National Defense Authorization Act for Fiscal Year 2001

Sectional Analysis

TITLE I—PROCUREMENT

Subtitle A–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 2001.

Subtitle B–Multi-Year Contract Authorizations

Sections 111 through 112 provide multi-year contract authorizations for the Army and the Navy for contracts identified in the President's Budget for fiscal year 2001.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments and the Defense Agencies in amounts equal to the budget authority included in the President's Budget for fiscal year 2001.

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 2001.

Section 302 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2001.

Section 303 authorizes appropriations for fiscal year 2001 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 2001.

Section 304 authorizes transfers from the National Defense Stockpile Transaction Fund

to the Operation and Maintenance accounts of the Army, Navy, and Air Force, and to the Defense Working Capital Funds in amounts equal to those included in the President's Budget for fiscal year 2001.

Subtitle B—Environmental Provisions

Section 311 would authorize the Secretary of Defense to reimburse the Former Nansemond Ordnance Depot Site Special Account within the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 for costs incurred by the United States Environmental Protection Agency (EPA) in overseeing a Time Critical Removal Action (TCRA) under CERCLA being performed by DoD under the Defense Environmental Restoration Program (DERP) (10 U.S.C. 2701 et seq.) at the Former Nansemond Ordnance Depot Site. The site was formerly used by the Department of Defense (DoD), and was included in DERP as a Formerly Used Defense Site (FUDS). The site is currently owned by various private and state entities, and it is used by the general public.

As a result of the activities carried out by DoD on the site, discarded munitions and various constituents of ordnance were discovered at the site. The site has been placed on the National Priorities List by EPA.

On December 30, 1999, the Department of the Army (Army) and the EPA entered into an interagency agreement in which the Army formally agreed, under its DERP authority, to perform the TCRA to investigate the site for the presence of any ordnance not already removed by the Army Corps and any continuing explosives safety hazards and to remove such hazards from the site if found. The DoD agreed to submit a request for legislative authorization to pay costs incurred by EPA in connection with its oversight of activities under the agreement.

Section 312 is necessary as a consequence of section 8149 of the Department of Defense Appropriations Act, 2000 (Public Law 106-79; 113 Stat. 1271) that requires specific provisions of law for the expenditure of funds appropriated for the Department of Defense to be paid as a fine or penalty imposed because of an environmental violation at a military installation or facility. This provision authorizes the expenditures of the following expenditures for the Army and Navy:

United States Army

Installation/State: Walter Reed Army Medical Center, Washington, D.C.
Assessing Agency: Environmental Protection Agency Region 3
Original Amount Assessed: $201,600
Statute: Resource Conservation and Recovery Act
Reason for the Penalty: Alleged violations included improper storage of hazardous waste without a permit or interim status, and failure to notify Regional Administrator before importing hazardous waste.

Negotiated Settlement:

Cash Portion: $50,400 (previously paid with Fiscal Year 1999 funds)

Supplemental Environmental Project: $993,000

By consent agreement concluded August 18, 1999, Environmental Protection Agency Region 3 agreed to offset 75% of the original penalty assessment because Walter Reed Army Medical Center demonstrated that it had already spent $1.6 million toward purchasing and implementing an installation-wide Hazardous Substance Management System. The System is an automated tracking system that monitors hazardous materials at an installation from the time of request to use, re-use, or disposal. The Environmental Protection Agency agreed that this warranted Supplemental Environmental Project credit even though all funding was programmed prior to receiving Environmental Protection Agency's complaint. The agreement, however, also requires that the entire System project be operational throughout the installation before the Environmental Protection Agency can close the enforcement action. At present, the installation needs to invest $993,000 of Fiscal Year 2000 funds to complete the project. The remaining funding to implement the System was provided from Fiscal Year 1999 resources.

Installation/State: Fort Campbell, Kentucky
Assessing Agency: Environmental Protection Agency Region 4
Original Amount Assessed: $540,470
Statute: Resource Conservation and Recovery Act
Reason for the Penalty: Alleged violations included exceeding the treatment tonnage at an open burning/open detonation facility, failure to inspect the facility, failure to adequately train personnel, and allowing unauthorized entry to the Open Burning/Open Detonation facility.
Negotiated Settlement:

Cash Portion: $125,000 (previously paid with Fiscal Year 1999 funds)

Supplemental Environmental Project: $183,000 from Fiscal Year 2000 budget, $194,250 from Fiscal Year 2001 budget.

Under a consent agreement concluded September 29, 1999, Environmental Protection Agency Region 4 agreed to offset the balance of the original penalty for an agreement by Fort Campbell to perform a Supplemental Environmental Project to reduce the generation of hazardous waste by installing new parts washers. In the 1980s, Fort Campbell had entered into a contract to supply and service 300 parts washers, half of which were used for weapons cleaning and the other half were for cleaning of vehicle and aircraft parts in motor pools and hangers. Use of the solvent in these washers generated hazardous waste and resulted in high disposal costs. In 1993-94, the installation identified a cheaper alternative process to recycle the solvent and prevent the generation of hazardous waste. Before the initiation of this enforcement action, the installation had made plans to fund the conversion of its parts washers to the new process. The plans included the cancellation of the contract on the prior method. During the negotiation process in settlement of this case, the Environmental Protection Agency granted Supplemental Environmental Project credit for the project already in progress.

The consent agreement requires that the Army carry out the Supplemental Environmental Project for a period of at least three fiscal years (1999-2001). To implement the project, Fort Campbell spent $178,702 in initial costs and $191,490 in operating costs from Fiscal Year 1999 funding. To fulfill the agreement the installation now requires approval to spend $183,000 from Fiscal Year 2000 funding for parts, solvent, filter replacements, labor, and transportation. The installation has already committed and spent funds from the installation Fiscal Year 2000 operation and maintenance account on this project because it was deemed mission essential, separate and apart from its potential value as a Supplemental Environmental Project. The installation also requires authorization to spend an additional $194,250 from Fiscal Year 2001 funding for similar requirements. As currently projected, the total expenditure on the project will be $747,442.

The key factors in continuing the implementation of this project are: (1) the installation must use parts washers to ensure that its warfighting equipment is properly cleaned and maintained; (2) switching to a type of solvent that can be recycled reduces operational costs; (3) recycling solvent reduces the risk of environmental pollution by eliminating the generation of hazardous wastes; and (4) the installation had already taken steps to discontinue the previous method of parts cleaning prior to Environmental Protection Agency's enforcement action. In addition, a return to the previous method is highly impracticable (i.e., it would be much more expensive than the present environmentally beneficial methods, and it would require generating and handling significant amounts of hazardous waste).

Installation/State: Fort Gordon, Georgia
Assessing Agency: Georgia Department of Natural Resources
Original Amount Assessed: $125,000
Statute: Resource Conservation and Recovery Act
Reason for the Penalty: Alleged violations included failure to conduct hazardous waste determinations and operation of an unauthorized hazardous waste storage facility.
Negotiated Settlement:
Cash Portion: $50,000 (previously paid with Fiscal Year 1999 funds)
Supplemental Environmental Project: $20,701

By consent agreement concluded September 7, 1999, the State of Georgia agreed to offset the balance of the fine because the installation agreed to implement a Supplemental Environmental Project that will upgrade the installation's waste water treatment plant by installing an ultraviolet light treatment system to replace the chlorine system at the plant. Such a system had been considered prior to the enforcement action, but funding was not available. Fort Gordon awarded a contract for installing the ultraviolet treatment system at the end of September 1999 using Fiscal Year 1999 money ($250,000). Fort Gordon planned to complete the installation of electrical connections necessary to make the ultraviolet treatment system operational using Fiscal Year 2000 money. The cost for the order is $20,701. Failure to connect the UV system would render the facility out of compliance with the installation National Pollutant Discharge Elimination System permit unless chlorine treatment were continued.

The installation has already committed and spent funds from the installation Fiscal Year 2000 operation and maintenance account on this project because it was deemed mission essential, separate and apart from its potential value as a Supplemental Environmental Project.

Installation/State: Pueblo Chemical Depot, Colorado
Assessing Agency: Colorado Department of Health and Environment
Original Amount Assessed: $1,048,600
Statute: Resource Conservation and Recovery Act
Reason for the Penalty: Alleged violations included the unpermitted storage and disposal of hazardous waste, failure to comply with a corrective action order, failure to manage waste, failure to make waste determination, inadequate training records, lack of a contingency plan, and failure to maintain land disposal restriction paperwork.
Negotiated Settlement:
Cash Portion: $225,000 (previously paid with Fiscal Year 1997 funds)
Supplemental Environmental Projects: $78,500

By consent agreement dated August 7, 1997, the State of Colorado agreed to offset the balance of the outstanding fine in exchange for an agreement by Pueblo Chemical Depot to perform a variety of Supplemental Environmental Projects totaling $275,000. Most of the funding for completing these projects came from previous fiscal years. A total of $78,500 for Supplemental Environmental Projects remains outstanding and must be funded with Fiscal Year 2000 dollars. The Army negotiated projects for environmental enhancement within the Pueblo City/County area to demonstrate the installation's commitment to improving environmental quality.

The breakdown of the outstanding projects is as follows:
Lab equipment for the Pueblo City-County Health Department, $5,500;
Hazardous communications and pollution prevention training for industry through the Pueblo City-County Health Department, $10,000;
Residential septic pollution prevention through the Pueblo City-County Health Department, $14,500
Jason Project (educational project with local schools), $6,500; and
Household hazardous waste collection event, $42,000.

These Supplemental Environmental Projects focus on hazardous waste reduction in the community and emergency response to environmental crises. Because the local emergency response assets may be needed to respond to emergencies at Pueblo Chemical Depot, the Depot benefits from the community's enhanced ability to respond to environmental and other emergencies. By funding these Supplemental Environmental Projects, the Depot also generates good will with the local community, an advantage that is lost if a cash fine of equal amount is simply paid to the state regulator. These projects are particularly important in contributing toward the good working relationship between the installation and the community/state that is essential to the successful construction and operation of a chemical demilitarization facility.

Failure to fund the Supplemental Environmental Projects for Fiscal Year 2000 will have a significant adverse affect on the relationship between the installation and both the surrounding community and the State of Colorado.

Installation/State: Deseret Chemical Depot, Utah
Assessing Agency: Utah Department of Environmental Quality
Original Amount Assessed: $51,200
Statute: Resource Conservation and Recovery Act
Reason for the Penalty: Alleged violations included storage of hazardous waste without plan approval, failure to report a spill, failure to properly train personnel, operating record deficiencies, storage of incompatible and unpermitted wastes, storage in unapproved containers, exceeding maximum amounts for open detonation, inadequate maintenance of contingency plan, and failure to keep manifest copies on-site.
Negotiated Settlement:
Cash Portion: $10,000 (previously paid with Fiscal Year 1998 funds)
Supplemental Environmental Project: $20,000

By consent agreement dated November 5, 1997, the State of Utah agreed to offset the balance of the outstanding fine in exchange for an agreement by Deseret Chemical Depot to perform a variety of Supplemental Environmental Projects totaling $23,160. One Supplemental Environmental Project remains to be accomplished using Fiscal Year 2000 dollars in the amount of $20,000. The Supplemental Environmental Project is to repair cracks in igloo floors that are subject to the installation's Resource Conservation and Recovery Act Part B permit for hazardous waste storage of waste munitions. A state inspection after the enforcement action revealed significant cracks in some of the permitted igloo floors.

In negotiating resolution of the enforcement action, Deseret Chemical Depot offered the repair to the state as a Supplemental Environmental Project for many reasons, including:

- The repair of cracks in the igloos is an ongoing maintenance requirement dictated by operations;
- There was concern the state would make this repair a requirement of a permit condition if the installation did not agree to do it voluntarily;
- The project would help lessen the Resource Conservation and Recovery Act corrective action/closure requirements for these permitted sites; and
- The good will that would be gained with the state.

United States Navy

Installation, State: Allegany Ballistics Laboratory, West Virginia
Assessing Agency: West Virginia
Original Amount Assessed: $217,000

Statute: Hazardous Waste Management Act (Resource Conservation and Recovery Act)
Reason for the fine/penalty: West Virginia alleged that the Navy stored hazardous wastes for greater than 90 days; failed to clearly label or mark the containers with the words "Hazardous Wastes," and failed to mark the containers with the date the accumulation period began. West Virginia further alleged that the Navy failed to conduct a proper hazardous waste determination on one of the 20 cubic yard roll-off containers of waste.
Negotiated Settlement:
Cash Portion: $108,800.
Supplemental Environmental Project: None.

Installation, State: Naval Air Station, Corpus Christi, Texas
Assessing Agency: Environmental Protection Agency Region 6
Original Amount Assessed: $92,400
Statute: Clean Air Act
Reason for the fine/penalty: Navy allegedly conducted operations in a spray paint booth without utilizing the applicable emission control measures; and failed to maintain sufficient air flow through a paint booth for emission recovery.
Negotiated Settlement:
Cash Portion: $5,000
Supplemental Environmental Project: None.

Subtitle C—Other Matters

Section 321 provides that the Air Force, the host military department, may charge civil air carriers using Johnston Atoll as a refueling stop the actual costs of their use of the island. Johnston Atoll has long been used by commercial aviation as a refueling stop on the way to the western Pacific region. The Air Force has recently been directed to allow an increase in use of Johnston Atoll for commercial aviation. Johnston Island is an extremely remote military installation and is the site of the Johnston Atoll Chemical Agent Demilitarization System (JACADS), operated by the U.S. Army to demilitarize the chemical agents stored on the island. The costs of operation on Johnston Atoll are very high because of its remote location. Virtually everything necessary to operate the facility must be transported to the Atoll at substantially greater expense than for other less remote locations. This particularly applies to fuel. Current policy only allows reimbursement from private entities for the standard fuel cost, which is the uniform cost of defense fuel everywhere in the world. This is notably less than the actual cost to the United States of transporting fuel to this remote location. As a result, civil aviation reaps a windfall by purchasing fuel at a lesser cost than it actually costs the United States and at a cost substantially less than they would have to pay in a commercial setting. Additionally, other services provided to civil aviation would not have the reimbursed funds returned to the Air Force. Instead, they would go to the Treasury as miscellaneous receipts, so that the Air Force would have provided the service at a cost to its own budget. Lastly, when civil aircraft actually are present on the island, the JACADS must cease operations for safety reasons. This imposes a cost on the chemical demilitarization program which is currently unreimbursed.

Because of the unique circumstances of civil aviation use of Johnston Atoll, the users should be expected to pay their fair share of the costs resulting from that use, rather than have them subsidized by the Defense budget. This proposal allows the Air Force to collect costs required to support civil air carriers; it does not authorize charging them for fixing problems at Johnston Atoll unrelated to their use. Any support costs must be the result of an actual request by the air carrier or actually required due to their use of the island. This provision does not permit the Air Force to require civil air carriers to support the general cost of operations at Johnston Atoll; that is a cost to DoD. In charging actual costs, the Air Force will have to demonstrate that the costs involved were actually expended for the direct or indirect support of the civil air carrier.

Because the regulations this section would authorize will affect non-governmental entities, they will have to be promulgated through a formal rulemaking under the Administrative Procedures Act.

For purposes of complying with pay as you go scoring, the current annual amount deposited in the Treasury as Miscellaneous Receipts is $219,000. This represents payments from civil air carriers for landing fees and ground and arrival/departure support of various types. The civil air carriers also pay approximately $557,000 a year for fuel but these receipts are properly deposited in the Defense Logistics Agency working capital fund, not Miscellaneous Receipts; consequently, they are not included for purposes of pay as you go scoring.

Section 322 would reduce the National Defense Stockpile of excess material by allowing the Department of Defense (DoD) to utilize it, where applicable, as raw material for manufacturing defense equipment (i.e., aircraft, engines, tanks, etc.). This section focuses specifically on the transfer of excess titanium sponge. The recipient DoD programs and quantities will be as selected by Under Secretary of Defense (Acquisition, Technology, and Logistics) until the total amount of titanium sponge held by the National Defense Stockpile has been disposed of; provided, however, that such transfers shall not diminish the amounts that are to be made available to the Secretary of the Army pursuant to Section 3305 of the National Defense Authorization Act for Fiscal Year 1996, 104 P.L. 106; 110 Stat. 186; February 10, 1996. Transfers under this section shall be without charge, except that the recipient military service shall pay all transportation and related costs incurred in connection with the transfer.

Section 3304 of the National Defense Authorization Act for Fiscal Year 1998 requires the Manager of the National Defense Stockpile to dispose of 34,800 short tons of titanium sponge from the Stockpile. This proposed section would make that titanium sponge available for use by defense programs. The program offices would provide the titanium sponge to their prime contractors as raw material to manufacture equipment. The titanium sponge would be made available incrementally as the various contracts are executed for hardware production.

While the cost of material processing at the melt/forging factories will still be borne by the programs, providing the raw material will significantly reduce the associated burden cost and

the final hardware cost. The infusion of this raw material will provide near-term relief to the budget thereby allowing the DoD to invest those funds in production cost reduction initiatives and manufacturing processes that could result in high pay-off across the lives of the programs. Investment towards reducing overall production costs is consistent with DoD's emphasis on affordability. Savings achieved will help assure affordable equipment for the warfighter.

Section 323. Section 377 of the *Strom Thurmond National Defense Authorization Act for Fiscal Year 1999* authorizes a pilot project under which the military departments retain civil aircraft landing fees established by the Secretary of Defense for use in operating and maintaining military airfields through September 30, 2000. The pilot program has not been implemented because there currently is no Secretary of Defense landing fee schedule as required under the existing legislation. This amendment would extend the pilot program and allow implementation of the program as intended by Congress by authorizing continued use of existing landing fee schedules and payments imposed under agreements for joint use of military airfields. It replaces the requirement for the Secretary of Defense to establish uniform landing fees with a definition of landing fees. It will also enable local communities and military installations to directly benefit from shared resources in a manner similar to the authority public airports have to use fees collected for airport improvements.

The Federal Aviation Act of 1958 stipulates that the Department of Defense shall make domestic military airports and airport facilities available for civil use to the maximum extent feasible; however, DOD's O&M budget is appropriated by Congress to support the military mission, not civil aviation, and it cannot make application under FAA's Airport Improvement Program (AIP) for funds to support civil use.

