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MAY 0 9 2002

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Department of Defense proposes the enclosed legislation relating to the management and operations of the Department of Defense. These proposals are part of the departmental legislative program for the Second Session of the 107th Congress, and we urge their enactment. The purpose of each proposal is stated more fully in its accompanying section-by-section analysis.

The Department proposes legislation to authorize the deferment of student loan payments for certain members of the Armed Forces; to permit the assignment of personnel from commercial entities with technical skills to technical positions in the Department for a limited period; to authorize a pilot program to evaluate the assignment of private-sector employees to acquisition positions in the Department of Defense; to clarify the requirement to buy certain articles from American sources; to conduct a limited five-year program for the provision of logistics support to certain weapon system contractors; for a one-time authority to clear certain suspense accounts and to resolve check issue discrepancies; to authorize the use of mandatory salary offsets to prevent delinquencies on Government travel charge-card payments; to authorize a special pay to encourage military members to volunteer for less-than-desirable assignments; for reimbursement authority for taxes incurred under the Homeowners Assistance Program; and to convert certain term employees to the Federal competitive service under certain conditions.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these initiatives for your consideration and the consideration of the Congress.

Sincerely,

Daniel J. Dell'Orto

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Acting

Enclosures
As Stated

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MAY 0 9 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

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SEC. ___. AUTHORIZE INTEREST PAYMENTS ON STUDENT LOANS FOR SERVICE IN THE ARMED FORCES.

(A) INTEREST PAYMENT PROGRAM AUTHORIZATION.—(1) IN GENERAL.—Chapter 107 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2150. Interest payments on student loans for service in the armed forces

"(a) AUTHORITY FOR THE PROGRAM.—The Secretary of Defense and the Secretary of Transportation may pay the interest that accrues on eligible student loans on behalf of members of the armed forces for a period not to exceed three years.

"(b) ELIGIBLE PERSONNEL.—Payment authorized under subsection (a) shall be available to members of the armed forces who—

(1) have one or more eligible student loans; and

(2) are entering military service during their first enlistment or, in the case of officers, are in their first three years of military service.

A person who is in default on a loan described in subsection (c) shall not be eligible for interest payments under this section.

"(c) ELIGIBLE STUDENT LOANS.—Payment authorized under subsection (a) shall be available for loans—

"(1) made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 *et seq.*);

"(2) made under part D of such title (20 U.S.C. 1087a *et seq.*); and

"(3) made under part E of such title (20 U.S.C. 1087aa *et seq.*).

"(d) INTEREST PAYMENTS.—The interest payments made under this section shall consist of the interest that accrues on the student loans (described in subsection (c)) of persons described

in subsection (c) during the period for which interest payments are being made under this section, and any special allowance payments due with respect to that period under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087-1).

"(e) FUNDS FOR INTEREST PAYMENTS.—The Secretary of Defense and the Secretary of Transportation shall pay any interest payments authorized under this section from appropriations available for an appropriate military personnel account.

"(f) COORDINATION.—(1) RESPONSIBILITIES OF THE SECRETARY OF DEFENSE AND THE SECRETARY OF TRANSPORTATION.—The Secretary of Defense and the Secretary of Transportation shall coordinate the administration of the student loan interest payment program for the military department under his jurisdiction authorized under this section with the Secretary of Education, and transfer to the Secretary of Education the funds needed to pay the interest payments on the student loans (described in subsection (c)) of persons described in subsection (c) (as identified by the Secretary of Defense and the Secretary of Transportation) and to reimburse any reasonable administrative costs incurred by the Secretary of Education in coordinating this program with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965.

"(2) RESPONSIBILITIES OF THE SECRETARY OF EDUCATION.—The Secretary of Education shall use the funds transferred by the Secretary of Defense and the Secretary of Transportation to make interest payments in accordance with section 428(o), 464(j), or 455(a) of the Higher Education Act of 1965, as the case may be. The Secretary of Education shall not be required to make interest payments in accordance with those sections if the Secretary of Defense or the Secretary of Transportation does not transfer the necessary funds.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is

amended by adding at the end the following new item:

"2150. Interest payments on student loans for service in the armed forces.".

(b) HIGHER EDUCATION ACT AMENDMENTS.—(1) FEDERAL FAMILY EDUCATION LOANS; DIRECT LOANS.—Section 428 of the Higher Education Act of 1965 (20 U.S.C. 1078) is amended—

(A) in subsection (c)(3)—

(i) in subparagraph (A)—

(I) in clause (i)—

(aa) by striking "or" at the end of subclause (II);

(bb) by inserting "or" at the end of subclause (III); and

(ccc) by adding at the end the following new subclause:

"(IV) qualifies for Department of Defense student loan interest payments in accordance with subsection (o);"; and

(II) in clause (ii)(II), by inserting "or (IV)" after "clause (i)(II)"; and

(ii) by amending subparagraph (C) to read as follows:

"(C) shall contain provisions that specify that the form of forbearance granted by the lender—

"(i) for purposes of this paragraph (other than subparagraph (A)(i)(IV)) shall be the temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled;

and

"(ii) for purposes of subparagraph (A)(i)(IV) shall be the temporary cessation of all payments on the loan other than payments made under subsection (o); and"; and

(B) by adding at the end the following new subsection:

"(o) ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—The Secretary shall, using funds transferred to the Secretary by the Secretary of Defense or the Secretary of Transportation, as the case may be, under the student loan interest payment program authorized by section 2150 of title 10, United States Code, make interest-only payments, and any special allowance payments required under section 438 of this Act, on a loan made, insured, or guaranteed under this part for a period not in excess of three years on behalf of a borrower who meets the eligibility requirements in that section. The Secretary shall not be required to make the payments if the Secretary of Defense or the Secretary of Transportation, as the case may be, does not transfer the necessary funds. During the period in which the Secretary is making the payments, the lender shall grant the borrower forbearance in accordance with subsection (c)(3)(A)(i)(IV).".

(2) FEDERAL PERKINS LOANS.—Section 464 of such Act (20 U.S.C 1087dd) is amended—

(A) in subsection (e)—

(i) by striking "or" at the end of paragraph (1);

(ii) by striking the period at the end of paragraph (2) and inserting "; or"; and

(iii) by adding at the end the following new paragraph:

"(3) the borrower qualifies for Armed Forces student loan interest payments in accordance with subsection (j), except that a forbearance under this paragraph shall be a temporary cessation of all payments on the loan other than payments made under subsection (j)."; and

(B) by adding at the end the following new subsection:

"(j) ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—The Secretary shall, using funds transferred to the Secretary by the Secretary of Defense or the Secretary of Transportation, as the case may be, under the student loan interest payment program authorized by section 2150 of title 10, make interest-only payments on a loan made under this part for a period not in excess of three years on behalf of a borrower who meets the eligibility requirements in that section. The Secretary shall not be required to make the payments if the Secretary of Defense or the Secretary of Transportation, as the case may be, does not transfer the necessary funds. During the period in which the Secretary is making the payments, the institution of higher education shall grant the borrower forbearance in accordance with subsection (e)(3).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to members of the armed forces who are on active duty on or after October 1, 2003, and who have eligible student loans, regardless of when those loans were made.

Section-by-Section Analysis

This proposal would authorize the Secretary of Defense and the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy, to pay the interest on certain federal education loans for service in the Armed Forces for up to three years.

The military departments are currently experiencing difficulties in recruiting officers in numerous career fields that require specialized training, such as intelligence officers, weather

officers, chemists, physicists, aeronautical engineers, astronautical engineers, computer engineers, electrical engineers, mechanical engineers, civil engineers, computer and communications officers, attorneys, and dentists. For example, since Fiscal Year 1994, law student applications have fallen about 40 percent for the Army and Air Force and over 25 percent for the Navy. In Fiscal Year 2001, Air Force filled only 23 percent of its dental accessions goal. Many of these career fields are paid significantly higher salaries in the civilian sector. Authorizing interest payments and mandatory forbearance would help alleviate student loan costs to bridge the pay gap between military and private sector salaries.

