1 **SEC. ___. AFGHANISTAN SECURITY FORCES FUND.**

2 (a) CONTINUATION OF PRIOR AUTHORITIES AND NOTICE AND REPORTING

3 REQUIREMENTS.—Funds available to the Department of Defense for the Afghanistan Security

4 Forces Fund for fiscal year 2021 shall be subject to the conditions contained in

5 (1) subsections (b) through (g) of such section 1513 of the National Defense

6 Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 428); and

7 (2) section 1521(d)(1) of the National Defense Authorization Act for Fiscal Year

8 2017 (Public Law 114-328; 130 Stat. 2577).

9 (b) USE OF FUNDS.—Subsection (b)(1) of such section 1513 is amended by striking

10 "security forces of the Ministry of Defense and the Ministry of the Interior of the Government

11 of the Islamic Republic of Afghanistan" and inserting "security forces of Afghanistan".

12 (c) EQUIPMENT DISPOSITION.—

13 (1) ACCEPTANCE OF CERTAIN EQUIPMENT.—Subject to paragraph (2), the

14 Secretary of Defense may accept equipment that is procured using amounts authorized to

15 be appropriated for the Afghanistan Security Forces Fund by this Act and is intended for

16 transfer to the security forces of Afghanistan, but is not accepted by such security forces.

17 (2) CONDITIONS ON ACCEPTANCE OF EQUIPMENT.—Before accepting any

18 equipment under the authority provided by paragraph (1), the Commander of United

19 States forces in Afghanistan shall make a determination that such equipment was

20 procured for the purpose of meeting requirements of the security forces of Afghanistan,

21 as agreed to by both the Government of Afghanistan and the United States, but is no

22 longer required by such security forces or was damaged before transfer to such security

23 forces.

1 (3) ELEMENTS OF DETERMINATION.—In making a determination under paragraph
2 (2) regarding equipment, the Commander of United States forces in Afghanistan shall
3 consider alternatives to Secretary of Defense acceptance of the equipment. An
4 explanation of each determination, including the basis for the determination and the
5 alternatives considered, shall be included in the relevant quarterly report required under
6 paragraph (5).
7 (4) TREATMENT AS DEPARTMENT OF DEFENSE STOCKS.—Equipment accepted
8 under the authority provided by paragraph (1) may be treated as stocks of the
9 Department of Defense upon notification to the congressional defense committees of
10 such treatment.
11 (5) QUARTERLY REPORTS ON EQUIPMENT DISPOSITION.—Not later than 90 days
12 after the date of the enactment of this Act and every 90-day period thereafter during
13 which the authority provided by paragraph (1) is exercised, the Secretary of Defense
14 shall submit to the congressional defense committees a report describing the equipment
15 accepted during the period covered by such report under section 1531(d) of the National
16 Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 938; 10
17 U.S.C. 2302 note), and under section 1532(b) of the Carl Levin and Howard P. "Buck"
18 McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-
19 291; 128 Stat. 3612) during the period covered by the report. Each report shall include a
20 list of all equipment that was accepted during the period covered by the report and
21 treated as stocks of the Department, and copies of the determinations made under
22 paragraph (2), as required by paragraph (3).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would authorize $4,015,612,000 for the Afghanistan Security Forces Fund (ASFF) for fiscal year (FY) 2021 and continue certain established provisions applicable to the ASFF. This proposal would also expand the group of eligible recipients of ASFF funds to include all of the security forces of Afghanistan.

ASFF funding is necessary to attain U.S. national security objectives in Afghanistan and to provide the United States' contribution to an international effort to meet the funding requirements of the Afghan forces. At the NATO Summit in Brussels in July 2018, participating donor nations agreed to extend assistance for financial sustainment of the Afghan forces - about $1 billion per year - through 2024, and the Afghan government continues to increase the amount of funding it provides consistent with its commitment at the 2012 NATO Summit in Chicago. The ASFF appropriation and the expanded eligibility group supports the United States strategy in Afghanistan to work with Allies and partners to enable well-trained, well-equipped, and sustainable Afghan security forces to provide security in Afghanistan. It also enables all Afghan security forces to continue efforts to defeat the remnants of al Qaeda, the Islamic State, and other terrorist organizations in order to ensure that Afghanistan does not again become a safe haven for terrorist groups to plan and execute attacks against United States interests. Effective Afghan forces minimize the need to reintroduce U.S. and coalition forces to conduct counterinsurgency operations. We will continue to execute ASFF through Financial and Activity Plans with statutory oversight by the Afghanistan Resources Oversight Council to ensure the Department of Defense and Congress maintain control and oversight over these funds.

This funding supports operations by and sustainment of Afghan National Defense and Security Forces at an authorized level of 352,000, plus 30,000 Afghan Local Police, to enhance the security and stability of Afghanistan by protecting the population, fostering the rule of law, preventing the establishment of terrorist safe havens, and developing a reliable long-term counterterrorism partnership with the United States.

Budget Implications: The resources reflected in the table below are funded within the FY 2021 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
ASFF	$1,235.1					Afghanistan Security Forces Fund	BA6	Multiple	
ASFF	$602.2					Afghanistan Security Forces Fund	BA7	Multiple	
ASFF	$835.9					Afghanistan Security Forces Fund	BA8	Multiple	
ASFF	$1,342.5					Afghanistan Security Forces Fund	BA9	Multiple	
Total	$4,015								

Changes to Existing Law: This proposal would amend section 1513(b) of the National Defense Authorization Act for Fiscal Year 2008 as follows:

SEC. 1513. AFGHANISTAN SECURITY FORCES FUND.

* * * * *

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds authorized to be appropriated by subsection (a) shall be available to the Secretary of Defense to provide assistance to the security forces of Afghanistan ~~security forces of the Ministry of Defense and the Ministry of the Interior of the Government of the Islamic Republic of Afghanistan~~.

(2) TYPES OF ASSISTANCE AUTHORIZED.—Assistance provided under this section may include the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funds.

(3) SECRETARY OF STATE CONCURRENCE.—Assistance may be provided under this section only with the concurrence of the Secretary of State.

* * * * *

1 **SEC. ____. AMENDMENT TO REPORTING REQUIREMENT FOR INTERAGENCY**
2 **COORDINATION GROUP OF INSPECTORS GENERAL FOR GUAM**
3 **REALIGNMENT.**

4 Section 2835(e)(1) of the National Defense Authorization Act for FY 2010 (Public Law 111-
5 84; 10 U.S.C. 2687 note) is amended—

6 (1) in the heading, by striking “ANNUAL” and inserting “BIENNIAL”; and
7 (2) in the matter preceding subparagraph (A)—
8 (A) by striking “each year” and inserting “every other year, beginning
9 February 1, 2022,”;
10 (B) by striking “fiscal year” and inserting “two fiscal years”;
11 (C) by striking “such year” and inserting “such years”; and
12 (D) by striking “the year” and inserting “the years.”

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would extend the statutory timeframe of the annual Guam Realignment reporting requirement under section 2835(e)(1) of the National Defense Authorization Act for FY 2010 (Public Law 111-84; 10 U.S.C. 2687 note) based on modifications to the number of projects and relocated personnel involved in the realignment initiative. Extension of the annual reporting requirement to a biennial basis would afford the Department of Defense Office of Inspector General (DoD OIG) greater ability to effectively provide substantive oversight as head of the Interagency Coordination Group of Inspectors General for Guam Realignment.

Section 2835 requires the chairperson of the Interagency Coordination Group (ICG) of Inspectors General for Guam Realignment, led by the DoD OIG, to prepare and submit annual reports summarizing the activities of the ICG during the past year and the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Pursuant to section 2835, the annual reports are submitted to the congressional defense committees, the Secretary of Defense, and the Secretary of the Interior.

The requirement for annual reports no longer aligns with the initial relocation of personnel and projects as originally planned. The initial Guam realignment plan, created in

May 2006, included relocation of approximately 13,000 U.S. Marines and dependents over a 5-year period between 2010 and 2014. The relocation of a large number of service members and completing multiple projects in a compressed timeframe necessitated comprehensive oversight and congressional reporting on an annual basis. However, since the 2006 plan's inception, the number of relocated service members and dependents has decreased by 6,700, and the timeframe for the realignment completion has grown by 14 years, as illustrated in the table below. Furthermore, as a result of fewer personnel moving, the number of realignment projects has decreased.

	Originally Planned	Current Plan
Approximate Number of Marines and Dependents	8,000 Marines 5,000 Dependents	5,000 Marines 1,300 Dependents
Timeline	FYs 2010 – FY 2014 5 years	FY 2010 – FY 2028 19 years

Therefore, amending the annual reporting requirement to a biennial basis better aligns with the increased relocation timeline, the reduced personnel movements, and the reduced construction projects. Accordingly, Congressional oversight would be better accomplished through timely and relevant incremental audits conducted individually by Offices of Inspectors General over the remaining years of the 19-year realignment process, supplemented by a biennial report summarizing the activities of the ICG, rather than an annual summary report. The DoD OIG requests an amendment to the reporting requirement from an annual basis to a biennial report beginning February 1, 2022, covering Guam relocation actions for FYs 2020 through 2021.

A biennial reporting requirement for the ICG and the DoD OIG would not affect specific oversight of the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Individual audits and investigations conducted by the various entities associated with the members of the ICG would still be done.