The military departments currently collect fees for use of its airfields by civil aircraft through two different methods.

The first is through landing fees for intermittent use of military airfields as authorized by a civil aircraft landing permit. Each military department has a published schedule of fees. It is not linked to AIP eligible operations and fees are charged when the purpose for use is not associated with official government business; e.g., weather alternate use by commercial air carriers.

The second is through payments under an agreement for joint use of the military airfield for those locations with civil aviation operations eligible for funds under FAA's Airport Improvement Program (AIP). A joint use agreement generally runs 25 years and allows a community to regularly use the airfield as a public airport. Payment terms in joint use agreements are negotiated with a local government sponsor on the basis of number of flights and scope of proposed operations, type of operations (i.e., cargo, passenger service, general aviation, or combination), location (military mission impacts, snow removal, environmental sensitivities), resources shared (air traffic services, fire department, security), etc. These agreements are specifically designed not to place the military airfield in competition with local civil airfields but

rather to facilitate meeting the air transportation needs of the region or to provide access to air services in less developed regions of the country.

The amendment will enable implementation of the program and provide an adequate database for analysis. Time is needed to prepare and distribute the necessary guidance concerning accounting procedures, management oversight, and use of funds available under the new authority. An effective pilot program requires the capability to assess and compare the benefits and impacts for a variety of locations with a variety of airport operations.

Section 324 would delete subsection 2488(c)(2) of title 10, which requires a nonappropriated fund instrumentality to distribute distilled spirits and not use a private distributor if using a private distributor would result in direct or indirect state taxation. The change is needed because, under subsection (c)(2), military exchanges distribute distilled spirits in some States or locations even if it would be more cost-effective to use a private distributor. The exchange should have the option to make business-based decisions and choose the most cost-effective means of distributing distilled spirits.

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 2001.

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 2001.

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 2001.

Section 413 prescribes the minimum end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2001.

Section 414 amends the officer grade table in section 12022(a) of title 10, United States Code and the enlisted grade table in section 12012(a) of title 10, United States Code, by increasing the ceilings on senior Air Force personnel on full time active duty in support of the Reserves as follows:

Colonel: Increase of 3, from 297 to 300;
Lieutenant Colonel: Increase of 41, from 777 to 818;
Major: Increase of 138, from 860 to 998;
E-9: Increase of 68, from 405 to 473;
E-8: Increase of 67, from 1041 to 1108.

All other numbers in the tables remain unchanged.

Section 415 would provide an exemption for Reserve component members on active duty or members of the National Guard on full-time National Guard duty to prepare for and perform funeral honors for veterans as required by section 1491 of title 10, United States Code, from counting against active duty end strength. The delivery of funeral honors to veterans is a continuous peacetime mission. This amendment would allow the Services to fulfill this peacetime mission without adversely affecting the end strength needed to meet their wartime missions. In order for the Department to meet the requirements of the law regarding the provision of funeral honors for veterans, it is critical to have Reserve component participation. This end strength exemption would remove an impediment to greater Reserve component participation in funeral honors and assist the Department in meeting the requirements of the veterans' funeral honors law.

Section 416 would amend section 115(d) of title 10, United States Code, by adding a new subsection (9), which would exclude a limited number of Reserve component members, who are serving on active duty for special work for more than 180 days, from counting against the end strength for each of the armed forces (other than the Coast Guard) authorized for active duty personnel who are to be paid from funds appropriated for active duty personnel. This proposed amendment would increase accessibility to Reserve component members and provide for greater continuity in the use of Reservists to support CINC and other active force OPTEMPO requirements.

Section 417 amends section 517 of this title, which establishes ceilings on the number of senior enlisted personnel who may be serving on active duty by adding a provision permitting suspension of those ceilings during a time of war or national emergency declared by the Congress or President.

In a situation that requires involuntary activation of members of the Reserve components, that call-up authority is weakened by the normal separation or retirement of regular and reserve personnel. To prevent such routine separations from undermining the effects of calling up the reserves, retirements and separations can be postponed by the military departments. This is popularly known as instituting a stop/loss order. If normal promotions continue while a stop loss is in effect, increased strengths in individual grades eventually will bump up against statutorily imposed strength ceilings, at which point promotions as well as separations would come to a stop. Stopping promotions has a significantly adverse effect on morale. To minimize the career and adverse impact on servicemen and women as well as to their families, these strength ceilings

must be suspended for promotions to continue.

This provision of law would amend existing statutory authority and authorize the President to suspend in time of war, or of national emergency declared by the Congress or the President, the operation of section 517 so as to permit the continued promotion of senior enlisted personnel during stop/loss.

Section 418 would amend 10 U.S.C., § 12011 that establishes ceilings on the number of senior reserve officers who may be serving on active duty or on full-time National Guard duty for administration of the reserves or the National Guard by adding a provision permitting suspension of those ceilings during a time of war or national emergency declared by the Congress or President.

10 USC, §527 provides grade strength relief for active duty officers during a time of war or national emergency declared by Congress or the President. Legislative enactment will provide the President similar statutory authority for senior officers within the Reserve Components (AGR's) that are on active duty or full-time National Guard duty for administration of the Reserve Components.

Section 419 would amend 10 USC, § 12012 that establishes ceilings on the number of senior enlisted personnel who may be serving on active duty or on full-time National Guard duty for administration of the reserves or the National Guard by adding a provision permitting suspension of those ceilings during a time of war or national emergency declared by the Congress or President.

10 USC, §527 provides grade strength relief for active duty officers during a time of war or national emergency declared by Congress or the President. Legislative enactment will provide the President similar statutory authority for the top two enlisted grades within the Reserve Components (AGR's) that are on active duty or full-time National Guard duty for administration of the Reserve Components.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would amend subsection (3) to Section 14703 of title 10, United States Code, to expand and clarify pool of eligible officers.

Although the Air Force Biomedical Sciences Corps consists of 18 different Air Force Specialty Codes, as currently written, this section limits use of biomedical science officers to veterinarian, optometrist, or podiatrist. The Army and Navy sections specify Medical Service Corps officers and the Air Force section does not. The increased and changing OPSTEMPO often alter the specific needs of the Air Force. This amendment would give the Air Force the

same latitude as the other services to accomplish our mission.

Since the Air Force no longer has veterinary officers, this language is no longer necessary.

Section 502 would clarify section 1521(a)(3) of title 10, United States Code, and as written does not require Service Secretary approval of an appointment or promotion recommendation prior to death of the member in line of duty. This change would authorize the posthumous promotion of a member who was recommended for an original appointment. This change would also provide for the posthumous promotion of a member who has been recommended for promotion. The current statutory language could be interpreted to mean that a posthumous promotion could not be issued to a member who dies before Secretarial approval of a recommendation for appointment or promotion.

Section 503. This amendment to sections 618(e) and 14112 of title 10, United States Code, would authorize the Secretary of Defense or designee to make public the names of officers recommended for promotion by a promotion selection board prior to approval of the board by the President. Currently, differences exist between procedures followed for officers on the active duty list under the Defense Officer Personnel Management Act (DOPMA) and procedures followed for officers on the Reserve Active Status List under the Reserve Officer Personnel Management Act (ROPMA).

Under Presidential Executive Order, the Secretary of Defense, or appointed official within his office, has delegated authority to approve active component promotion selection boards and to make public the names of those officers. A similar Executive Order existed for Reserve component promotion selection boards but was rendered invalid following enactment of ROPMA, which became effective on October 1, 1996. Since that date, Reserve component promotion selection board reports are transmitted to the President for approval and subsequent public release of the names of officers. Although section 14111 of title 10, United States Code, includes a delegation provision and delegation authority has been requested, the request has yet to be acted upon. The necessity to wait until Presidential approval delays dissemination of selection board reports, creating an unwarranted disparity between active and Reserve component officers.

This amendment will permit timely dissemination of the names of officers (other than any name deferred from transmittal) recommended by a selection board for promotion to a grade below brigadier general or rear admiral (lower half) upon transmittal to the President of the report of a selection board.

Subtitle B—Reserve Component Personnel Policy

Section 511 would clarify the promotion status of reserve component general and flag officers in joint duty assignments, by amending section 641 of title 10, United States Code to add

reserve component general and flag officers below lieutenant general or vice admiral, in joint duty assignment positions, to the list of those excluded from the active duty list for promotion purposes. Such officers would maintain eligibility for promotion consideration on the active-status list of their reserve component.

Section 526(b) of title 10, United States Code was recently amended by inserting a new paragraph (2). See Section 553 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, 113 Stat. 512. Section 526(b)(2)(A) of title 10, United States Code grants the Chairman of the Joint Chiefs of Staff the authority to designate up to 10 general or flag officer to positions on the staffs of the commanders of the unified and specified combatant commands as positions to be held by reserve component general and flag officers below lieutenant general or vice admiral.

Under the provisions of section 526(b)(2)(B) a reserve component officer serving in a position so designated under a call or order to active duty that does not specify a period of 180 days or less does not count against strength limitations under subsection (a) of section 526 and the grade restrictions of section 525 of title 10, United States Code, provided the procedure outlined in section 526(b)(2)(C) of title 10, United States Code is followed.

Accordingly, this proposal would establish a specific statutory exemption from active duty promotion applicability for these unique positions consistent with the status of other reserve component officers. The amendment makes promotion practice for reserve officer joint duty assignment consistent with that of other reserve officers in similar active duty positions already excluded under the statute.

No additional funding is required.

Section 512 would authorize the Secretary of Defense to increase by not more than two percent the number of officers of the Army, Air Force or Marine Corps in each of the grade of major, lieutenant colonel or colonel who are on active duty or full-time National Guard duty, or the number of officers of the Navy in each of the grades of lieutenant commander, commander or captain on active duty as provided for in section 12011 of title 10, United States Code (U.S.C.). The use of this authority is contingent upon the Secretary's authorizing an increase in end strength under section 115(c)(2) of title 10, U.S.C. The number of additional officers authorized to serve in the controlled grades would be based on a percentage applied to the controlled grade ceilings and would be limited to not more than the corresponding percentage increase in the annual personnel strength authorization for Active Guard and Reserve officers. While the Secretary has the authority, if it is in the national interest, to increase the total end strength for a Reserve component in order to accomplish an emerging mission or requirement that has been assigned to that component, he lacks the corresponding authority to provide for the necessary grade mix at the field grade level to support that new mission or requirement, if needed. This authority would provide the Secretary of Defense with that authority. This will help bridge the gap until adjustments to the force structure and grade ceilings can be provided for in statute.

Section 513 would authorize the Secretary of Defense to increase by not more than two percent the number of enlisted members of the Army, Navy, Air Force, or Marine Corps in each of the pay grades of E-8 and E-9 on active duty or full-time National Guard duty as provided for in section 12012 of title 10, United States Code (U.S.C.). The use of this authority is contingent upon the Secretary's authorizing an increase in end strength under section 115(c)(2) of title 10, U.S.C. The number of additional enlisted members authorized to serve in the controlled grades would be based on a percentage applied to the controlled grade ceilings and would be limited to not more than the corresponding percentage increase in the annual personnel strength authorization for Active Guard and Reserve enlisted personnel. While the Secretary has the authority, if it is in the national interest, to increase the total end strength for a Reserve component in order to accomplish an emerging mission or requirement that has been assigned to that component, he lacks the corresponding authority to provide for the necessary grade mix at the senior enlisted level to support that new mission or requirement, if needed. This authority would provide the Secretary of Defense with that authority. This will help bridge the gap until adjustments to the force structure and grade ceilings can be provided for in statute.

Section 514 would exempt medical and dental officers of the Reserve components of the Army and the Air Force from being included in the grade ceiling limits contained in section 12005 of title 10, United States Code (U.S.C.). This amendment would provide the same exemption as is currently authorized for Active duty medical and dental officers under 10 U.S.C. 523(b)(3) and (4) and for Reserve component officers of the Navy under section 12005(b). The current ceiling established in 10 U.S.C. 12005(a)(2) for Reserve component officers of the Army and Air Force sets a fixed field grade percentage based on the maximum authorized officer strength given in 10 U.S.C. 12003, which includes medical and dental officers. This presents a problem in career management of Reserve component medical and dental officers and inhibits the flow of promotion of medical and dental corps officers. Medical and dental officers receive constructive credit for their medical or dental education, relevant training, and experience as provided for in 10 U.S.C. 12207. They enter the Guard or Reserve as senior time-in-grade 03s or 04s and normally serve over half their careers in the grades of 05 and 06. This high percentage of senior field grade officers in the medical and dental corps must be accommodated in the total number of officers authorized to serve in field grades. Without an exemption for Army and Air Force Reserve component medical and dental corps officers, senior grade physicians and dentists who are currently over grade must be separated. This will only exacerbate critical physician and dentist shortages and will adversely affect recruiting and retention of health care providers.

Section 515 would exempt Reserve component officers who are currently on the Reserve Active Status List (RASL) and are ordered to active duty for up to three years in support of the Active component from being placed on the Active Duty List. This would allow these officers to compete for promotion with other Reserve component officers by retaining them on the RASL. Currently, officers who perform active duty in support of the active component are transferred from the RASL to the ADL, unless exempt under section 115 (d) of title 10, United States Code. While these officers may be performing superbly in their current assignments and would otherwise be competitive for promotion, they do not have the extensive active duty experience to

compete favorably with officers who have had that experience and are thus at a disadvantage when competing for promotion. In order to fill manning shortfalls, the Services are recalling Reserve component officers to active duty to fulfill those needs. This amendment would afford these officers a reasonable opportunity for promotion, since they would be competing with officers who have similar records.

Section 516 would permit the Secretary of the military department to offer continuation on the Reserve Active Status List to an officer who has been recommended for continuation by a board and who would otherwise be required to separate, without requiring the officer to request continuation. The option of accepting or declining continuation would rest with the Reserve officer. This amendment would mirror section 637(a)(1) of title 10, United States Code, relating to continuation of officers on the Active Duty List and streamline the Reserve personnel management process.

Section 517 would technically amend sections 3961(a) and 8961(a) of title 10, United States Code. These amendments are necessary to eliminate conflicting provisions regarding the general rule for time-in-grade requirement to retire at the current grade held by a Reserve component officer. The service rule specifies that the retired grade of an officer will be determined under 10 U.S.C. § 1370, except in the case of a Reserve commissioned officer who retires for nonregular service under chapter 1223 of title 10, United States Code. However, the enactment of the Reserve Officer Personnel Management Act (ROPMA), Title XVI of the National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337 § 1641, 108 Stat. 2663, 2968; added subsection (d) to section 1370, which established the general rule for retirement for nonregular service. This technical correction eliminates the phrase "or for nonregular service under chapter 1223 of this title," from both subsections 3961(a) and 8961(a) and will make it clear that only the provisions of section 1370(d) apply to retirements under chapter 1223 of title 10, U.S.C. Title 10 does not contain analogous provisions to sections 3961(a) and 8961(a) regarding the retirement of Navy and Marine Corps officers. The effective date for this amendment applies to retirements in accordance with the transition rules established in section 1688 of P.L. 103-337, which specified the effective date for the time-in-grade requirements for promotion or federal recognition after the enactment of ROPMA.

Subtitle C—Education and Training

Section 521 would strike out section 2033 of title 10, United States Code. Section 2033 was added to title 10, U.S.C., by section 547 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 512). This proposal would eliminate the requirement that any amount appropriated in excess of the $62,500,000 that has been appropriated to the National Guard Challenge program must be made available for the Junior Reserve Officers Training Corps program. Federal expenditures are limited by the amount of funding that Congress allocates for the program as part of the yearly appropriations for the Department of Defense. The problems associated with establishing a limit for the Challenge program have already been illustrated in the first year following the enactment of a limit. The

conference committee for the Department of Defense Appropriations Act for Fiscal Year 1999 recommended that $62,394,000 from funds appropriated for Operations and Maintenance, Defense-Wide should be used to support the Challenge program. However, as a result of the $50,000,000 limit then in existence, it was necessary for the committee to also recommend enactment of a provision of law (section 8131 of H.R. 4103) that would establish a specific exception for Fiscal Year 1999 to the restriction in section 509(b) of title 32. The contingent funding increase should be eliminated to prevent further legislative conflict.

Section 522 would amend section 509(b) of title 32, United States Code, to eliminate the provision of law that limits Federal expenditures under the National Guard ChalleNGe Program to $50,000,000 for any fiscal year. Federal expenditures are limited by the amount of funding that Congress allocates for the program as part of the yearly appropriations for the Department of Defense. The problems associated with the $50,000,000 limit have already been illustrated in the first year following the enactment of the limit. The conference committees for the Department of Defense Appropriations Act for Fiscal Year 1999 recommended that $62,394,000 from funds appropriated for the Operations and Maintenance, Defense-Wide should be used to support the ChalleNGe program. However, as a result of the $50,000,000 limit, it was necessary for the committee to also recommend enactment of a provision of law (section 8131 of H.R. 4103) that would establish a specific exception for the fiscal year 1999 to the restriction in section 509(b) of title 32. Since the President's budget request in FY 2000 provides $62,500,000 for the program, the funding limitation should be eliminated.

Subtitle D—Decorations, Awards, and Commendations

Section 531 is pursuant to the provisions and procedures of section 1130 of title 10, United States Code. The Honorable John McCain of the United States Senate requested the Secretary of the Army, the appropriate official under section 1130, to review the circumstances of this case. This legislation follows the determination made under section 1130 (b)(2) that the award of the decoration warrants approval. It further recommends a waiver of the specified time restrictions prescribed by law. The Secretary of the Army and the Chairman of the Joint Chiefs of Staff both agree and recommend that Ed W. Freeman be awarded the Medal of Honor. This bill would waive the period of limitations under Section 3744 of title 10 to authorize the President to award MR. Freeman the Medal of Honor.

The bill would authorize the President to award the Medal of Honor to Ed W. Freeman, who served as a Captain in the United States Army during Vietnam and who was assigned as a helicopter pilot to Alpha Company, 229th Assault Helicopter Battalion, 1st Cavalry Division (Airmobile). It would waive the specific provisions of section 3744 of title 10 that the award be made within three years of the date of the act upon which the award is based. The acts of then Captain Ed W. Freeman clearly show such a risk of life, gallantry, and conspicuous action beyond the call of duty, as required by section 3741 of title 10, United States Code, to merit this legislation and the award.

