the environmental preparation costs of vessels designated for experimental use.

This section also would permit contractors or designated sales agents to sell the stripped material and equipment on behalf of the Navy, resulting in increased efficiency and reduced costs. Absent such a provision, stripped materials and equipment would have to be removed from the vessel, stored and then transported to the Defense Reutilization and Marketing Service for potential sale, reducing the likelihood that such stripping efforts will in fact be cost-effective. The ability to utilize on-site contractors will increase the Department's ability to maximize proceeds and to capitalize on the efficiencies of an integrated stripping and remediation process without having to segregate the costs associated with each function.

This section also would clarify that "experimental use," previously undefined, includes the use of Navy vessels for target practice during fleet training exercises (SINKEX) in additional to vessels used for RDT&E purposes. This definition would avoid a potential future conflict over the applicability of the revised section 7306a to ships designed for SINKEX.

This section would result in proceeds being credited to Department of Navy appropriations that were previously required to be deposited into the general fund of the Treasury. The resultant proceeds from the increased incentive to maximize stripping are estimated at $50,000 to $200,000 per year.

Cost Implications: This section would result in the proceeds, which were previously required to be deposited into the general fund of the Treasury, to be credited to Department of the Navy appropriations. Currently, commercial stripping above and beyond Navy and other Federal government agency stripping requirements is not performed and no proceeds are deposited to the general fund of the Treasury. While difficult to estimate, this section is estimated to increase

both direct spending and the proceeds by approximately $50,000 to $200,000 per year.

Section 1013 would authorize the Secretary of the Navy to transfer vessels stricken from the Naval Vessel Register to States, Commonwealths or possessions of the United States, or municipal corporations and political subdivisions thereof, for use as artificial reefs. The transferees must use the vessels as artificial reefs to enhance either fishery resources or diving opportunities (as long as the latter does not have an adverse effect on fishery resources).

This authority would provide yet another way to dispose of decommissioned ships in an environmentally friendly and inexpensive manner. This solution is more cost effective than, and environmentally superior to, domestic scrapping, thereby resulting in the more effective use of ship disposal funds to reduce the inventory of inactive ships in coastal waterways pending disposal.

Finally, this section would provide the Department of the Navy with statutory authority similar to that already possessed by the Maritime Administration, another federal agency engaged in ship disposal, and help satisfy community demands for ships to be used as artificial reefs.

In using, siting, constructing, monitoring and managing the vessels as artificial reefs, transferees must comply with the standards established for artificial reefs under chapter 35 of title 33, United States Code, with the exception that the artificial reef also can be used to enhance diving opportunities. This approach is consistent with an established history of success in using sunken ships to build reefs that benefit marine life, commercial and sport fishing, and recreational diving. Specifically, under 33 U.S.C. 2102, artificial reefs must be sited and constructed, and subsequently monitored and managed, in a manner that, using the best scientific information available, will enhance fishery resources to the maximum extent practicable; facilitate access and utilization by United States recreational and commercial fishermen; minimize conflicts among competing uses of waters covered under chapter 35 and the resources in such waters; minimize environmental risks and risks to personal health and property; and be consistent with generally accepted principles of international law and not create any unreasonable obstruction to navigation. Section 2103 of title 33 requires the Secretary of Commerce, in consultation with the Secretary of the Interior, the Secretary of Defense, the Administrator of the Environmental Protection Agency, and the Secretary of the Homeland Security Department, as well as Regional Fishery Management Councils, interested States, Interstate Fishery Commissions, and representatives of the private sector to develop and publish a long-term plan for artificial reefs, known as the national artificial reef plan. Transferees under this section must meet all of the requirements of that plan, including any requirements to clean the vessels before using them as artificial reefs. Transferees also are responsible for obtaining and complying with any applicable permits for creating an artificial reef.

This section also would allow the Secretary of the Navy to establish any other requirements he finds necessary in the transfer agreement. This could include a requirement for demilitarization before sinking or that title remain with the United States, if appropriate, to prevent any future salvage of the vessel. In addition, this section would enable the Department

of the Navy and the recipient to share the costs associated with the transfer and preparation of a vessel for sinking in accordance with creating an artificial reef. This provision would give the Department of the Navy flexibility, subject to the availability of funds, to tailor the terms of a transfer to the particular situation. Currently, the Department of the Navy disposes of stricken ships through domestic scrapping. The Department of the Navy anticipates that the cost of the ship disposal work necessary to make a ship suitable for artificial reefing would be less than the cost of domestic scrapping. The Department of the Navy plans to use budgeted ship disposal funds to prepare ships for artificial reefing before their donation to the transferees. This would enhance the ability of States financially to accept ships for use as artificial reefs.

This section has a neutral budgetary impact. The Department of the Navy would use funds appropriated for ship disposal to dismantle ships or prepare ships for artificial reefing, whichever is determined to be most advantageous by the Secretary of the Navy.

Section 1014. The current provision authorizes the Secretary of the Navy to enter into a "shipbuilding capability preservation agreement" with a shipbuilder that permits the shipbuilder to claim indirect costs attributable to its private sector work.

The Department of Defense continues to support initiatives that will promote commercial competitiveness among all the shipyards that produce Naval vessels, however, the utility of existing statutory authority is questionable. Since its enactment in 1997, and to this date, the Secretary of the Navy has received and approved only two applications at a total cost of $17 million.

Subtitle C—Counter-Drug Activities

Section 1021. Section 8145 of HR 5010, the Defense Appropriations Act for Fiscal Year 2003, amended the Fiscal Year 2002 Supplemental Appropriations Act and gave the Department of Defense expanded authority for the use of counternarcotics funds in Fiscal Year 2003. In order to ensure that this effort is successful, this section seeks to extend the preceding authority for an additional two years, through Fiscal Years 2004 and 2005.

This provision would provide important flexibility to support counterterrorism work. Without the flexibility to use counterdrug funding to combat terrorism in Colombia, the Government of Colombia may not prevail. Colombia's failure would aggravate instability in the Andean region, harming important United States national security interests.

The Department's senior leadership has promised the Government of Colombia and the Congress that it would seek this authority to increase its support to Colombian counter-terrorist efforts.

- On June 18, 2002, Secretary Rumsfeld and General Myers promised then Colombian President-elect Uribe that the Department would provide Colombia additional resources to combat terrorism.

- On September 19, 2002, Deputy Secretary Wolfowitz sent letters to the Chairmen and Ranking Members of the House and Senate Armed Services committees supporting this authority.

- On September 23, 2002, Deputy Secretary Wolfowitz and Under Secretary Feith told President Uribe and other Colombian officials that the Department sought expanded authority in order to use its counternarcotics resources to help Colombia fight terrorism.

Extension of this authority would be consistent with the overall efforts of the United States in the war against terrorism, and would strongly signal support to the new Government of Colombia and the other countries of the Andean Region in their fight to sustain democracy.

Section 1022 would enable the Department of Defense to utilize funds allocated by Congress in a much broader spectrum of counter-terrorism operations in Central and South America. Current funding only allows for strictly defined counter-drug operations. This constraint ignores the proven connection between terrorism, drug-trafficking, illegal arms-trafficking, money-laundering, human-trafficking, and threats to regional security.