In addition, section 2835 requires the chairperson of the ICG of Inspectors General for Guam Realignment to prepare and submit to the congressional defense committees a final report containing a notice of termination and a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam when the Guam realignment is 90 percent complete (subsection (h)(2)(B)); the final report will continue to remain a requirement.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request. This proposal will allow the DoD OIG to continue to use existing resources to provide effective oversight of DoD's Guam Realignment operations, while freeing up resources to perform other important audits, increasing the DoD OIG's overall efficiency.

Changes to Existing Law: This proposal would make the following changes to section 2835 of the National Defense Authorization Act for FY 2010 (10 U.S.C. 2687 note):

SEC. 2835. INTERAGENCY COORDINATION GROUP OF INSPECTORS GENERAL FOR GUAM REALIGNMENT.

(a) Interagency Coordination Group.-There is hereby established the Interagency Coordination Group of Inspectors General for Guam Realignment (in this section referred to as the "Interagency Coordination Group')-

(1) to provide for the objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam; and

(2) to provide for coordination of, and recommendations on, policies designed-

(A) to promote economic efficiency and effectiveness in the administration of the programs and operations described in paragraph (1); and

(B) to prevent and detect waste, fraud, and abuse in such programs and operations.

(b) Membership.-

(1) Chairperson.-The Inspector General of the Department of Defense shall serve as chairperson of the Interagency Coordination Group.

(2) Additional members.-Additional members of the Interagency Coordination Group shall include the Inspector General of the Department of Interior and the Inspector General of such other Federal agencies as the chairperson considers appropriate to carry out the duties of the Interagency Coordination Group.

(c) Duties.-

(1) Oversight of guam construction.-It shall be the duty of the Interagency Coordination Group to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for military construction on Guam and of the programs, operations, and contracts carried out utilizing such funds, including-

(A) the oversight and accounting of the obligation and expenditure of such funds;

(B) the monitoring and review of construction activities funded by such funds;

(C) the monitoring and review of contracts funded by such funds;

(D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States and private and nongovernmental entities;

(E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such fund; and

(F) the monitoring and review of the implementation of the Defense Posture Review Initiative relating to the realignment of military installations and the relocation of military personnel on Guam.

(2) Other duties related to oversight.-The Interagency Coordination Group shall establish, maintain, and oversee such systems, procedures, and controls as the Interagency Coordination Group considers appropriate to discharge the duties under paragraph (1).

(3) Oversight plan.-The chairperson of the Interagency Coordination Group shall prepare an annual oversight plan detailing planned audits and reviews related to the Guam realignment.

(d) Assistance From Federal Agencies.-

(1) Provision of assistance.-Upon request of the Interagency Coordination Group for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Interagency Coordination Group.

(2) Reporting of refused assistance.-Whenever information or assistance requested by the Interagency Coordination Group is, in the judgment of the chairperson of the Interagency Coordination Group, unreasonably refused or not provided, the chairperson shall report the circumstances to the Secretary of Defense and to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] without delay.

(e) Reports.-

(1) ~~Annual~~ Biennial reports.-Not later than February 1 of ~~each year~~ every other year, beginning February 1, 2022, the chairperson of the Interagency Coordination Group shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Secretary of Defense, and the Secretary of the Interior a report summarizing, for the preceding ~~fiscal year~~ two fiscal years, the activities of the Interagency Coordination Group during such ~~year~~ years and the activities under programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Each report shall include, for the ~~year~~ years covered by the report, a detailed statement of all obligations, expenditures, and revenues associated with such construction, including the following:

(A) Obligations and expenditures of appropriated funds.

(B) A project-by-project and program-by-program accounting of the costs incurred to date for military construction in connection with the realignment of military installations and the relocation of military personnel on Guam, together with the estimate of the Department of Defense and the Department of the Interior, as applicable, of the costs to complete each project and each program.

(C) Revenues attributable to or consisting of funds contributed by the Government of Japan in connection with the realignment of military installations and the relocation of military personnel on Guam and any obligations or expenditures of such revenues.

(D) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for military construction on Guam.

(E) In the case of any contract, grant, agreement, or other funding mechanism described in paragraph (2)-

(i) the amount of the contract, grant, agreement, or other funding mechanism;

(ii) a brief discussion of the scope of the contract, grant, agreement, or other funding mechanism;

(iii) a discussion of how the department or agency of the United States Government involved in the contract, grant, agreement, or other funding mechanism identified, and solicited offers from, potential individuals or entities to perform the contract, grant, agreement, or other funding mechanism, together with a list of the potential individuals or entities that were issued solicitations for the offers; and

(iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(2) Covered contracts, grants, agreements, and funding mechanisms.-A contract, grant, agreement, or other funding mechanism described in this paragraph is any major contract, grant, agreement, or other funding mechanism that-

(A) is entered into by any department or agency of the United States Government with any public or private sector entity; and

(B) involves the use of amounts appropriated or otherwise made available for military construction on Guam.

(3) Form.-Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex if the Interagency Coordination Group considers it necessary.

(4) Rule of construction.-Nothing in this subsection shall be construed to authorize the public disclosure of information that is-

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(5) Submission of comments.-Not later than 30 days after receipt of a report under paragraph (1), the Secretary of Defense or the Secretary of the Interior may submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] any comments on the matters covered by the report as the Secretary concerned considers appropriate. Any comments on the matters covered by the report shall be submitted in unclassified form, but may include a classified annex if the Secretary concerned considers it necessary.

(f) Public Availability; Waiver.-

(1) Public availability.-The Interagency Coordination Group shall publish on a publicly available Internet website each report prepared under subsection (e). Any comments on the report submitted under paragraph (5) of such subsection shall also be published on such website.

(2) Waiver authority.-The President may waive the requirement under paragraph (1) with respect to availability to the public of any element in a report under subsection (e), or any comment with respect to a report, if the President determines that the waiver is justified for national security reasons.

(3) Notice of waiver.-The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which a report required under subsection (e), or any comment under paragraph (5) of such subsection, is submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]. The report and comments shall specify whether waivers under this subsection were made and with respect to which elements in the report or which comments, as appropriate.

(g) Definitions.-In this section:

(1) Amounts appropriated or otherwise made available.-The term “amounts appropriated or otherwise made available for military construction on Guam” includes amounts derived from the Support for United States Relocation to Guam Account.

(2) Guam.-The term “Guam” includes any island in the Northern Mariana Islands.

(h) Termination.-

(1) In general.-The Interagency Coordination Group shall terminate upon the expenditure of 90 percent of all funds appropriated or otherwise made available for Guam realignment.

(2) Final report.-Before the termination of the Interagency Coordination Group pursuant to paragraph (1), the chairperson of the Interagency Coordination Group shall prepare and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a final report containing-

(A) notice that the termination condition in paragraph (1) has occurred; and

(B) a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam.

1 **SEC. ___. AUTHORITY TO ACQUIRE AND DISPOSE OF MATERIALS FOR THE**

2 **NATIONAL DEFENSE STOCKPILE.**

3 (a) DISPOSAL AUTHORITY.--Pursuant to section 5(b) of the Strategic and Critical

4 Materials Stock Piling Act (50 U.S.C. 98d(b)), the National Defense Stockpile Manager

5 may dispose of 4,031,000 pounds of tungsten ores and concentrates contained in the

6 National Defense Stockpile (in addition to any amount previously authorized for disposal).

7 (b) ACQUISITION AUTHORITY.—Using funds available in the National Defense

8 Stockpile Transaction Fund, the National Defense Stockpile Manager may acquire the

9 following materials determined to be strategic and critical materials required to meet the

10 defense, industrial, and essential civilian needs of the United States:

11 (1) Dysprosium

12 (2) Rare earth cerium compounds

13 (3) Rare earth lanthanum compounds

14 (4) Neodymium oxide, Praseodymium oxide and Neodymium Iron Boron (NdFeB)

15 magnet block.

16 (5) Yttrium

17 (6) Samarium–Cobalt (Sm-Co) alloy

18 (c) AMOUNT OF AUTHORITY.—The National Defense Stockpile Manager may use up

19 to $50,000,000 in the National Defense Stockpile Transaction Fund for acquisition of the

20 materials specified in subsection (b).

21 (d) FISCAL YEAR LIMITATION.—The authority under subsection (b) is available for

22 purchases during fiscal year 2021 through fiscal year 2025.

Section-by-Section Analysis

This proposal would authorize acquisition of certain materials for the National Defense Stockpile (NDS) under the Strategic and Critical Materials Stock Piling Act (Act).

DISPOSAL

Subsection (a) of this proposal would authorize the National Defense Stockpile Manager to dispose of materials that have been determined, based upon the analysis required by the Act to be excess to Stockpile requirements.

ACQUISITION

Subsection (b) of this proposal would provide authority under section 5(a)(1) of the Act (50 U.S.C. 98d(a)(1)) to acquire strategic and critical materials for the Stockpile.

The materials for which acquisition authority is requested have been identified as necessary to meet the military, industrial, and essential civilian needs of the United States through a rigorous analytical requirements determination processes and are identified in the 2017 and 2019 Biennial Report to the Congress on Stockpile Requirements (Report). The Report is prepared pursuant to the Act, which applies a rigorous analytical process to identify strategic and critical materials required to sustain the United States during various military conflict scenarios developed by the Under Secretary of Defense for Policy. A discussion of the materials follows.

Dysprosium. Dysprosium metal improves the ability of NdFeB magnets to resist demagnetization in demanding, high temperature, service environments. China accounted for approximately 100% of dysprosium production over the past five years. Terbium may serve as a substitute for dysprosium in magnets with a minimum reduction in properties. However, terbium is relatively scarcer than dysprosium and is much more expensive. In addition, substituting terbium for dysprosium would require re-engineering of the magnet and further qualification work thus possibly lengthening time of any supply disruption for NdFeB magnets.