Section 532. This legislation is pursuant to the provisions and procedures of section 1130 of title 10, United States Code. The Honorable Thomas W. Ewing of the House of Representatives requested the Secretary of the Army, the appropriate official under section 1130, to review the circumstances of this case. Andrew J. Smith was recommended for the Medal of Honor but the award was not approved at the time based on an erroneous determination that there was a lack of documentation. This legislation follows a recent determination by the Secretary of the Army under section 1130(b)(2) of title 10 that the award of the decoration warrants approval. The Secretary further recommended a waiver of the specified time restrictions prescribed by law. The Secretary of the Army and the Chairman of the Joint Chiefs of Staff both agree and recommend that Andrew J. Smith, now deceased, be awarded the Medal of Honor, posthumously. This bill would waive the period of limitations under section 3744 of title 10 to authorize the President to award Andrew J. Smith the Medal of Honor.

Andrew J. Smith served in the United States Army during the Civil War and was assigned as a corporal to the 55th Massachusetts Voluntary Infantry. The award is based on actions that occurred on November 30, 1864. The proposed bill would waive the specific provisions of section 3744 of title 10 that the Medal of Honor award be made within three years of the date of the act upon which the award is based.

The award of the Medal of Honor is for conspicuous gallantry and intrepidity at the risk of life above and beyond the call of duty. MR. Smith enlisted in the 55th Massachusetts Volunteer Infantry from Clinton, Illinois. He distinguished himself by retrieving his regimental colors after the designated flag bearer was killed in the midst of a bloody charge across a narrow bridge against a dug-in enemy. In the late afternoon of November 30, 1864, the 55th Regiment was pursuing enemy skirmishers and conducting a running fight when it ran into a swampy area backed by a rise in which the Confederates were well situated with a commanding view of the charging 55th. The surrounding woods were thickly grown with underbrush and impeded infantry movement and artillery support. The 55th and 54th Regiments formed columns in the woods to advance on the enemy position in a naked flanking movement. Other units were repelled by the Confederates but the 55th and 54th continued to move up to their flanking positions. They were forced into a narrow defile in which a road crossed the swamp in the face of the enemy position. When they moved into the road and across the swamp on a narrow bridge, the officer at the head of the column was immediately killed along with another officer. The regimental commander's horse was shot and fell on the wounded commander. The Color-Sergeant was blown to pieces by the explosion of a shell and the Regimental Colors were snatched from his hand by then Corporal Smith who carried them in the midst of heavy grape and canister being fired at very short range. One-half the officers and a third of the enlisted men engaged in the fight were killed or wounded. The regimental colors were protected by Corporal Smith and not lost to the enemy. This heroic action by the 54th and 55th Regiments was known as the Battle of Honey Hill. Corporal Smith was promoted to sergeant on January 31, 1865, and detailed as Color-Sergeant for the 55th Massachusetts Volunteers based, in part, on his actions at Honey Hill.

The Medal of Honor was created on July 12, 1862, and was to be awarded to those "who

shall most distinguish themselves by their gallantry in action, and other soldier-like qualities..." The Medal of Honor was the Nation's only honor for gallantry at the time. More than 80 awards were made for acts of gallantry during the Civil War by saving the unit colors. The color bearer was a known target for the enemy. The enemy knew that soldiers fought hard for their unit and that the Regimental colors held high gave them hope and courage to sustain the fight. Everyone knew that if the colors were captured or lost in battle, there would be a serious loss of morale by the affected unit. During the Civil War, the 80 awards for saving the unit colors is a testament to the determination by the soldiers and officers of that time that such action in the face of enemy fire indeed constituted gallantry in action upon which to base the award of the Medal of Honor.

The surgeon of the 55th Massachusetts at the time of the Battle of Honey Hill, Doctor Burton G. Wilder, a former First Lieutenant of the 55th Regiment, recommended Sergeant Smith for the Medal of Honor on December 21, 1916 based on the actions mentioned above and Sergeant Smith's capture of a deserter. The War Department rejected the recommendation a little more than a week later on January 3, 1917, the middle of the Holiday Season, based on standards set forth in the Defense Appropriations Act for fiscal year 1904 that award of the medal must be based on information derived "from official records in the War Department." The Adjutant General stated that there was no official War Department record of MR. Smith's actions. Sergeant Smith's actions, however, were a matter of official record. General Order Number 3, R.&P. 55th Massachusetts Regimental Order Book, January 31, 1865, page 151, officially reports Sergeant Smith's actions as does Special Order Number 17 of the same book, dated February 8, 1865. Other documents allude to Sergeant Smith's bravery. Specifically, his detail as Color-Sergeant notes "bravery in action at Honey Hill." The War Department's peremptory action in 1916 and 1917 was a failure by appropriate officials at the time to conduct the appropriate search needed to find the official records in the War Department that clearly noted Andrew J. Smith's heroic actions. This legislation will correct those errors.

Subtitle E—Joint Management

Section 541. Section 661 established the requirement for officers "nominated for the joint specialty." The original intent of this section was to create officers well-versed in joint operations who could fill critical positions in joint activities, thus enhancing joint effectiveness and efficiency. Section 661 established the requirements for creating these officers, known within the Department of Defense as Joint Specialty Officers (JSOs). It required officers who had either completed a program of joint education and had served a full tour of duty in a joint organization (in that order), or, had served two full tours of duty in joint organizations. The joint education must be taught at one of the three schools that comprise the National Defense University. For the purposes of joint credit, a tour of duty is normally 36 months, but a 24-month tour is acceptable for officers in Critical Occupational Specialties (combat-related fields experiencing shortages of qualified officers) and general and flag rank officers. The law permits Secretary of Defense to make exceptions to these criteria and designate JSOs in other, unusual circumstances. To designate JSOs, the Services select officers who meet these criteria and submit their names to the Secretary of Defense as JSO nominees, and the Secretary approves

them.

Section 668 instructs the Secretary of Defense to publish a list of billets for which officers receive joint duty credit. This list is known as the Joint Duty Assignment List (JDAL), and by law must contain a minimum of 800 positions designated as "*critical*" positions per Section 661d(2)(A). The critical positions are those that require an officer with prior joint duty experience (previous full JDA tour), joint education and selection as a JSO. In addition to the critical billets, JSOs or JSO nominees must fill 50 percent of the Joint Duty Assignment List positions, while any officer may fill the other positions.

Careful management is required to nominate only officers with a high potential for promotion to become JSOs because Section 662 requires JSOs to be promoted at a higher rate than the average officer. The intent of the original legislation in levying this requirement was to ensure officers who had served in joint activities were not penalized for spending time outside their Service career track, and that high quality officers were sent to joint activities. Prior to GNA, the lack of quality officers within the joint community was a significant issue requiring a solution. The quality provision of GNA has been successful in meeting its original intent. However, several significant, unintended consequences developed in the JSO program that this proposal seeks to address.

First, to ensure compliance with the mandated high promotion target, top priority is given to the promotability of potential JSOs during the selection process. The need to maintain a large pool of JSOs to fill joint duty billets is countered by the requirement to only select those few officers with the higher probability of future promotion selection. In practice, this is contrary to one of the original reasons for establishing the joint specialty, the need to place JSOs in critical positions and to fill a portion of other joint duty billets. The result is a relatively small pool of high quality JSOs (approximately 5900 at the end of FY 99) and a population of 2100 JSO eligible officers who have the requisite educational and career experience, but will not be designated JSOs. This group of JSO eligibles is technically qualified to fill critical billets but will not be selected as JSOs therefore cannot fill a critical billet without causing a compliance issue with the law.

Next, a JDAL and critical billet fill rate problem looms on the horizon. Because careful selectivity must be exercised in choosing JSOs, a relatively small number of JSOs are produced each year. This practice has not led to serious problems in filling critical billets yet, but it is projected to be an issue in the near future. The current pool of JSOs includes officers who were designated JSOs in the late 1980s under a more liberal program designed to ease the Services' transition to the GNA requirements. These transitional JSOs have sustained a relatively large pool of JSOs that supported legal compliance up to now. These "transitional JSOs' comprise 46 percent of the JSO pool today, and are now retirement eligible. The high JSO promotion standard inhibits the higher JSO selection rate needed to offset the departure of retiring transitional JSOs. If current trends persist, there will not be enough JSOs to meet the mandated JDAL billet requirement for joint experienced and educated officers.

Third, the needs of the joint community differ from the well-intended JSO program as it exists today. From a May 1998 Joint Staff survey, years of experience managing joint officer matters, and discussions between the Joint Staff and joint activities, it is clear that joint activities place top priority on the immediate availability of a joint experienced and educated officer with the proper Service specialty and in the correct grade. The requirement for an officer with a joint background is not static; it changes with missions, taskings, and priorities. The critical billet program entrenched in the manpower processes of each Service hinders an activity's flexibility in their personnel requisition requirements. When the JSO program cannot deliver JSOs as intended, joint activities must:

a) accept officers who meet the legal requirements but not necessarily their personnel needs;
b) live with a vacancy because no JSO is available;
c) process a waiver for a non-JSO in a critical billet;
d) or process a manpower change to move the critical billet designation so they can hire who they need.

In all cases, but especially the last option, the original intent of the JSO/critical billet program is defeated as the critical billet designations are moved to billets that will least affect the mission of the joint activity—to the least critical billets. This least critical position is where the critical billet tag ultimately stays. The future promotability of a JSO is not a priority when the key issue is the education and experience background of the officer to optimally perform in a specific position. What has become clear is that joint activities occasionally need experts in their Service core specialties, who have performed previously in the joint arena, but they do not desire or need joint specialists. This represents a conceptual difference from the current nature of the JSO—JSO as an experience identifier vice a specialist career track. Joint activities prefer the ability to designate their joint officer requirements on a just-in-time basis and then be assured of a qualified, available fill.

Fourth, the "critical" position requirements of joint organizations are dynamic. Changing organizational structures, areas of responsibility, and mission priorities cause critical position designations to move among billets as joint activities adapt to changing missions. This movement of critical designations among positions causes the designated specialty, grade, and Service of the critical positions to change. Developing a JSO takes a minimum of four years. With the critical billet tags changing, it is impracticable to determine joint activities' future JSO needs in order to designate the proper officers as JSOs so far in advance. The management process of designating critical positions cannot keep pace with the "just-in-time" needs of the joint activities and the personnel and manpower systems.

Finally, the small pool of JSOs makes it difficult to fill critical positions. One reason is the limited selection of JSOs available for joint duty. Production and quality requirements keep the JSO pool small, so even when JSOs with the right credentials exist; they are frequently unavailable for duty in the joint world. There is also the need to protect the officers'

promotability, which prevents many JSOs from serving in a joint assignment after they become JSOs. Joint service is outside the career path officers must follow to maintain currency in their service specialties (i.e., pilot, submariner, infantryman) and prepare for greater responsibility. Extended service outside their Service diminishes their value in their primary specialization area. This has a negative affect on both promotability and the officer's value to both his or her Service and to joint activities.

Although the original concept of the JSO in the legislation envisioned creating a cadre of specialists who would follow a joint-dominated career path and become the nucleus of joint activities, JSOs have not evolved into a program that is needed, or employable, by the joint community. At least, not in their current form. Instead, the fluid joint operational environment that our forces function within today has created different needs. When polled on this subject, joint activities expressed a need for officers with a high degree of expertise in their areas of specialization and their Service core competencies. Past joint experience can occasionally be valuable, but it does not outweigh the joint activities' need to continually draw in people current in the most recent developments in their area of specialization.

Conversely, the current cross flow of officers is also an important source of joint expertise to the Services. The joint activity-Service exchange is useful in creating the linkages between the operational units and the joint activities into which they fold. An overabundance of joint expertise in an officer's career though, depreciates the value of the officer's usefulness to the Service and the joint community. Today, the concept of an officer on a "joint specialty career track" (as required by Section 661 of current law) does not serve the needs of joint activities or the Services, although a JSO as proposed in this legislative package can have practical, valuable application.

The tools GNA created to improve joint operations helped the Department of Defense made great strides in improving joint operations. The following proposal is designed to update and build on the original JSO program to meet current needs and carry the Department into the future. This proposed program places the emphasis on building a large pool of officers with joint expertise and education by changing the nature of a JSO from a specialist career track to a special experience identifier. Part of the transition includes decoupling the promotion standard when identifying those officers with joint experience and education. The designation will be granted automatically to all officers who complete the requisite course of joint education and/or tours of duty in joint duty assignments. The JSO designation will be used to quickly identify officers with joint expertise and draw on their expertise when needed to form or maintain Joint Task Forces or meet pressing Service and joint duty assignments that require previous joint expertise. The objective of the JSO designation is to build a larger pool of joint officer expertise and to provide greater choice of available officers in the Services by grades and specialties. The JSO designation described increases the chance that the best joint qualified officer will be identified and available to meet the requirement. As stated earlier, having the right officer available when needed is the highest priority for joint activities.

The joint activity will drive the requirement for a JSO through the officer requisition process, there is no longer a need for critical billet designation and no requirement for JSOs to fill a specified percentage of positions. Joint activities require the flexibility to determine their needs and request officers with specific joint experiences on a just-in-time basis given the circumstances when the request is made. The established officer personnel management processes and the chain of command can adequately control the officer assignment process to ensure jobs are filled and experience requirements are met. The modified JSO designation program will enhance the ability to quickly locate officers with specific expertise, have a readily available candidate, and fill time-/mission-critical requirements more effectively.

The transition from the old conception of JSO to the new one will begin immediately upon enactment. Within 60 days of enactment:

Services will code all officers meeting the JSO requirements. The Services current personnel data systems are already configured to support this requirement. The Services will share their code designation with joint activities such as the Joint Staff, Office of the Secretary of Defense, combatant commands and others as necessary to ensure a swift and orderly transition.

Joint Duty Assignment "critical" positions will be discontinued in all manpower databases. Services and joint activities will begin to manage JSO assignment actions using established Service officer requisition processes where by all requirements for JSOs will be noted in the requisitions for new personnel. With time, the newly coded JSOs will be more abundant and available to fill any joint requirement in or out of the joint community.

JDAL fill rate requirements will cease.

Critical Occupational Specialty (COS) designations will cease as none of the new processes require the distinction between COS and non-COS officers.

Section 542. The promotion standards for JSOs and other officers who are "serving-in" or "have-served" in joint assignments were established in this section. It was designed to increase the overall quality of officers in grades O4 through O6 serving in the joint domain and ensure those who served in joint activities were not penalized for the spending time outside their Service. Current law states there is an expectation that JSOs are to be promoted at a rate comparable to their peers who served in Service headquarters. Promotion expectation for officers on the Joint Staff is to be comparable to their parent Service's headquarters' average, and officers in the other joint duty assignments are to be promoted at the comparable parent Service board average rate. Attention to these standards has helped raise the level of quality among officers serving in positions on the Joint Duty Assignment List to a level on par with the Services. This proposal seeks to update the promotion standards to reflect the changes from the JSO proposals in section 661 and to trim the actions that do not provide practical value to the joint quality issue.

The promotion requirements tied to the Joint Staff, JSO and the "other joint" categories for O4 through O6 officers are modified to complement with the proposed changes in section 661 (JSOs) and to reflect experiences relating to managing promotion standards since GNA was initiated. The need to ensure high quality officers serve in joint organizations remains as important as ever.

The true measurement of quality officers in the joint community is reflected in the promotion rates of those serving in the joint community at the time the officers are considered. Promotions after serving in a joint duty position are dependent on infinite individual and independent variables unrelated to a joint duty assignment. These variables significantly diminish the value of promotion statistics for indicating a cause and effect relationship with joint duty completion. Therefore, the proposal is to measure quality in the joint community only among officers serving in joint at the time they are considered for promotion. All joint officers must meet the Service board average.

The proposal to change the nature of a JSO from a specialty career track to an experience identifier also changes the nature of why and how quality is maintained for JSOs. As noted earlier, a separate JSO promotion standard places the priority of JSO designation on future promotability and not the experience/educational background or joint assignment requirements that are considered most significant to the joint community. The mindset regarding what a JSO is must change before fully appreciating the reasoning behind the JSO proposal. JSO will identify an officer's special background, not a career specialty with an expected promotion standard. Quality standards do not apply on special experience identifiers because the certification for JSO designation is completion of the required qualifications, not who the officer is. Therefore, it is not proposed to have a separate JSO promotion standard. Instead, the promotion standard that continues for a joint duty assignment acts as the quality screen for JSO designation. An officer designated as a JSO has to pass a Service assignment quality screen in order to be assigned to joint duty. The by-product is JSOs who reflect the joint communities' quality standard.

New reporting requirements for O4 – O6 joint officers will be effective beginning with the first board results submitted for review after the enactment of this legislation. The reporting requirements that ensure appropriate consideration of joint members will be reviewed within 90 days of enactment. These include reviewing board precepts for compliance with the appropriate joint duty philosophies, appointment of a joint-experienced board member, the presentation of joint selection statistics, etc. These requirements are currently in place, but some modification may be necessary. Services should also review their assignment and promotion policies to ensure compliance with the new legal requirements.

Section 543. Section 663 explains the requirements for joint education. The Joint Staff, Services, and National Defense University are conducting a comprehensive study of Joint Professional Military Education (JPME) requirements to support future educational needs. Though not completed, at this point in the study, a picture is starting to develop.

A need for the benefits of joint education extends beyond the scope of joint activities. There are jobs in the Services where joint education can enhance understanding of the joint mission and facilitate working relationships within the Service component organizations; especially those Service organizations with missions directly supporting joint operations.

There is a detrimental effect from tying joint education to a joint duty assignment. The current requirement that links joint education to a joint duty assignment diminishes potential joint educational opportunities. This direct link between the joint schools and the following joint duty assignment places the schools in the position of putting training requirements ahead of educational requirements in the school's priorities. This is because the organizations that receive new graduates expect tangible benefits from educational experience, "why else would they be linked?" Educational opportunities are hindered when the expectation of the gaining activity regarding the joint educated graduate is "how to" abilities. Decoupling education from the job will allow for a true educational opportunity.