In general, the military departments, to meet recruiting quotas, are now targeting recruits with one or two years of college experience. In fact, the percentage of the enlisted force that is recruited having completed at least some college has steadily increased in recent years. However, according to the University of Michigan's Annual Monitoring the Future Survey of high school seniors, 75 percent have no interest in the military. Instead, nearly 70 percent enroll in post-secondary education within a year of high school graduation. RAND studies of military recruitment in the college-bound youth market have made two central points about the military's recruitment of this market.

First, the military does not recruit well in the college market. Only 10-12 percent of accessions have attended college, while 55 percent of youth aged 18-24 have attended at least one semester of college. Eighty-five percent of Navy's Fiscal Year 2001 non-prior service enlisted accessions were high school graduates with less than one semester of college credits; only five percent of accessions had at least one semester of college. Of the 75,855 soldiers the Army enlisted in Fiscal Year 2001, only 13,382 had completed some college, and only 1,346 had some kind of degree.

Second, the primary reason youth cite for not serving in the military is because they want to continue their education. In particular, youth want the opportunity to go immediately to college. The college-bound market has a variety of options in securing funding for college, if needed. For example, there is a large annual budget for federally-funded educational loans. This proposal dovetails nicely with the special interests of those who attend college and absorb student loan commitments. Therefore, it would provide the services with another tool to attract more recruits among this highly talented and desirable market.

Currently, cancellation, forgiveness, and forbearance are limited to certain types of loans and only apply to members serving in an area of hostilities or imminent danger, or if exceptional circumstances exist, such as a local or national emergency or military mobilization.

Section 2171 of title 10, United States Code, authorizes the Secretary of Defense and the Secretary of Transportation to repay certain federally made, insured, or guaranteed education loans for certain enlisted members. For example, the Army annually enlists roughly 3,000 soldiers who opt for their Loan Repayment Program. The average total amount owed in student loans by participants is over $15,000. Some participants have more than the $65,000 maximum amount in loans authorized, others have very tiny loan amounts, and quite a number of participants have more than $30,000 in loans. Participants are enlisted soldiers, overwhelmingly in the pay grades of E-4 and below.

Similar to this proposal, participants in the loan repayment program must maintain their loans in "good standing," because the Army will not repay any loans that are in default. However, the loan repayment program covers neither interest nor re-capitalized (into principal) interest. A similar civilian loan repayment program in section 5379 of title 5, United States Code, does not apply to military personnel. Therefore, this proposal would afford an extra degree of relief to program participants as well as to the thousands of new enlistees who come into the Army who have student loans and who are not participants.

Sections 428(h)(1)(M)(iii) and 435(o) of the Higher Education Act authorize student loan deferment of interest and principal for up to three years. However, military members must claim economic hardship to apply for a deferment. In addition, the deferment is for one year at a time up to a total of three years. Each year the member applies, he or she must provide evidence that satisfies the deferment criteria.

This proposal also would help retain highly qualified members who otherwise would leave due to their large student loan debts. For example, in addition to the participants in Army's Loan Repayment Program, Air Force enlisted personnel average $24,000 in debts. As noted by the Department of Education, dentists average $124,000 in debts and new lawyers average $63,000. Specifically, Army JAGs average $70,760 in loans and have monthly payments of $970; Navy JAGs average $64,000 in loans and $675 in monthly payments. Accordingly, a Navy JAG with loans and one year of duty makes the equivalent of an E-6 with six years of service. Army JAGs with loans make less than an enlisted solider at the E-4 pay level. Section 321 of title 37, United States Code, does provide JAG continuation pay to assist attorneys laden with student loan debt. However, the continuation pay only becomes available after at least three years - after the judge advocates have completed their active duty service obligation. Similarly, section 2173 of title 10 only provides loan repayments for certain military doctors.

As a result, more and more professionals on active duty are leaving because of their heavy debt burden. According to informal polls of separating dentists by the Air Force's dental accessions office, dentists cannot afford to remain on active duty because they cannot support themselves and their families and still meet their student loan payments. Similarly, voluntary separations among Army and Marine Corps JAGs have risen substantially since Fiscal Year 1997.

The Secretary of Education would manage the program for the Armed Force involved. The Secretaries of Defense and Transportation would pay a fee for the Secretary of Education to manage the program. Appropriate changes are made to the Higher Education Act of 1965 to authorize the implementation of this function.

SEC. ___. COMMERCIAL PERSONNEL ASSIGNMENT TO TECHNOLOGY POSITIONS IN THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after Chapter 89 the following new chapter:

"CHAPTER 90—COMMERCIAL PERSONNEL ASSIGNMENT

"§1810. Assignment of technology commercial personnel

"(a) PERSONNEL TRANSFER.—The Secretary of Defense may assign up to 350 individuals who are employees of private commercial entities to technology positions in the Department of Defense. Each assignment shall—

"(1) be on a temporary basis;

"(2) exclude participation in managerial or policy decisions, including decisions pertaining to the selection of program priorities or funding; and

"(3) be subject to the terms and conditions set forth in this section.

"(b) WRITTEN AGREEMENT.—The terms of an assignment made pursuant to this section shall be in writing. Terms that would exempt the individual from any statute or regulation that otherwise would be applicable to the individual or the private commercial entity that employs the individual are prohibited.

"(c) PERIOD OF ASSIGNMENT.—The period of an assignment made pursuant to this section shall not to exceed two years, except that the Secretary of Defense, with the consent of the individual and the private commercial entity that employs the individual, may extend the period for up to an additional two years.

"(d) DEPARTMENTAL STATUS.—An individual who is assigned to a technology position in the Department of Defense pursuant to this section may be—

"(1) appointed, without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service; or

"(2) deemed to be on a detail to the Department of Defense.

"(e) COMPENSATION.—(1) An individual who is assigned to a technology position in the Department of Defense pursuant to this section shall remain an employee of the private commercial entity during the period of the detail for purposes of establishing eligibility for benefits and longevity in accordance with subsections (g) and (i), but shall receive compensation from the Department of Defense only.

"(2) The Secretary of Defense shall establish the rate of compensation, which shall not be less than the minimum rate of basic pay for grade GS-11 of the General Schedule, excluding any locality-based comparability payment made applicable pursuant to section 5304 of title 5, and any special rate of pay made applicable pursuant to section 5305 of title 5, and shall not exceed the maximum rate provided in level V of the Executive Schedule, except that the Secretary of Defense may provide compensation in addition to base pay, including benefits not otherwise prohibited by subsection (f), incentives, and allowances that are consistent with, and not in excess of, the level authorized for comparable positions authorized by title 5.

"(f) RIGHTS OF TRANSFERRED INDIVIDUAL.—For the period of assignment made pursuant to this section, an individual who is detailed to a technology position in the Department of Defense is deemed to be an employee of the Department of Defense for all purposes, except as provided in—

"(1) this section;

"(2) subchapter III of chapter 83, and chapter 84 of title 5, United States Code, or other applicable retirement systems;

"(3) chapters 12, 23, 43, 71, 75, 77, and 87 of title 5, United States Code;

"(4) chapter 89 of title 5, United States Code, or other applicable health benefits systems, unless the appointment results in the loss of coverage in a group health benefits plan, the premium of which has been paid, in whole or in part, by contribution by the private commercial entity that employs the individual; and

"(5) classification,

"The exceptions shall not apply to non-Federal employees who are covered by chapters 84, 87, and 89 of title 5, United States Code, by virtue of their non-Federal employment immediately before assignment under this section.

"(g) STATUS OF ASSIGNED PERSONNEL IN PARENT ORGANIZATION.—Notwithstanding subsection (f) and section 209 of title 18, the period of assignment may be counted by the private commercial entity that employs the individual as if it were employment with the private commercial entity for purposes of determining longevity or seniority of the individual as an employee of the private sector commercial entity.

"(h) WORKERS COMPENSATION COVERAGE.—

"(1) A private sector employee assigned to the Department of Defense pursuant to this section shall not be deemed an employee of the United States for the purposes of Chapter 81 of title 5 (relating to compensation for injury).