Rare earth cerium compounds. Virtually every integrated circuit chip fabricated today requires multiple steps of polishing with sophisticated formulations of slurries containing cerium in a process known as Chemical Mechanical Planarization (CMP). In the transportation fuels sector, consumption of additive cerium-based catalysts from oil refineries is growing in order to reduce sulfur oxide (SOx) and nitrogen oxide (NOx) emissions and to eliminate metal elements in the crude that have deleterious effects in the process of producing petrochemical distillates. The production of cerium-based cover glass for solar panels is critical for protection against ultraviolet (UV) radiation on geostationary and non-geostationary space satellites.

Rare earth lanthanum compounds. Lanthanum is critical to the production of certain petroleum products that, in turn, are essential to the national economy. The use of lanthanum as a component of fluid cracking catalysts (FCC) used in oil refining is tantamount for maintaining the supply chains for transportation fuels across the country. It is notable that FCCs account for 70% of the U.S.'s lanthanum consumption. Currently, the U.S. imports all of its lanthanum oxide. The civilian economy and the military are dependent on a continuous, reliable supply of transportation fuel from this supply chain.

Neodymium oxide, Praseodymium oxide and Neodymium Iron Boron (NdFeB) magnet block. The United States does not possess the industrial capability to manufacture a type of rare earth permanent magnets (REPM) known as neodymium-iron-boron (NdFeB) magnets. Stockpiling REPMs and related raw materials is a cost-effective, relatively quick albeit short-term stopgap solution to the U.S.'s foreign reliance on REPMs. Numerous weapon systems rely upon NdFeB magnets to function, and a disrupted foreign supply would similarly disrupt the manufacture of these systems. Select critical NdFeB magnet applications include Joint Direct Attack Munition (JDAM) kits, multiple radar systems, and a next-generation submarine propulsion system.

DLA Strategic Materials recommends implementing a stockpiling strategy for NdFeB magnets consisting of separate Nd oxide and Pr oxide in order to provide operational flexibility to manufacturers of NdFeB magnets should there be a requirement for a particular magnet specification. Stockpiling large quantities of NdFeB magnet block or NdFeB alloy has several limitations, most notably technological obsolescence and shelf life. Furthermore, there are currently about 80 different grades of NdFeB magnets making a grade determination highly uncertain, a problem compounded by the existence of several business proprietary blends of NdFeB magnet materials in defense platforms.

While there are noted limitations with storing multiple grades of magnetic block, DLA Strategic Materials is aware of a specific grade of NdFeB magnet block that meets military specifications. Having some of the material in the block form will shorten the manufacturing time. DLA Strategic Materials recommends acquisition of magnet block, along with the Nd oxide and Pr oxide, as part of an overall risk mitigation strategy.

Yttrium. Yttrium is a required material used in numerous defense and essential civilian applications (e.g. lasers and radar, sensors, visual displays and lighting, high-temperature ceramics, and metal alloys). Lasers for range finders and target designators are important military applications for yttrium. While the U.S. has a robust domestic supply chain for lasers, the U.S. is currently 100% dependent upon imports of yttrium most of which comes from China. Alternate sources including Japan, France, and Austria likely produce yttrium-containing materials from concentrates and intermediate compounds imported from China. Procurement of quantities of high-purity yttrium oxide for the NDS Program inventory will provide for a domestic source of this critical material in the event of a supply disruption during a national emergency.

Samarium–Cobalt (Sm-Co) alloy: Currently, the United States only has one manufacturer capable of producing a type of rare earth permanent magnet (REPM) known as samarium cobalt (SmCo) magnets. This sole source domestic producer relies on foreign supplies of samarium metal and cobalt metal for needed raw materials. Stockpiling SmCo magnet raw materials is a cost-effective, relatively quick short-term solution to the U.S.'s foreign reliance on samarium metal and cobalt metal. Numerous defense systems rely on SmCo magnets for actuator motors and traveling wave tubes incorporated into precision guided munitions and a variety of radar systems.

Budgetary Implications: The National Defense Stockpile Transaction Fund (T-Fund) has a projected Fiscal Year 2019 ending unobligated balance of $235 million. Budgeted costs of the

Stockpile average $72.4 million per annum for fiscal years 2021-2025. This budget includes the $50 million of funding required in order to execute the proposed acquisitions. In lieu of an appropriation, the proposed disposal authorities will generate revenue and serve as the financing source to fund these acquisitions, provided that the revenues generated from these disposals are retained in the T-Fund. The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget Request.

		Budget Table							
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**BA**	**BLI/SAG**	**Total**	**Appropriation**
FY 2020 Budget ($Millions)	**$83.6**	**$77.1**	**$72.2**	**$64.9**	**$64.4**	**04**	**UNDD**	**$362.2**	National Defense Stockpile Transaction Fund
		Proposed Acquisitions ($Millions)							
Material	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**			**Total**	**Appropriation**
Dysprosium	$0.432	$0.432	$0.432	$0.432	$0.432			**$2.16**	National Defense Stockpile Transaction Fund
Rare earth cerium compounds	$0.188	$0.188	$0.188	$0.188	$0.188			**$0.94**	National Defense Stockpile Transaction Fund
Rare earth lanthanum compounds	$0.924	$0.924	$0.924	$0.924	$0.924			**$4.62**	National Defense Stockpile Transaction Fund
Nd-Pr Oxide and NdFeB magnet blocks	$7.37	$7.37	$7.37	$7.37	$7.37			**$36.85**	National Defense Stockpile Transaction Fund
Yttrium	$0.27	$0.27	$0.27	$0.27	$0.27			**$1.35**	National Defense Stockpile Transaction Fund
Sm-Co alloy	$0.818	$0.818	$0.818	$0.818	$0.818			**$4.09**	National Defense Stockpile

									Transaction Fund
Acquisition Sub-Total	**$10**	**$10**	**$10**	**$10**	**$10**			**$50**	National Defense Stockpile Transaction Fund
		Proposed Disposals ($Millions)							
Material	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**			**Total**	**Appropriation**
Tungsten O&C	$10	$10	$10	$10	$10			**$50**	National Defense Stockpile Transaction Fund
Revenue Sub-Total	**$10**	**$10**	**$10**	**$10**	**$10**			**$50**	National Defense Stockpile Transaction Fund

Changes to Existing Law: This proposal would not change the text of any existing statute.

SEC. ___. AUTHORITY TO ESTABLISH A MOVEMENT COORDINATION CENTER PACIFIC IN THE INDOPACIFIC REGION.

(a) AUTHORITY TO ESTABLISH.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize—

(A) the establishment of a Movement Coordination Center Pacific (in this section referred to as the "Center"); and

(B) participation of the Department of Defense in an Air Transport and Air-to-Air refueling and other Exchanges of Services program (in this section referred to as the "ATARES program") of the Center.

(2) SCOPE OF PARTICIPATION.—Participation in the ATARES program under paragraph (1)(B) shall be limited to the reciprocal exchange or transfer of air transportation and air refueling services on a reimbursable basis or by replacement-in-kind or the exchange of air transportation or air refueling services of an equal value.

(3) LIMITATIONS.—The Department of Defense's balance of executed transportation hours, whether as credits or debits, in participation in the ATARES program under paragraph (1)(B) may not exceed 500 hours. The Department of Defense's balance of executed flight hours for air refueling in the ATARES program under paragraph (1)(B) may not exceed 200 hours.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—

(1) ARRANGEMENT OR AGREEMENT REQUIRED.—The participation of the Department of Defense in the ATARES or exchange like program under subsection

24 (a) shall be in accordance with a written arrangement or agreement entered into by
25 the Secretary of Defense, with the concurrence of the Secretary of State.
26 (2) FUNDING ARRANGEMENTS.—If Department of Defense facilities,
27 equipment, or funds are used to support the ATARES program, the written
28 arrangement or agreement under paragraph (1) shall specify the details of any
29 equitable cost-sharing or other funding arrangement.
30 (3) OTHER ELEMENTS.—Any written arrangement or agreement entered into
31 under paragraph (1) shall require that any accrued credits and liabilities resulting
32 from an unequal exchange or transfer of air transportation or air refueling services
33 shall be liquidated, not less than once every five years, through the ATARES
34 program.
35 (c) IMPLEMENTATION.—In carrying out any written arrangement or agreement
36 entered into under subsection (b), the Secretary of Defense may—
37 (1) pay the Department of Defense's equitable share of the operating expenses
38 of the Center and the ATARES program from funds available to the Department of
39 Defense for operation and maintenance; and
40 (2) assign members of the Armed Forces or Department of Defense civilian
41 personnel, within billets authorized for the United States Indo-Pacific Command, to
42 duty at the Center as necessary to fulfill the Department of Defense obligations under
43 that arrangement or agreement.

Section-by-Section Analysis

This proposal would grant the authority to establish a U.S. Indo-Pacific Command (USINDOPACOM)-specific shared airlift mechanism that will be known as the Movement Coordination Center Pacific (MCC-P). The MCC-P is a multinational operation that aims to synchronize lift capabilities of partner nations in the USINDOPACOM area of responsibility,

thereby expanding the overall reach capacity of mobility operations. In the USINDOPACOM area of responsibility, coordinating effective logistics operations and support to both joint and combined forces warrants a dedicated mechanism that focuses on effective and efficient employment of combined lift assets. The Movement Coordination Center-Europe, under the control of the U.S. European Command, is responsible for coordinating employment of multinational lift in the European theater. Likewise, a Movement Coordination Center Pacific would similarly enhance the efficient use of available transportation assets in the Pacific theater. The MCC-P concept will maximize efforts to provide lift solutions for bilateral and multilateral operations, including exercises as well as Humanitarian Assistance/Disaster Relief (HADR) operations.