Finally, new technologies are rapidly developing that can and will change the way education is conducted. The evolution of the "joint way" into the Services has come a long way since the mid-1980s. It is becoming more difficult to have a job in the Services and not have some level of involvement with the joint community. As a result, joint education can be beneficial to more officers throughout DOD. With the new technologies available and anticipated, there will be opportunities to develop and provide joint education to the masses—military and civilian members.

This proposal will enhance the current legislation to allow joint education to reach more officers and expand its capabilities for educating the officers of the future. It will open possibilities to expand the opportunities growing in the interagency and international arenas. While it is unknown how many of the study group's recommendations will eventually be adopted, some legislative modifications can still be pursued to pave the way for inevitable enhancement opportunities. Untying joint education from the joint duty assignment (which will cease the current but unintended training process) is a key step in some necessary changes along with the allowance of flexible course lengths. The proposed processes will support the advancement of joint education throughout the military without hindering potential future developments. Given the dynamic nature of the military environment and advances in technology, it is impracticable to believe a prediction can be made as to the future requirements and capabilities of joint education. Key to joint education in the future is the maintenance of the ideals and vision established by GNA but the freedom to take advantage of the opportunities that become available and to expand into areas that require attention. One of the restrictions on the future is the mandated outplacement standards for joint education. It is proposed that the joint education outplacement rules that require graduates to go to a joint duty assignment be discontinued. By allowing this provision, the joint educational establishment can explore options to open their doors to new markets of students; those currently serving, or scheduled to serve in, Service, interagency and international positions. As stated earlier, there are positions other than in the joint community that can benefit from joint educated officers but these activities are

limited to waiting until the officer completes a joint tour. It also allows the joint educational institutions to focus on educational pursuits vice having to juggle education and training. When education and a job are connected, the job expects tangible benefits from the education; something education cannot usually deliver but is expected of training.

Also the mandated course length of AFSC is proposed to change from 12 weeks to a length designated by the Chairman of the Joint Chiefs of Staff. This is to allow for the development of new educational programs using the latest technology and plus it adds the flexibility to take advantage of future technologies. The vision is to broaden the availability of joint education to the majority of officers, not just a small cadre of joint specialists. The more officers that can be joint educated, the more that can qualify for JSO, and the more that come to understand the synergies of joint cooperation.

Changes to outplacement requirements will be effective immediately and necessary educational reforms can be implemented as able.

This proposal also would authorize the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to establish a joint professional military education extension component of the Armed Forces Staff College. In cooperation with the professional military schools of the military departments and in support of the combatant commands and domestic joint task forces, the extension component would consist of distributed joint learning centers and distance joint learning clusters. Resources for this program currently are available in the Department of Defense. The military departments currently are operating with advanced distributed learning. Developmental costs for an early pilot joint program will be assumed by the military departments and the joint schools. The earliest operational program will not occur until Fiscal Year 02. That program will be funded out of TDY savings. No additional program costs would be required. Furthermore, the efficiencies of such an operation will provide added value to the military departments and the joint staff by having their officers fully trained on one set of orders before they leave the service schools. In other words, the officers receiving this joint training would complete the training at one location (the service school) and would not need an additional change of station to the joint school. The period of instruction would be two months instead of the current program that entails three months residence at the joint school.

Section 544. Section 664 was designed to establish a tour length that provides a credible length of service on which to base acknowledgment of joint expertise and to enhance assignment stability in the joint domain. The standard tour length for full joint duty credit is two years for general/flag officers and three years for all others, but there are exceptions. Officers with the Critical Occupational Specialties are allowed to depart after two years and still receive full tour credit. Other officers departing before three years must have a tour length waiver and a full tour credit waiver approved. In a number of other situations, officers are allowed to depart early (retirement, separation, suspension, promoted out of a job, position eliminated, humanitarian reassignment, short overseas tour), but they receive only partial, or "cumulative," joint duty credit. The Section requires the Department to maintain an overall 36-month tour length average

with several exemptions allowed. Any joint service of less than 10 months earns the officer no joint duty credit. DOD is required to report tour lengths in the Defense Annual Report to Congress. In 1996, a provision was added to allow officers who served 90-days or more in a JTF HQ (strictly defined) to also receive partial credit.

Other issues also affect tour lengths and joint credit. Some of the provisions are confusing and require a great deal of oversight while adding little value to the original GNA intent regarding stability and joint credit. These include, determining when cumulative credit counts towards full tour credit or not, limitations on when and which officers can leave joint duty assignments early, making provisions for special assignment situations, tracking constructive credit, and so on. This proposal advances the GNA procedures by providing more effective, simplified processes, and maintaining the original intent of GNA concerning joint stability and acculturation, while providing more flexibility for both joint activities and the Services to deal with dynamic requirements and future developments.

The awarding of joint duty credit after completion of a joint duty tour is key to the designation of JSO in section 661 and one day of service in a joint duty assignment qualifying for promotion to O7 in this section. This proposal seeks to provide more authority to the Secretary of Defense for defining the standard for a full credit joint tour. The objective is to have the increased discretion authority for better determining the situations in which officers gain valuable joint duty experience. The standard for the joint tour length should be more closely aligned with the standards required of any other military duty.

This proposal establishes the minimum qualifying tour length for joint service as the DOD designated tour length for the joint duty location. This will maintain a 36-month tour length for the majority of joint activities, but it will recognize the joint service performed by officers serving short joint tours in remote locations, such as in Korea. At these short tour locations, operation tempos are high; people work long hours and live in close quarters. The joint experience officers gain in these situations is commensurate to that gained by officers serving longer tours in less stressful environments.

All Services recognize the DOD tour length as the appropriate acculturation standard for other crucial elements of officer development such as command credit. Adopting the DOD tour length for joint credit would not detract from the importance of joint duty in career development; it will simply establish a more credible standard for determining when credit should be awarded.

This proposal also recognizes that officers who serve in Joint Task Force headquarters gain some of the highest quality joint experience available. It provides a process to grant full joint credit to officers who amass 365 or more days in Joint Task Force headquarters when they have been deployed via 90-day or greater rotations. Though only a relatively small number of officers will fulfill the JTF joint duty requirements, it better recognizes the high quality of the JTF Headquarters experience and maintains a consistent standard for full tour credit in light of the provision awarding full credit for short tours. The requirement for the Secretary of Defense

to approve all JTF operations for which officers will receive under the current law will remain in effect. Also more discretionary authority to determine which JTF operations will be eligible for joint duty credit will be provided to the Secretary of Defense.

As in the original legislation, the proposal recognizes that there are legitimate reasons to curtail a 36-month tour of duty. It retains 24 months as the minimum tour length acceptable if a longer tour must be curtailed and establishes a requirement for the joint activity involved to agree to an officer's early departure. This gives the joint activity a voice in the decision making process and provides the safety net to ensure necessary stability in the joint community.

The stability safety net is also maintained by deleting the use of cumulative credit (except for Joint Task Force service situations). Under this proposal, officers will either complete the joint tour and receive full credit or leave early and receive no credit for time served—an incentive to serve a full joint tour thereby enhancing stability.

The proposal adopts a set of simplified but rigorous standards that are tailored to meet joint activities' needs and the way military forces operate today. The "all or nothing" credit provision and the requirement for joint activity approval for curtailments serve as safeguards for stability. Credit for DOD standard tours in remote areas and time served in JTF headquarters recognizes valuable joint experience officers gain in those locations.

Tour length and credit provisions are effective on the date of enactment. This means that any officer serving a DOD-established tour of less than 24 months within a joint activity on the enactment date and completes that tour will receive credit for a full joint tour of duty upon their departure. Current Service officer management processes will take effect within the new legal guidance. Services will need to review policies and procedures to ensure adequate documentation is maintained on officers' joint credit history to ensure they comply with new standards. To receive credit under the new JTF headquarters guidelines, the Services will be responsible for verifying an officer obtained the requisite amount of joint service. The ability to document this is within all Services' current capabilities. Policies and procedures to substantiate and process requests for joint duty credit for JTF headquarters service will have to be reviewed and established.

Section 545. Section 665 outlines the procedures for managing the careers of JSOs and other joint officers. The proposal modifies this section to reflect the effects of changes in the other sections. It also establishes the guidance to provide the Joint Staff the capabilities to carry out the career-monitoring role.

As a result of these proposals, this section retains the requirement for the Secretary of Defense to monitor the state of the joint officer force to ensure compliance with the law, but allows more flexibility in determining how that will be accomplished.

This section is effective on the date of enactment. Processes and policies necessary for

the Joint Staff to effectively manage the joint officer program will be established prior to and shortly after the enactment of this legislative proposal.

Section 546. Section 667 establishes the requirement to report joint officer management data to Congress in the Defense Annual Report. The proposal modifies this section to reflect new measurements associated with the changes this proposal would cause. Some current measurements provide data of limited value, information of no relevance, or that fails to assist in monitoring, maintaining or managing a process, or, creates an incomplete picture of the joint domain's progress in meeting the objectives. The proposal provides updates the reporting requirements to provide more meaningful data.

The information reported annually to Congress will change to reflect the new management systems. New reports will include data that is more meaningful and helpful for judging the status of the joint domain and compliance with the Chapter 38 provisions.

The number of JSOs reported by service, grade, and branch/specialty. The purpose of this data is to indicate the status of the pool of joint qualified officers for use on organizational staffs and in JTF operations. The data should indicate an adequate selection of officers to ensure timely availability of the right officer at the right time for critical joint officer requirements.

An analysis of how well the Services fill joint positions. The expectation is that joint activities will be manned at no less than Service average rate for any grade/branch/specialty.

Number of Good of the Service waivers used by the number of brigadier general/rear admiral (lower half) selected. The expectation is no good of the Service waivers should be necessary.

Percent of officers who departed from joint duty before earning full tour credit. The expectation is every officer should earn full tour credit as stipulated in Sec 664(d) if assigned to a joint duty assignment.

Percent of JPME class seats filled, reported by Service at each NDU college. The expectation is that the Services will maximize available joint education opportunities by filling all NDU class seats.

The number of officers who received credit for time served in a JTF HQ by Service, grade, and full/partial credit. This would include a list of qualifying, SecDef approved JTFs ,and their mission descriptions.Promotion comparison statistics for all promotion selection boards to ensure compliance with section 662.

Other significant information as determined by the Secretary of Defense.

The changes to the Defense Annual Report will be effective on the date of enactment.

Secretary of Defense and the CJCS will ensure the policies and processes are in place to collect and distribute Service data as necessary to compile the report.

Section 547. Section 668 provides the definitions of "joint matters," "joint duty assignment," and "tour of duty." One definition has been modified to support other sections in this proposal and better meet the requirements of joint activities and to allow continuation of joint credit between consecutive joint duty assignment tours.

These provisions are effective upon enactment.

Section 548. Section 619a makes joint duty service a requirement before officers can be selected for O7. This requirement and the O4 through O6 promotion comparisons were supposed to ensure joint experience is a part of the career path for every potential general and admiral. Current law lists a number of exceptions where the Secretary of Defense may waive the requirement for joint duty under certain circumstances.

The opportunity to serve in joint duty prior to selection for brigadier general or rear admiral (lower half) does not exist in the case of many scientific, technical and other specialties. The current law specifies officers in scientific and technical fields may be waived from the requirement. It needs to be reworded to include other career fields that similarly have no opportunity to serve.

The serving-in category limits the availability to the joint community of some top quality officers due to the 180 day, serving-in requirement. In this particular case, once an officer is assigned to a joint duty position, as long as the tour is completed, the requirement to complete a joint duty tour is satisfied. The current requirement for 180 days service in the joint activity prior to the promotion board inhibits the joint community's opportunities to attract some top quality, general/flag officer potential officers.

Those officers serving in a joint duty at the time of O7 selection will not require 180 days in the joint duty prior to O7 selection provided the officer continues to serve in the joint duty until full tour credit is earned.

The scientific and technical waiver will be renamed to indicate there are specialties (not always limited to scientific and technical fields) where there is no opportunity to serve in a joint duty position as O4-O6s.

All proposals take effect on enactment of the legislation. Budget issues are not applicable.

Subtitle F—Selection Board Appeals

Section 551 adds a new section 1558 at the end of chapter 79 of title 10:

Subsection (a) provides that the remedies prescribed in section 1558 are the exclusive remedies available to a person challenging the action or recommendation of a selection board (other than a promotion selection board convened under sections 573(a), 611(a) or 14101(a) of title 10).

Subsection (b) provides that a person challenging the action or recommendation of a selection board is not entitled to judicial relief unless he or she has been considered by a special board under section 1558, or has been denied such consideration by the Secretary concerned. Denial of consideration by a special board is made subject to judicial review only for procedural error or on the basis that it is arbitrary, capricious or otherwise contrary to law. The recommendation of a special board, or a decision resulting from that recommendation, is made subject to judicial review only for procedural error or on the basis that it is contrary to law. These limitations on reviewability are in accord with current Federal Circuit law regarding review of military personnel decisions. *Murphy v. U.S.*, 993 F.2d 871 (Fed. Cir. 1993). The term "contrary to law" is intended to encompass constitutional as well as statutory violations.

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

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

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

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

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

purpose of reducing the number of persons serving in the armed forces.

Subsection (f)(3) defines "Secretary concerned" as the Secretary of a military department or, with respect to the Coast Guard, the Secretary of Transportation.

Section 552 adds new subsections (h) and (I) at the end of section 628 of title 10, the section authorizing special selection boards for promotion of active duty list commissioned and warrant officers. These new subsections correspond exactly to subsections (g) and (h) of section 14502 of title 10, the ROPMA provision authorizing special selection boards for promotion of reserve active status list commissioned officers.

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

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

Section 553 contains two provisions preserving existing jurisdiction:

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

Subsection (b) provides that nothing in this legislation limits the existing authority of the Secretary of a military department (or, with respect to the Coast Guard, the Secretary of Transportation) to correct a military record under section 1552 of title 10.

Section 554 provides that the amendments made by Sections 1 and 2 are retroactive in effect and apply to any judicial proceeding pending on the date of enactment or initiated thereafter.

Subtitle G—Other Matters

Section 561. Effective September 30, 1996, section 690 of title 10, United States Code, limited the number of retired officers that can be recalled to active duty at any one time to 25 for each Service during peacetime. In addition, the number of retired general or flag officers that may be recalled is limited to 15 for each Service.

This proposal would modify section 690 of title 10, United States Code, by excluding board members of the Retiree Councils of the Air Force, Army, and Navy from these congressionally imposed limits. Each Service typically recalls council members to active duty for five to seven days a year to attend an annual board meeting. This exclusion would only be invoked in the event that 25 retired officers or 15 general/flag officers are already recalled during the annual board meeting of the Councils. The provision would also ensure that the ability of each Service to recall retired officers under the congressionally imposed limits will not be adversely affected during the five to seven days that each Retiree Council meets annually.

Section 562. The current language resulted in application of the tenure requirement of section 1734(a) to over 4000 critical acquisition positions (CAPs) in the Air Force alone. This proposal will leave the qualifications to occupy a CAP alone. The proposed change would focus efforts on the key managers who are critical to the success of our acquisition programs. Ensuring they are in place for their required tenure will provide the stability originally sought by the legislation. In addition, allowing more flexibility for the remaining acquisition workforce will allow more career-broadening assignments and ensure we develop the best qualified individuals for our program manager positions.

The intent of the current statute is to provide continuity in the acquisition research and development and program management offices here military and civilian employees frequently change positions. This amendment retains that intent and promotes program continuity, while eliminating an unnecessary administrative burden, increasing productivity, and allowing the workforce to be responsive to changing organizational needs.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Bonuses and Special and Incentive Pays

Section 601 would modify title 37, United States Code, to allow the Secretary concerned to delegate "gate" waiver authority within the Service, but not to a level below the Service Personnel Chief of that Service. Currently, the law sets minimum operational flying requirements (i.e., "gates") that an aviator must meet in order to qualify for continuous payment of Aviation Continuation Incentive Pay. The law provides the Secretary concerned authority to waive the gate requirements for individual aviators who, for the needs of the Service, miss the gate requirement. The law specifies the Secretary's waiver authority may not be delegated. Through the years, this waiver authority has been used sparingly. For example, in FY 1996 only five waivers were granted across the Services, and in FY 1995 only four were granted. While this is a minor program improvement, it would ease the administration of aviation career

incentive pay to allow the Secretaries concerned statutory authority to delegate the gate waiver authority.

Adoption of this proposal would have no effect on expenditures for aviation career incentive pay.

Section 602 would amend two sections of title 37, sections 302(h) and 302f(d), for the purpose of making special pays for Reserve medical and dental officers consistent. It has no cost implications. Currently, section 302(h) authorizes payment of $450 per month to Reserve medical officers who perform periods of active duty for less than one year but it does not specify the types of active duty to which this pay pertains, an ambiguity which has led to past confusion. However, the more recently enacted section 302b(h), which authorizes the same type of pay benefit (in the monthly amount of $350) for Reserve dental officers, more clearly defines the types of active duty for which the pay is authorized (such as active duty for training (ADT) and active duty for special work (ADSW)). The first change proposed by the initiative would modify section 302(h) to include the more precise definitions of section 302b(h), thereby providing clarity and consistency.

The second proposed change pertains to section 302f, which authorizes Reserve health professionals recalled to active duty in excess of 30 days to receive, on a pro-rata basis, all active component special pays except for the multi-year bonuses. Section 302f(d) prohibits Reserve medical officers from receiving the $450 per month authorized under section 302(h) while also receiving special pays authorized under section 302f, but there is no similar prohibition for Reserve dental officers who receive the $350 per month authorized under 302b(h). The second proposed change would amend section 302f(d) to correct this inconsistency by applying the prohibition to Reserve dental as well as medical officers.