Illicit narcotics-trafficking based terrorist organizations are a trans-national threat and do not recognize international boundaries or the sovereignty of individual nations. Any significant reduction in illicit activity in one country of the hemisphere almost certainly will lead to a similar increase in a neighboring country. For example, reduction in coca leaf production in Peru led to a marked increase in coca leaf production in Colombia. The destruction of drug cartels in Colombia led to a marked increase in drug cartel activity in Mexico. Clearly, the problem facing the security of the United States and the Western Hemisphere is not limited to, nor centered in one country. It is a regional problem requiring a joint regional solution.

Existing funding constraints ignore the obvious trans-national aspects of the counter-drug/counter-terrorism problem. The proposed change would enable the Department of Defense to gain efficiency and effectiveness in operations against the entire spectrum of illicit activities. Benefits of the approval of this section include preservation of human safety and health, and the restoration of stability and peace in a troubled region. The forms of assistance envisioned in this section are intelligence gathering and sharing, training, equipment upgrade and integration of equipment.

Enactment of this section is unlikely to increase the budgetary requirements of the Department of Defense or other federal agencies. For example, military air cost is based on the number of hours the aircraft is flown, regardless of the type of mission it is flying. Intelligence gathering activities can easily be modified to collect a broader range of data without marked increases in operating costs. Additional increases to personnel strength are not expected. The Department of Defense is fully capable and ready to act upon the approval of proposed changes now.

Section 1023. Section 1033 of the National Defense Authorization Act for Fiscal Year 1998 authorized the Department of Defense to provide specific types of support, not to exceed

$20 million during fiscal years 1999 through 2002, to the Governments of Peru and Colombia. This has proved to be a responsive and effective authority for supporting illegal narcotic interdiction efforts in Colombia and Peru, and would be a valuable tool in bolstering security efforts in Afghanistan and the surrounding region.

This section would demonstrate that the United States supports countries that are key in our national drug strategy and the Defense security cooperation goals. An enhanced interdiction capability for these nations is critical to our combined efforts to stem the flow of illicit drugs, attack a source of terrorist funding, and reduce the threat to struggling democracies. By working with the security forces of these countries, DoD receives access to host nation information that is useful for not only tracking illicit drugs, but also terrorists and weapons of mass destruction.

This section would extend the authority contained in Section 1033 for Peru for two more years, as the original authority expired at the end of FY 2002. It also would expand the authority by including the countries of Afghanistan, Ecuador, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan. Further, it would expand the nature of support to include additional types of equipment and supplies to sustain and reinforce previously provided training to enable these countries to engage drug traffickers successfully.

The inclusion of Afghanistan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan reflects U.S. recognition that drug trafficking is an important source of funds for terrorist groups. Additionally, disrupting drug trafficking in Afghanistan and the surrounding region is critical for establishing a stable government in that country, which would increase the chance for peace in the region.

The inclusion of Ecuador would bolster that country during a time when drug traffickers are continually looking for new venues in which to avoid the counter-drug pressure in Colombia. This is appropriate since Ecuador, in spite of its internal difficulties, assumed its role in the regional struggle against drug traffickers by providing the United States long-term access to its airbase at Manta.

This section also would provide for upgrading, as well as maintaining and repairing, the equipment used for counter-drug activities by these governments, for example, enhancements to Colombia's and Peru's aerial interdiction fleet. It specifically would provide for sustainment cost, including ammunition, for those nations willing to engage in more interdiction but that may not be able to pay for it. It would double dollar authority to accommodate four times as many countries being supported, and it would delete references to the term "riverine" in recognition of the fact that host nation counter-drug activities are not limited to riverine operations.

Subtitle D—Other Department of Defense Provisions

Section 1031 allows the National Security Agency (NSA) to provide and pay for living quarters for Cooperative Education (Co-op) Program and Summer Program students to address an existing housing shortage. NSA would enter into a contract with a local real estate

management company and seek to achieve economies of cost based on the number of apartment units rented and the duration of leases. The contractor would maintain the apartments and handle all leasing issues. While the housing program would be voluntary, given that a revolving pool of students are participating in the programs year-round, occupancy rates should remain steady, and the NSA student programs office would schedule students in a manner ensuring that the apartments would be filled for the full year. Summer Program students also would be able to take advantage of this allowance to further maximize the year-round use of the apartments.

NSA's Co-op Program provides the greatest return on investment of any Agency recruitment program. It is a critical tool that supports NSA's ongoing requirement to hire individuals with hard-to-find scientific and technical skills. Under the program, NSA obtains the critical services of up to 175 engineering and computer undergraduate science students (average GPA of 3.5) for a minimum of 52 weeks. Just as important, NSA obtains the benefit of their state-of-the-art training and gets to evaluate their skills in a real-world work setting. In return, these students have an unparalleled opportunity to learn about a career at NSA. This results in high levels of attraction and retention. Compared to other Federal agencies, NSA's retention rate is nearly twice the national average. Throughout this program's history, NSA has been able to retain more than 80% of its highly sought-after graduates. In an average year, the Co-op Program puts as many as 50 permanent hires with critically needed skills on the NSA payroll. For example, in FY 2002, over 97% of the Co-op students converted to full-time status. Currently, NSA has more than 600 former Co-op students permanently employed in critical positions. In July 2001, the National Association of Colleges and Employers identified NSA's Co-op Program as a "Best in Class" experiential education program.

NSA has experienced similar success with its Summer Employment Program. This program provides highly skilled and motivated temporary employees the opportunity to spend approximately 12 weeks working on projects in math, computer science, electrical and computer engineering, network evaluation, physical sciences, and intelligence analysis. The primary cost to NSA is the salaries for the students, and the benefit is that the Agency often receives a fresh perspective on difficult problems. On average, 105 students participate in the program each year. The students return to school and upon graduation, approximately 50% of eligible students join NSA. In FY 2002, 24 of 47 eligible participants accepted full-time employment. More than 76 former Summer Employment Program participants are now counted among the Agency workforce. In order for NSA to be effective in future skills markets, which are projected to be tight, NSA seeks an increased emphasis on student programs to bolster full-time hiring.

Student programs are essential for NSA to compete in the present highly-challenging labor market. The single biggest obstacle to the growth of NSA's Co-op and Summer Employment Programs is a lack of affordable short-term housing. More than 95% of the approximately 350 Co-op and Summer Program students recruited nationally to work at NSA each year come from out of the area, and nearly 100% of these students are in need of affordable, short-term housing. The local housing market provides little relief. Apartment vacancy rates in the area are at 1%, and local landlords simply have limited economic incentive to provide the type of short-term leases needed by Co-op and Summer Program students.

For years, NSA has relied on the student housing facilities at the University of Maryland Baltimore County campus (UMBC) to house its summer hires. Historically, UMBC has been the only facility in the local commuting area that could accommodate a large contingent of summer students (for example 106 for FY 2002). This year, however, UMBC was unable to meet NSA's demand for rooms. Based upon current trends, the availability of housing at UMBC is expected to become worse in the future.

NSA needs to ensure that it remains a competitive, prospective employer for students. This section would ensure that future students are not deterred from seeking a valuable and beneficial employment opportunity with NSA simply because of the unavailability of affordable, short-term housing.

Section 1032 would eliminate the existing requirement that the U.S. Defense Attaché in France be a flag officer or selected to be a flag officer. Consistent with his existing authority, Secretary of Defense should fill this position as he determines appropriate.

Section 1033. The purpose of this section is to change the name of the National Imagery and Mapping Agency (NIMA) to the National Geospatial-Intelligence Agency (NGA) and to introduce, as a matter of law, the term "geospatial intelligence".