"(2) Notwithstanding any other law, the United States, any instrumentality of the United States; or an employee, agent, or assign of the United States shall not be liable to:

"(A) a private sector employee assigned to the Department of Defense pursuant to

this section;

"(B) such employee's legal representative, spouse, dependents, survivors and next of kin; and

"(C) any other person, including any third party as to whom such employee, or his or her legal representative, spouse, dependents, survivors, or next of kin, has a cause of action arising out of an injury or death sustained in the performance of duty pursuant to an assignment under this section, otherwise entitled to recover damages from the United States, any instrumentality of the United States, or any employee, agent, or assign of the United States with respect to any injury or death suffered by a private sector employee sustained in the performance of duty pursuant to an assignment under this section.

"(i) CONTRIBUTIONS TO EMPLOYEE PLANS.—During the period of assignment, the Department of Defense may make, from funds appropriated to the Department of Defense for salary and expenses, the employer contribution to the retirement, life insurance, and health benefit plans of the private commercial entity as if paid by the private commercial entity, without affecting the qualification of the private commercial entity's pension plan.

"(j) EVALUATION. Before any assignments are made under the authorities under this section, the Secretary shall establish a methodology and criteria for evaluation of the program.

"(k) DEFINITIONS.— In this chapter:

"(1) The term 'private commercial entity' means a non-Federal commercial organization, including a corporation, partnership, sole proprietorship, limited liability company, or other such form of commercial enterprise.

"(2) The term 'detail' means the temporary assignment of an individual who is

employed by a private commercial entity to a technology position in the Department of Defense and, at the expiration of the detail, who will return to employment with the private commercial entity.

"(4) The term 'technology position' means a scientific and engineering position executing the missions of defense laboratories.

"(5) The term "assignment" means an assignment under an arrangement made pursuant to the section under which a private sector employee is assigned to the Department of Defense by being appointed without regard to the provisions of title 5 governing appointments in the competitive service or being deemed to be detailed to the Department of Defense.

"(l) EXPIRATION.—This section shall expire five years after the date of enactment of this Act.".

(b) CLERICAL AMENDMENTS.—(1) The table of chapters at the beginning of title 10, United States Code, the table of chapters at the beginning of subtitle A of title 10, United States Code, and the table of chapters at the beginning of Part II of subtitle A of title 10, United States Code, each are amended by inserting after the item relating to chapter 88 the following new item:

"90. Assignment of technology commercial personnel ..... 1810".

(2) The table of sections at the beginning of title 10, United States Code, is amended by inserting after the item relating to chapter 88 the following new item:

"1810. Assignment of technology commercial personnel.".

Section-by-Section Analysis

This section would authorize the Secretary of Defense to assign temporarily an individual, who is an employee of a private commercial entity, to a technology position in the Department of Defense. In doing so, the Department of Defense would gain access to individuals who possess specialized or unique technical knowledge that is not otherwise available in the Government or from the private sector through other methods, such as the current

Intergovernmental Personnel Act (chapter 33, Subchapter VI, of title 5, United States Code), direct contracting, cooperative research and development agreements, or other arrangements. Persons sought under this provision would work at a level equivalent to that of GS-11 through GS-15 and perform functions that equate to those performed by scientists and engineers in the defense laboratories. They would not be executives, managers, or supervisors.

The ability to appoint senior level scientists and engineers from private industry to the laboratories for a two-year assignment is a critical element in maintaining laboratory core technical expertise. Military threats and response scenarios are changing and consequently the technologies needed to respond to them must also change. The laboratories have attempted to maintain core areas of expertise, which enable them to respond to such changes. Yet, new technical initiatives must be created or existing areas of technical expertise must be augmented. These core technical areas usually require very narrowly focused scientific expertise. Such specialized talent is not readily available in the general labor market. For the most part, such unique talent resides at corporate research centers or at specialized niche product companies. Consequently, this section would allow the Department to bring in high caliber industrial people into the laboratories for a limited time to initiate and/or build up these core areas. The proposed legislation would allow the Secretary to compensate a visiting scientist without requiring a fundamental career change, thus increasing our ability to attract such needed talent.

During the period of the assignment, an individual would be deemed to be an employee of the Department of Defense for purposes of the conflict of interest laws, including but not limited to, sections 203, 205, 207, 208, and 209 of title 18, United States Code, although the period of assignment may be counted for the purposes of determining longevity or seniority with the private industry. Chapters 84 (Federal Employees Retirement System), 87 (life insurance), and 89 (health insurance) of title 5, United States Code, would not apply to persons in this project. Individuals participating in the program would not be entitled to the benefits of chapters 12 (Merit Systems Protection Board, Office of Special Counsel, and employee right of action), 23 (merit system principles), 43 (performance appraisals), 75 (adverse actions) and 77 (appeals) of title 5, United States Code.

The section would permit, but not require, the Secretary of Defense to use these authorities, to establish an exchange program with industry in which private industry could reimburse the Department for some or all of the costs paid by the Department for industry employees appointed or detailed to the Department under this section. Funds reimbursed for this program would remain in the Department and be available to offset the costs of the program. While exchanges would not be on a one-for-one basis and not all Components would utilize the exchange authority, this provision would authorize the Department to accept personnel from industry, while generally not increasing the overall costs of such assignments to the Department.

The authority would expire in five years. The Department would develop and implement evaluation tools to assess whether this authority meets 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 during the fourth year after enactment. As part of this evaluation and reporting requirement, the Department intends to capture, assess, and report on

information needed to determine the viability of the authority, including the numbers and types of personnel assigned to the Department, whether the individuals are assigned by appointment or by detail, their private commercial entities, grades, and salaries, the job series of the duties they performed, whether the assignment was part of an exchange program, and the costs reimbursed to the Department, if any.

SEC. ___ . INDUSTRY ASSIGNMENT PROGRAM.

(a) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by inserting after section 1599c the following new section:

"§ 1599d. Government industry assignment program

"(a) AUTHORITY.—The Secretary of Defense may establish a pilot program for the temporary assignment of non-governmental personnel who are employed in the private sector to the Department of Defense. The Secretary may promulgate regulations for such purpose.

"(b) PURPOSE .—This program is designed to improve the Department's acquisition-related processes and procedures. It would accomplish this through an infusion of new and modern ideas by the temporary assignment in the Department of non-governmental personnel who are employed by private industry. The private sector employees would be compensated by their private employer yet would be subject generally to Governmental requirements that are in force for Federal employees. The Department would provide the private employer the benefit of a career enhancement for its private sector employees who participate in the program.

"(c) LIMITATIONS.—(1) This program is limited to those individuals in private sector positions whose duties, as determined by the Secretary, are comparable to defense acquisition positions.

"(2) Each such assignment shall be based on a written agreement between the Department of Defense, the private sector employer, and the employee concerned, which shall include nondisclosure provisions addressing the use and disclosure of classified and unclassified information in the possession or under the control of the Department of Defense that has not been released to the public and which shall also include the Federal laws and penalties applicable to the disclosure of classified information, including, but not limited to section 798 of title 18,

United States Code.

"(3) During the period of an assignment made pursuant to this section, a private sector employee—

"(A) is not entitled to pay from the Department of Defense, except, as determined by the Secretary on a case by case basis, to the extent that the pay received from the private sector employer is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title, title 5, United States Code, or other applicable authority;

"(B) is deemed an employee of the Department of Defense, subject to section 7353 of title 5, United States Code; sections 201, 203, 205, 207, 208, 209, 219, 602, 603, 606, 607, 610, 643, 654, 1905, 1913 and other provisions of title 18, United States Code, not specifically exempted herein; sections 1343, 1344, and 1349(b) of title 31, United States Code; the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*); any other Federal tort liability statute; section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423) and regulations implementing that Act; the Ethics in Government Act of 1978 (5 U.S.C. App.) and regulations implementing that Act; and any other provisions of Federal law not specifically exempted herein. Notwithstanding section 209 of title 18, United States Code, the private sector employer may pay, contribute to, or supplement the salary or other benefits of such private sector employee (who may accept such pay, contributions, and benefits), subject to the terms of the written private sector employee assignment agreement required in paragraph (c)(2) above;

"(C) is also deemed an employee of his or her private sector employer for purposes of section 208 of title 18, United States Code;

"(D) is subject to such regulations that the Secretary may prescribe, which shall incorporate by reference executive branch standards of ethical conduct and any authorized agency supplemental standards of conduct and which shall include as a minimum—

"(i) limitations on the number of participants (no more than 400);

"(ii) length of temporary assignments (up to two years);

"(iii) protection of government information;

"(iv) procedures for avoidance of conflicts of interest, including selection of program priorities and funding decisions that may involve the assignee's employer or its competitors, and avoidance of the appearance of conflicts of interest; and

"(v) exclusions from the performance of inherently governmental functions, such as policy-making and supervision of government employees; and

"(vi) methodology and criteria for evaluation of the pilot; and

"(E) is not deemed to be an employee for purposes of federal employee pay and benefits under title 5, United States Code, except as provided for under this subsection.