The USINDOPACOM area of responsibility currently has no dedicated mechanism in place to coordinate collectively the use of available transportation assets of multiple lift capable nations in the region. There is a growing demand to establish such an organization to leverage the combined lift capacity available from the many nations within the USINDOPACOM area of responsibility for mutual cost savings. The MCC-P concept is designed to manage such a requirement effectively, which incorporates a coalition of participating nations and their respective movement coordination centers into a communications network that focuses on optimum use of lift capability according to the priorities of USINDOPACOM and member nations.

Cargo and passenger airlift requirements often exceed U.S. airlift capabilities. This is especially true of organic capability, which is costly considering the relatively small amount of cargo space available on an airlift platform versus that of a single sealift vessel. When such a lift shortfall occurs, costly commercial augmentation is frequently procured to help offset the organic shortfall. Logistics planners should also consider other preferred sources of lift capability (rather than focusing solely on commercial augmentation), not only to satisfy the specific movement requirement, but also to conserve valuable mobility funding (e.g., Transportation Working Capital Fund dollars). The savings can be quite substantial when more alternatives are available for optimizing the movements and achieving timely closure of requirements. This strikes at the very essence of the MCC-P concept and overall need to communicate effectively with respective movement coordination centers within the Indo-Pacific region to coordinate required support for moving people and cargo in theater.

The MCC-P will synchronize multinational lift capabilities of U.S. allies and partner nations, which has the potential for significantly expanding the overall reach and capacity of mobility operations in the USINDOPACOM area of responsibility. The benefits are considerable, and the MCC-P is the solution. The major benefits are: the expansion of the U.S. deployment and distribution capabilities — another option for increasing lift support, fostering theater engagement plans with partners and allies, improved effectiveness and efficient use of lift assets through sharing lift information, and providing security cooperation and expanding the interface among MCC-P lift-sharing nations.

Budget Implications: The resources required are reflected in the table below and are funded within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Navy USINDOPACOM Core Operations	$1.12	$1.18	$1.24	$1.30	$1.36	Operation & Maintenance, Navy	01	1CCH	
Total	$1.12	$1.18	$1.24	$1.30	$1.36				

Note: Total resource requirements plus personnel requirement total $6.2M 2021-2025

Changes to Existing Law: Not applicable: This proposal does not amend an existing law.

1 **SEC. ___. AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR**
2 **CYBER OPERATIONS-PECULIAR CAPABILITY DEVELOPMENT**
3 **PROJECTS**

4 (a) IN GENERAL.—Subchapter I of chapter 134 of title 10, United States Code, is
5 amended by inserting after section 2243 the following new section:

6 **"§2243a. Authority to use operation and maintenance funds for cyber operations-peculiar**
7 **capability development projects.**

8 "The Secretary concerned may spend from appropriations available for operation and
9 maintenance amounts necessary to carry out cyber operations-peculiar capability
10 development projects costing not more than $3,000,000.".

11 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such
12 subchapter is amended by inserting after the item relating to section 2243 the following new
13 item:

"2243a. Authority to use operation and maintenance funds for cyber operations-peculiar capability development projects.".

Section-by-Section Analysis

This proposal would allow the Secretaries of military departments to use money appropriated for Operation and Maintenance (O&M) to develop cyber operations-peculiar capabilities up to $3,000,000. The Department of Defense (DoD) could use its O&M funds for rapid creation, testing, fielding, and operation of cyber capabilities that would be developed and used within the one year appropriation period.

Cyberspace threats are a continuing concern for the DoD. While the services are working to develop agile teams to respond to cyberspace threats and opportunities, cyber capability development is hamstrung by an acquisition funding process that is often incompatible with real-time operations and innovation. Cyber threats and opportunities must be addressed quickly; however, to address these threats, current law often requires coordinated use of up to three different types of funding: Research Development Testing and Evaluation (RDT&E), O&M, and Procurement. Additionally, the appropriate type of funds for any given project is not always clear, and coordinated use of multiple types of funds can lead to bureaucratic requirements and reviews that ultimately hamper cyber capability development within operationally relevant timeframes.

Cyber operations-peculiar capabilities are often urgently needed in hours to days for both offensive and defensive purposes. These types of capabilities can be fleeting in nature and often do not have a useful lifecycle of more than a few months after creation. Due to their short life-cycle and operational nature, funding these types of cyber capabilities with O&M funds could be determined to be appropriate. Additionally, using O&M funds increases operational flexibility and reduces planning and budgeting overhead.

Because creation of these types of cyber capabilities can include generation of new applications and tools, the use of RDT&E funding could be determined to be more appropriate in some situations. Unfortunately, the planning and programming timeline for RDT&E funds can make use of RDT&E funds to develop and field a new capability in days or weeks impossible. Moreover, operational units requiring rapid cyber capability development generally have primarily O&M funds available and must coordinate with research labs for developmental work. Such coordination takes time and may delay operations.

Finally, if a cyber operations-peculiar capability is considered to be an investment, then the use of procurement funds is required. Generally, capabilities expected to last more than a year and cost in excess of $250,000 are considered "investments" and funded with procurement funds. Investments are the costs that result in the acquisition of or additions to end items. However, unlike traditional investment items, low-cost cyber capabilities are often created and become obsolete within a one-year period. They may or may not require maintenance and they are often not incorporated into a weapon system. For all these reasons, low-cost cyber capabilities are more properly accounted as O&M expenses.

Contributing to the difficulty of determining appropriate funds for cyber-capability development is a fundamental terminology difference between fiscal law and cyberspace operations. For fiscal law purposes, "development" is the "systematic use of the knowledge and understanding gained from research, for the production of useful materials, devices, systems, or methods, including the design and development of prototypes and processes." However, software developers call all creation of code "development" whether it falls within the fiscal law definition or not. This terminology difference often creates confusion and complicates the fiscal analysis necessary to determine proper funds for cyber operations-peculiar capability development.

The fiscal gray area between situations where it is appropriate to use different types of funds causes delays and places artificial limitations on cyber operators' ability to quickly meet cyber needs. For example, current Air Force real-time operations and innovation guidance permits the use of O&M funds in certain situations where a capability "enhances and/or is linked to an existing operational system, platform[,] or capability." This limitation is intended solely to ensure that spending of O&M funds is appropriate as the modifications are considered maintenance of an existing system. Artificial limitations such as this reduce otherwise responsive and creative efforts to address real-world threats or to develop exploits of adversary vulnerabilities.

Moreover, the DoD has recently increased its use of Other Transaction Authorities (OTA) to acquire innovative technologies from non-traditional sources. Through OTA agreements, the DoD has been able to acquire innovative technologies in a fraction of the time generally necessary for traditional government acquisitions. However, the services do not agree whether and in what circumstances O&M can be used to fund activities under OTA agreements. For these reasons, operational commanders are often not able to use OTA agreements for rapid prototyping efforts with immediate operational benefits. This proposal would permit use of O&M to fund OTA agreements for cyber operations-peculiar capabilities up to $3,000,000.

Current law also creates an environment where development is halted before a capability is ready for transition to an operational user. For example, where a DoD laboratory has completed a prototype but there is no existing acquisition program available to fund the final stages of development and transition. This problem is known colloquially as the "valley of death." For small-scale cyber capabilities, often the technology could be transitioned directly from the developing DoD laboratory to the warfighter in the field if operational commanders were able to dedicate O&M funds to the final testing and transition of the capability. Accordingly, while there are many contributing factors to the technology transition problem, permitting operational commanders to dedicate O&M funds to transition promising low-cost cyber operations-peculiar capabilities needed for a rapid response would be beneficial.

This proposal would address the above concerns by permitting the use of O&M funds for the development of cyber operations-peculiar capabilities up to $3,000,000. The language of this proposal is based on a similar exception permitting the use of O&M funds for minor military construction projects under section 2805(c) of title 10, United States Code. Additionally, this proposal would increase efficiency by decreasing complex funding coordination between units and decreasing artificial limitations on cyberspace innovation. Permitting the use of O&M funds for low-cost cyber capabilities would increase operational flexibility as commanders could more efficiently re-prioritize funding as needs or opportunities arise and provide operational commanders the ability to commit O&M funds to promising technologies.

Note: This proposal uses the term "cyber operations-peculiar" consistent with the use of that term in Fiscal Year 2016 National Defense Authorization Act Section 807.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Air Force	20	21	22	23	24	Air Force Operation and Maintenance	01	01050000 015E	N/A

Army	20	20	20	20	20	Army Operation and Maintenance	01	151	N/A
Navy	3	3	3	3	3	Navy Operation and Maintenance	01	1CCY	N/A
Marine Corps	3	3	3	3	3	USMC Operation and Maintenance	01	1CCY	N/A
Total	46	47	48	49	50				

Changes to Existing Law: This proposal would add a new section to chapter 134 of title 10, United States Code, the full text of which is shown in the legislative language above.

SEC. ___. AUTHORIZED COST VARIATIONS FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION.