Section 603 provides the Secretary concerned with the authority to compensate a Reserve component member who performs funeral honors functions in a funeral honors duty status at the rate prescribed in section 206 of title 37, United States Code, or as a stipend as provided for in section 435 of title 37. A long-standing principle of military compensation is pay according to the service member's rank or grade. Therefore, it is appropriate to provide the authority to compensate those National Guard and Reserve members, based on their rank or pay grade, who volunteer to provide funeral honors for a deceased veteran. However, there may be situations in which the Services find the stipend to be a better means of compensating some members. The added authority established by this amendment would provide the Services with the flexibility to provide compensation that will enable them to best meet the demand for providing funeral honors. Section 115 was added to title 32, by section 578 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 512).

Section 604 would extend the authority to employ accession and retention bonuses for enlisted personnel, and continuation pay for aviators, ensuring that adequate staffing is provided for hard-to-retain skills, including occupations that are arduous or that feature extremely high

training and replacement costs. Experience shows that retention in those skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing a replacement. The Department and the Congress have long recognized the cost effectiveness of these incentives in supporting effective staffing in these occupations.

Section 605 would extend the authority to employ recruiting and retention incentives to support effective manning in the Reserve Components, ensuring that adequate manning is provided for hard-to-retain skills. These bonuses also stimulate the flow of manning to under-subscribed Reserve units. Experience shows that retention in those skills, or in those units, would be unacceptably low without these incentives. The Department and the Congress have long recognized the cost-effectiveness of these incentives in supporting effective manning in such occupations and units.

Section 606 would extend the authority to employ accession and retention incentives to support staffing for nurse billets that have been chronically undersubscribed. Experience shows that retention in the nursing field would be unacceptably low without these incentives, and the Department and Congress have long recognized the cost effectiveness of these incentives in supporting effective personnel levels within the nursing field.

Section 607. Under current law, commissioned officers in the Coast Guard who are physician assistants are not eligible for special pay, unlike their counterparts in the Army, Navy, Air Force, and Public Health Service. At present, there are six Coast Guard physician assistants who would be eligible for special pay under this provision. Each year, the Coast Guard loses three-four physician assistants, all of whom must be replaced through accession. Special pay will create an incentive for these health care providers to remain in the Coast Guard instead of leaving the Service for more lucrative jobs in the civilian sector or with other uniformed services. If this provision is enacted, and the Coast Guard elects to implement the pay to meet retention needs, the estimated total expenditure for the eligible Coast Guard physician assistants would be approximately 150,000 over the five fiscal years following enactment.

Subtitle B—Travel and Transportation Allowances

Section 611 would amend Section 404a (a) of Title 37, United States Code, making changes to the management and administration of Temporary Lodging Expenses (TLE) which will simplify and streamline the military relocation process. This revision does not increase the service member's TLE entitlement, it merely pays the service member the entitlement in advance. Currently, service members conducting a Permanent Change of Station (PCS) must process several travel vouchers in conjunction with their move. The more complex the move (PCS), the greater number of vouchers that must be processed; making this system unnecessarily burdensome and inefficient. For example, it is common for a service member to conduct a temporary duty assignment (school or training) enroute to a new permanent duty station. Each portion of this move requires a financial settlement of the TLE incurred by the service member.

Additional settlements must also be processed for family members should they travel separately from the service member, which is usually the case when an intermediate temporary duty is involved. Easily, four to six TLE settlements might be necessary in this scenario. Each of these transactions involves time for service members and incurs direct costs associated with settlement processing as well as other indirect costs related to salaries and infrastructure.

The changes made by this section are very simple but will significantly streamline the process for the government. By merely allowing advance payment of TLE, this portion of the military relocation process immediately becomes 100% more efficient because the number of transactions and time spent by service members and finance personnel will at least be cut in half. This revision will also set the stage for further improvements to include an up front lump sum payment for travel expenses; a practice used by private industry that has proven to be very efficient and is fast becoming an industry standard. A recent study conducted by the Employee Relocation Council found that the number of employers using advance lump sum payments has doubled in the last five years and has increased by a factor of six in the past ten years. One of the primary reasons that is cited for this remarkable increase is the efficiency created by eliminating the burden of processing all the paperwork involved with itemized reimbursements.

Another direct benefit is clearly the customer satisfaction an advance payment provides the service member. By providing the TLE payment in advance, service members do not have to make the temporary lodging payments using their own funds and then wait for a potentially partial reimbursement. (It should be noted the a 1999 PCS Survey determined that one-third of all military travelers request an advance on their monthly basic pay to help defray moving costs). There are other indirect benefits of this revision as well. First, the service member may use the advance payment to offset the costs of a househunting trip, which may result in getting settled more quickly. Once settled, the service member can begin the new assignment without the stress of finding a place to live. Also, The househunting trip has a broader benefit in terms of the family transition to the new duty station by enabling school registration for the children and allowing the spouse to investigate the job market. Finally, the sooner a home is found the sooner the household goods can be delivered, reducing temporary storage time and in turn reducing the likelihood of loss or damage.

As a safeguard, to ensure that this revision does not result in any increase of entitlement payments, the Service Secretaries are given the authority to determine the amount of TLE to be paid in advance for constructed expenses based on a predetermined number of days. Constructed expenses are, for this purpose, the expenses computed in advance of the actual move, using established entitlements, regulations and polices, for the purpose of providing advance payment to the service member. This revision does not propose a change to the ten-day limit to TLE or the $110 per day cap.

Advance payments of relocation entitlements in the military are not new. Dislocation Allowance and the Monetary Allowance in Lieu of Transportation with Per Diem are currently authorized for advance payment. (In fact, DoD civilians already have an option to receive their

equivalent of TLE in advance). The authority to include TLE in the advance payment equation allows for a complete up front lump sum payment and provides immediate efficiencies as stated in this section. Additionally, this revision is a key ingredient for future military relocation reengineering and even greater efficiencies.

Section 612 amends Section 406 (b) (1) of Title 37, United States Code, authorizing the Government and the service member to share in the cost avoidance savings realized from a reduction in household goods (HHG) shipping cost (i.e.) a cost avoidance benefit-sharing program). In other words, this revision would provide a monetary incentive for service members to ship significantly less than their full HHG weight allowance. HHG maximum weight allowances are established by grade and family member status, and the current budget is based on estimates that assume service members will ship household goods at historical levels (statistically based averages).

There is currently no incentive for service members to ship anything less than their full HHG weight allowance. This proposal provides that incentive. By shipping less than the historical average for the service member's grade, he/she could reap the potential cost avoidance savings and help offset other PCS costs, cutting down on out-of-pocket expenses. The savings to the government could be used to enhance other PCS entitlement programs.

This program will work. A 1987 pilot program directed by Congress and conducted by the Army showed that 9.5% of eligible service members reduced their HHG shipment enough to receive a cost avoidance payment. The government shared in these savings. Unfortunately, the program was not adopted because the Army claimed it actually lost money when it paid soldiers who did not reduce their HHG weights but whose weights were already below the threshold to receive payment. However, the Army did indeed make money because, by its own admission, it did not attribute savings "to those participants who indicated a reduction of shipment weight but exceeded their baseline weight and thus were not authorized payment". In fact, 17% of the participants reduced their HHG shipment significantly, but not enough to warrant a payment. The government actually kept all of these savings.

Given the Army pilot, there are two issues about implementation that this program must address. First, the program must avoid paying "economic rent" to service members whose initial HHG weight is already below the cost avoidance payment threshold. Second, the program must set the HHG weight payment threshold to guarantee a significant net savings to the government. These issues can be addressed if service members are required to meet two criteria to qualify for this program: (1) Service members must reduce their HHG shipment weight (to include non-temporary storage) by a minimum amount determined by program administrators (e.g. 20%) from their previous HHG shipment. For example, a service member who shipped 10,000 pounds on a previous PCS must ship 8,000 pounds or less on the next PCS to qualify. (2) A service member's HHG weight must be significantly less (e.g. two standard deviations) than the statistical average weight for the service member's pay grade. For example, if a service member is authorized 16,000 pounds but the average weight shipped for that paygrade is 14,000 pounds, the service

member's HHG must weigh significantly less than 14,000 pounds to qualify.

Finally, administration of this program should be simple to implement since the government already has a program in place to collect money from service members when their HHG weight exceeds the authorized limit. The same program administrators can implement the cost avoidance benefit-sharing program.

Section 613 amends Section 405 (a) of Title 37, United States Code, allowing Temporary Lodging Allowance (TLA) to be paid in advance thereby simplifying and streamlining the military relocation process. TLA is the entitlement paid to service members at overseas locations for temporary housing. This revision does not increase the service member's TLA entitlement, it merely pays the service member the entitlement in advance. Currently, service members conducting a Permanent Change of Station (PCS) must process several travel vouchers in conjunction with their move. The more complex the move (PCS), the greater number of vouchers that must be processed; making this system unnecessarily burdensome and inefficient. For example, it is common for a service member to conduct a temporary duty assignment (school or training) enroute to a new permanent duty station. Each portion of this move requires a financial settlement of the TLA incurred by the service member. Additional settlements must also be processed for family members should they travel separately from the service member, which is usually the case when an intermediate temporary duty is involved. Easily, four to six TLA settlements might be necessary in this scenario. Each of these transactions involves time for service members and incurs direct costs associated with settlement processing as well as other indirect costs related to salaries and infrastructure.

The changes made by this section are very simple but will significantly streamline the process for the government. By merely allowing advance payment of TLA, this portion of the military relocation process immediately becomes 100% more efficient because the number of transactions and time spent by service members and finance personnel will at least be cut in half. This revision will also set the stage for further improvements to include an up front lump sum payment for travel expenses; a practice used by private industry that has proven to be very efficient and is fast becoming an industry standard. A recent study conducted by the Employee Relocation Council found that the number of employers using advance lump sum payments has doubled in the last five years and has increased by a factor of six in the past ten years. One of the primary reasons that is cited for this remarkable increase is the efficiency created by eliminating the burden of processing all the paperwork involved with itemized reimbursements.

Another direct benefit is clearly the customer satisfaction an advance payment provides the employee. By providing the TLA payment in advance, service members do not have to make the temporary lodging payments using their own funds and then wait for a potentially partial reimbursement. (It should be noted the a 1999 PCS Survey determined that one-third of all military travelers request an advance on their monthly basic pay to help defray moving costs). There are other indirect benefits of this revision as well. First, the service member may use the advance payment to offset the costs of a househunting trip, which may result in getting settled

more quickly. Once settled, the service member can begin the new assignment without the stress of finding a place to live. The househunting trip also has a broader benefit in terms of the family transition to the new duty station by enabling school registration for the children and allowing the spouse to investigate the job market. Finally, the sooner a home is found the sooner the household goods can be delivered, reducing temporary storage time and in turn reducing the likelihood of loss or damage.

As a safeguard, to ensure that this revision does not result in any increase of entitlement payments, the Service Secretaries are given the authority to determine the amount of TLA to be paid in advance for constructed expenses based on a predetermined number of days. Constructed expenses are, for this purpose, the expenses computed in advance of the actual move, using established entitlements, regulations and polices, for the purpose of providing advance payment to the service member.

Advance payments of relocation entitlements in the military are not new. Dislocation Allowance and the Monetary Allowance in Lieu of Transportation with Per Diem are currently authorized for advance payment. (In fact, DoD civilians already have an option to receive their equivalent of TLE in advance). The authority to include TLE into the advance payment equation allows for a complete up front lump sum payment and provides immediate efficiencies as stated in this section. Additionally, this revision is a key ingredient for future military relocation reengineering and even greater efficiencies.

Section 614 would amend Section 2634 of Title 10, United States Code, by providing for the storage, at government expense, of a privately owned motor vehicle for Service members authorized to ship the vehicle at government expense when the member can demonstrate that storage would be no more expensive than shipping. This provision would only apply to members assigned to dependent restricted areas on a short tour. It would have "no cost" associated with it because it is limited to what the cost of the shipment would have been had the member decided to ship the vehicle. Members extending their overseas tour to the point where the storage costs exceed shipping costs would be required to pay all excess storage costs out of their own pockets.

The second part of this proposal would authorize the government and the Service member to share in the cost avoidance savings realized when a Service member does not exercise the entitlement to ship a car to an overseas assignment or store the vehicle in lieu of shipment. In other words, this proposal would provide a monetary incentive not to ship or store a vehicle. It costs the government approximately $2500 to ship a car overseas. If the Service member chooses not to ship or store a vehicle, the government would save the cost of the vehicle shipment/storage. The cost could be divided between the government and the Service member, each benefitting from the savings.

Currently, there is absolutely no incentive for the service member not to ship their vehicle overseas. In fact, many will ship a "clunker" overseas to ensure they have the entitlement to ship a vehicle back to the states. Herein lies the problem. With the Service member shipping a

"clunker" vehicle overseas, the vehicle many times becomes inoperable. There are approximately 520 vehicles found "abandoned" per month on USAREUR controlled property in Germany alone. If the Service member is still in theater, he/she is forced to recover and fix or properly dispose of the vehicle. If the Service member has already returned to the States, then the community or the unit must dispose of the vehicle, at a cost of between $100-$350 per vehicle. This is an additional expense incurred by the government. There are an unknown number of vehicles abandoned on the German economy that are not traced directly back to the Service member. The German authorities say this is a severe problem. These problems could be alleviated if this proposal is enacted.

Cost avoidance savings would be computed based on the increased number of Service members who would neither ship or store a vehicle. This program will determine the proportional amount to pay a Service member and the amount the government will keep so that there is a net savings to the government. This would be accomplished using historical shipping averages and current shipping costs. This portion of the proposal is truly "no cost" and will generate savings for the government.

Subtitle C—Servicemembers' Group Life Insurance and Survivor Benefit Plan

Section 621 would provide those members of the Individual Ready Reserve (IRR) who are subject to involuntary call-up under the provisions of 10 U.S.C. 12304 Presidential Reserve Call-up (PRC) authority to enroll in the Servicemembers' Group Life Insurance program. These IRR members have been identified as such critical manpower assets in the Services' mobilization planning systems that their involuntary call to active duty under a PRC may occur prior to many Selected Reserve members being involuntarily called to active duty. Eligibility for SGLI is one of the few benefits that can be offered under the current statutes to these service members, who are critical in the event of a national emergency or war. Expanding the pool of eligible members will also provide for a greater participation in the current SGLI program. This proposal is consistent with section 511 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) that established this new category within the IRR and is one benefit that will fulfill the requirement in section 511, which states: "(4) A member in such mobilization category shall be eligible for benefits (other than pay and training) as are normally available to members of the Selected Reserve, as determined by the Secretary of Defense."

Subtitle D—Other Matters

Section 631 amends paragraph (b)(1) of sections 4342, 6954 and 9342, of title 10, United States Code (U.S.C.), to permit the President to consider for selection to one of the service academies the children of Reserve component members who have earned at least 2,880 retirement points countable for purposes of section 12733 of title 10, U.S.C., and Reserve component members who are retired or have qualified for retired pay under chapter 1223 of title 10, U.S.C. (eligible for retired pay upon reaching 60 years of age or receiving retired pay having

reached age 60). Qualifying members of a Reserve component have completed significant service to their country (2,880 retirement points equates to 8 years of active service for purposes of computing retired pay under section 12733 of title 10, U.S.C.) and continue to serve their country. Children of Guard and Reserve members who continue to serve in a Reserve component after having complete sufficient service to qualify for a non-regular retirement and Reserve retirees who have completed at least 20 years of qualifying service to their country, would similarly be eligible for consideration for a presidential appointment to a service academy. There is no additional cost associated with this proposed amendment since the total number individuals selected for a service academy appointment would not increase.

Section 632. This amendment to section 414 of title 37, United States Code, would authorize payment of a Personal Money Allowance to the Sergeant Major of the Army, the Master Chief Petty Officer of the Navy, the Chief Master Sergeant of the Air Force, the Sergeant Major of the Marine Corps, and the Master Chief Petty Officer of the Coast Guard. The Personal Money Allowance, as currently structured, is intended to defray expenses incurred in connection with official duties for certain officers, with the designated amounts varying according to rank and/or position of the officer. The senior enlisted member of each Service is frequently required to incur expenses similar to those of officers entitled to Personal Money Allowance, but, unlike those officers, receives no additional compensation. Further, expenses incurred by these members in the official performance of their duties is not reimbursable through other authorized mechanisms such as Official Representation Funds. This legislative proposal would provide monetary relief to the most senior enlisted members of the Armed Forces for non-reimbursable, but obligatory, expenses.

Section 633 would modify sections 415 and 416 of title 37, United States Code, to increase the initial and additional uniform allowances for officers by $200 and $100, respectively. Since 1981, officers have received the same $200 initial allowance to pay for their uniforms upon entry on active duty. The additional allowance was increased from $50 to $100 in 1989. Out-of-pocket expense for uniforms has increased significantly since 1981 (for male officers, from $643 in 1981 to $1,250 in 1998; and for female officers, from nearly $725 in 1981 to $1470 in 1998). Increasing the initial and additional uniform allowances for officers by an overall $300 will restore the out-of- pocket expenditures to roughly the 1981 level for officers entering active duty.

The net effect of adoption of this proposal would be an increase of $5.3 million in Fiscal Year 2001 ($1.9 million for Army, $1.4 million for Navy, $.5 million for Marine Corps, and $1.5 million for the Air Force).

Section 634 would modify section 418 of title 37, United States Code, to vest in the Secretary of Defense and the Secretary of the Transportation the authority to prescribe the clothing to be furnished annually to enlisted members under them, and to set the amount of a cash allowance paid when prescribed clothing is not so furnished. This authority currently resides with the President. However, under Executive Order (E.O.) 10113, as amended on July

9, 1952, the Secretaries of Defense and Transportation are directed "after appropriate consultation with the Director of the Bureau of the Budget" to perform the functions vested in the President in section 418. This proposed modification to the statute would allow for significant streamlining of the current multi-step process required to establish the Services' annual Clothing Monetary Allowance rates. Subsection (b) relates to National Guard technicians and the Coast Guard does not have a National Guard element so the Secretary of Transportation is not involved in the provision.

Adoption of this technical proposal would have no affect on expenditures for uniform issuances or allowances.

TITLE VII—HEALTH CARE PROVISION

Section 701 will allow Medal of Honor recipients to receive extended access, irrespective of the disability rating or degree of disability, to federal medical treatment facilities and enrollment in TRICARE for the recipients and their immediate families. MEDICARE eligible Medal of Honor recipients and their family members would have space available access to care at federal medical treatment facilities and eligibility to enroll in TRICARE Senior Prime where available.