Geospatial intelligence requires knowing where things are and what their location means. For example, information provided to operational commanders can range from undersea topography in order to determine where ships should deploy, to terrain analysis that would enable commanders to know where the adversary is and how to strike him. The use of this new term supports a transformed business that brings together disciplines of imagery intelligence and geospatial information. Geospatial information includes maps, charts, geodetic data, and statistical data related to the geographic location and characteristics of natural or constructed features and boundaries on the earth. Nothing in this section is intended to alter the mission of the NIMA with respect to support of military, intelligence, civil, or other customers. Likewise, nothing in this section is intended to alter the authorities or responsibilities of the Director of Central Intelligence.

Rapid technological change has transformed the work of NIMA making the traditional distinctions between imagery intelligence and geospatial information less meaningful. To better meet the needs of the Defense and Intelligence communities as well as other federal customers, the term "geospatial intelligence" should be introduced as a matter of law. Geospatial Intelligence encompasses the analysis and visual representation of security-related activities on the Earth including imagery, imagery intelligence, and geospatial information. To reflect this change, the name of NIMA should be changed to the National Geospatial-Intelligence Agency.

The Report of the Independent Commission on NIMA, dated December 2000, called for further work on integration of the imagery and geospatial analysis cultures that are constituent parts of NIMA into a single NIMA culture. In the year since the Report was issued, the traditional distinctions between imagery intelligence and geospatial information have become less meaningful. Technology has transformed the business process distinctions between these

respective disciplines. The introduction of the term "geospatial intelligence," which encompasses the analysis and visual representation of security-related activities on the Earth including imagery, imagery intelligence, and geospatial information, will better represent our transformed business process and intelligence disciplines. The renaming of the Agency will facilitate the provision of needed information and services to the Defense and Intelligence communities as well as other federal customers.

Subtitle E—Other Matters

Section 1041 authorizes access to the National Driver Register 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.

Such information is currently obtained on a sporadic basis by 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 National Driver Register 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 National Driver Register that is provided for the other purposes set out in current law. For the increasing number of States that provide electronic access to driver records through the National Driver Register, obtaining such information would be especially quick and easy. Most importantly, access by personnel security investigators to the information available through the National Driver Register would make it much more likely that they will discover information important to security clearance determinations.

The National Driver Register 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 is currently 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)).

Section 1042 would establish a nonprofit charitable foundation to accept and administer gifts to be used to assist the Department of Defense in its efforts to preserve, maintain, and use historic properties for which the Department has responsibility. This section is modeled on the existing authorities that established the National Natural Resources Conservation Foundation (Chapter 78 of Title 16; 16 USC §§ 5801-5809), the National Fish and Wildlife Foundation (Chapter 57 of Title 16; 16 USC §§3701-3709), and the National Park Foundation (Subchapter III of Chapter 1 of Title 16; 16 USC §§19e-19o).

Many historic properties in the DoD portfolio are undercapitalized and threatened with physical deterioration and obsolescence. Deferred maintenance results in ultimately higher repair and maintenance costs, deteriorating building stock, and prolonged consultations. Specialized financial and management tools such as donations and trust establishments are available to private-sector developers as incentive for historic rehabilitation projects. These development capital tools are not available or are severely limited for DoD and the Military Services because of barriers in current legal language. A Heritage Foundation offers 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 appropriate monies, and offer the military an opportunity to preserve its military heritage.

Finally, a Heritage Foundation would allow the Department of Defense to accept gifts and grants from private sector donors and leverage those monies through a Trust Fund.

Section 1043 would update general definitions in title 10, United States Code, to simplify legislative drafting and eliminate the need for repetitive definitions throughout Title 10 and in annual Defense Authorization Acts that simply could refer to section 101, without having to recite the entire definition.

The proposed definition of "appropriate committees of Congress" would replace "congressional defense committees" throughout Title 10, except where applicable statutes do not include the intelligence oversight committees for facilities projects within their jurisdiction (a matter of importance only in chapter 169).

The proposed definitions for "military munitions", "operational range", and "unexploded ordnance" are adapted from the recently enacted section 2710 of title 10. The only change in the definition of "operational range" is where the reference in section 2710 to "Secretary" is changed to "Secretary concerned" to reflect the roles of the military departments in managing the real property that makes up the ranges. The proposed definition of "range" is adapted from the Environmental Protection Agency's Military Munitions Rule, 40 C.F.R. Part 266, Subpart M, but includes reference to "airspace areas designated for military use according to regulations and procedures established by the Federal Aviation Administration (FAA), such as special use airspace areas, military training routes, or other associated airspace," since Department of Defense ranges can include the airspace above the real property. Because the FAA governs the process for designating various types of airspace used by the military, this additional language also recognizes that these types of airspace can only be included in accordance with FAA regulations and procedures. The definition also adds the words "electronic scoring sites" in the second sentence listing locations that are included in a range in order to include this increasingly important aspect of training capability. These definitions are particularly relevant to the issues of ranges, encroachment, and unexploded ordnance and would provide for uniform terminology in future legislation. The terms are already in use in Department of Defense regulations.

Section 1044 would allow the Department of Defense to enter into one-year contracts for the performance of firefighting functions to fill positions vacated by deployed military firefighters. Existing law prohibits such contracts.

Presently, the Department faces a severe shortage of military firefighters at bases in the United States because of frequent deployments to support operations. Upon departure from their home installations, there is no ready means to backfill these positions. Because the Department is unable to fill these positions quickly, the section would authorize the Department of Defense to enter into short-term contracts for such services with the private sector.

Section 1045 generally would exempt charter aircraft from screening and passenger manifest provisions of the Aviation and Transportation Security Act (ATSA) when such charter aircraft operations are employed to provide transportation to the armed forces.

Every year, DoD and the Coast Guard contract or otherwise arrange with air carriers to perform hundreds of charter flights to provide transportation for DoD and Coast Guard passengers and cargo. These flights are performed by certificated air carriers operating in full compliance with applicable Federal Aviation Regulations and ATSA regulations.

Defense operational and readiness needs require different screening and manifest procedures for charter aircraft operations transporting members of the armed forces. In many cases, such flights originate at general aviation or military airfields that lack the passenger, baggage, and cargo handling infrastructure found at commercial airports. DoD and Coast Guard personnel compile their own passenger manifests. The section would ensure that the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Transportation, establishes the appropriate security procedures relating to such charter aircraft operations.

Section 1046 would authorize the Secretaries of the military departments to lend or donate obsolete or surplus property to specified entities, such as municipal corporations, museums, and recognized war veterans' associations. This section also would authorize the Secretaries of the military departments to exchange obsolete or surplus property with any individual, organization, institution, agency, or nation if the exchange would directly benefit the historical collection of the armed forces.

Currently, the Secretaries of the military departments may exchange books, manuscripts, drawings, plans, models, works of art, historical artifacts and obsolete or condemned combat materiel for similar items. They also may exchange conservation supplies, equipment, facilities, or systems; search, salvage, and transportation services; restoration, conservation, and preservation systems; and educational programs. This section would improve the management and general condition of the historical collection of the armed forces.