Section 2853 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “or (e), the cost” and inserting “or (e)—

“(1) the cost”;

(B) by striking “Congress.” at the end and inserting “Congress; and”; and

(C) by adding at the end the following new paragraph (2):

“(2) the cost of an unspecified minor military construction project undertaken pursuant to section 2805(a)(2) or section 2805(d) of this title may be increased above the applicable ceiling in section 2805(a)(2) or section 2805(d)(1) of this title by not more than 25 percent of such ceiling, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual and unanticipated variations in cost occurring after award of the project.”;

(2) in subsection (c)—

(A) in paragraph (1), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(C) by striking “(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply” and inserting “(c)(1) The limitations on the amount of cost variations in subsection

24 (a) and the limitation on scope reduction in subsection (b)(1) do not apply";

25 and

26 (D) by adding at the end the following new paragraph:

27 "(2) An unspecified minor military construction project undertaken pursuant to section

28 2805(a)(2) or section 2805(d) may be decreased in cost or reduced in scope at the discretion

29 of the Secretary concerned."; and

30 (3) in subsection (e), by striking "The limitation on cost variations in subsection (a)

31 does" and inserting "The limitations on amount of cost variations in subsection (a) do".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would explicitly apply the authority provided by section 2853 of title 10, United States Code (U.S.C.), to increase the cost of a military construction project, to allow unspecified minor military construction (UMMC) projects authorized by 10 U.S.C. § 2805 to exceed the UMMC limit in section 2805(a)(2) when unforeseen cost increases occur.

Under current law, there is no authority for the Secretary concerned to exceed the applicable limits of section 2805(a)(2) for any UMMC project, except to satisfy a contractor claim under 10 U.S.C. § 2863. This proposal would extend the provision of 10 U.S.C. 2853 on project cost variations to include UMMC projects in need of exceeding the limit of section 2805(a)(2), and afford minor projects the same ability as major projects to respond to unforeseen cost growth. This would provide flexibility to complete projects with unusual variations and avoid (1) project cancellation; (2) constructing a facility or item of infrastructure that does not fully meet the planned mission requirement; or (3) reprogramming the project into the FY+2 Specified Military Construction program. The proposal does not limit the cost variation per project, but section 2805(a) limits the authority to carry out UMMC projects collectively to 125 percent of the amount authorized by law.

This authority is not often needed but nonetheless crucial. As an example, the lack of this authority compelled the Air Force to cancel eight FY 2011 Overseas Contingency Operations (OCO) UMMC projects that had been terminated for default when the projects were approximately 50% complete. The U.S. Army Corps of Engineers re-advertised the contract for all eight projects, but due to the sunk costs and risk associated with assuming the previous contractor's work, the new cost estimates exceeded the UMMC threshold. To complete the projects, the Air Force must resubmit them as specified major projects in the FY+2 Military Construction program—delaying completion by three years at greater cost and significant detriment to the mission.

Budget Implications: The resources impacted are estimated in the table below and are included within the Fiscal Year (FY) 2021 President's Budget. As the actual total amount of all cost variations allowed by this proposal is unknown, an estimate of 5% the total UMMC appropriation was used. For major MILCON projects, DoD adds 5 percent contingency to project estimates to account for unforeseen cost increases during construction, based on historical averages. Applying this to the UMMC program (the focus of this LP), 5 percent of the total UMMC program would be a theoretical worst-case amount, representing a scenario where all UMMC projects were awarded near the UMMC upper limit and subsequently experienced cost growth (in aggregate) matching the historical average for major projects.

RESOURCE REQUIREMENTS ($ MILLIONS)								
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
Army	$3.5	$3.6	$3.6	$3.7	$3.8	Military Construction, Army	02	2050
Navy	$1.95	$1.48	$2.29	$4.83	$4.52	Military Construction, Navy	02	1205
Air Force	$4.1	$4.1	$4.2	$4.3	$4.4	Military Construction, Air Force	02	3300
Defense-Wide	$5.0	$5.1	$5.2	$5.3	$5.4	Military Construction, Defense-Wide	02	0500
Total	$14.55	$14.28	$15.29	$18.13	$18.12	--		

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. § 2853:

§2853. Authorized cost and scope of work variations.

(a) Except as provided in subsection (c), (d), or (e),—

(1) the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress; and

(2) the cost of an unspecified minor military construction project undertaken pursuant to section 2805(a)(2) or section 2805(d) of this title may be increased above the

applicable ceiling in section 2805(a)(2) or section 2805(d)(1) of this title by not more than 25 percent of such ceiling, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual and unanticipated variations in cost occurring after award of the project.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term "scope of work" refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c)(1) ~~The limitation on~~ The limitations on the amount of cost variations in subsection (a) and ~~or~~ the limitation on scope reduction in subsection (b)(1) ~~does~~ do not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and-

(A~~1~~) in the case of a cost increase or a reduction in the scope of work-

(i~~A~~) the Secretary concerned notifies the appropriate committees of Congress of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(ii~~B~~) a 14-day period has elapsed after the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title; or

(B~~2~~) in the case of a cost decrease, the Secretary concerned notifies, using an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(2) An unspecified minor military construction project undertaken pursuant to section 2805(a)(2) or section 2805(d) may be decreased in cost or reduced in scope at the discretion of the Secretary concerned.

(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if-

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the congressional defense committees in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(e) The ~~limitation on~~ limitations on the amount of cost variations in subsection (a) ~~does~~ do not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(f)(1) In addition to the notification sent under paragraph (1) of subsection (c) of a cost increase with respect to a project, the Secretary concerned shall provide an additional report notifying the congressional defense committees and the Comptroller General of the United States of any military construction project or military family housing project with a total authorized cost greater than $40,000,000 that has a cost increase of 25 percent or more.

(2) The report under paragraph (1) shall include the following-

(A) A description of the specific reasons for the cost increase and the specific organizations and individuals responsible.

(B) A description of any ongoing or completed proceedings or investigation into a government employee, prime contractor, subcontractor, or non-governmental organization that may be responsible for the cost increase, and the status of such proceeding or investigation.

(C) If any proceeding or investigation identified in subparagraph (B) resulted in final judicial or administrative action, the following:

(i) In the case of a judicial or administrative action taken against a government employee, the report shall identify the individual's organization, position within the organization, and the action taken against the individual, but shall exclude personally identifiable information about the individual.

(ii) In the case of a judicial or administrative action taken against a prime contractor, subcontractor, or non-governmental organization, the report shall identify the prime contractor, subcontractor, or non-governmental organization and the action taken against the prime contractor, subcontractor, or non-governmental organization.

(D) A summary of any changes the Secretary concerned believes may be required to the organizational structure, project management and oversight practices, policy, or authorities of a government organization involved in military construction projects as a result of problems identified and lessons learned from the project.

(3) If any proceeding or investigation described in paragraph (2)(C) is still ongoing at the time the Secretary concerned submits the report under paragraph (1), the Secretary shall provide a supplemental report to the congressional defense committees and the Comptroller General of the United States not later than 30 days after such proceeding or investigation has been completed. If such proceeding or investigation resulted in final judicial or administrative action against a government employee, prime contractor, subcontractor, or non-governmental organization, the Secretary shall include in the supplemental report the information required by paragraph (2)(C).

(4) Each report under this subsection shall be cosigned by the senior engineer authorized to supervise military construction projects and military family housing projects under section 2851(a).

(5) The Secretary shall send the report required under paragraph (1) with respect to a project not later than 180 days after the Secretary sends to the appropriate committees of Congress the notification under paragraph (1) of subsection (c) of a cost increase with respect to the project.

(6) The Comptroller General of the United States shall review each report submitted under this subsection and validate or correct as necessary the information provided.

(g) Notwithstanding the authority under subsections (a) through (f), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act").

1 **SEC. __. MODIFICATION OF AVAILABILITY OF APPROPRIATIONS FOR SHIP**

2 **OVERHAUL, MODERNIZATION, MAINTENANCE AND REPAIR.**

3 (a) IN GENERAL.—Section 8683 of title 10, United States Code, is amended—

4 (1) in the heading, by striking "**overhaul**" and inserting "**overhaul,**

5 **modernization, maintenance, and repair**";

6 (2) in subsection (a)(1)—

7 (A) by striking "Appropriations" and inserting "Notwithstanding section

8 1502 of title 31, appropriations"; and

9 (B) by inserting "modernization," after "overhaul,"; and

10 (3) in subsection (b)—

11 (A) in the matter preceding paragraph (1), by striking "An appropriation"

12 and inserting "Notwithstanding sections 1502 and 1553(c) of title 31, an

13 appropriation"; and

14 (B) in paragraph (1), by inserting "modernization," after "overhaul,".

15 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter

16 863 of title 10, United States Code, is amended by striking the item relating to section 8683 and

17 inserting the following new item:

"8683. Ship overhaul, modernization, maintenance, and repair work: availability of appropriations for unusual cost overruns and for changes in scope of work.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would clarify that funds may be used as authorized by the language of the statute regardless of the restrictions that would otherwise be applicable under section 1502 of title 31, United States Code (U.S.C.).

The proposal would also clarify the applicability of the statute to the range of ship work efforts consistent with the range of efforts identified in the body of the statute, which are

overhaul, maintenance, and repair, and to ensure that ship modernization is included for the fiscal flexibilities provided by the statute.

The proposal would explicitly exclude the use under this statute of otherwise-expired appropriations, or appropriations after their period of availability, from the approval and notification requirements associated with use of expired appropriations under section 1553(c) of title 31, U.S.C.