"(d) WORKERS COMPENSATION COVERAGE.—

"(1) A private sector employee assigned to the Department of Defense pursuant to this section shall not be deemed an employee of the United States for the purposes of Chapter 81 of title 5, United States Code, (relating to compensation for injury).

"(2) Notwithstanding any other law, the United States, any instrumentality of the United States; or an employee, agent, or assign of the United States shall not be liable to:

"(A) a private sector employee assigned to the Department of Defense pursuant to this section;

"(B) such employee's legal representative, spouse, dependents, survivors and next of kin; and

"(C) any other person, including any third party as to whom such employee, or his or her legal representative, spouse, dependents, survivors, or next of kin, has a cause of action arising out of an injury or death sustained in the performance of duty pursuant to an assignment under this section, otherwise entitled to recover damages from the United States, any instrumentality of the United States, or any employee, agent, or assign of the United States—

with respect to any injury or death suffered by a private sector employee sustained in the performance of duty pursuant to an assignment under this section.

"(e) DEFINITIONS.—In this section:

"(1) The term 'private sector employer' means a corporation, partnership, sole proprietorship, or other entity operated on a for-profit basis. It may, at the option of the Secretary, also include "other organizations" as defined in section 3371 of title 5, United States Code.

"(2) The term 'acquisition position' has the same meaning as in section 1721(b) of this title.

"(3) The term 'assignment' means an assignment under an arrangement made pursuant to the section under which a private sector employee is assigned to the Department of Defense by being appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service or being deemed to be detailed to the Department of Defense.

"(4) The term "government employee" means an "employee" as defined in section 2105 of title 5, United States Code.

"(f) EXPIRATION.—The Secretary may not assign non-governmental personnel who are employed in the private sector to the Department of Defense under the provisions of this section after the last day of the fifth year beginning with the effective date of this Act.".

(b) REPORTING REQUIREMENT.—During the fourth year after the enactment of this Act, the Secretary of Defense, with input from the Inspector General of the Department of Defense, and in consultation with the Director of the Office of Personnel Management, shall evaluate the program authorized under this section and prepare a report for the President that includes an analysis of the use of the authorities of this section, including conflict of interest standards, and the costs and benefits of assignments made pursuant to this section.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 81 is amended by inserting after the item relating to section 2331 the following new item:

"1599d. Government industry assignment program.".

Section-by-Section Analysis

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

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

their current positions to work for the Government. A Government Industry Assignment Program would allow those individuals to retain their employment status while assisting the Government in its efforts to streamline and reorganize its business and financial systems.

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

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

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

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

SEC. ___ . CLARIFICATION OF REQUIREMENT TO BUY CERTAIN ARTICLES FROM AMERICAN SOURCES; EXCEPTIONS.

Section 2533a of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "subsections (c) through (h)" and inserting "subsections (b) through (i)"; and

(B) by striking "if the item is not grown, reprocessed, reused, or produced in the United States";

(2) in subsection (b)—

(A) by revising paragraphs (1) through (3) to read as follows:

"(1) An article or item of—

"(A) meals ready-to-eat listed in Federal Supply Class 8970 unless the item is produced or manufactured in the United States;

"(B) clothing, individual equipment, or insignia listed in Federal Supply Group 84, except items listed in Federal Supply Class 8460 (luggage), unless the item is produced or manufactured in the United States and the textile components are produced or manufactured substantially in the United States; or

"(C) textiles, tents, tarpaulins, covers, or flags listed in Federal Supply Group 83 unless the item is produced or manufactured in the United States and the textile components are produced or manufactured substantially in the United States.

"(2) Equipment of the following Federal supply classifications that contain a specialty metal unless the specialty metal used to produce or manufacture the item, or an equivalent amount that is acquired by the contractor or a subcontractor, was smelted in the United States:

"(A) Weapons listed in Federal Supply Group 10.

"(B) Nuclear ordnance listed in Federal Supply Group 11.

"(C) Fire control equipment listed in Federal Supply Group 12.

"(D) Ammunition and explosives listed in Federal Supply Group 13.

"(E) Guided missiles listed in Federal Supply Group 14.

"(F) Aircraft and related components, accessories, and equipment listed in Federal Supply Groups 15, 16, and 17.

"(G) Space vehicles listed in Federal Supply Group 18.

"(H) Ships, small craft, pontoons, and floating docks listed in Federal Supply Group 19.

"(I) Ship and marine equipment listed in Federal Supply Group 20.

"(J) Passenger motor vehicles listed in Federal Supply Class 2310.

"(K) Tracked combat vehicles listed in Federal Supply Class 2350.

"(L) Engines, turbines, and components listed in Federal Supply Group 28.

"For the purposes of this paragraph, "specialty metal" means:

"(A) steel—

"(i) where the maximum alloy content exceeds one or more of

the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

"(ii) that contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

"(B) metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

"(C) titanium and titanium alloys; or

"(D) zirconium and zirconium base alloys."; and

"(3) Hand tools listed in Federal Supply Group 51 and measuring tools listed in Federal Supply Group 52, unless the item is produced or manufactured in the United States.";

(3) in subsection (c)—

(A) by striking "Subsection (a)" and inserting "This section";

(B) by inserting ", or component thereof," after "such article or item";

(C) by striking "(1) or specialty metals (including stainless steel flatware)"; and

(D) by striking "United States market prices" and inserting "a reasonable cost";

(4) in subsection (d)—

(A) in the catchline for such subsection, by striking "OUTSIDE THE UNITED STATES" and inserting "IN EXIGENT CIRCUMSTANCES";

(B) by striking "Subsection (a) does not apply" and inserting "This section does not apply";

(C) by revising paragraph (1) to read as follows:

"(1) Procurements in support of contingency operations as defined in section 101(a)(13) of this title."; and

(D) by revising paragraph (3) to read as follows:

"(3) Procurements of unusual and compelling urgency under the authority of section 2304(c)(2) of this title.";

(5) by revising subsections (e) and (f) to read as follows:

"(e) EXCEPTION FOR SPECIALTY METALS.— This section does not apply to procurements of end items or components of equipment listed in subsection (b)(2) if the specialty metal used to produce or manufacture the item, or an equivalent amount that is acquired by the contractor or a subcontractor, was smelted in a foreign country that has a memorandum of understanding providing for reciprocal procurement of defense items that is entered into with the Department of Defense in accordance with section 2531 of this title.

"(f) EXCEPTION FOR WARFARE PROTECTIVE CLOTHING.— This section does not apply to procurements of nuclear, biological, or chemical warfare protective clothing listed in Federal Supply Group 84 produced or manufactured in any foreign country that has a memorandum of understanding providing for reciprocal procurement of defense items that is entered into with the United States in accordance with section 2531 of this title, provided that the textile components are produced or manufactured substantially in the United States or in any such foreign country.";

(6) in subsection (g), by striking "Subsection (a) does not apply" and inserting "This

section does not apply";

(7) in subsection (h)—

(A) by striking "Subsection (a) does not apply " and inserting "This section does not apply"; and

(B) by striking "2304(g) of this title" and inserting "2302(7) of this title"; and

(8) in subsection (i)—

(A) by striking "This section" and inserting "(1) Except as provided in paragraph (2), this section"; and

(B) by adding at the end the following new paragraph:

"(2) This section does not apply to commercial items, or components thereof, that are listed in sections (b)(1)(A), (b)(2), and (b)(3), except if the end item is specialty metal.".