Section 1047. Section 1051 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261)(1998) requested the Secretary of Defense to provide "draft legislation that the Secretary considers appropriate to clarify the authority of the Government to recover critical and sensitive defense property that has been inadequately demilitarized". In consonance with this direction, this section would amend Title 10, United States Code, to permit the United States to recover significant military equipment (SME) that has been released by the U.S. Government without proper demilitarization. The possession of improperly demilitarized Department of Defense property by individuals and business entities has caused grave concern both in the media and in Congress, and has been a topic of study by the Defense Science Board. The importance of this issue has been heightened by the events of September 11, 2001, and the war on terrorism.

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

Section 1048 removes the requirement to fire a warning signal before firing disabling fire at or into a vessel liable to seizure or examination after the vessel does not stop on being ordered to do so or on being pursued by an authorized vessel or aircraft. Removing the requirement to fire a warning shot ensures the Coast Guard has the same authority as other Federal law enforcement agencies to establish internal guidelines on the use of force.

This section also clarifies that military aircraft may engage in such action when one or more members of the Coast Guard are assigned thereon pursuant to section 379 of title 10, United States Code.

Finally, this section repeals an obsolete reporting requirement.

Section 1049. Subsection (a) of this section repeals section 44310 of title 49, United States Code, relating to the expiration of Chapter 443, Aviation Insurance program. This would extend the authority of the Secretary of Transportation to provide insurance and reinsurance on a permanent basis. Continuation of the insurance program is necessary to bring the statute in line with current practices that allow for the most efficient means of procurement of transportation by the Department of Defense and to preclude lapses of this wartime essential program. Congress has regularly reauthorized the chapter 443 program by extending the cutoff date, sometimes retroactively, during the last five decades. As a result of September 11, 2001, current initiatives for adapting to realities facing civil aircraft flights assume the continued availability of chapter 443 insurance or reinsurance when commercial insurance or reinsurance is not available on reasonable terms. Permanent authority to issue reinsurance would favorable affect the market behavior of most insurance companies or risk retention groups, encouraging these entities to offer coverage at lower insurance rates than might otherwise be the case, thus resulting in lower cost to the government for its charter operations.

Subsection (b) of this section amends the analysis section of chapter 443, United States Code, by striking the references to Section 44310.

Section 1050 would transfer responsibility for the national security scholarship, fellowship, and grant program from the Department of Defense to the Department of Education. The Department of Education administers a similar scholarship and grant program, and the Department of Defense believes transfer of the program would be more efficient and effective.

TITLE XI—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Section 1101. Section 5597 of title 5, United States Code, authorizes the Secretary of Defense to pay separation incentives to an employee as an inducement to separate from service voluntarily. The Department of Defense has used separation incentives to reduce significantly the number of involuntary separations during extensive and prolonged downsizing. This authority expires on September 30, 2003.

This section would extend the authority for three additional years, a period that coincides with the Department's ongoing downsizing and restructuring efforts.

The estimated cost of this section in Fiscal Year 2004 is $37.5 million.

Section 1102 would ensure that employees across the government who are exempt from the Fair Labor Standards Act, and are paid above step five of grade 12, do not suffer a pay cut when they work overtime. Under current law, employees who are exempt from the Fair Labor Standards Act are limited in overtime to an hourly rate that is one and one-half times the step one, grade 10 rate. In 2003, this works out to be just under the hourly rate for those in step six of

grade 12. Thus, those paid at or above step six of grade 12, lose money if they are granted overtime. For example, a grade 13, step one supervisor in the Washington-Baltimore area earning $32.10 an hour would receive $31.34 per hour (at 2003 rates) for working overtime, or 76 cents less than his or her basic pay rate. For those in higher steps and grades, the shortfall only increases

The prospect of earning less than their basic rate of pay in overtime makes it difficult to attract people into supervisory positions. This inequity also means that some supervisors may earn less than their employees who work overtime.

Alternative overtime pay provisions already apply to a growing number of General Schedule employees. For example, law enforcement officers earn at least their hourly rate of basic pay for all overtime work (5 U.S.C. 5542(a)(4)(B)). Firefighters, compensated under 5 U.S.C. 5545b, also earn at least their firefighter hourly rate of pay for all overtime work (5 U.S.C. 5542(f)(2)). Department of the Interior and Department of Agriculture employees engaged in wildland fire suppression activities receive 150 percent of their hourly rate of pay for overtime hours, regardless of their hourly pay rate (5 U.S.C. 5542(a)(5)). Department of Transportation non-managerial employees in positions at GS-14 or lower, who the Secretary determines are critical to the operation of the air traffic control system, also receive 150 percent of their hourly rate of pay for overtime work (5 U.S.C. 5542(a)(3)).

Extending the firefighter and law enforcement officer overtime pay provisions to employees who are exempt from the Fair Labor Standards Act would restore equity to the pay system. These earnings still would be subject to the limitations on premium pay established under 5 U.S.C. 5547. Additionally, overtime hours for affected employees must be ordered and approved (5 C.F.R. § 550.111(a)(1)). Thus, management would retain control of costs associated with overtime work.

Cost Implications: The estimated cost of this section in Fiscal Year 2004 is $18.77 million, subject to appropriation.

Section 1103 would amend a Federal service labor-management relations statute and redefine the definition of "grievance" to clarify that it refers to grievances made under negotiated grievance procedures established pursuant to section 7121 of title 5.

By its application, the current statute requires an agency to give the exclusive bargaining representative of its employees (a union) the opportunity to be represented at "any formal discussion between one or more representatives of the agency and one or more employees in the [bargaining] unit or their representatives concerning and grievance . . . ." (See 5 U.S.C. § 7114(a)(2)(A).) In three cases, the Federal Labor Relations Authority (FLRA) has interpreted the statutory definition of "grievance" to include discrimination complaints filed by employees under the federal employment discrimination statutes, whether or not the employee making the complaints requested or desired the presence of the exclusive representative at discussions relating those complaints.

In Luke Air Force Base, Arizona & AFGE Local 1547, 54 F.L.R.A. 716 (1998), the FLRA held that a formal meeting convened to investigate and possibly mediate a formal EEO complaint was a "formal discussion" about a grievance, and therefore, the union had a right to be notified of the meeting and afforded an opportunity to attend. In Department of the Air Force, 436th Airlift Wing, Dover Air Force Base & AFGE , 57 F.L.R.A. 304 (2001), the FLRA found a mediation meeting between the agency and a bargaining unit employee also to be within the definition of "grievance" for purposes of 5 U.S.C. § 7114(a)(2)(A).

The Dover Air Force Base decision will be reviewed in federal court. While the U.S. Court of Appeals for the Ninth Circuit overturned the FLRA in Luke Air Force Base, and the United States Supreme Court declined to review that decision, Luke Air Force Base v. FLRA, 208 F.3d 221 (9th Cir. 1999), cert. denied, 531 U.S. 819 (2000), appeal of Dover Air Force Base and the likelihood of future decisions and appeals suggest there may eventually be a split among the circuit courts as to whether these types of meetings about EEO cases are "formal discussions," leading to further litigation, confusion, and inconsistency in the application of this requirement within the Executive Branch.

The requirement to include union representatives in these types of meetings, regardless of the wishes of the employee making the complaint, is likely to have a chilling effect on the EEO process, by dissuading complainants from participating in settlement discussions, investigations, or mediations, as many complainants believe EEO complaints are private matters and do not want the union to be involved. Additionally, union involvement in settlement discussions is likely to cause management officials to avoid making settlement offers or offers of mediation, due to the potential impact in subsequent labor negotiations. Finally, mandating inclusion of exclusive representatives in meetings is likely to delay the EEO process in many cases, since scheduling union representatives for meetings can often result in delays.