Background

A provision similar to section 8683 of title 10, U.S.C. was first enacted in the Department of Defense Appropriations Act, 1982 and was provided as a recurring provision in subsequent appropriation acts until codified in 1988 by Public Law 100–370 as 10 U.S.C. 7313, recently renumbered as 10 U.S.C. 8683 in the John S. McCain National Defense Authorization Act for Fiscal Year 2019. The FY 2019 revision also reinstated the statute's congressional notification requirement that was previously inadvertently terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433). Note that the notification requirement was never facially removed from the statutory language, but yet had been inadvertently terminated by the Goldwater-Nichols provision.

The statute as originally enacted was intended to alleviate unique fiscal issues arising from ship repair and overhaul by providing flexibility necessary to accommodate the fact that most ship overhauls cannot be completed within the one-year availability of the Operation and Maintenance, Navy appropriation used to fund them due to the uncovering of needed work after the start of the availability once removal of equipment and other inspections of the ship have begun. The limitations associated with access to operational vessels makes it difficult to estimate the costs of ship overhaul, modernization, maintenance, or repair, efforts for advance planning and budgeting purposes, as it is always uncertain exactly what work will need to be done until the ship is in dock, inspected and equipment removal has begun. Congress previously acknowledged the need for fiscal flexibility in H.R. Report No. 97-333 for the Fiscal Year 1982 Defense Appropriations Bill as follows:

> **Financing Change Orders**
> **Scope of Effort Changes on Ship Overhauls**
>
> As Naval ships became more complex and the average age of those ships retained in the fleet increased, so did the effort of estimating a definitive overhaul work package. Frequently, post induction open and inspection procedures disclose repair requirements not previously allowed for. This results in either a reduction in the original work package for a given ship or a program reduction elsewhere to accommodate for the increased scope of effort. Consequently, some years ago the Navy commenced budgeting for a funding wedge in the subsequent year for scope of effort changes relative to the initial ship overhaul repair package.
>
> The Committee also attempted to address this problem through the use of a two year appropriation since multiyear funding of ship overhauls from an annual appropriation is not proper. Navy indicated that a two year availability which

> "fenced" ship overhaul would be unnecessarily restrictive, and the proposal was dropped in conference.
>
> The Committee is now recommending new language in the fiscal year 1982 Bill, Section 708 (n) and (o), which will allow Navy to budget for scope of effort changes in the same fiscal year in which the ship is inducted. The Committee believes this procedure will alleviate the problem Navy has encountered in maintaining accountability of fiscal year funds used to finance increased scope of effort changes. These funds will remain unobligated at the end of the fiscal year and remain available to finance scope of effort changes. It should be noted that the language is restricted to depot level maintenance related work on ships. The Office of the Secretary of Defense and the Military Departments should take whatever action deemed necessary to assure availability of resources at end year. The Committee proposes an increase of $58 million in fiscal year 1982 to cover change order costs related to ship overhauls based on an average of such costs identified for the last three fiscal years.
>
> Such costs for other depot maintenance programs should be covered from unobligated balances available at end year from within the appropriation which funded the initial repair effort.
>
> Language has also been included which would allow the use of current year appropriations to cover unusual cost overruns, with prior congressional approval, associated with depot repair work inducted in the previous fiscal year.

Additionally, the associated Senate Report, No. 97-273, provided:

> *Ship overhaul change orders and advanced funding*.-Beginning in fiscal year 1983, the Committee directs that the Navy budget for ship change orders in the same fiscal year in which the ship is inducted. Further, the Navy should finance the procurement of all long-lead materials through the stock fund to be provided in the same fiscal year in which a ship enters an industrial facility. The effect of this recommendation will be to improve the accountability of fiscal year funding provided for ship maintenance. Unlike prior year programs, as of fiscal year 1983 all costs associated with ship overhauls and repair will be charged to the same fiscal year funding as the year that the ship enters overhaul. The recommendation to defer implementation of this financing procedure has been made in recognition of the adjustments necessary to accommodate this effort in the fiscal year 1983 budget submission.

However, in retrospect, the statute as currently written has not provided the level of flexibility needed to efficiently and cost effectively carry out ship overhaul, modernization, maintenance, or repair as we believe Congress intended. Additionally, an issue has arisen as to whether the subsequently enacted notification and approval requirements for use of expired funds at 31 U.S.C. 1553(c)(1) and (2), first established in the FY 1990 National Defense Authorization Act (P.L. 101-189), apply to use of funds after their "otherwise-applicable expiration" under 10 U.S.C. 8683. The 31 U.S.C. 1553(c)(1) and (2) approval and notification procedures include a requirement to obtain approval from the head of the agency (or delegee within the office of the head) in order to obligate expired funds in excess of $4 million during a fiscal year for contract changes for a program, project or activity. For contract changes involving use of expired funds for a program, project or activity in excess of $25 million during a

fiscal year, the head of the agency is required to notify the appropriate authorizing and appropriations committees of Congress and wait 30 days before use of such funds. But where 10 U.S.C. 8683 contains congressional authorization to use expired funds, it is redundant and a major cause of delays to availability execution which the statute sought to eliminate to also require the additional approvals under 31 U.S.C. 1553(c). Therefore, this proposed 10 U.S.C. 8683 amendment would explicitly exclude the use of funds under 10 U.S.C. 8683 after their period of availability from the approval and notification requirements of 31 U.S.C. 1553(c).

The Department of Defense and Department of the Navy have interpreted the notification and approval requirements under 31 U.S.C. 1553(c) to be applicable to the use of "otherwise" expired funds under 10 U.S.C. 8683. As a result, the Navy has been unable to use 10 U.S.C. 8683 to exercise the fiscal flexibility needed for prompt resolution of emergent requirements resulting from changes in the scope of work for ship overhauls, modernization, maintenance, and repair. Many approval requests occur while the ship is undergoing time sensitive availabilities, and the delay caused by the funding approval process increases the risk of unacceptable delay to that ship availability. Whenever overhaul, modernization, maintenance, and repair work on ships cannot be immediately funded and performed as intended by 10 U.S.C. 8683, the Navy is at risk for decreased mission readiness. Application of the 31 U.S.C. §1553(c) approval requirements in order to use expired funding for changes identified during ship availabilities has resulted in exercise of a time-consuming process that takes anywhere between six (6) and twelve (12) weeks before funds are approved, creating significant potential for delay and work stoppages, extension of the ship availability and modernization milestones, and incurrence of additional contract costs.

Another issue associated with the statute, and that this proposal seeks to resolve, is that its history creates some ambiguity regarding the applicability of the statute to solely depot level ship overhauls, or whether it may also be applied to other ship modernization, maintenance, and repair efforts. As currently written, the language in the body of the statute, specifically paragraphs (a)(1), (b)(1) and (b)(2), indicates that the authorities provided therein may be broadly applied to all "ship overhaul, maintenance, and repair." However, the current title of 10 U.S.C. 8683 and legislative history of the statute leave room for a more restrictive application of the statute to only certain major ship repair efforts. Specifically, the title of the statute refers only to "ship overhaul." The legislative history of the statute, particularly H. Rpt. 97-333 for the FY 1982 Appropriations Act, states that "[i]t should be noted that the language is restricted to depot level maintenance related work on ships." Although the rules of statutory construction may generally allow the broader application of the authority to include ship repair and maintenance based on the language in the body of the statute, the current interpretation, informed by the title and legislative history, limits the authority to only depot level overhauls. This proposed amendment would provide certainty that the authority provided in the statute may be broadly applied to all ship overhauls, ship modernization, ship maintenance, and ship repair efforts. Broader application of the authority would provide needed funding flexibility for smaller ship availabilities and would facilitate timely work execution at the performing shipyard.

Budget Implications: This proposal has no budget impact.

Changes to Existing Law: This proposal would amend section 8683 of title 10, United States Code as follows:

§ 8683. Ship overhaul, modernization, maintenance, and repair work: availability of appropriations for unusual cost overruns and for changes in scope of work

(a) UNUSUAL COST OVERRUNS.—(1) Notwithstanding section 1502 of title 31, appropriations ~~Appropriations~~ available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, modernization, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

(b) CHANGES IN SCOPE OF WORK.—Notwithstanding sections 1502 and 1553(c) of title 31, an ~~An~~ appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-applicable expiration of the availability for obligation of that appropriation—

(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship overhaul, modernization, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.

1 **SEC. ____. CHANGE TO PAYMENT OF CERTAIN RESERVES WHILE ON DUTY.**

2 (a) CHANGE IN PRIORITY OF PAYMENTS FOR RETIRED OR RETAINER PAY.—Subsection (a) of

3 section 12316 of title 10, United States Code, is amended—

4 (1) in the matter preceding paragraph (1)—

5 (A) by striking "subsection (b)" and inserting "subsection (c)"; and

6 (B) by striking "a pension, retired or retainer pay, or disability compensation" and

7 inserting "retired or retainer pay"; and

8 (2) by amending paragraphs (1) and (2) to read as follows:

9 "(1) the pay and allowances authorized by law for the duty that he is performing; or

10 "(2) if he specifically waives those payments, the retired or retainer pay to which he is

11 entitled because of his earlier military service.".