The projected FY2001 cost for the provision of such health care in the Military Health System for Medal of Honor recipients is $591,644. This estimate is based on a projected cost per patient of $2,804. There are 154 living Medal of Honor recipients - 61 from World War II, 22 from the Korean War, and 71 from Vietnam. Of these, 116 have eligible spouses, and 84 are retired military and therefore already eligible for DoD health care. In addition, there are 71 widows eligible for care under this provision.

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

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

Section 801. The reporting requirement provides additional information to Congress useful in evaluating those multiyear contracts (MYC) subject to Congressional approval, i.e., those with a value exceeding $500 million. However, subparagraph (l)(4) of section 2306b, as currently written, would require the department to submit material to the congressional defense committees on every MYC regardless of the value of the multiyear contract.

The Military Departments are responsible for managing the use of MYCs below the $500 million threshold. Their use of MYCs for smaller procurements can generate significant cost savings over the long term. The award of intermediate and small MYCs does not otherwise require review or approval by the Department or by the Congress. Requiring the award of every one of these MYCs to be preceded by a Secretary of Defense report to Congress poses an

extraordinary administrative burden for the lower echelon organizations involved. The administrative cost and time required to satisfy this requirement for every MYC is disproportionately large when compared to any benefit to be derived by recipients of the reports. DoD believes this would cause an unnecessary burden on the military departments without an offsetting benefit for lower value multiyear awards.

The amendment would make subparagraph (l)(4) consistent with the requirement in subparagraph (l)(3) for Appropriations Act authority to enter into a multiyear contract only for those multiyear contracts valued over $500,000,000.

Section 802 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 Command (DCMC) 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. Surveillance also enables DCMC 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.

Section 803 would amend 10 U.S.C. §2306(e) to eliminate, for contractors with Department of Defense-approved purchasing systems, the requirement to notify the Department of Defense (DoD) prior to awarding specific types of subcontracts. When a contractor has an approved purchasing system, advance subcontract notifications do not add value to the acquisition process. Currently, both the Defense Contract Management Command (DCMC) and the Defense Contract Audit Agency (DCAA) oversee subcontract procedures and policies. In this regard, DCMC 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 DoD man-hours expended in the preparation and review of the notifications. The proposed change is consistent with the growing use of commercial practices and greater reliance on contractor self-oversight. Furthermore, DoD financial interests are still protected through DCMC purchasing system reviews and DCAA audits.

Section 804. The provisions of this section and the cost principles in the Federal

Acquisition Regulation require businesses with covered contracts to institute and maintain extensive cost tracking and segregation systems to identify and separately treat unallowable costs, and other costs that require special treatment.

Despite the fact that fixed-price contracts without cost incentives and firm fixed price contracts for commercial items are not covered by the cost principles statute, contractors who hold such contracts become subject to the cost principles if a modification of $500,000 or more is placed against those contracts. If the modified performance will still be performed on a fixed price basis—with risk of cost performance borne by the contractor, the underlying rationale for not including the cost principles statute on fixed price and commercial item contracts remains. The amendment will eliminate this requirement, facilitating access to a broader array of contractors for the Department of Defense.

Section 805. This section would amend 2399 as follows:

Current statute uses the term "major defense acquisition program" with two different definitions. The proposed change substitutes the term "major system" for the term "major defense acquisition program" each place the term "major defense acquisition program" is defined in terms of 10 U.S.C. 2302(5). This is a technical change. No attempt has been made to change the substantive application of the terms.

The second change allows the Secretary of Defense to authorize the use of contractor employees of the contractor whose system is being tested, to provide analytic and logistic support when contractor impartiality is assured. While the current statute requires that the system be tested as it will be used in operation, often that kind of support is not available when a new system is being tested that does not yet have a support system. Further, the system contractor often has analytic capability that is not present or affordable to replicate for the purposes of operational test and evaluation. The intent of this change is to allow better operational testing, not to subvert the intent of the independent operational testing. This change, while allowing additional contractor support, also requires steps to ensure impartiality and requires documenting the system contractor employee involvement in the TEMP, thereby ensuring full disclosure and oversight review of that involvement.

The third change involves the impartial contracted advisory and assistance services and allows a contractor that supported developmental test analysis to support operational test analysis as well. The intent of this change is to enhance the analytic capability of the operational testers who have ben constrained from using the expertise of test and support contractors who are not involved in systems development or production. This would permit advisory and assistance services from range and/or test facility contractors who have participated in system testing for the program office. It allows the use of advisory and assistance service contractors with knowledge of the system. It does not change the denial of contracting with any person that participated in the development or production of such system.

The fourth change provides clarification on the use of contractors who have participated in system development or production in establishing criteria for test activities. It makes it clear that these contractors cannot be involved in criteria establishment for any of the test activities: data collection, performance assessment, or evaluation activities.

Section 806. The Federal Acquisition Streamlining Act (FASA) of 1994 provided DoD with authority (section 5064) to conduct five Defense Acquisition Pilot Programs and to apply commercial item exemptions to other than commercial items under the pilot programs. The pilot program authority was made applicable to contracts awarded or performed during the period beginning 45 days after enactment of FASA to September 30, 1998.

The pilot programs identified in section 5064(a) have demonstrated remarkable savings as a result of the authority they have been given.

Since their designation as DAPPs, the pilot programs have successfully implemented numerous innovative acquisition techniques including:

Specification and standards streamlining (all)
Commercial-style milestone billing (FSCATT)
Earned value management (JPATS)
Reduced oversight (all)
Commercial practices (CDA and JDAM)
Rolling down-select (JDAM)

These innovative techniques resulted in dramatic improvements including faster cycle times, reduced contract costs, and more efficient program staffing compared to traditional programs:

Program	**Cycle Time**	**Contract Cost**	**Program Staffing**
JDAM	-35%	-50% (AUUP)	-30%
FSCATT	-33%	-13.5%	-27%
JPATS	0%	-49%	-47%
F-117	-69%	-4%	-42%

If the extension is not approved, the DoD runs the risk of losing continued benefits.

The objective of this pilot program is to minimize use of traditional military business practices by the majority of prime contractors and their suppliers while simultaneously encouraging the conversion to commercial processes and practices and to commercial contracts, where those products meet the definition of a commercial item. This authority is limited through the end of production of such programs.

Section 807 would amend section 8 of the Small Business Act and section 18 of the OFPP Act to recognize that the requirement for notices of solicitation to be published by the Secretary of Commerce in hard copy in the *Commerce Business Daily* may be alternatively satisfied through the provision of widespread electronic public notice in a form that allows convenient and universal user access through a single Government-wide point of entry (SPE).

In addition, this proposal would permit solicitations to be issued 10 days after an electronic notice is published through the SPE (as opposed to waiting 15 days as is presently required unless an exception applies). If the solicitation were also published through the SPE, either with the notice or subsequent thereto, the wait period would be waived and the time period for submitting bids or proposals would begin to run from the point at which such documents were issued electronically.

The proposal would leave in place currently prescribed time periods for receiving responses to solicitations -- typically 30 days, with exceptions. The proposal also would not alter the currently recognized exception to CBD publication and its associated wait periods for acquisitions under the simplified acquisition threshold (i.e., $100,000) where the procurement is to be conducted by using widespread electronic public notice of the solicitation through the SPE and permitting public response to the solicitation electronically. See 41 U.S.C. 416(c)(1)(A) and 15 U.S.C. 637(g)(1)(A).

Finally, the proposal would require bi-annual --rather than annual -- progress reporting to Congress on EC usage in acquisition generally. This would help to maximize agency resources dedicated to keeping pace with rapid technological change. Agencies still would be expected, however, to measure progress annually and demonstrate results achieved during the reporting period.

Recognizing the benefit and efficiency of applying electronic commerce to the procurement process, and the ongoing trend towards electronic business and away from inefficient paper-based processes, Congress amended section 30 of the OFPP Act to require that notices and solicitations be provided "in a form that allows convenient and universal user access through a single, Government-wide point of entry." With this concept as a guiding principle, the Government has successfully taken increasing advantage of electronic commerce to improve access to, and visibility of, contracting opportunities.

Today, the *Commerce Business Daily* (CBD) online, also known as "CBDNet" provides notices of all open market contract opportunities above $25,000 that would otherwise be published in the paper version of the CBD. CBDNet demonstrates that the Internet can be used effectively to provide convenient, immediate, universal user access to notices through an SPE, thus allowing vendors to avoid the delays associated with hard-copy mailing. NASA's Acquisition Internet Service (NAIS) has demonstrated that, in addition to notices, the Internet also can be used to provide simultaneous access to solicitations and other related documentation. In an assessment of NAIS, the General Accounting Office (GAO) found that the system was

simple, effective, and user-friendly. The report also noted that NAIS was satisfying the needs of businesses -- both large and small -- who contract with NASA. (See ACQUISITION REFORM: *NASA's Internet Service Improves Access to Contracting Information*, GAO/NSIAD-99-37 (February 1999)). Pilot efforts have been undertaken to provide an SPE for notices, solicitations and related documents across government, with free-of-charge search capabilities. Initial feedback (including from small businesses) has indicated that these efforts are generally providing user friendly, easy, and consistent access.

The Administration is evaluating the most effective SPE strategy in terms of improvements associated with processes relating to vendor access to notices, solicitations, and related documentation and buyer dissemination of this information. The government's vision is for an SPE to provide access through the use of electronic tools that have widespread commercial acceptance and interoperate with (1) sellers' electronic access tools, including new access-enhancing tools as they gain commercial acceptance and (2) other government electronic applications for business process reengineering. An SPE consistent with this vision will help agencies to maximize the number of vendors with access to information concerning government contracting opportunities. It also will help to ensure that the government is pursuing a market-led approach.

The Administration will seek public comment on its proposed SPE designation before it is made effective. The Administration will reassess the designated SPE periodically to ensure it reflects maximum practicable reliance on the private sector in the development of electronic business processes. The Administration also intends to seek public comment on tying response times to electronic publication of information through the SPE.

In its report, the GAO recommended that the Administration propose changes to the statutory procurement notice requirements in the Small Business Act and the Office of Federal Procurement Policy Act if it concluded that the current framework is inhibiting agencies' ability to take full advantage of the efficiency offered by electronic commerce in improving access to the government's business opportunities. In light of the success of CBDNet and NAIS, and other ongoing efforts, the Administration believes it would be beneficial for the current statutory framework to expressly recognize that publication requirements can be satisfied with use of electronic notification through a single government-wide point of entry. This clarification is especially important in light of a recent case by the United States Court of Federal Claims, *FN Manufacturing, Inc. v. United States*, 41 Fed. Cl. 186 (1998) which, despite the efficiencies of electronic commerce, held that for acquisitions above the simplified acquisition threshold, the waiting periods associated with publication begin only upon issuance of a notice in the printed hard-copy version of the CBD. As the government improves its ability to effectively utilize electronic commerce, it is important that it be able to transition, along with its business partners, from paper-based to paper-free processes.

The Administration further believes that the current requirement to wait 15 days after publication of a notice before issuing a solicitation should be modified to appropriately reflect

the efficiencies of electronic commerce. Minimum time periods, which before 1983 were left to regulations, were set forth in statute to ensure timely delivery of notices and solicitations through a paper-based mail delivery system. Congress established the 15-day minimum interval between publication of a notice of procurement action and the issuance of a solicitation -- five days longer than what had been set forth in regulation -- to address "problems regularly caused by delays in the receipt of the Commerce Business Daily." See 129 Cong. Rec. 1389, 1391-92. With electronic commerce, these documents can be made available immediately.

Section 808 would amend Chapter 141 of title 10, United States Code, by adding a new section which would allow the Secretary of Defense to permit a limited group of entities, specifically states, political subdivisions of a state, the Commonwealth of Puerto Rico, the District of Columbia, nonprofit agencies for the blind and severely handicapped and the governments of Indian tribes, to place orders against indefinite-delivery contracts established by the Department of Defense in support of the military services and Department of Defense (DoD) activities for a limited number of items.

The DoD is reforming its logistics system. For example, the Defense Logistics Agency (DLA) is rapidly expanding its acquisition and logistics system with the implementation of many commercial-based strategies such as Electronic Commerce, Prime Vendor and Quick Response. Establishing these and other related programs enables DLA to better provide the military services with the products they need, delivered when and where they need it, and at the lowest possible cost. More importantly, however, these programs provide DLA, and in turn the military services, with the flexibility to maintain and enhance the DoD readiness and sustainability missions and to permit rapid mobilization when required. This becomes increasingly critical in an environment when the military services are required to rapidly respond to international crises at different locations. This is due to the fact that DLA is downsizing its organic logistics support infrastructure and increasing its dependence upon private industry for logistics support.

Declining peacetime requirements and budgetary constraints have challenged DLA's ability to maintain a sufficient base for critical troop support items. DLA is responsible for ensuring the readiness of America's fighting forces by providing logistics support for these items; and DLA faces the challenges of supporting peacekeeping missions, humanitarian aid, disaster relief and operations other than war. Peacetime requirements are insufficient to sustain the current supplier base. This issue becomes critical for those military suppliers with little or no commercial sales. The operational rations and clothing and textile areas are particularly impacted. As a result, DLA faces the potential loss of critical production capability necessary to meet surge requirements.

If the proposal were enacted, DoD would be better able to counter the effect of declining peacetime requirements and the loss of traditional business segments. By increasing use of its suppliers, and purchase of items currently being supplied to the military department, military readiness would be enhanced and costs to the military departments would be reduced. Allowing use of DoD indefinite-delivery contracts would cause no increase in procurement costs.

Moreover, an increase in the potential users of these contracts would permit better utilization, and hence viability, of existing contractors who are essential for the provision of products for DoD contingency operations and other emergency situations.

Should the proposal be enacted, guidance will be issued that will address matters regarding the rights and responsibilities of the parties involved, including: that liability in the event of nonpayment for goods or services under an order will rest with the entity placing the order rather than DoD; that responsibility for handling any claims that might arise out of the placement of orders rests with the entity placing the order rather than DoD; that DoD orders will receive priority in the event of contingencies or other national emergencies; and that if the indefinite-delivery contract is one of a multiple set, the entity intending to place an order will be responsible for ensuring that vendors are given a fair opportunity to be considered for award.

Subtitle B—Other Matters Management

Section 811. The purpose of the amendment is to allow the President, or his designee, to overrule §801 of the Strom Thurmond National Defense Authorization Act for fiscal year (FY) 1999, if it is determined that the payment of a price evaluation adjustment is necessary to remedy demonstrated discrimination. Section 801 established a subparagraph B to §2323(e)(3) of title 10, U.S.C. Section 2323(e)(3)(B) currently requires the Department of Defense to suspend the use of the small disadvantaged price evaluation adjustment if at the beginning of the fiscal year, contracting data for the most recent fiscal year available shows that the Department achieved the five percent SDB goal. Section 801 impedes the ability of the DoD to participate in recently implemented reforms to affirmative action in federal procurement.

The proposed amendment to Title 10, United States Code, §2323(e)(3)(B) allows the President, or his designee, to make a determination that the Department of Defense can pay a price for contracts exceeding fair market cost by not more than 10 percent, if it is determined to be necessary to remedy demonstrated discrimination in selected industry categories. The amendment further provides for a minimum of a sixty day notice in the Federal Register prior to implementation. Moreover the amendment expressly provides for judicial review in the appropriate United States District Court for any person or entity adversely affected by the application of such determination.

Section 812. Section 806 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 requires that the official in the Department of Defense designated as the Single Manager for Conventional Ammunition (SMCA) shall have the authority to, and shall restrict conventional ammunition procurements to domestic sources when necessary to protect the technology and industrial base. Department of Defense Directive 5160.65, dated March 8, 1995, assigns the SMCA mission to the Secretary of the Army. The Secretary of the Army has designated the Commanding General, Army Materiel Command (AMC) as the SMCA executor. The AMC Industrial Operations Command, Rock Island, IL is the principal field operating agency for performing the SMCA mission.

The statute provides the SMCA responsibility and authority to restrict ammunition procurements for which it is not otherwise responsible, including those conventional ammunition procurements managed by other organizations within the Army and the other Military Departments. The statute does this by specifying that the term conventional ammunition "has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995." This directive categorizes all non-nuclear energetic materials under the heading of conventional ammunition. The statutory definition, therefore, encompasses ammunition managed by the SMCA, plus rockets, missiles, naval mines, torpedoes, depth charges, and other Service-unique ammunition. The SMCA buys only about 25% of the DoD's "conventional ammunition" per this expanded definition.

The proposed amendment clarifies that the authority to restrict conventional ammunition procurements to domestic sources when necessary to protect the U.S. technology and industrial base is limited to those ammunition item and component procurements managed by the SMCA .

Section 813 would continue to provide the special authorities granted for pilot programs in the Federal Acquisition Streamlining Act (Public Law 103-355) through the production phase for the Joint Direct Attack Munition (JDAM) program and would authorize the award of contracts and modifications on the same terms and conditions as the 1994 JDAM contract as necessary. While this authority was extended by section 2004 of the Emergency Supplemental Appropriations Act (Public Law 106-31), that authority expires on September 30, 2000.

The JDAM program, which began with a projected unit cost estimated to be $40,000 per round, resulted in an actual unit cost of less than $18,000 per round. This significant savings was, in part, tied to a Production Price Commitment Curve (PPCC) that was negotiated with the prime contractor. That PPCC is predicated on the continuation of commercial item exemptions for the program. Failure to obtain an extension of the pilot program authority will cause the PPCC to be abandoned, resulting in higher per unit prices, and negating many of the benefits the pilot program has demonstrated, particularly with respect to cost savings. In addition, without an extension of pilot program authority, anticipated cost savings for future production lots may be in jeopardy.

Currently, there are at least 22 items provided by subcontractors to the program that would be subject to the requirements exempted for commercial items. Inclusion of the requirements exempted for commercial items will result in some commercial contractors refusing to continue to do business with the prime contractor and will cause an increase in the prices that some of the other suppliers will charge.