Section 1104 would amend the Civil Service Retirement law for the computation of annuities under the Civil Service Retirement System (CSRS) regarding the part-time service of federal employees. The current provisions governing the computation of annuities have an unintended adverse effect when part-time service is performed at the end of a federal career.

A CSRS annuity is computed based on a complex formula involving an employee's average salary and years of service. Before 1986, the average salary for employees who worked part-time was pro-rated based on the number of hours actually worked. Because an employee could switch to a full-time schedule in the last three years of service and thereby reap a benefit equal to that of an employee who worked full-time for an entire career, Congress decided in 1986 to reverse the computation formula. Beginning with service performed after April 6, 1986, the computation of part-time service would be based on a deemed full-time average salary, multiplied by the factor representing years of service. The resulting benefit would be reduced by a fraction representing years of service. The resulting benefit would be reduced by a fraction representing the actual time worked over the equivalent full-time service. Because this new computation applied only to service performed after April 6, 1986, the old formula continued to apply to service before that date. Consequently, if an employee with substantial full-time service before 1986 switched to a part-time schedule at the end of their federal career, the average salary

that is applied to service before 1986 is the pro-rated salary or, if higher, the full-time salary from the years before the employee began working part-time. This results in a disproportionate reduction in the employee's benefit.

This section would amend 5 U.S.C. 8339(p) to provide a special annuity computation formula for employees who performed part-time service after April 6, 1986. For these employees, the section would extend application of the full-time rates of pay in computing average salary to all service, regardless of when it was performed. This would correct the anomaly in the current computation scheme; eliminate a disincentive for employees nearing the end of their careers who would like to phase into retirement by working part-time schedules; and allow agencies to keep senior staff on board as part of a succession planning effort.

Section 1105 would permit mobilized Reserve component officers who remain on the Reserve Active Status List to be considered for position vacancy promotions, a special procedure that permits eligible officers to be promoted to the next higher grade, provided they meet all prerequisites established by law at section 14315 of title 10, United States Code.

Subsection 14317(d) currently precludes a mobilized Reserve component officer who has been selected for promotion to the next higher grade by a position vacancy promotion board to be promoted unless the officer's entire Reserve unit is mobilized. This inequity may cause officers to leave the Reserves voluntarily, thus affecting retention rates. Because mobilization of Reserves now often is tailored to call-ups of individuals who have unique, desired skills, derivative Reserve units, or a combination of both, those officers who happened to be serving in a higher-graded position at the time of their mobilization are not eligible for a position vacancy promotion because their entire Reserve unit was not mobilized. This section would remedy this inequity in favor of those Reserve component officers who have been called upon to serve on active duty during a war or national emergency.

Section 1106 would help mobilized Federal civilian employees whose military pay is less than their Federal civilian salary transition to military service by allowing them to receive 22 additional workdays of military leave. Such leave would help alleviate the difference in pay for the first month of service by enabling them to receive the difference between their federal civilian pay and their military pay.

The Federal government provides very little direct financial assistance to mobilized civilian employees. Existing law only entitles Reserve component members to the additional military leave when they are providing military aid to enforce the law or assisting civil authorities in the protection or saving of life or property or the prevention of injury -- circumstances that primarily apply only to members of the National Guard. Since 1990, DoD has called the Guard and Reserve to active duty on five separate occasions to support contingency operations. This section would help alleviate the hardship experienced by some Federal civilian employees when they are mobilized.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Matters Related to Arms Control and Monitoring

Section 1201. The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) was officially established as the successor organization to the United Nations Special Commission on Iraq (UNSCOM), by United Nations Security Council Resolution 1284, passed on December 17, 1999.

These proposed revisions would recognize UNMOVIC as UNSCOM's successor, and extend the Department of Defense's authority to continue to provide support for critical weapons inspections and monitoring in Iraq for an additional fiscal year.

Subtitle B—Matters Related to Allies and Friendly Foreign Nations

Section 1211 would expand the authority of the Secretary of Defense to manage the Arctic Military Environmental Cooperation Program to a broader geographic area.

In 1995 Norway asked the United States and Russia to join in a military collaboration to address cross-border pollution from Russian military activities, particularly nuclear submarine dismantlement. The United States agreed in principle to support Norway and helped to form the Arctic Military Environmental Cooperation.

This program supports a valuable NATO ally and has proven to be a cost-effective and efficient means of constructive involvement with the military forces of Russia. It is important to build on the success of the program by expanding the geographic area and by allowing cooperation with militaries in both the Arctic and the Western Pacific.

Section 1212. The United States provides cataloging data and services to the North Atlantic Treaty Organization (NATO) and member governments on a reciprocal basis. The United States also provides such services to several non-NATO countries, such as Australia and New Zealand, but on a reimbursable basis under foreign military sales. There are instances when the interests of the United States would best be served if such data and services could be provided to a non-NATO country under a reciprocal agreement. This section would authorize the President to provide such services to non-NATO countries on a reciprocal basis.

For almost 50 years, the NATO Codification System, which is based on United States standards for naming, describing and numbering items of supply, has served as the cornerstone for interoperability between the United States and its NATO allies. Many non-NATO countries that participate in joint exercises and deployments with the United States have adopted the NATO Codification System. Facilitating the provision of United States cataloging data for materials produced in the United States has been and continues to be in the Nation's strategic interest. This is especially true in light of contingency operations that have and may be initiated in the war on terrorism.

Section 1213 would provide authority, with some exceptions, for the Department of Defense to waive, for individual or class procurements, the application of statutory domestic source requirements and domestic content requirements. Application of this authority would be limited to certain foreign countries with whom the U.S. has a reciprocal defense procurement memorandum of understanding (MOU). Moreover, it would have two conditions: application of the requirement would impede the reciprocal procurement of defense items under an MOU between another country and the U.S. providing for such reciprocal procurement and the country must not discriminate against items produced in the US to a greater degree than the US discriminates against items produced in that country.

This section would support interoperability and standardization of defense equipment with other countries; encourage competition in DoD procurements; yield significant cost savings for purchases of our defense supplies; enable DoD to obtain the best equipment available in the most expeditious manner for our armed forces; enhance the readiness and capabilities of the armed forces of the United States; and help United States industry gain access to foreign markets without discrimination.

Section 1214 would amend chapter 53 of title 10, United States Code, expressly to authorize the Department to expend operations and maintenance funds to recognize superior noncombat achievements or performance by members of foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.

Currently, the Department's authority to expend appropriated funds to recognize superior achievements and performance by foreign nationals is limited to awarding military decorations to military attaches and other foreign nationals for individual acts of heroism, extraordinary achievement or meritorious achievement, when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign of the Armed Forces of the United States, under the provisions of sections 1121, 3742, 3746, 3749, 6244-6246, 8746, 8749-8750, of title 10, United States Code, and Executive Orders 11046 and 11448.

"Representational" funds also are available pursuant to section 127 of Title 10, United States Code, but such funds generally are appropriate only for extending courtesies to dignitaries and higher-level officials from foreign governments. Such funds normally are not appropriate for purchasing tokens or gifts to bestow on the lower level foreign military personnel or civilians that are often involved in supporting specific missions.

As most recently demonstrated during Operation Enduring Freedom, U.S. military members often interact with, and gain support from, the militaries and citizens of foreign countries in order to conduct specific missions successfully. In some circumstances, the local cultures of these countries require U.S. military members to bestow tokens or gifts as recognition for the services or support that these foreign nationals provide in support of specific missions. Failure to adhere to such customs may be considered an affront and may prove detrimental to mission accomplishment.