12 (b) PAYMENTS FOR PENSION OR DISABILITY COMPENSATION.—Such section is further amended—

13 (1) by redesignating subsection (b) as subsection (c), and in that subsection by striking

14 "(a)(2)" both places it appears and inserting "(a)(1)"; and

15 (2) by inserting after subsection (a) the following new subsection (b)

16 "(b) Except as provided by subsection (c), a Reserve of the Army, Navy, Air Force, Marine

17 Corps, or Coast Guard who because of his earlier military service is entitled to a pension or disability

18 compensation, and who performs duty for which he is entitled to compensation, may elect to receive for

19 that duty either—

20 "(1) the pension or disability compensation to which he is entitled because of his earlier

21 military service; or

22 "(2) if he specifically waives those payments, the pay and allowances authorized by law

23 for the duty that he is performing.".

24 (c) PROCEDURES.—Such section is further amended by adding at the end the following new

25 subsection:

26 "(d) The Secretary of Defense shall prescribe regulations under which a Reserve of the Army,

27 Navy, Air Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law

28 for the duty he is performing under subsection (a)(2).".

29 (d) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the

30 date of the enactment of this Act.

Section-by-Section Analysis

This proposal would modify the pay and compensation waiver order provisions of 10 U.S.C. § 12316. Specifically, it would modify the existing priority of payments so that a Reservist of the Army, Navy, Air Force, Marine Corps, or Coast Guard who is entitled to retired or retainer pay and who performs paid reserve duty, would be paid (receive compensation) for their reserve duty unless the reservist elects to waive that compensation to receive the retired or retainer pay. This proposal would also make clear that a Reservist in the circumstances described above may receive either (1) the pension or disability compensation to which they are entitled because of his or her earlier military service; or (2) the pay and allowances authorized by law for the duty the reservist is performing, but not both.

Approximately 500 military retirees perform active or inactive duty with reserve units. When a military retiree performs paid reserve duty, per the existing statute, they are only entitled to receive either (1) the payments to which he or she is entitled because of their earlier military service (such as military retired pay and VA disability compensation); or (2) if he or she specifically waives those payments, the pay and allowances authorized by law for the duty that they are performing. A retired service member receiving compensation due to earlier military service who performs paid reserve duty who wishes to receive the pay for the reserve duty must waive the compensation due from earlier military service for each calendar day on which the reserve duty is performed. In the vast majority of cases (96% based on analysis of CY2019 cases) for these retiree-reservists, the compensation associated with their reserve duty is greater. However, 10 U.S.C. § 12316 requires that unless the service member specifically elects to waive the compensation due from earlier military service in order to receive their reserve duty pay, a retiree is not entitled to pay for reserve duty, which is not usually financially beneficial to the service member. Furthermore, without a timely, affirmative written election by the military retiree in advance of the reserve duty waiving the compensation due from earlier military service, both forms of compensation are often paid, in error, which results in an overpayment that must later be recouped as a debt.

The current process is burdensome to both the military services and military retirees, and at times can financially disadvantage retiree-reservists. There are several reasons why members neglect or affirmatively choose not to make a pay waiver election or pay waiver elections are not processed timely, such as the dynamic and decentralized nature of reserve units, and the reserve member's pay can fluctuate from month to month or day to day making the best election extremely difficult to determine or

update in advance. This proposal would simplify the election process, remove the burden of debt at the end of the fiscal periods by military retirees who continue to serve their country, and reduce the administrative burden associated with these processes for the military services. This is achieved by removing the requirement for an affirmative election to receive the the pay for the reserve duty. Under this proposal, a waiver request would only be required when the retiree prefers to receive the compensation due from earlier military service. In all other cases, the compensation associated with the reserve duty will be paid.

The drafters of this proposal understand that it will impact the Department of Veteran's Affairs. Coordination with VA will occur after DFAS/DoD coordination is complete.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request. The yearly cost to process debts for the roughly 500 retiree-reservist is estimated at $3,500 based on an analysis by DFAS Retired and Annuitant pay of the number of debts processed from Dec 2018 – Mar 2019. In total, 360 debts were processed during this period with an average cost of $3.23 per instance.

Changes to Existing Law: This proposal would make the following changes to section 12316 of title 10, United States Code:

§12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection ~~(b)~~(c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to ~~a pension,~~ retired or retainer pay, ~~or disability compensation,~~ and who performs duty for which he is entitled to compensation, may elect to receive for that duty either-

(1) ~~the payments to which he is entitled because of his earlier military service;~~the pay and allowances authorized by law for the duty he is performing; or
(2) if he specifically waives those payments, ~~the pay and allowances authorized by law for the duty that he is performing.~~ the retired or retainer pay to which he is entitled because of his earlier military service.

(b) Except as provided by subsection (c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either-
(1) the pension or disability compensation to which he is entitled because of his earlier military service; or
(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(~~b~~c) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(~~2~~1), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be

entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(~~2~~1). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(d) The Secretary of Defense shall prescribe regulations under which a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law for the duty he is performing under subsection (a)(2).

1 **SEC. ___. EXTENSION OF THE JOINT DEPARTMENT OF DEFENSE-DEPARTMENT**

2 **OF VETERANS AFFAIRS MEDICAL FACILITY DEMONSTRATION**

3 **PROJECT.**

4 Section 1704(e) of the National Defense Authorization Act for Fiscal Year 2010

5 (Public Law 111-84; 123 Stat. 2567), as most recently amended by section 732 of the National

6 Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92), is further amended by

7 striking "September 30, 2021" and inserting "September 30, 2023".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend title XVII of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2567), which authorized the Department of Defense (DoD)-Department of Veterans (VA) Affairs Medical Facility Demonstration Project in North Chicago and Great Lakes, Illinois. The purpose of this proposal is to authorize the continuation of the demonstration project. A comprehensive assessment of the demonstration project concluded that continued joint operation of a medical center in the North Chicago-Great Lakes area serves the needs of both departments and continues to provide a valuable demonstration of VA-DoD medical system collaboration.

This proposal would amend would amend section 1704 of title XVII to extend the term of the Joint Medical Facility Demonstration Fund from September 30, 2021, to September 30, 2023. Continued use of the joint fund is essential to the program.

Budget Implications: The resources reflected in the table below are included within the FY 2021 President's Budget; however, they are subject to update based upon the final reconciliation of prior year costs, as agreed to by the Department of Defense and the Department of Veterans Affairs.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Defense Health Program	130.40	134.04	137.78	141.62	146.91	Defense Health Program, Operation and Maintenance	01	3_01	-
Total	130.40	134.04	137.78	141.62	146.91	--			

Changes to Existing Law: This proposal would make the following changes to section 1704 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2190):

SEC. 1704 JOINT FUNDING AUTHORITY.

(a) JOINT MEDICAL FACILITY DEMONSTRATION FUND.--

(1) ESTABLISHMENT.--There is established on the books of the Treasury under the Department of Veterans Affairs a fund to be known as the `Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund' (in this section referred to as the `Fund').

(2) ELEMENTS.--The Fund shall consist of the following:

(A) Amounts transferred to the Fund by the Secretary of Defense, in consultation with the Secretary of the Navy, from amounts authorized and appropriated for the Department of Defense specifically for that purpose.

(B) Amounts transferred to the Fund by the Secretary of Veterans Affairs from amounts authorized and appropriated for the Department of Veterans Affairs specifically for that purpose.

(C) Amounts transferred to the Fund from medical care collections under paragraph (4).

(3) DETERMINATION OF AMOUNTS TRANSFERRED GENERALLY.--The amount transferred to the Fund by each of the Secretary of Defense and the Secretary of Veterans Affairs under subparagraphs (A) and (B), as applicable, of paragraph (2) each fiscal year shall be such amount, as determined by a methodology jointly established by the Secretary of Defense and the Secretary of Veterans Affairs for purposes of this subsection, that reflects the mission-specific activities, workload, and costs of provision of health care at the James A. Lovell Federal Health Care Center of the Department of Defense and the Department of Veterans Affairs, respectively.

(4) TRANSFERS FROM MEDICAL CARE COLLECTIONS.--

(A) IN GENERAL.--Amounts collected under the authorities specified in subparagraph (B) for health care provided at the James A. Lovell Federal Health Care Center may be transferred to the Fund under paragraph (2)(C).

(B) AUTHORITIES.--The authorities specified in this subparagraph are the following:

(i) Section 1095 of title 10, United States Code.

(ii) Section 1729 of title 38, United States Code.

(iii) Public Law 87-693, popularly known as the `Federal Medical Care Recovery Act' (42 U.S.C. 2651 et seq.).

(5) ADMINISTRATION.--The Fund shall be administered in accordance with such provisions of the executive agreement under section 1701 as the Secretary of Defense and the Secretary of Veterans Affairs shall jointly include in the executive agreement. Such provisions shall provide for an independent review of the methodology established under paragraph (3).

(b) AVAILABILITY.--

(1) IN GENERAL.--Funds transferred to the Fund under subsection (a) shall be available to fund the operations of the James A. Lovell Federal Health Care Center, including capital equipment, real property maintenance, and minor construction projects that are not required to be specifically authorized by law under section 2805 of title 10, United States Code, or section 8104 of title 38, United States Code.

(2) LIMITATION.--The availability of funds transferred to the Fund under subsection (a)(2)(C) shall be subject to the provisions of section 1729A of title 38, United States Code.

(3) PERIOD OF AVAILABILITY.--

(A) IN GENERAL.--Except as provided in subparagraph (B), funds transferred to the Fund under subsection (a) shall be available under paragraph (1) for one fiscal year after transfer.

(B) EXCEPTION.--Of an amount transferred to the Fund under subsection (a), an amount not to exceed two percent of such amount shall be available under paragraph (1) for two fiscal years after transfer.