The current PPCC covers lots 1-5. Lots 1-4 will be awarded prior to the JDAM program authority expiring. Lot 5 contract award is expected after expiration, as are contracts to be awarded pursuant to the PPCC for Lots 6-11. Without this authority, the Air Force will have to individually negotiate each lot, with the risk of increased prices.

Section 814. Too often, the government is denied access to the best commercial technologies (that have been developed at private expense) to support its warfighters because the government personnel are too focused on ensuring access to proprietary technical data to support purchased systems. While this is a valid concern, of at least equal importance is ensuring that the DoD can economically acquire available leading-edge technologies developed exclusively at private expense that best meets mission objectives.

In many instances, the DoD is foregoing the most appropriate technology because the vendors of such technologies are unwilling to provide the Government their products—developed at their expense—because 10 U.S.C. § 2320, its regulations, and the practices that implement it place the corporation's technical data at risk. Largely driven by the pace of technological innovation, it is increasingly common that systems or components are either returned to the manufacturer for repair or discarded. In such cases, it is irrelevant whether the government has or does not have certain technical data. Consequently, a vendor's refusal to provide unlimited use of its technical data for such systems or components should not dissuade the government from using the system or component.

The revision of subparagraph (a)(2)(C)(iii) is intended to change the approach the government takes to technical data. The DoD will no longer be able to make the provision of "technical data necessary for the normal operation, maintenance, installation, or training" a condition of responsiveness. Instead of starting from the premise that the government must have technical data to completely support purchased systems, the supplier and the buying command may negotiate whether such data developed at private expense is necessary to the Department's needs and if the corporation is willing to sell such data. If agreement cannot be reached regarding reasonable limits on and needs of the government for that data, then the government is not bound to make contract award. Subparagraph (a)(2)(F) is amended accordingly. With the addition of subparagraph (a)(2)(C)(iv), the government will continue to be able to obtain data necessary for critical operation, maintenance, or installation of deployed equipment.

The initial determination is: will the system or component best meet the government's needs. If so, then the goal should be to minimize, if not eliminate, the need for access to technical data. A life cycle assessment should be made to determine: (1) whether the government itself will repair the item; (2) if so, in what ways and what data is necessary; and (3) whether the government can seek other support if the original vendor stops providing support for whatever reason. Using negotiated technical data escrows or contingent manufacturing rights could, in appropriate situations, address the third issue. Careful analysis of likely operational scenarios and consequent risk mitigation strategies developed by the contractor and government negotiators may often resolve the first two issues. The current framework acts as a barrier to commercial firms by placing the intellectual capital of the firm at risk, since once the information is shared with the Government it may then be shared with others who may become future competitors.

Section 815. Subsection (c)(1) of section 2366 of title 10, United States Code, permits

the Secretary of Defense to waive the application of the survivability tests of subsection (a) to a covered system, "if the Secretary, before the system or program enters engineering and manufacturing development, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical." The proposed section would extend the time for executing such waiver for the MH-47E and MH-60K helicopter modification programs, to anytime before full materiel release of the MH-47E and MH-60K helicopters for operational release.

If this provision is not enacted, the Secretary cannot waive survivability testing of the MH-47E and MH-60K helicopters under subsection (c)(1) of section 2366, title 10, because engineering and manufacturing development for these helicopters was completed in August 1991 with entry into Milestone III. These programs passed the dollar threshold that made the live fire tests of section 2366 applicable after programs entered production. In January 1995, production of the last MH-47E helicopter was completed. In April 1994, production of the last MH-60K helicopter was completed. Although the helicopters have reached full operational capability, the Materiel Release Status Reports indicate that there are 20 open issues that must be resolved prior to full materiel release of the helicopters for operational use. It is anticipated that these issues will be resolved by the end of FY 2000.

There are no additional financial resources required to implement this section. On the contrary, enactment of this section could save the Department the cost of the helicopters that would be destroyed by conducting survivability tests on the helicopters.

Section 816 would amend 10 U.S.C. 2306b (I) to eliminate the requirement that the Secretary of Defense certify to Congress that the current five-year defense program fully funds support costs associated with multiyear programs, before a multiyear contract may be entered into for any fiscal year for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority.

In light of recent streamlining efforts by Congress and the Department, it is inconsistent to require such a high level of oversight and administrative burden on the program manager and staff. Additionally, support costs often are programmed in years beyond the Future Year Defense Program, which has replaced the five-year defense program. This change is consistent with ensuring that streamlining efforts result in the necessary program efficiency and effectiveness that the DOD needs.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Department of Defense Organization

Section 901. Section 5041 of title 10, United States Code, established that within Headquarters, Marine Corps there is a Chief of Staff of the Marine Corps, Deputy Chiefs of Staff, and Assistant Chiefs of Staff. Section 5045, Title 10, United States Code, sets out the

maximum number of Deputy Chiefs of Staff of the Marine Corps, within the same Headquarters. The Marine Corps proposes eliminating the position of Chief of Staff, replacing the language "Deputy Chiefs of Staff" with "Deputy Commandants," and eliminating the title "Assistant Chief of Staff."

The Marine Corps proposes eliminating the position of Chief of Staff from Headquarters, Marine Corps, because the position has not been filled on a full time basis since 1988 and future use of the position is not foreseeable. The Marine Corps also proposes eliminating the position of Assistant Chief of Staff for consistency and to avoid confusion with other positions, and replacing the title Deputy Chief of Staff with the more appropriate title, Deputy Commandant. If these amendments are adopted, amendments to section 401 of Title 24 should also be made, replacing the language "Deputy Chief of Staff for Manpower" with Deputy Commandant responsible for personnel matters.

Section 902 would revise the definition of "Inspector General" to authorize Inspectors General of defense agencies and joint service organizations, and civilian employees assigned as Inspectors General elsewhere within the Department of Defense, to receive and process protected communications, and reprisal allegations from members of the armed forces under section 1034 of title 10, United States Code.

Currently, the law defines "Inspector General" as: the Inspector General, Department of Defense; Inspector General, Department of Transportation; the four Inspectors General of the military departments; and "an officer of the armed forces assigned or detailed under regulations of the Secretary concerned to serve as an Inspector General at any command level in one of the armed forces."

By excluding Inspectors General of defense agencies and joint service organizations and civilian employees assigned as Inspectors General at various levels within the military departments from the current definition of "Inspector General", the definition hampers the execution of Department of Defense programs to investigate and resolve alleged violations of the whistleblower protections provided to members of the armed forces. Accordingly, the proposal would broaden the definition to include all Inspectors General within the Department of Defense in order to ensure the expeditious investigation and resolution of all such complaints.

Section 1034(c)(3)(A) of title 10, United States Code, is also amended to clarify that internal processes necessary to ensure the expeditious processing and investigation of such complaints shall be delineated in regulations prescribed by the Secretary of Defense.

Enactment of this provision would not require additional funding for the Department of Defense or increase its costs.

Section 903 would fill a void currently in the law to protect two categories of sensitive unclassified information from loss or unauthorized disclosure to the public.

Many allied and other friendly nations have a category of unclassified information that is subject to special controls and protected by law from release outside the government. Some international organizations have similar policies to control and protect sensitive information. Often this type of information is provided to a U.S. department or agency only on the condition that it will be handled in confidence and access will be limited as it is by the providing nation or organization. Unless the information is classified under Executive Order 12958, there is, however, no legislative authority for withholding it from public release.

Many governments also have a category of classified information not used by the United States, "Restricted." Executive Order 12958, "National Security Information", provides for only three levels of classification: "Top Secret, Secret and Confidential." The Restricted level, lower than Confidential, is used by the foreign governments in a manner similar to the controls for unclassified information described in the preceding paragraph. The information classified as "Restricted" is provided a level of protection in its nation of origin below that required for Confidential by Executive Order 12958 in the United States. If there were an alternative means to protect it while in the custody of the United States Government, it would not, therefore, require classification.

The absence of protection from disclosure under U.S. law results in a difficult dilemma: the foreign nation or organization cannot be assured that the information will be protected from loss or unauthorized release to the public unless it can be classified in the interests of national security under Executive Order 12958. The foreign government information may be and usually is classified at least at the Confidential level as foreign government information "provided in confidence". As a consequence, the information is handled as required by the Executive Order and implementing regulations of the information security program. This means that the security requirements for classified information apply: personnel security clearances for individuals who have access to the information, safes for storing it, and additional precautions in transmitting it. Moreover, if the information is returned to the providing government or organization, or incorporated into joint documents, confusion usually results from the increased security requirements imposed by the United States on information which originated in the other government or organization. This may require the providing government or organization to classify information that was not previously classified by that government or organization.

This deficiency in the present state of the law imposes unnecessary costs and has serious consequences for cooperative defense programs between the U.S. and other countries. For example, the United States and the Russian Federation, under a 1993 Memorandum of Understanding, have exchanged significant amounts of sensitive unclassified information in the course of developing confidence and understanding between the military establishments of our respective countries. The Russian government has requested that the exchange of such information be safeguarded in confidence and public release of such information would only be carried out with mutual consent. The Russian Ministry of Atomic Energy has specifically designated scientific, technical and operational information related to national security issues as sensitive, regardless of classification, and has requested that the United States control access to

this information. Further, the Russian government has indicated that unauthorized access to sensitive unclassified information generated under the various cooperative ventures, presently in effect, would have a significant chilling effect upon its willingness to provide additional information in the future. Such information is protected by law in Russia. In the absence of similar U.S. legislation, the Russian information must be classified Confidential.

Another example of the difficulties presented by the absence of legislative protection for the information covered by this section is the Defense Cooperation in Arms Program with the NATO and other close allies. Some of these allies use the Restricted classification category to protect sensitive unclassified information; others have separate legislation and some use both legislation and the Restricted category. Because they have these different methods of protecting this sensitive information, the absence of any legislative protection in the United States is a cause for concern among our allies. A great deal of information covered by this section is involved in commercial programs whose costs are increased as the result of the additional security requirements.

Protection for this information would promote more efficient operations in the areas of Security Assistance and International Cooperative Programs by simplifying the process by which the United States protects information considered sensitive by partner nations with proprietary interests in such information. It would assist in addressing situations in which the United States is asked-sometimes by foreign nationals-to release information provided by a foreign government which that government would not release under its own laws. Enactment of this proposal would facilitate the candid exchange of sensitive information with foreign governments in furtherance of national security objectives without resorting to unnecessary and expensive security classification.

There is a dire need for legislation that will permit the protection of "Restricted" information and controlled unclassified foreign government and international organization information, that is protected by law by the originating government, without relying on the classification and other security requirements of the U.S. information security program. This offered amendment would resolve this deficiency. It would require the heads of agencies to promulgate regulations or orders designed to limit access to and the dissemination of properly identified controlled unclassified information provided by or generated together with a foreign government or international organization. In most cases the foreign entity involved would specifically identify the information to be treated as sensitive either when it is obtained by the United Sates or in writing at some other time. The proposal, however, allows the heads of agencies to determine in the absence of such identification that the information should be protected because the disclosure would have an adverse effect on the availability of the same or similar information in the future. This authority would be delegated by regulation setting forth appropriate guidance for the officials who would make these determinations.

This proposal would provide a specific statutory exemption within the meaning of section 552 of title 5, the United States Code, the Freedom of Information Act (FOIA). The FOIA

provides a legislative preference for public access to agency information and records; section 552(b) enumerates a series of narrowly interpreted exemptions from this preference for disclosure. Section 552(b) (3) provides an exemption for those matters specifically exempted from disclosure by statute (other than section 552(b) of title 5), provided that such stature: (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. This proposal would be such a statute.

This proposal can be implemented with existing personnel and would require no additional funding.

Subtitle B—Other Matters

Section 911 will amend the certain sections of title 10, United States Code, to allow consolidation of five Department of the Navy gift and trust funds into two funds, thereby increasing the efficiency of fund management while decreasing administrative costs. The affected provisions are:

"Department of the Navy Gift Fund"--	10 U.S.C. 2601
"The Fisher House Trust Fund, Department of the Navy"--	10 U.S.C. 2221
"United States Naval Academy General Gift Fund"--	10 U.S.C. 6973
"United States Naval Academy Museum Fund"--	10 U.S.C. 6974
"Naval Historical Center Fund"--	10 U.S.C. 7222

Because these funds were established separately, under different legal provisions, they are currently managed and administered as distinct and independent entities. The Navy spends an excessive amount on administration and accounting under this current multiple fund scheme. For example, the FY 1995 accounting bill alone for the Navy General Fund, 10 U.S.C. 2601, was $922,000.00, while revenues for the fund were only $497,000.00. Further, management accounting and reporting costs for the various trust funds are increased where the funds are established as completely separate and independent entities. Maintaining these funds as separate entities requires that administration and management of the particular funds be conducted separately, on behalf of each fund. This creates duplication of work which would not exist but for the existence of so many different funds. Finally, the proliferation of different funds multiplies and complicates the accounting and reporting workload of the Defense Finance and Accounting Services (DFAS), making it more difficult for DFAS to adjust its billing rates and cut accounting costs connected to the funds.

The proposed changes, which consolidate the United States Naval Academy's General Gift and Museum Funds into one fund and which make the Navy's Fisher Home Trust Fund and the Naval Historical Center Fund part of the Navy General Gift Fund, will lead to more efficient management of the funds and will result in savings on administrative, reporting, and accounting costs. Once consolidated, reports, such as monthly and annual reports prepared by DFAS and

annual reports submitted in accordance with the Chief Financial Officer's (CFO) Act, will only need to be prepared for two as opposed to five different funds. Further, consolidating the funds will create greater opportunities for the Navy to take steps to reduce the accounting fees it pays to DFAS. Currently, DFAS charges the Navy for accounting services based on the number of allotments maintained in the respective Navy funds. Typically, each allotment within a particular gift or trust fund represents a discrete pool of money which is designated for a particular project or purpose based on the terms of the particular gift or gifts through which the money was received. Consolidation of the funds will lead to a greater number of allotments within a single fund, increasing the opportunities for combining allotments with common objectives. By combining allotments which are designated for similar purposes, the Navy will be able to reduce the total number of allotments that it maintains in its gift funds. The fewer allotments the Navy maintains, the lower the DFAS bill for accounting costs will be under the current scheme.

Additionally, by simplifying financial reporting to DFAS, consolidation of the funds will facilitate DFAS' efforts to alter its billing structure and further reduce the Navy's accounting bills and costs.

The bill would repeal 10 U.S.C. 6974 and amend 10 U.S.C. 6973 to consolidate the two funds established by 6973 and 6974 into one gift fund. Section 6974's coverage regarding acceptance of gifts on behalf of the USNA museum is preserved in subsection 6973(a). The amendment to 10 U.S.C.6973 will explicitly encompass gifts to the USNA Museum and require that use of those gifts remains subject to the wishes of the donors as manifested by the terms of the gifts. Thus, with this consolidation, the Naval Academy Museum will continue to benefit from an established gift fund and the goals of 10 U.S.C. 6974 will continue to be met. Currently, the Navy pays an unacceptably large amount of money to administer its trust funds. Consolidating these trust funds and centralizing the management and administration of these funds will eliminate many duplicative administrative costs, streamline management of the funds, and facilitate adjustment by DFAS of its billing schedule for accounting services provided in connection with fund management. The United States Naval Academy and Naval Academy Museum concur with this proposal.

The bill would repeal the provision of law, 10 U.S.C. 7222, which establishes a separate trust fund for the Naval Historical Center. The Naval Historical Center is an "institution or organization under the jurisdiction of the Department of the Navy." Accordingly, pursuant to 10 U.S.C. 2601, "Department of the Navy General Gift Fund", the Secretary of the Navy is authorized to accept, administer, and spend gifts made to this institution notwithstanding the existence or absence of the provisions of law in section 7222. Further, section 2601 requires that any gifts so accepted be used "subject to the terms of the gift, devise or bequest." As such, there is no need for a separate gift fund or for a separate provision of law authorizing a separate gift fund for the Naval Historical Center. The needs of the Naval Historical Center in this area can be met by the general gift fund, and at an administrative cost lower than that of maintaining a separate fund. The Naval Historical Center concurs with this proposal.

The proposal would amend 10 U.S.C. 2221 to eliminate the requirement that the Department of the Navy maintain a separate trust fund on behalf of its Fisher Houses, substituting instead a requirement that the Navy maintain a separate allotment or allotments, dedicated to the Navy Fisher Houses, within the currently established Department of the Navy General Gift Fund. The Navy Fisher Houses are "institutions or organizations under the jurisdiction of the Department of the Navy." Accordingly, pursuant to the terms of 10 U.S.C. 2601, the Secretary of the Navy is authorized to accept, administer, and spend gifts made to this notwithstanding the existence or absence of the provisions of law in section 2221. Further, section 2601 requires that any gifts so accepted be used "subject to the terms of the gift, devise or bequest." In fact, before section 2221 was enacted, the Navy already maintained three trial balances within the Navy General Gift Fund devoted exclusively to the Navy Fisher Houses. As such, the needs of the Navy Fisher Houses can be fully met without a dedicated separate trust fund. The Navy is sensitive to the wishes of Congress that this very important program receive adequate attention and funding. The proposed language changes will guarantee that the Fisher Houses receive the appropriate attention, while allowing the control and administration of Fisher House Funds to remain with the General Gift Fund. This would allow Fisher House Funds to be managed more efficiently and cost effectively than an independent fund which requires separate management and reporting.

The proposal would authorize the appropriate transfers to the new funds.

Section 912 will enable the Secretary of the Navy to accommodate the request of a Naval Academy Gift Fund donor to have a previously donated gift transferred from the Naval Academy Gift fund to some other entity.

Section 913. This is a technical change to align U.S. Military Postal Service size limits with changing United States Postal Service (USPS) domestic mail limits. United States Postal Service (USPS) domestic mail size and weight limits by class are specified in the Code of Federal Regulations (CFR) rather than in United States Code; however, military mail is subject to compliance with size restrictions specified in 39 USC 3401. The maximum size limit of USPS domestic fourth class parcel post (now known as "Standard Mail (B)"), specified in 39 CFR 111.1, has increased over the years, from 100 inches in length and girth combined, to 108 inches and finally to 130 inches in January 10, 1999. Complying with the combined length and girth restrictions imposed by 39 USC 3401 (100 inches) has caused DoD problems in returning merchandise that has been transported overseas via USPS size limits, specified in 39 CFR 111.1, and is being returned under the more restrictive military limits specified by 39 USC 3401. This technical change will bring military mail size limits into conformity with existing, as well as with future, USPS standards for domestic mail and, if enacted, will neither increase nor decrease the budgetary requirements of the Department of Defense.