Section-by-Section Analysis

The proposed changes would clarify the requirements of 10 U.S.C. 2533a in ways that would facilitate timely purchases of products needed to support contingency operations, such as Operation Enduring Freedom, and in situations of unusual and compelling urgency. Other proposed clarifications would make it easier and less expensive for U.S. producers and manufacturers, especially small businesses and small disadvantaged businesses, to sell commercial products to the Department of Defense. Proposed clarifications would eliminate inequities that currently favor foreign sources over domestic sources, and they would improve the level of protection afforded to domestic sources in price competitions. The clarifications proposed would improve understanding, implementation, compliance, and enforcement of the law among buyers and sellers.

In subsection (b), the proposal would preserve the domestic capability and capacity to produce meals ready-to-eat, reaffirming that they must be produced or manufactured in the United States. The proposal would end coverage of food and other food products to allow for greater use of commercial business practices, such as the prime vendor program, and to ensure that DoD has access to the widest possible selection of food products to meet the peacetime needs and surge requirements of U.S. armed forces. The proposal would to preserve the domestic capability and capacity to produce military clothing and textile requirements (that is, the items covered under Federal Supply Groups 83 and 84) by reaffirming that they must be of domestic origin. This also would provide complete clarity

as to what products are covered by the law. The proposal would include a stipulation that textile components of covered items must be produced or manufactured substantially, rather than wholly, in the United States.

This modification would establish an effective standard for content that is fully consistent with the Buy American Act, and it would be much more practicable for U.S. industry, particularly small businesses and small disadvantaged businesses, to meet. The proposal would continue to require that hand tools and measuring tools must be of domestic origin. The proposal would reiterate that specialty metals must be smelted in the United States or in a qualifying country. The proposal would enhance the ability of suppliers to comply with the intent of the law by allowing them to use auditable records, rather than rely only upon the physical separation of materials inventories, to demonstrate that they have purchased an amount of domestically smelted specialty metals equivalent to what is required to satisfy the needs of national defense.

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

In subsection (c), the proposal would provide for hand and measuring tools to be subject to the same exceptions as all other covered items. The proposal would increase the protection afforded to domestic industries in price competitions by adjusting the existing availability exception to allow a waiver if a covered item is unavailable from a domestic source at a reasonable cost, rather than if the item is not available just at U.S. market prices. DoD has been successfully, effectively applying the standard of reasonable cost to implement the requirements of the Buy American Act for decades. That is, the price of a domestic item would be unreasonable only if it exceeds the price of a comparable foreign item by more than 50%. This standard of protection would be more formidable and practicable to use than the present standard of United States market prices.

In subsection (d), the law provides an exception for procurements outside the United States in support of combat operations and for emergency procurements outside the United States. The proposal would modify this to provide that the exception would apply to any procurement in support of contingency operations, such as Operation Enduring Freedom vs. "combat operations", and to any procurement of unusual and compelling urgency (vs. "emergencies"). These adjustments would ensure the readiness of U.S. armed forces in either situation. The terms "combat" and "emergency" as currently used in the law are subject to interpretation. This creates problems for implementation, compliance, and enforcement of the law. The proposal would preempt such problems by replacing these terms with comparable ones that are defined in other statutes and therefore commonly

understood. The proposal would enable DoD to avoid the time consuming process of determining whether a covered item is available domestically and, if not, executing a determination of domestic non-availability before it can procure within the United States items that are urgently needed by U.S. armed forces. The proposed changes do not alter the original intent of the law in order to accommodate potentially life-threatening situations and other time-critical situations in which it is vital to allow for exceptional procedures. In these very limited circumstances, the proposed changes would not undermine the law's fundamental requirement that DoD purchase certain items from domestic producers and manufacturers in the normal course of business.

In subsections (e) and (f), the proposal would eliminate an existing anomaly that gives foreign suppliers greater latitude than domestic suppliers in the production and manufacture of chemical warfare protective clothing and specialty metals. The proposal also would modify the exception for the procurement of chemical warfare protective clothing to include nuclear and biological warfare protective clothing. The proposal would repeal an exception provided under the law that recognizes offset agreements with foreign countries as a basis for foreign participation in our national security purchases.

In subsection (i), the proposal would allow an exception for purchases of commercial items or components of meals ready-to-eat, specialty metals, and hand and measuring tools. In the commercial market for such items or components, DoD would be a relatively insignificant influence on the way suppliers do business. For the limited situations cited, this clarification would allow for the use of commercial business practices by U.S. industry and DoD, and it would attract broader participation by U.S. companies in DoD's procurement of the affected items.

SEC. ___ . PERFORMANCE OF LOGISTICS SUPPORT AND SERVICES TO WEAPON SYSTEMS CONTRACTORS.

(a) AUTHORITY.—Subject to the limitations of this section, the Secretary of Defense may make available logistics support and services, as described in subsection (b), on a full-cost reimbursable basis, to all private offerors competing for a contract for the construction, modification, or maintenance of a weapons system.

(b) SCOPE.—Logistics support and services provided under this section are limited to the distribution, disposal, and cataloging of materiel and repair parts required for the performance of federal support contracts.

(c) NUMBER AND SIZE OF CONTRACTS.—The Secretary may make logistics support and services under the authority of this section available for not more than five contracts. The length of such a contract shall not exceed five years, including options to extend. The total estimated cost for performance under the five contracts combined shall not exceed $100 million.

(d) GUIDANCE.—Prior to exercising this authority, the Secretary shall develop guidance to ensure that the provisions of logistics support under this section is used only when in the best interests of the United States. At a minimum, such guidance shall include the following:

(1) The authority shall be used only for acquisitions in which the Department intends to seek competition for the selection of sources.

(2) The solicitation shall—

(A) identify that the source selection is being conducted pursuant to the authority provided by this section;

(B) specify the range of logistics support and services to be offered; and

(C) state that offered services are available to all interested offerors on a non-mandatory basis.

(3) The rates at which a contractor will be charged for logistics support and services provided under this section shall reflect the full cost to the Government of resources used for providing services, which shall include costs of resources used, but not paid for, by the Department of Defense.

(4) The Secretary shall ensure that payment from the contractor to cover the portion of the payment necessary to cover the full cost of performance, as required by paragraph (3), is transferred to the General Fund in the Treasury to the extent the payment is reimbursing the Agency for Federal resources it has used, but not paid for, in performing its work.

(5) In accordance with applicable contracting procedures, the customer agency shall not be charged for any effort undertaken by the Department of Defense or the contractor to correct performance deficiencies.

(6) The Secretary shall not charge the contractor for any effort it undertakes to correct performance deficiencies under the contract.

(e) IMPLEMENTATION.—The Secretary shall ensure that exercise of this authority does not conflict with United States treaty obligations.

(f) SUNSET.—The authority provided in this section shall expire on September 30, 2007. A contract may be awarded after this date for solicitations issued prior to this date. Contracts entered before such authority expires shall remain in effect, notwithstanding the expiration of this authority.

Section-by-Section Analysis

Currently, the Defense Logistics Agency (DLA) may provide logistics support and services to other Department of Defense components, but not to contractors, even if doing so may be the overall better value for, and in the best interests of, the Department.

Under this section, the Secretary of Defense could provide limited authorization to the head of DLA (which would expire on September 30, 2007) to make available logistics support and services, on a full-cost reimbursable basis, to all private offerors competing for a contract for the construction, modification, or maintenance of a weapons system. The option for potential contractors to consider use of DLA's logistics support and services, as an alternative to those available in the private sector, when developing a competitive proposal for federal work would provide new flexibility for all parties and potentially reduced costs to the Government. In some cases, needed support may not be available immediately from the private sector at reasonable cost; and in other cases, performance by the Department may yield direct economic benefits. For example, on a Defense contract where DLA is a subcontractor, it could be more economical to store contractor items used in the performance of that contract alongside Department of Defense items in DLA depots or DLA contracted storage facilities, especially in overseas locations. In this circumstance, the Department already has the existing infrastructure required, whereas private sector contractors may not.