Enactment of this section would provide the Department with a tool to establish goodwill that may continue to improve security relationships in the future.

Section 1215. In Fiscal Year 02, there were seventy countries supporting Operation Enduring Freedom. Forty of these countries provided liaison officers (LNOs) to U.S. Central Command headquarters. Currently, twelve coalition LNOs are being supported through the Combatant Commander's Initiative Fund Packages. These packages fund round-trip airfare, per diem, lodging, and access to a rental car. The LNOs supported by these packages are from countries that have limited resources and which do not have the capability to support them while they are in the U.S. It would send an inappropriate signal to countries supporting the U.S.-led coalition that only those countries that can afford to send LNOs will be represented at the headquarters. This signal results in an extremely adverse effect on the combatant commander's ability to maintain the coalition.

The funding type proposed within this legislative section would be annually renewable to account for operations that overlap multiple fiscal years, such as the Global War on Terrorism and Operation Enduring Freedom.

Section 1216. This section currently limits the Secretary of Defense's authority to waive participation costs in Marshall Center programs to military officers and civilian officials of North Atlantic Cooperation Council (now Euroatlantic Partnership Council (EAPC)) and Partnership for Peace countries. This proposed amendment would expand the Secretary'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 effectively excludes participation in Marshall Center programs by many non-EAPC countries that are key for achieving U.S. foreign and security policy objectives, such as Bosnia-Herzegovina and Yugoslavia (including Kosovo). This change would greatly streamline current funding practices for these and similarly situated countries within the region. This change also would allow the funding of key non-government participants in Marshall Center programs (such as media and non-governmental organizations involved in defense and security issues) when attendance by such personnel is in the national security interest of the U.S. Having such influential people participate in Marshall Center programs is likely to have a significant long-term strategic impact in terms of U.S. goals and interests in the region, such as stability, enhanced security, democratization, transparency, and the creation of civil society and market economies.

No additional resources are needed to implement these changes. Total participant numbers, for which the Marshall Center is currently funded, will not increase.

Section 1217 would authorize the permanent reciprocal transfer of lethal and non-lethal significant military equipment (SME) between the United States and friendly nations. It would significantly promote U.S. national security interests worldwide by expanding access to SME to fight the Global War on Terrorism; promote interoperability between the U.S. and its allies and coalition partners; significantly reduce the cost of training and exercises by eliminating the

transportation expense for jointly used or held SME; and enhance the ability of Combatant Commanders to conduct successful and meaningful contingency operations and exercises with allies and coalition partners.

Limiting the transfer of lethal and non-lethal SME to replacement-in-kind transactions also is in keeping with the intent of the Arms Export Control Act (AECA) because it ensures that these transactions occur only between the U.S. and those countries approved by the Department of State to receive the SME through Foreign Military Sales or export control licenses. This section would not eliminate DOS oversight and would immediately benefit operational and training forces in the Pacific and other areas.

For example, U.S. Navy units in the Pacific would be permitted to exchange sonobuoys with our Australian ally. This would significantly reduce the cost of operations and training where U.S. taxpayer dollars are used to transport sonobuoys to Australia where the same sonobuoys are already available. Another example would be the shipping of U.S. Navy torpedoes to Australia so that U.S. Navy submarines can fire the torpedoes in bilateral operations and training exercise. Excessive packaging, handling, transportation and storage expenses would be eliminated if U.S. torpedoes in the Australian inventory could be fired instead. In return, this exchange also fosters goodwill and promotes rationalization, standardization and interoperability of equipment by permitting the Australian Navy to fire U.S. Navy torpedoes at U.S. training exercise sites.

Section 1218. The mission of the Asia-Pacific Center for Security Studies (APCSS) is to enhance cooperation and build relationships through mutual understanding and the study of comprehensive security issues between military and civilian representatives of the United States and other Asia-Pacific nations. Established under DoD Directive 5200.38 (29 January 96), and subject to the authority of the Secretary of Defense, the APCSS is an element of the United States Pacific Command and is authorized personnel, facilities, funds, and other resources necessary to carry out its mission.

Under the authority granted in the FY2000 Defense Authorization Act (codified at 10 U.S.C. 2611), APCSS may accept foreign gifts and donations. This amendment seeks to expand the authority to include gifts from domestic sources as well. The Army and Naval War Colleges, the Naval Postgraduate Schools, the Military Academies, the George C. Marshall European Center for Security Studies, and the Regional Centers under the National Defense University already possess authority to accept gifts from domestic sources.

APCSS stands alone in lacking this valuable mission-enhancing tool. Consistent with existing ethical and fiscal requirements, the proposed authority would assist APCSS by allowing the Center to receive funds, research materials, and lecture and faculty services that may defray operating costs and enhance operations.

Section 1219 would allow military personnel from Allied Nations to cash checks and certain negotiable instruments and exchange foreign currency, provided they are participating in military or training activities with United States military forces. This privilege would be subject

to the approval of the senior U.S. military commander assigned to the joint operation or mission.

This authority is necessary to support the foreign personnel of such foreign forces, who often experience difficulty in cashing checks and are required to pay high exchange rates. This section would enable U.S. commanders to support the allied personnel who work with them by providing these important services.

Section 1220 would make permanent the Regional Defense Counterterrorism Fellowship Program. The existing program, established by Congress under section 8125 of the FY2002 Defense Appropriations Act, would expire upon depletion of the $17.9 million appropriated to establish the Program.

The CT Fellowship Program allows the Department of Defense to provide targeted education and training to foreign military officers to further the US government's counterterrorism priorities. The proposed legislation will institutionalize the Regional Defense Counterterrorism Fellowship Program (CT Fellowship), target a broader audience of counterterrorism officials, and allow the Department to engage in long-term planning for the educational assistance of our friends and allies.

Section 1221 is designed to give the Secretary of Defense the flexibility needed to permit rapid deployment and provide rapid support without the existence of a finalized agreement or foreign military sale, when such is in the best interests of the United States. Such flexibility is desirable in light of the current war on terrorism and the potential need for rapid responses.

Subtitle C—Other Matters

Section 1231. The Secretary of Defense has reviewed the legislation establishing the Center for the Study of Chinese Military Affairs at the National Defense University and strongly urges repeal. While supportive of the concept of enhancing analysis of China's security policies and practices, the Secretary believes that there are more efficient means of accomplishing this goal.

Since the establishment of the Center, the Department of Defense has taken concrete steps to enhance the study of China's military. During 2002, the Defense Intelligence Agency has increased the number of military analysts dedicated to China and plans to hire more civilian China analysts. 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 China 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.

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

Section 1301 would authorize the President to obligate and expend each fiscal year up to $50 million in Cooperative Threat Reduction funds outside the states of the former Soviet Union if the President determines such funds would assist the United States in the resolution of critical emerging proliferation threats or otherwise would permit the United States to take advantage of opportunities to achieve long-standing nonproliferation goals. Existing law limits the use of such funds to the states of the former Soviet Union.

This section would allow the President to provide equipment, goods, and services for a project or activity, but would prohibit direct cash assistance. To the extent possible, such assistance will be provided to the recipient pursuant to international agreements with terms similar to those in existing international agreements concerning the provision of Cooperative Threat Reduction assistance to states of the former Soviet Union.