Section 914. There is a vital need for the Department of Defense Laboratories to obtain temporary access to the specialized scientific and engineering knowledge and expertise that only exists in the research and development activities being conducted by private industry, under

terms that would enable the Department to return these assigned employees to their corporate positions.

This provision, if enacted, would provide a five-year pilot project established within the Department of Defense. This project would give the Department of Defense Laboratories access to up one hundred individuals, with specialized and unique technical knowledge that is not available in Government or to the Laboratories from the private sector through other methods, such as the current Intergovernmental Personnel Act (chapter33, Subchapter VI of title 5, United States Code), direct contracting, cooperative research and development agreements, or other arrangements. Persons sought under this provision would be technical experts, not managers or supervisors. During the period of the assignment, a person would be deemed to be an employee of the Department for purposes of the conflict of interest laws, including but not limited to, sections 203, 205, 207, 208 and 209 of title 18, although the period of time a person is assigned may be counted for the purpose of determining longevity or seniority with the private industry.

The authority for this program would expire in five years, although the Secretary could choose to end the program earlier. As part of its establishment of this program, the Department would include a strong oversight process. The Department also would develop and implement evaluation tools to assess whether the program was meeting the needs it was intended to address and whether there was an on-going need for this authority in its current, or an expanded, form. A report would be submitted to the President and the Congress during the fourth year of the program.

Section 915 would add a provision to Title 10, United States Code, and would establish a three-year pilot program permitting payment of retraining and relocation expenses for DoD employees scheduled to be involuntarily separated from DoD due to reductions-in-force or transfers of functions. In the National Defense Authorization Act for Fiscal Year 1995, a pilot program of this nature was established for employees affected by BRAC. (See Public Law 103-337, Section 348.)

Enactment of this provision would expand coverage to address work force changes mandated by cost savings-mandated transfers or privatization of functions, such as those made under the auspices of OMB Circular A-76 actions. The purpose of these incentives is to encourage non-Federal employers to hire and retain individuals whose employment with DoD is terminated. Expanded use of incentives would provide DoD with an enhanced management tool to reduce the adverse impact on employees. Availability of this option could also reduce costs associated with VSIP payments and the placement of employees through the DoD Priority Placement Program.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001. Subsection (a) of this section amends section 2636 of title 10, United States Code, to authorize administrative offset of transportation overpayments by the carriers. The amounts so offset would be credited to the appropriation or account that funded the transportation services. The proposal would also provide a streamlined offset procedure for amounts overpaid for transportation services when such amounts are below the simplified acquisition threshold, currently $100,000.

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

Section 1002. The current submission date of December 15th does not allow sufficient time for OMB and CBO to meet the requirements of the joint report. For the past two years, the date has not been met. The published letter, if sent out on 15 December would be incomplete as budget decisions of the President and the Secretary of Defense are have not generally finalized by this date or in sufficient time for OMB and CBO to meet this reporting requirement. A report of this magnitude should reflect all of the scoring agreements/disagreements between OMB and CBO, however, this requirement is not being met. Should the reporting date remain in effect, it is likely that multiple scoring letters will be forwarded to Congress for each legislative session in order to properly document OMB and CBO outlays scoring approaches. If the submission date is revised to match the submission of the President's budget, only one joint letter should be necessary to document the outlay scoring that will be used for Department of Defense appropriations. The use of "differences" in lieu of "averages" will provide a more meaningful report to budget committee staff members.

Section 1003 repeals the provisions of section 1405 of the Department of Defense Authorization Act for Fiscal Year 1986 which requires the submission of a two-year budget at the beginning of each Congress. In the 12 years since this provision was enacted, Presidents have submitted 6 budgets in response to this requirement and requested the appropriation of funds for Fiscal Years 1988 and 1989; 1990 and 1991; 1992 and 1993; 1994 and 1995; 1996 and 1997; and 1998 and 1999. Funds have never been appropriated on a two-year basis for the Department of Defense by the Congress. In view of the past history in response to the requirement of section 1405, it appears that there is no reason to continue to require the submission of such two-year budgets in the law and that the provisions of section 1405 should be repealed.

Subtitle B—Humanitarian and Civic Assistance

Section 1011. In many regional CINCs' areas of responsibility, valuable opportunities for the execution of medical, dental and veterinary humanitarian and civic assistance (HCA) activities exist in underserved urban or outlying areas, as well as in the rural countryside. There has been uncertainty as to whether medical, dental and veterinary HCA activities could be conducted in medically underserved urban areas, in the same way that, for example, "rudimentary construction and repair of public facilities" (authorized by 10 USC 401 (e)(4)) could be. This

minor revision would clarify that medical, dental and veterinary HCA can be conducted in underserved areas of a foreign country whether they be of rural or other character.

Section 1012 would permit the Department to use funds appropriated for humanitarian demining (HD) operations (Overseas Humanitarian, Disaster, and Civic Aid) to pay personnel costs associated with Special Operations Force (SOF) Reserve Component (RC) participation in humanitarian demining training activities. The amendment would also provide for the transfer of equipment, services and supplies to support expansion of the Geographic Commanders-In-Chief (CINCs) demining programs into newly authorized countries. The proposed amendment would help ease the OPTEMPO pressure on Active Component (AC) Civil Affairs/Psychological Operations (CA/PSYOP) forces imposed by HD missions. For example, in FY97, U.S. Army Civil Affairs Psychological Operations Command (USACAPOC) units participated in a large number of Humanitarian Demining Operations worldwide. The vast majority of support was performed by AC personnel (14.77 man-years) rather than RC personnel (1.24 man-years). Currently, there is only one AC Civil Affairs Battalion, which is at reduced strength, and one AC Psychological Operations Group (3 battalions). Politico-military developments around the world could easily require commitment of the entire AC civil affairs and PSYOP capability on short notice, leaving planned HD operations without support. In FY 96, 12 countries were receiving humanitarian demining assistance; in FY98, 21 countries received assistance with additional countries seeking approval for demining programs from the United States. The number of countries projected for approval in FY99 is 28.

Subtitle C—Miscellaneous Reporting Requirements and Repeals

Section 1015. Section 112 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (as amended by Section 141(b) of the National Defense Authorization Act for Fiscal Year 1996) requires the Secretary of Defense to submit an annual report to the Senate Armed Services Committee and the House Armed Services Committee on the B-2 bomber program. Specifically, the Act requires the Secretary to determine the probability of achieving production cost savings, to assess the quality assurance practices of the contractor, and to report on the B-2's testing and its ability to perform its intended mission.

The purpose of this legislation is to repeal the reporting requirement. The report is no longer warranted since the original acquisition program is over 95% complete and 98% per cent of the funds have been appropriated through 1999. All 21 B-2 aircraft have been delivered to the Air Force, over half the fleet has been modified to Block 30 configuration, and modification of the remaining aircraft is funded and, with the exception of Air Vehicle 3, scheduled for completion by the end of September 2000. Air Vehicle 3 is being used for testing upgrades and is scheduled to meet Block 30 configuration by September 2002. Also, initial operational test and evaluation is complete, the B-2 is operational, and was successfully used in combat as part of Operation Allied Force.

Section 1016. During the preparation of the budget year 2000 National Guard and

Reserve Component Equipment Report, it became clear that changes were needed to both the report and process in order to make the report more relevant to Congress. As a result, a joint working group was commissioned from the Office of the Assistant Secretary of Defense for Reserve Affairs to analyze the report and process. Key changes were coordinated with all Services and are included in the legislative proposal above.

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

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

Subtitle D—Other Matters

Section 1021. This amendment to chapter 53 of title 10, United States Code, would add a new section, 1044d, to require the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States, to include Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands to recognize a will prepared for a person eligible to receive legal assistance if the will is executed under procedures in the section. The new section would be similar to section 1044c, which requires states to recognize advance medical directives prepared for persons eligible for legal assistance under section 1044. The proposed section would preempt substantive standards of form, formality, or recording for wills or codicils under state law by establishing a federal standard for such instruments for members of the armed forces, their families, and other persons eligible for legal assistance under 10 U.S.C. § 1044. Wills and codicils that satisfy that standard would be deemed valid for probate in state courts and given the same legal effect as a will prepared and executed in accordance with state law. The amendment would simplify will preparation for eligible clients and afford them greater certainty and security in accomplishing their testamentary intent. Absent convincing evidence to the contrary, the will would be presumed valid and admissible to probate in state court without requiring any appearance or deposition of execution witnesses. This proposal would significantly reduce the likelihood that family members would experience difficulties in probating a military member’s will.

Section 1022 would amend titles 10 and 14, United States Code, by adding new sections

to authorize the Service Secretaries and the Secretary of Transportation, to charge and retain fees paid by the public for historical material or research assistance obtained from U. S. Army Military History Institute, U.S. Navy and Marine Corps Historical Centers, U.S. Air Force Historical Research Agency, and the Office of the Coast Guard Historian. The fees would be used to defray the costs associated with responding to requests from the public for historical material or research assistance. Such costs include, the cost of making or authenticating copies or reproductions of materials held in such military archives, and costs associated with providing research assistance to members of the public.

The cost of document searches, and duplication and review costs associated with the production of reasonably described records pursuant to Freedom of Information Act requests, are excluded under the provision of subsection (c) of the proposal. Fees assessed for such charges, will continue to be collected and administered under the provisions of section 552 of title 5, United States Code.

Although, each Service maintains an archive of historical records and material for official purposes, such material is also available for public use. Over the past decade, the volume of public users accessing the archives at the United States Army Military History Institute, for example, has increased from an average of 13,000 requests per year to 31,000 requests per year. As a result, simply processing and responding to such large volumes of requests for the production of historical material, or research assistance requires substantial staff assistance.

In many cases, such resources are provided immediately, even though the provision of such services constitutes a burden upon the normal functions of the institute. More often, however, such requests for assistance must be placed in a queue, until a staff member is able to meet the demand. For example, in Fiscal Year 2000, approximately 17 staff members of the Army Military History Institute responded to in excess of 27,000 public contacts. Since Fiscal Year 1997, the backlog of unanswered non-Freedom of Information Act inquires at the Army Military History Institute, has grown from an average 350, to approximately 1200, and some public patrons must wait up to six months for a response.

To reduce this increasing workload to manageable levels, the Army Military History Institute has been forced to limit the number of non-Freedom of Information Act copies that it provides to researchers during a calendar year to 100 in the manuscript collection, and 300 within the library holdings. The other military archives have experienced similar volumes of such requests for assistance and backlogs in responding to them.

This legislation would authorize military archives to charge user fees for providing the public such services, and the use of such fees to improve the service rendered to the public. The proposed mechanism for doing so is based on the authority granted to the National Archives under the provisions of section 2116 of title 44, United States Code. Section 2116(c), grants the National Archives the authority to charge the public for making or authenticating copies of its holdings. Section 2116 also directs that the revenue obtained from such fees "shall be paid into,

administered, and expended as part of the National Archives Trust Fund." Currently, there is no authority for such a charge, or for military archives to retain the revenue obtained from such fees to improve the service to the public. This legislation would provide that authority.

It is vital that military archives be authorized to receive, administer and expend the revenue produced from the collection of such fees, to improve services rendered to the public. If these funds were paid into the miscellaneous receipts of the Treasury, the services rendered to the public would continue to be inefficient due to the lack of available resources, or require the expenditure of additional appropriated funds to bring the level of service that is provided to the public up to an acceptable level.

Service archives would also benefit greatly by regaining the opportunity to focus the activities of appropriated fund archival/library technicians, who currently devote a significant amount of their time to responding to such requests, upon performing specialized work in support of the primary mission of such facilities.

It is also anticipated that approximately of $100,00 in annual revenue would be generated if this new authority is enacted. This will allow these military archives to hire four employees at approximately $9.25 per hour and to purchase and maintain reproduction equipment to be used for such purposes.

Enactment of this proposal will not adversely impact on revenue owed to the Treasury. Accordingly, the pay-as-you-go provisions of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66, 107 Stat. 684-6685) pose no obstacle.

Section 1023 would remove an inconsistency between paragraph (1) of § 2350, title 10 United States Code and subsection (d) of § 2350c, title 10 United States Code. Section 2350 (1) is contained in subchapter I of chapter 138 of title 10 United States Code, and § 2350c(d) is found in subchapter II of the chapter 138 of title 10 United States Code.

In 1994, paragraph (1) of § 2350 was amended to include the word "airlift" in the definition of "logistic support, supplies and services" that can be the subject of an acquisition and cross-servicing agreement with allies and other countries. See NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995, Pub. L. No. 103-337, § 1317(h) (1), 108 Stat. 2663, 2901 (1994). As discussed below, prior to this amendment, the authority of the Secretary of Defense to enter into such agreements was limited to the terms provided in § 2350c(d). By broadening the scope of the definition of "logistic support, supplies and services," Congress provided the Secretary with the authority to include military airlift agreements within the terms of acquisition and cross-servicing agreements.

In the wake of this amendment, § 2350c must now be viewed as providing the Secretary the option of entering into a stand-alone military airlift agreement, when the execution of an acquisition and cross-servicing agreement is not desirable or required. Nevertheless, given the

express terms of subsection (d), an unintended conflict in the language of the statute exists.

> "(d) Notwithstanding subchapter I, the Secretary of Defense may enter into military airlift agreements with allied countries only under the authority of this section" (Emphasis added).

Subsection 2350c(d), however, was enacted in the DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1983, Pub. L. No. 97-252, § 1125(a) 96 Stat. 718, 757-58 (1982); and it has been amended only once, to substitute the words "subchapter I" for "chapter 138 of this title". See NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1990 AND 1991, Pub. L. No. 101-189, § 931(b)(2) 103 Stat. 1352, 1534 (1989). The general purpose this amendment, however, was to conform the subsection to the statutory reorganization promulgated by § 931(a) of the Act, not to make a substantive change in the law. Thus, as enacted, § 2350c(d) runs counter to the subsequently manifested intent of Congress to provide the Secretary the flexibility to enter into international military airlift agreements as part of an larger acquisition and cross-servicing agreement or as a stand-alone agreement, at his discretion.

In keeping with the provisions of subchapter I of chapter 138, 10 United States Code, several cooperative military airlift provisions have or are being incorporated into the terms of larger acquisition and cross-servicing agreements that have been or are currently being negotiated with several allied countries. The inclusion of military airlift provisions in acquisition and cross-servicing agreements negotiated under section 2342 of title 10, promotes efficiency by obviating the need to enter into a separate military airlift agreement under the provisions of § 2350c, when an all-inclusive acquisition and cross-servicing agreements will suffice. Although somewhat more challenging from an accounting standpoint because most strategic airlift operations are funded by the transportation working capital fund, the Department has procedures in place to ensure reimbursement of the working capital fund from the proper O&M accounts when reimbursement is received in kind.

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

Section 1024. Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 barred obligation or expenditure of FY2000 and future funds for planning, design, or construction of a chemical weapons destruction facility in Russia.

The proposed provision would repeal section 1305, consistent with the President's request for $30 million in Fiscal Year 2001 funding for chemical weapons facility construction in Russia. The Department of Defense is committed to working with Congress to address concerns about the chemical demilitarization in Russia, and believes that the modest request for fiscal year 2001 is fully consistent with the program's expected capacity. Moreover, chemical demilitarization in Russia remains a key U.S. national security objective that the Administration must have the flexibility to address.

TITLE XI—BASE REALIGNMENT AND CLOSURE ACT OF 1999.

Sections 1101 through 1112. This legislation would authorize two additional rounds of base closures and realignments to occur in the years 2003 and 2005. The legislation is substantially the same as the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, which authorized base closure and realignment rounds in 1991, 1993, and 1995 and which authorized the Secretary of Defense to transfer property to the local redevelopment authority (LRA), without consideration, provided he LRA's reuse plan provides for the property to be used for job creation and the LRA uses the economic benefits from the property to reinvest in the economic redevelopment of the installation and the surrounding community.

The Department is encumbered with facilities we no longer need. These facilities drain resources that could otherwise be spent on modernization. During the post-Cold War military drawdown, DoD reduced both the Defense support structure and the force structure. But infrastructure reductions C including military bases, facilities, and buildings C have lagged behind force reductions. Force structure has fallen 32 percent since 1989 and will decline to 36 percent by 2003 as a result of the Quadrennial Defense Review (QDR). At the same time, after four rounds of base realignments and closures, our worldwide base structure has declined only 26 percent and domestic base structure has declined only 21 percent. This relative disparity between base structure and force reductions wastes limited resources on maintaining unneeded bases.

The Department continues to experience significant erosion in planned modernization increases, particularly in the procurement accounts, thus undercutting our ability to field new systems and technologies and, consequently, threatening our ability to execute the strategy. If this trend were to continue, we would face future threats with potentially aged and obsolete forces. The Department has had a tendency to under fund future operations and support accounts while at the same time expecting savings that do not fully materialize. The substantial progress made in bringing down infrastructure costs during the post-Cold War drawdown has not been enough or as much as expected. The expected rebound in procurement, financed by infrastructure savings and operations efficiencies, has been postponed each year since the Bottom-Up Review.

The QDR examined this issue and concluded that additional infrastructure savings were required to properly fund operations and support accounts and to finance future modernization. We plan to accomplish this through a variety of measures, including reductions in support personnel and facilities. The future forces of the military will require steadily increasing investments for modern systems, new technologies, and new weaponry. To afford these investments, we must eliminate unneeded infrastructure. The QDR found that there is enough excess capacity in the Department's infrastructure to warrant two rounds of closure and realignment similar in size to those conducted in 1993 and 1995. The Department validated the QDR conclusions in its April 1998 report to Congress on Base Realignment and Closure required by Section 2824 of the National Defense Authorization Act for Fiscal Year 1998, Public Law

105-85.