Under this proposal, weapon systems program managers, who have been given more authority for the total life cycle management of weapon systems, would have more options to seek better quality and reductions of total costs for supply chain management through greater levels of competition. This section is in consonance with the current environment of public-private partnering and teaming as a means to secure better quality at lower cost. For materiel re-utilization and disposal services that may have already been privatized through the Defense Reutilization and Marketing Service, the logistics provider/defense contractor could benefit from the cost efficiencies already established for all Department of Defense users.

The process used to make DLA services available in support of a federal contract under this authority would be delineated in guidance issued by the Department after consultation with the Office of Management and Budget. The guidance would establish a competitive framework for offeror consideration of DLA's services. Among other things, the guidance would make clear that work offered by DLA would be made available to all interested offerors for incorporation into their competitive proposals, at the offerors' sole discretion. The rates a successful contractor would be charged for work performed by DLA would reflect the full cost to the taxpayer of resources used for providing the services -- which would include costs of resources used but not paid for by DLA. DLA would ensure that payment from the contractor is transferred to the General Fund in the Treasury to the extent it covers costs for federal resources that were used, but not paid for, by DLA in performing its work.

SEC. ___. CLEARING SUSPENSE ACCOUNTS AND RESOLVING CHECK ISSUE DISCREPANCIES.

(a) CLEARING SUSPENSE ACCOUNTS.—(1) IN GENERAL.—With respect to any transaction that was made by or on behalf of the Department of Defense prior to March 1, 2001, that is recorded in the Department of Treasury Budget Clearing Account (Suspense) account F3875, Unavailable Check Cancellations and Overpayments (Suspense) account F3880, or an Undistributed Intergovernmental Payments account F3885, and that is not identified to a specific Department of Defense appropriation—

(A) any undistributed collection shall be deposited to the miscellaneous receipts of the Treasury; and

(B) any undistributed disbursement shall be cancelled.

(2) LIMITATIONS.—An undistributed disbursement shall not be cancelled pursuant to paragraph (1) until the Secretary of Defense has made a written determination that the Department of Defense has attempted without success to locate the documentation necessary to demonstrate which appropriation should be charged and further efforts are not in the government's best interests.

(b) RESOLVE CHECK ISSUE DISCREPANCIES.—(1) IN GENERAL.—With respect to a Treasury check that was issued by or on behalf of the Department of Defense prior to October 31, 1998, for which the Department of Treasury reported a discrepancy between the amount paid and the amount of the check-issue transmitted to the Department of Treasury, and for which a specific Department of Defense appropriation associated with the issued check cannot be identified, the check-issue discrepancy shall be cancelled.

(2) LIMITATIONS.—A discrepancy shall not be cancelled pursuant to paragraph (1) until

the Secretary of Defense has made a written determination that the Department of Defense has attempted without success to locate the documentation necessary to demonstrate which appropriation should be charged and further efforts are not in the government's best interests.

(c) CONSULTATION.— The Secretary of Defense shall consult the Secretary of the Treasury as appropriate in the exercise of the authority granted by subsections (a) and (b).

(d) DURATION OF AUTHORITY.—(1) The authority to cancel an undistributed disbursement under subsection (a) shall expire thirty days after the date of the written determination by the Secretary of Defense that relates to that undistributed disbursement.

(2) The authority to cancel a check-issue discrepancy under subsection (b) shall expire thirty days after the date of the written determination by the Secretary of Defense that relates to that check-issue discrepancy.

(3) No authority shall be exercised under this section after the date that is one year after the effective date of this section.

Section-by-Section Analysis

Subsection (a) would provide the Department of Defense the authority it needs to cancel many longstanding debit and credit transactions that currently are not identified to any Department of Defense appropriation and, therefore, are being charged to a Treasury suspense account. To remove them from the Treasury suspense account to which they are now charged, and to charge them to the proper Department of Defense appropriation, the Department must be able to identify the specific appropriation to be charged. However, in some instances, particularly those involving older transactions, the Department no longer has the documentation needed to demonstrate which appropriation should be charged. Accordingly, without legislative relief, such transactions could remain suspended in Treasury accounts indefinitely. This subsection would allow the Department to remove the amounts from Treasury suspense accounts.

Debit and credit transactions are recorded in a Treasury suspense account for a variety of reasons. Most often this occurs because the appropriation cited on the transaction is incorrect. Such a failure commonly is due to factors such as manual keystroke data errors, inadequate interfacing of electronic data files between systems, or when data occasionally becomes garbled during electronic transmission.

When debit and credit transactions are suspended, manual research efforts are required to resolve such transactions. When such research identifies the appropriation to be charged, the transaction is removed from the Treasury suspense account and charged to the applicable Department of Defense appropriation. Research efforts have resolved the vast preponderance of suspended transactions, thereby permitting them to be charged to the Department of Defense appropriations. Notwithstanding the generally high success rate resulting from such research, some debit and credit transactions – especially those involving older transactions – remain suspended due to missing or incomplete documentation or data. In some instances, the period for which documentation is required to be retained has expired and the supporting documentation no longer is available. In other cases, documentation inadvertently may have been lost or misplaced in the course of conducting worldwide business among hundreds of Department of Defense locations over the years or during the consolidation of worldwide financial operations the Department has undertaken over the last ten years. In the absence of specific documentation to conclusively demonstrate which Department of Defense appropriation should be charged, such debit and credit transactions – without legislative relief could stay suspended in Treasury suspense accounts indefinitely.

To preclude similar problems from occurring in the future, the Department implemented new policies, effective March 1, 2001, that require suspended debit and credit transactions to be cleared from applicable Treasury suspense accounts within 180 days. Given the procedures that are now in place, this legislative relief is considered a one-time remedy that will address the matter with finality.

Subsection (b) would provide the Department the authority it needs to cancel many longstanding debit and credit transactions that currently are not identified to any Department of Defense appropriation and, therefore, cannot be cleared from the Department of Treasury's Comparison of Checks Issued - Detail Reported on Statements of Accountability and Block Control Level Totals Report (the Comparison Report).

Check issue differences are created by variances between check summaries reported on the Statement of Accountability and detail checks reported through the Defense Check Reconciliation Module to the Department of Treasury. DFAS Arlington and the centralized Field Organizations did not have visibility of these variances until mid-1998. Regulations are promulgated by the Department of Treasury's Financial Management Service to adjust any check-issue errors and enter any appropriate adjustments in its accounts. When check issue differences are reported, manual research efforts are required to resolve such transactions. When such research identifies the appropriation to be charged, the transaction is processed and cleared from the Comparison Report.

Research efforts have resolved the preponderance of suspended transactions, thereby permitting them to be charged to the Department of Defense appropriations. Notwithstanding the generally high success rate resulting from such research, some debit and credit transactions – especially those involving older transactions – remain uncleared due to missing or incomplete documentation or data. In some instances, the period for which documentation is required to be retained has expired and the supporting documentation is no longer available. In other cases, documentation may have been lost or misplaced in the course of conducting worldwide business

among hundreds of Department of Defense locations over the years or during the consolidation of worldwide financial operations that the Department has undertaken over the last ten years. In the absence of specific documentation to conclusively demonstrate which Department of Defense appropriation should be charged – and without legislative relief – such debit and credit transactions could remain uncleared indefinitely.

To preclude similar problems from occurring in the future, the Department implemented a performance measure in FY 2001, which the Under Secretary of Defense (Comptroller) included as part of the FY 2002 Performance Contract for the Director of the Defense Finance and Accounting Service. In addition, policy is being revised that requires future retention of records for any open check issue difference until the difference is cleared. Again, given the procedures that are now in place, this legislative relief is considered a one-time remedy that will address the matter with finality.

SEC. ___. USE OF MANDATORY SALARY OFFSETS TO PREVENT DELINQUENCY ON GOVERNMENT TRAVEL CHARGE CARD PAYMENTS.