TITLE XIV—HOMELAND SECURITY

Section 1401 would authorize the Secretary of Defense to assist States and units of local government in obtaining articles and services suitable for chemical and biological defense.

Subsection (a) authorizes the Secretary of Defense to establish procedures under which States and units of local government could purchase articles and services from commercial firms through the Department of Defense. Subsection (b) authorizes the Secretary to sell articles suitable for chemical and biological defense in Department of Defense inventories to States and units of local government at not less than their estimated replacement cost. Subsection (c) authorizes the Secretary to provide services in connection with articles suitable for chemical and biological defense at not less than the actual costs of providing the services. Purchases through the Department of Defense, sales from its inventories, and the provision of training by the Department will facilitate uniformity among the States and local jurisdictions and provide for increased efficiencies in obtaining articles and services for chemical and biological defense.

Under subsections (f) and (g) funds received by the Department of Defense from sales of articles from inventories of the Department, and the provision of services in connection with such articles, would be credited to the military department, Defense Agency, or Department of Defense Field Activity that sold the articles or provided the services and would be available only for the acquisition of articles or the provision of services related to chemical and biological defense.

This section would help States and units of local government obtain articles suitable for

chemical and biological defense that have been manufactured, inspected, and validated to meet Department of Defense standards. The section would also help States and units of local government obtain uniform state-of-the-art training on a continuous basis.

Section 1402. Section 224 of the PATRIOT Act contains a sunset provision (as of December 31, 2005) but excludes sections 203(a), 203(c), 205, 208, 210, 211, 213, 216, 219, 221, and 222 of the Act. Omission of section 204 from the excluded sections list created a technical anomaly that the proposed legislative amendment would remedy.

Section 216 of the Act discusses the modification of authorities relating to the use of pen registers and trap and trace devices. Section 204 clarifies that intelligence exceptions continue to apply from the limitations on the interception and disclosure of wire, oral, and electronic communications.

While Section 204 was sunsetted, Section 216, the section it was intended to clarify, was not. This section would correct the technical oversight and remove Section 204 from the sunset provision. If not removed, valuable and necessary intelligence exemptions to the pen register and trap and trace provision would be lost after December 31, 2005.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXVIII–GENERAL PROVISIONS

Subtitle A–Military Construction and Military Family Housing

Section 2801 would streamline military construction administrative requirements, thereby making the completed facilities available to the users sooner, improving military readiness and saving money. At present, cycle time for facility construction is too long and typically takes about five to eight years from requirements determination to beneficial occupancy. The section would improve the design-build contracting methodology to enable the design of a project and increase the minor construction thresholds to permit execution of additional small projects as needed.

Existing cost thresholds effectively limit the size and scope of facilities to be constructed utilizing unspecified minor construction funds from both the military construction and operations and maintenance appropriations. Increasing the cost limits for minor construction projects would allow DoD to (1) respond more effectively to urgent and unforeseen requirements with properly sized and scoped facilities and (2) reduce the recapitalization rate faster by allowing facility projects under $3,000,000 to be funded with an unspecified minor construction account instead of the normal military construction programming and budgeting process.

This section also would allow DoD to enter into the design phase of design-build contracts (fast-track design funding) using design funds made available under the authority of section 2807 of title 10.

In a design-build contract, one contractor is responsible for both the design and construction. Typically, design-build contractors utilize proven construction methods and design concepts, resulting in both shorter construction time frames and lower change order rates. Design-build acquisitions are a proven industry strategy that include accelerated completion of projects, cost containment, reduction of complexity and reduced risk to the owner. Moreover, such contracts shift liability and risk for design errors, ambiguities in design, cost containment and project completion to the design-build entity.

At present, DoD lacks statutory authority to award an early design effort of a design-build contract such that design could be completed quickly end as needed. In addition, existing law 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 2853 of title 10, United States Code, presently allows the Services to increase the appropriated amount of a military construction project by the lesser of 25 percent of the amount appropriated or 200% of the unspecified military construction threshold (currently $1.5M). The section would utilize 25% of the appropriated amount as the sole threshold for determining whether a cost variation notification is required.

Limiting the requirement for a cost variation to 25% of the project appropriated amount would reduce the frequency of cost variation notifications and would create a threshold that reacts to local economic factors by using the project cost as the baseline for calculating the cost variation limit. This would allow the construction agents to manage limited cost growth on military construction projects more effectively and efficiently.

Section 2802 would increase the length of leases the Secretaries of the military departments may enter into to acquire family housing and other real property facilities in foreign countries. Existing law limits the term of leases for family housing in foreign countries to ten years, and limits the term of leases for structures and real property for military purposes, other than for military family housing, to five years. This section increases the term length for both types of leases to fifteen years.

The "Build to Lease" (BTL) initiatives at Government leased facilities in the United States have been successful by utilizing domestic business practices. The replication of BTL initiatives utilizing business practices in foreign countries could be useful in obtaining family housing and support facilities, such as schools, medical and dental facilities, child care centers, shopping venues, and recreational facilities. Business practices in some foreign countries, however, make it difficult to acquire leased housing and support facilities because of differing capital formation processes and risk mitigation strategies. The current limitations on term lengths for leases compound these difficulties by limiting the period over which the costs associated with projects can be reasonably amortized.

For example, the Department of the Army's efforts to obtain family housing in Korea would be greatly assisted by extending the terms of leases of family housing and support facilities to fifteen years. The most serious quality of life issue the Army faces in Korea is a significant lack of adequate family housing. Initial studies regarding the ability of transnational business interests to supply family housing and support facilities in Korea indicate that projects to provide housing and facilities would be contingent upon securing private capital. The relatively short-term leases available under current law would jeopardize efforts to obtain capital for comprehensive projects such as family housing and support facilities.

The proposed extension of lease terms would provide DoD with an improved means of acquiring both family housing and supporting facilities.

Subtitle B–Real Property and Facilities Administration

Section 2811 expands existing authority that allows DoD to transfer property at a military installation, closed or pending closure, in exchange for military family housing. This expansion would facilitate such transfers in exchange for both family and unaccompanied housing, thereby addressing the present critical shortage of military unaccompanied housing.

Section 2812 authorizes DoD to accept in-kind payments derived from the modification of existing and new easements parallel with authority granted to the Secretaries of the military departments to lease real or personal property under their control, as set forth in section 2667 of title 10, United States Code. Under current law, DoD cannot accept in-kind payment for easements.

Section 2813 would allow the Secretaries of the military departments to require non-Federal persons or entities that request interests in real property from a military department to pay in advance. Currently, a non-Federal entity may seek to acquire property at no cost by special legislation, while the military department must pay the costs of studies to determine whether the proposed conveyance would be compatible with the military mission on the retained property. This section would ensure the non-Federal persons or entities shoulder such costs, whether or not the transaction is completed.

Where the transaction may involve environmental concerns, administrative costs often are substantial. Advance payment of such costs would be preferable to reimbursement months later.

Under current law, DoD may receive reimbursement only following successful completion of a transaction, and amounts collected can be reimbursed only to the specific account from which the expenses were incurred. This results in no reimbursement for the significant administrative costs of pursuing special legislation, and other external requests that are never completed through no fault of DoD. Furthermore, because transactions frequently span multiple fiscal years, DoD often receives reimbursements after expiration of the original

account, resulting in those reimbursements not being available for the purposes for which they were originally appropriated.

This section has no budgetary impact and will preclude the continuing negative impacts on mission support caused by diverting funds to unanticipated real estate actions.

Section 2814 would allow DoD to convey excess real property (including any improvements, structures and fixtures located thereon) at a military installation in exchange for either military family or unaccompanied housing at locations at which there is a housing shortage. As such, it would provide DoD with additional flexibility to procure needed housing for military members.

Under existing authority, DoD only may convey property for purposes of providing family housing when it is associated with privatization under section 2878 of title 10, United States Code, or when it is located at an installation slated for closure or realignment as set forth in a note to section 2687 of title 10. This section would expand this authority to installations not part of base closure or realignment or privatization and would allow the acquisition or construction of unaccompanied as well as family housing.

The proposed language would require that the fair market value of the housing that the Government receives must be equal or exceed the fair market value of the real property that the Government conveys. If not, the Government would receive payments of an amount equal to the difference. The military department could deposit any proceeds in the Department of Defense Housing Improvement Fund for use in conjunction with military family or unaccompanied housing privatization projects.

Subsection (e) would exempt conveyances under this section from screening requirements of the McKinney Act and section 2693 of title 10.

Subsection (g) would clarify that the authority in this section may be used for both family and unaccompanied housing.

Section 2815 would increase the authority of the Secretaries of the military departments to engage in certain real property transactions without having to comply with burdensome Congressional notice and wait requirements. Existing law requires extensive notice and a 30-day wait period for transactions that cost $500,000 or more. This section would change the limit to that imposed in the case of unspecified minor military construction projects, which presently is $750,000.

Section 2816 would authorize the Secretary of Defense or the Secretary of a Military Department to enter directly into a contract or other agreement for public works, utility, and other municipal services at a Defense Department installation or facility with the municipal or local government responsible for serving the area.

Subsection (b) repeals existing law that authorizes the Secretary of Defense to conduct a

demonstration project at Monterey, California under which firefighting, security-guard, police, public works, utility, or other municipal services needed for the operation of any DoD asset in Monterey County could be purchased from government agencies located within the county.

Faced with multiple missions and finite resources, the Secretary of Defense is committed to ensuring DoD focuses its efforts on core competencies. This section would provide an opportunity for DoD to partner with local municipalities to provide services at reduced cost to the Government with less procurement process time.

Subtitle C–Other Matters

Section 2821 would amend section 2828 of title 10, United States Code, to increase by 800 the number of family housing units that the Secretary of the Navy may lease in Italy for between $20,000 and $25,000 per unit per year.

Section 2828(e)(1) limits the expenditures for foreign leases to $20,000 per unit per year as adjusted annually for changes to the Consumer Price Index and foreign currency fluctuations. The military departments, however, may lease 450 units for not more than $25,000 per unit per year. Section 2828(e)(2) authorizes the Secretary of the Navy to lease up to 2,000 additional units in Italy for not more than $25,000 per unit per year.

Pursuant to section 2828(e), the Department of the Navy currently leases 2,238 units in Italy that exceed the $20,000 limitation. The Department of the Navy, however, projects that the number of leases in Italy exceeding the $20,000 limitation will increase by 800 by the end of the Future Years Defense Plan. There is currently no authority available within the Department of Defense to cover this increase. Absent additional authority, the Department of the Navy would have to cancel existing leases and not execute additional leases, resulting in relocations or family separations.

Complexities in lease construct projects in Italy, including compliance with all U.S. Government specifications and standards (such as seismic and force protection criteria), have resulted in increased per-unit costs. Force protection criteria alone require a large buffer of land atypical of Italian construction; the required extra land drives up the per-unit costs.

This section does not require any Fiscal Year 2004 funding. Instead, the Department of the Navy requires authority in advance of funding to allow negotiations with potential developers for planned and programmed lease construction projects and to prevent the cancellation of existing leases.

Section 2822 would specifically authorize the Army and Air Force Exchange Service (AAFES) to sell property located at 1515 Roundtable Drive, Dallas, Texas. In addition, AAFES would be permitted to retain the nonappropriated funds derived from the divestiture since nonappropriated funds were initially used to acquire the property.

AAFES is a self-supporting NonAppropriated Fund Instrumentality (NAFI) that receives no appropriations from Congress. It was established by the Army and the Air Force to provide for the Morale, Welfare, and Recreation (MWR) of its service members. AAFES raises its money through the sale of goods and services, at a discount, to soldiers and airmen of the United States. AAFES uses its income and holds its assets for the benefit of the soldiers and airmen of the United States, either to continue to provide goods and services at uniformly low prices or to contribute to the MWR funds of the Army and the Air Force. It is unfortunate, but military pay alone is often insufficient to meet the needs of today's soldiers and airmen. The services provided by AAFES and the MWR community, funded in part by AAFES, help address this shortfall with such resources as day care centers and low cost retail establishments.

This section would authorize AAFES as a part of its constant evaluation of its business operations, to divest itself of real property it owns in Dallas, Texas, that it purchased and maintained solely with nonappropriated funds. Because of the unique character of the property involved (i.e., it was purchased with non-appropriated funds (NAF), it is managed and maintained by a NAF Instrumentality, and it is not located on a military installation), the disposal would be exempt from the Federal Property and Administrative Services Act. If this Act were to apply to the disposal of the AAFES building, the resources available for AAFES and the MWR community would be reduced, thereby limiting their ability to meet the needs of the soldiers and airmen of the United States.

Section 2823. The McKinney-Vento Act mandates that before Federal Property can be leased, sold, or given to other agencies, it must be made available to entities representing the homeless. In order to answer whether property has been made available to the homeless, the Department must collect information, screen it to determine whether it was made available, and provide a report on a quarterly basis. This section would allow the Department of Defense to make real property available for emergencies without going through the screening and notification process.

During national emergencies, when Federal facilities are needed by State, Local and private agencies to support emergency efforts, the change in legislation would allow temporary use of facilities without having to meet requirements of the McKinney-Vento Act. The change would permit grants of property without screening in the event of a declaration of war, a declaration of national emergency by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), a declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.), or the use of the militia or the armed forces after a proclamation to disperse under section 334 of title 10.

Specific examples of how the McKinney-Vento Act severely hampers emergency out granting include support the 77th Regional Support Command provided in response to the terrorist attacks last September. The 77th Regional Support Command provided storage space to the New York City police and fire departments at Fort Totten. Additionally, they provided administrative space to the New Jersey State Police and the U.S. Secret Service for use as a command and control center in Jersey City (Caven Point), NJ.

After 9-11, DoD had to make available facilities to State/Local agencies immediately, which violated the McKinney-Vento Act. (The GAO has previously ruled in an audit of GSA that grants to State/Local agencies must first go undergo McKinney screening.) There is no provision in the law for national emergencies declared by the President. In addition, during Stafford Act-covered emergencies, DoD may have to allow private entities use of facilities, also on a short-notice status (such as temporary relocation of stock from a store in threat of rising flood-waters). The McKinney-Vento Act does not contain a provision that would permit for such emergency uses, but requires all such grants be first screened. The Act assumes that all facilities granted outside of the government are underutilized, but does not distinguish those that are being allowed to become underutilized (so a non-Federal user may use them) for a short time to meet the needs of the emergency. The proposed legislation would remedy this by permitting grants of excess property during Stafford Act emergencies (flood, mudslide, fire, etc.) and Presidentially declared emergencies without McKinney-Vento Act screening.