Section 2784 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) SALARY OFFSETS.—(1) IN GENERAL.—Under regulations containing procedures substantially equivalent to those under the regulations promulgated by the Administrator of General Services under the Travel and Transportation Reform Act of 1998, the Secretary of Defense, in his sole and exclusive discretion, or in the sole and exclusive discretion of a designee, may require that any amount of funds a Department of Defense employee or military member owes to a Government travel charge contractor as a result of delinquencies not disputed by the employee or member on a Government travel charge card issued for payment of expenses incurred in connection with official Government travel shall be collected, on behalf of a Government travel charge contractor, by deduction from the amount of pay owed to that employee or member. The amount of pay deducted from the pay owed to an employee or member with respect to a pay period may not exceed 15 percent of the disposable pay of the employee or member for that pay period, except that a greater percentage may be deducted upon the written consent of the employee or member.

"(2) DUE PROCESS PROTECTIONS.—Collections under this subsection shall be carried out by the Secretary of Defense, in his sole and exclusive discretion, in accordance with procedures substantially equivalent to the procedures required under section 3716 of title 31.".

Section-by-Section Analysis

Delinquency rates on travel charge cards issued to Department of Defense civilian employees and military members are unacceptably high, and contractors have written off a significant amount of debts associated with individually issued Government travel charge cards. This proposal would amend section 2784 of title 10, United States Code, to enhance the Department's management of its travel card program by providing an additional tool to assist in prompt payments to contractors and in reducing the number of delinquent payments on travel charge cards. It should help to reduce problems experienced by contractors who have written off a significant amount of bad debts associated with individually billed accounts.

This proposal provides authority to the Secretary of Defense, in his sole and exclusive discretion, to require that delinquent amounts not in dispute owed to a travel card contractor shall be collected by salary deduction. Unless a civilian employee or military member agreed to a greater amount, the amount collected would not be more than 15 percent of the disposable pay of an employee or member. Collections, in the sole and exclusive discretion of the Secretary, or a designee, would be in accordance with procedures substantially equivalent to the procedures for collection under the "Debt Collection Act."

SEC. ___. AUTHORIZE PAYMENT OF DISTRIBUTION INCENTIVE PAY.

(a) IN GENERAL.—Chapter 5 of title 37, United States Code, is amended by inserting after section 305a the following new section:

"§305b. Special pay: distribution incentive pay

"(a) ENTITLEMENT.—A member of an armed force who is entitled to basic pay and is on duty in an assignment designated by the Secretary of Defense may be paid distribution incentive pay at a monthly rate established by the Secretary concerned not to exceed $1,500.

"(b) ELIGIBILITY.—For an assignment to be qualified for an award of the distribution incentive pay authorized in subsection (a), the assignment must be designed by the Secretary to attract volunteers to agree to serve in less-than-desirable locations. If assignments to certain locations are difficult-to-fill only in specific occupational specialities, then the Secretary shall further limit the pay to just personnel in those locations who are required to fill the difficult-to-fill positions.

"(c) DURATION OF DISTRIBUTION INCENTIVE PAY.—A member will continue to receive special pay under this section during absences from the qualifying assignment for temporary duty pursuant to military orders or for authorized periods of leave. The special pay will be terminated upon the member's permanent separation from the qualifying assignment pursuant to military orders.

"(d) SUNSET.—No distribution incentive pay may be paid under this section with respect to the assignment to a hard-to-fill career position or for service in a less-than-desirable geographic location after December 31, 2007.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 305a the following new item:

1 "305b. Special pay: distribution incentive pay.".

Section-by-Section Analysis

This proposal would modify chapter 5 of title 37, United States Code, to enable the services to pay Distribution Incentive Pay, a flexible, market-based incentive to encourage members to volunteer for less-desirable geographic locations. The use of Distribution Incentive Pay would be subject to the discretion of the Secretary of Defense.

Market-based, distribution incentives are needed to replace more costly or ineffective measures used by the services today. For example, the Navy currently utilizes a variety of monetary and non-monetary incentives to compensate for assignments to billets in different locations. However, the monetary incentives are neither flexible enough nor financially sufficient to encourage enough qualified volunteers to fill many of these billets. In addition, the Navy has used many non-monetary incentives such as sea duty credit (full or partial), neutral duty credit, points towards promotion, choice of assignment/homebase, and other means to attract sailors to serve in both the Continental United States and overseas billets. Although these incentives have been somewhat effective in manning these billets, they have unintentionally encumbered the Navy's sea/shore rotation structure. With shortages in critical sea intensive ratings, any incentive which negatively affects Navy's ability to assign members to sea duty exacerbates these shortages.

The proposed Distribution Incentive Pay would replace the non-monetary incentives described above. Distribution Incentive Pay would enable the services to pay up to $1,500 per month to encourage adequate numbers of volunteers for hard-to-fill jobs in an effective and responsive manner, without the unintended consequences of non-monetary incentives. The specific amount of this pay allocated to various locations or billets would be adjusted upward or downward, in a responsive manner at the Service Secretary's discretion, to balance the supply and demand of qualified volunteers serving in these jobs or locations.

Distribution Incentive Pay would be a flexible, cost-effective enhancement to the current compensation system and would provide an alternative to the non-monetary credit system with its negative impact on manning Battle Forces units. Although today's military is an all-volunteer force, many assignments in the military today are involuntary, adversely affecting morale, performance and retention.

The following benefits are anticipated to offset and justify the cost of implementing Distribution Incentive Pay: increased availability of manpower to the fleet units; improved balancing of manpower needs versus personnel preferences, increasing sailor satisfaction; increased voluntary manning of billets, resulting in greater productivity; reduced moving and training costs from a more geographically stable force; savings from increased retention due to more voluntary assignments; lower crew turnover due to voluntary assignments, creating higher readiness; and greater flexibility and responsiveness in manning urgent billet requirements with willing, qualified volunteers.

Initially, only the Navy intends to provide Distribution Incentive Pay. Their projected first year costs are $1.0 million from Navy's Military Personnel account for initial special pays and a $2.1 million Operations & Maintenance account expenditure for initial startup, including hardware, software, and product development. If the program is successful, the projected costs for Fiscal Years 2004 through 2007 are $147.4 million.

SEC. ___ . ALLOWANCE TO REIMBURSE INCOME TAXES ON PROGRAM BENEFITS.

Section 1013(c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374(c)) is amended by inserting at the end the following new sentences: "In addition to other benefits authorized by this section, under such regulations as the Secretary of Defense may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to provide benefits authorized by this section are also available for the reimbursement of substantially all the Federal, State, and local income taxes incurred by a civilian employee (or by such employee and such employee's spouse if filing jointly) or by a member of the Armed Forces (or by such member and such member's spouse if filing jointly) for any benefits provided under this section. Reimbursement under the preceding sentence shall also include an amount equal to all income taxes for which the employee, member, and spouse, as the case may be, would be liable due to the reimbursement for income taxes referred to in the preceding sentence of this subsection.".

Section-by-Section Analysis

This section would authorize the Secretary of Defense, by regulation, to provide for the reimbursement of Federal, state, and local income taxes on benefits provided under section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374), including the reimbursement of Federal, state, and local income taxes. Reimbursement is authorized for civilian employees and members of the Armed Forces eligible for benefits under that section and for the spouses of such individuals if joint income tax returns are filed.

Current Law

Homeowners Assistance Program

Under current law, the Secretary of Defense is authorized to provide financial assistance to civilian employees and members of the Armed Forces assigned to a military base or installation ordered to be closed if they own homes at or near those bases or installations. This program is known as the Homeowners Assistance Program.

The Homeowners Assistance Program (HAP), codified at section 3374 of title 42, United States Code, was authorized by section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, (P.L. 89-754) as amended. The program assists eligible homeowners who, through no fault of their own, face a financial loss when selling their homes in an area where real estate values have declined because of a Base Realignment or Closure (BRAC) Announcement. HAP is a special relief program designed to provide financial assistance to eligible employee homeowners when the real estate market is so adversely affected by closure or partial closure of a military installation, or reduction in scope of operations, that the personnel are unable to dispose of their dwellings under reasonable terms and conditions.

The Department of Defense has designated the U.S. Army as executive agent for HAP. The U.S. Army Corps of Engineers administers the program for the entire Department of Defense and the Coast Guard. Working with military commanders and installation housing officials, the U.S. Army Corps of Engineers district real estate specialists offer assistance in determining and disbursing HAP benefits to eligible homeowners. There are three different HAP benefits: (1) government acquisition; (2) private sale; and (3) foreclosure.

With government acquisition, the government buys the home of an eligible individual for 75 percent of the value on the day prior to the realignment/closure announcement date or by paying off the mortgage, whichever is greater. Additional benefits include reimbursement of mortgage interest, taxes and hazard insurance. This is paid from (a) the date of vacancy of the property; (b) the date the application was received; or (c) the date of program approval, whichever date is later.

With private sale, the government reimburses eligible individuals for part of the loss from selling their homes. An eligible applicant may be reimbursed in connection with the private sale of the dwelling in an amount not to exceed the difference between 95 percent of the appraised fair market value of the property on the day prior to the announcement date and appraised fair market value of such property at the time of the sale or the sales price, whichever is greater.

In the event an eligible individual has defaulted on a mortgage the government also can provide foreclosure assistance. If lenders have foreclosed on the property after the announcement, an eligible individual may be reimbursed for the amounts paid out as a result of the foreclosure (including VA compromises). This payback may include the direct cost of the judicial foreclosure, expenses and liabilities enforceable according to the terms of the mortgage, and debts established against the eligible individual by a Federal Agency for loans made, guaranteed or insured following liquidation of security for such loans.

In general, individuals eligible for HAP benefits include military service members, civilian employees of the Federal Government, and non-appropriated fund individuals. HAP benefits are available to full-time active duty military members (including the Coast Guard), full-time DoD civilian employees, and U.S. citizens who are non-appropriated fund full-time employees at the affected installation. Eligible individuals must be assigned or employed at or near the installation announced for closure or realignment on the announcement date and must be the owner-occupant on the announcement date. Civilian or military personnel transferred, or

terminated as a result of a Reduction-In-Force (RIF), within six months prior to the announcement, who were owner-occupants at the time of the transfer or termination also are eligible. Civilian or Military personnel who transferred overseas from an affected installation within three years prior to the announcement and who are homeowners in the area, as well as civilian employee homeowners on an overseas tour with reemployment rights back to the affected installation at the time of the announcement, are also eligible. A servicemember transferred from the installation within three years prior to the public announcement is eligible, if in connection with the transfer, he was informed of a future programmed reassignment to the installation. Military member homeowners ordered into on-post housing within six months prior to the announcement are also eligible. In addition, applicants must be relocating beyond the normal commuting distance from the affected area to secure employment.

In order for benefits to be approved at a particular installation, an intensive study of the real estate markets in the areas surrounding an installation is performed. Once it is determined that the market has declined based on a BRAC Announcement, supporting documentation must be provided to Headquarters, U.S. Army Corps of Engineers (HQUSACE) for recommendation of approval. Once reviewed by HQUSACE, the report is then forwarded to the Deputy Assistant Secretary of the Army (Installations and Housing), for final approval/denial of a HAP.

Tax Treatment

Under current tax law, amounts received, directly or indirectly, by an individual as a payment for moving from one residence to another residence that is attributable to employment is includible in gross income subject to federal income tax. As a result, if an employer reimburses an employee for a loss incurred on the sale of the employee's house, and the reimbursement is made because of the employer-employee relationship, the reimbursement is attributable to the performance of services and, as a result, includible in gross income. Similarly, if an employer acquires the house of an employee at a price in excess of fair market value in order to prevent an employee sustaining a loss on the sale, the employee is considered to have received a payment attributable to employment to the extent that such payment exceeds the fair market value of the property.

Applying these principles, the Internal Revenue Service has concluded that benefits under the Homeowners Assistance Program are includible in gross income for federal income tax purposes (Rev. Rul. 76-342, 1976-2 C.B. 22). In particular, the cash payment that federal civilian employees and members of the Armed Forces may elect to receive as compensation for losses in a private sale of their personal residence is a payment attributable to employment and, consequently, includible in gross income of the employee or member as compensation for services. The payment is not considered a part of the selling price of the residence for purposes of determining gain or loss. In addition, if the Government purchases the personal residence of a civilian employee or member of the Armed Forces for 90 percent of the pre-announcement fair market value or the amount of the outstanding mortgages, the amount by which that purchase price exceeds the fair market value of the residence at the date of sale is also a payment attributable to their employment and, as a result, includible in gross income. This excess is also not part of the selling price for purposes of determining gain or loss. These amounts includible

in gross income are also considered "wages" for purposes of withholding and, in the case of civilian employees, these amounts are also considered "wages" for purposes of Federal Insurance Contributions Act (FICA) taxes.

Reasons for Change

The taxation of HAP benefits diminishes the value of assistance provided and creates a financial burden on all eligible individuals. These burdens can be particularly burdensome in the case of a member of the Armed Forces who bought a home with little or no down payment. An example might be illuminating.

An enlisted member of the Armed Forces, pay grade E-6, buys a home in Hawaii for $185,000. Sometime thereafter, the installation to which the member is assigned is included among the installations scheduled for closure in a BRAC announcement. The E-6 is transferred to San Diego and cannot sell the home without significant loss. A HAP is established for this installation and the member's property has been appraised at $96,000. The member still owes $180,000 on the mortgage. The HAP will pay the $84,000 difference between the assessed value of the house and the amount owed on the mortgage. In accordance with Rev. Rul. 76-342, the amount in excess of the fair market value of the home, *i.e.*, $84,000, is includible in gross income for federal tax purposes. This amount is a considerable amount for any federal employee. It's an overwhelming amount for an E-6 in the Armed Forces. In addition, because many states follow federal income tax rules, this amount is also subject to income taxes in many states. This amount is also included in "wages" for FICA tax purposes.

Proposal

This proposal would amend the Homeowners Assistance Program to provide authority for the Secretary of Defense to reimburse eligible individuals for federal, state, and local income taxes imposed on HAP benefits. Since this allowance is itself taxable, the reimbursement would be increased to offset the income taxes imposed on the reimbursement. Modeled after the income tax allowance provided to federal civilian employees for travel, transportation, and relocation expenses (5 U.S.C. 5724b), this allowance would offset the adverse effect of federal and state income taxes imposed on HAP benefits.

SEC. ___. CONVERSION OF TERM APPOINTMENT TO CAREER-CONDITIONAL OR CAREER APPOINTMENT.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended by adding at the end the following new section:

"§ 3304b. Conversion of term appointment to career-conditional or career appointment

"An agency may select a term employee for permanent appointment in the competitive service through internal competitive promotion procedures when the following conditions are met—

"(1) such term appointment was made through competitive examining procedures;

"(2) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a career appointment;

"(3) the employee has completed at least two years of current competitive service under a term appointment in the competitive service;

"(4) the employee's performance under such term appointment was at least fully successful; and

"(5) the conversion is made to a position in the same line of work as the position to which the employee received a term appointment under competitive procedures.

"The authority to convert such an appointment to a career appointment is exclusive of any other provision of law relating to the examination, certification, and appointment of individuals to the competitive service.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of Chapter 33 of title 5, United States Code, is amended by adding at the end the following new item:

"3304b. Conversion of term appointment to career-conditional or career appointment." .

Section-by-Section Analysis

Agencies are authorized to make a term appointment to respond to short-term requirements or for a specific project. A vehicle for converting a term appointment to a career-conditional or career appointment, however, does not exist without going through the entire recruitment process, under which there is no guarantee that the individual who holds the term appointment could be reached.

This section would authorize agencies to convert an individual serving in a competitive service position under a term appointment to a career-conditional or career appointment under internal merit promotion procedures. Authority would allow agencies to retain a proven employee when the employee's services are required to maintain critical continuity or to reshape the workforce quickly.