(c) FINANCIAL RECONCILIATION.--The executive agreement under section 1701 shall provide for the development and implementation of an integrated financial reconciliation process that meets the fiscal reconciliation requirements of the Department of Defense, the Department of the Navy, and the Department of Veterans Affairs. The process shall permit each of the Department of Defense, the Department of Navy, and the Department of Veterans Affairs to identify their fiscal contributions to the Fund, taking into consideration accounting, workload, and financial management differences.

(d) ANNUAL REPORT.--The Secretary of Defense, in consultation with the Secretary of the Navy, and the Secretary of Veterans Affairs shall jointly provide for an annual independent review of the Fund for at least three years after the date of the enactment of this Act. Such review shall include detailed statements of the uses of amounts of the Fund and an evaluation of the adequacy of the proportional share contributed to the Fund by each of the Secretary of Defense and the Secretary of Veterans Affairs.

(e) TERMINATION.--The authorities in this section shall terminate on ~~September 30, 2021~~September 30, 2023.

1 **SEC. ___. ENDOWMENTS AT THE UNIFORMED SERVICES UNIVERSITY OF THE**

2 **HEALTH SCIENCES.**

3 Section 2113(g)(1) of title 10, United States Code, is amended—

4 (1) in subparagraph (E), by striking “and” at the end;

5 (2) by redesignating subparagraph (F) as subparagraph (G); and

6 (3) by inserting after subparagraph (E) the following new subparagraph:

7 “(F) to establish and fund endowments under agreement with a nonprofit entity,

8 including with funding from gifts, devises, and bequests received under this section and

9 other authorities, or royalties received under chapter 63 of title 15, to carry out medical

10 research, medical consultation, and medical education, with such endowment funds

11 available to the University until expended; and”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This section would allow the Nation’s only Federal health sciences university, the Uniformed Services University of the Health Sciences (USUHS), to pursue medical research, medical consultation, and medical education impacting care provided throughout the Military Health System in a manner that is comparable with fully accredited schools of the health professions. Non-U.S. governmental institutions of higher learning are able to establish endowments for the purposes of programs, endowed chairs, and other research and educational activities that greatly benefit from the nature of no-year funds encompassed in an endowment construct. Presently, funds from royalties at USUHS are treated as having a limited lifecycle and must be used in a short period of time. This prevents the establishment of endowments that would provide enduring funds to foster continuity of military-relevant education and research. This proposal allows gifts and royalties received by USUHS to be used indefinitely as endowments for military-relevant medical education and research without having an expiration date.

Budget Implications: This proposal has no significant budget impact. Incidental costs or savings are accounted for within the FY 2021 President’s Budget. There are no budgetary implications with this proposal because the research and education endeavors already occur. This

simply permits the administrative change to allow royalties acquired by the university from the current activities to not expire as is currently the situation.

Changes to Existing Law: This section would make the following changes to section 2113 of title 10, United States Code:

§2113. Administration of University

(a) The business of the University shall be conducted by the Secretary of Defense with funds appropriated for and provided by the Department of Defense.

(b) The Secretary shall appoint a President of the University (hereinafter in this chapter referred to as the "President").

(c)(1) The Secretary, after considering the recommendations of the President, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary (after due consideration by the Secretary) so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions identified by the Secretary for purposes of this paragraph.

(2) The Secretary may confer academic titles, as appropriate, upon military and civilian members of the faculty.

(3) The military members of the faculty shall include a professor of military, naval, or air science as the Secretary may determine.

(4) The limitations in sections 5307 and 5373 of title 5 do not apply to the authority of the Secretary under paragraph (1) to prescribe salary schedules and other related benefits. In no event may the total amount of compensation paid to an employee under paragraph (1) in any year (including salary, allowances, differentials, bonuses, awards, and other similar cash payments) exceed the total amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(d) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs.

(e) The Secretary of Defense may establish the following educational programs at the University:

(1) Postdoctoral, postgraduate, and technological institutes.

(2) A graduate school of nursing.

(3) Other schools or programs, including certificate, certification, and undergraduate degree programs, that the Secretary determines necessary in order to operate the University in a cost-effective manner.

(f) The Secretary shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(g) (1) The Secretary also is authorized--

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, on such terms and conditions as the Secretary determines appropriate, such space, facilities, equipment, and support services within the University as the Secretary considers necessary to accomplish cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, under which the Secretary may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; ~~and~~

(F) to establish and fund endowments under agreement with a nonprofit entity, including with funding from gifts, devises, and bequests received under this section and other authorities, or royalties received under chapter 63 of title 15, to carry out medical research, medical consultation, and medical education, with such endowment funds available to the University until expended; and

(~~F~~G) to accept the voluntary services of guest scholars and other persons.

(2) The Secretary may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Secretary may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for the work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be

considered to be a Federal employee for any other purpose by reason of the provision of such services.

SEC. ___. NONDISCLOSURE OF CERTAIN SENSITIVE MILITARY INFORMATION.

(a) SECTION HEADING.—The heading of section 130e of title 10, United States Code, is amended to read as follows:

“§130e. Nondisclosure of certain sensitive military information”.

(b) EXEMPTION.—Section 130e(a) of title 10, Unites States Code, is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking “critical infrastructure security”; and

(B) by striking “pursuant to section 552(b)(3) of title 5,”; and

(2) by amending paragraph (1) to read as follows:

“(1) the information is—

“(A) Department of Defense critical infrastructure security information;

“(B) covered information pertaining to military tactics, techniques, or procedures; or

“(C) covered information pertaining to rules of engagement or rules for the use of force; and”.

(c) DESIGNATION OF DEPARTMENT OF INFORMATION.—Section 130e(b) of such title is amended—

(1) in the subsection heading, by striking “CRITICAL INFRASTRUCTURE SECURITY”; and

(2) in the first sentence, by striking “may designate information as being Department of Defense critical infrastructure security information” and inserting “may designate information as being information identified in subsection (a)(1)”.

1 (d) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—Section 130e(c) of
2 such title is amended—
3 (1) in paragraphs (1) and (2)(A), by striking "critical infrastructure security"; and
4 (2) in paragraph (2)(B), by striking "Department of Defense critical infrastructure
5 security information" and inserting "information exempt from disclosure".
6 (e) DELEGATION AND TRANSPARENCY.—Section 130e of such title is further amended—
7 (1) by striking subsection (d);
8 (2) by redesignating subsection (e) as subsection (d); and
9 (3) in subsection (d), as so redesignated—
10 (A) by striking ", or the Secretary's designee,"; and
11 (B) by striking "through the Office of the Director of Administration and
12 Management" and inserting "in accordance with guidelines prescribed by the
13 Secretary".
14 (f) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—Section 130e of such title is
15 further amended by inserting after subsection (d), as redesignated by subsection (e)(2) of this
16 section, the following new subsection:
17 "(e) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—This section shall be
18 treated as a statute that specifically exempts certain matters from disclosure under section 552 of
19 title 5, as described in subsection (b)(3) of that section.".
20 (g) DEFINITIONS.—Subsection (f) of such section is amended to read as follows:
21 "(f) DEFINITIONS.—In this section:

1 “(1) ADVERSARY.—The term ‘adversary’ means a party acknowledged as
2 potentially hostile to a friendly party and against which the use of force may be
3 envisaged.
4 “(2) COVERED INFORMATION PERTAINING TO MILITARY TACTICS, TECHNIQUES, OR
5 PROCEDURES.—The term ‘covered information pertaining to military tactics, techniques,
6 or procedures’ means information pertaining to military tactics, techniques, or procedures
7 that identifies a method for using equipment or personnel to accomplish a specific
8 mission under a particular set of operational or exercise conditions (including offensive,
9 defensive, force protection, cyberspace, stability, civil support, freedom of navigation,
10 operations security, counter intelligence, and intelligence collection operations) the
11 public disclosure of which could reasonably be expected to provide a military advantage
12 to an adversary.
13 “(3) COVERED INFORMATION PERTAINING TO RULES OF ENGAGEMENT OR RULES
14 FOR THE USE OF FORCE.—The term ‘covered information pertaining to rules of
15 engagement or rules for the use of force’ means information pertaining to rules of
16 engagement or rules for the use of force the public disclosure of which could reasonably
17 be expected to provide an operational military advantage to an adversary.
18 “(4) DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY
19 INFORMATION.—The term ‘Department of Defense critical infrastructure security
20 information’ means sensitive but unclassified information that, if disclosed, would reveal
21 capabilities or vulnerabilities in Department of Defense critical infrastructure that, if
22 exploited, would likely result in the significant disruption, destruction, or damage of or to
23 Department of Defense operations, property, or facilities, including—

1 “(A) information regarding the securing and safeguarding of explosives,
2 hazardous chemicals, or pipelines, related to critical infrastructure or protected
3 systems owned or operated by or on behalf of the Department of Defense;
4 “(B) vulnerability assessments prepared by or on behalf of the Department
5 of Defense;
6 “(C) explosives safety information, including storage and handling; and
7 “(D) other site-specific information on or relating to installation security.
8 “(5) MILITARY TACTICS, TECHNIQUES, AND PROCEDURES.—The term ‘military
9 tactics, techniques, and procedures’ means—
10 “(A) the employment and ordered arrangement of military forces in
11 relation to each other;
12 “(B) a non-prescriptive way or method used to perform a mission,
13 function, or task that is—
14 “(i) related to or incidental to combat missions or contingency
15 operations; or
16 “(ii) directly related to preparing for, going to, or returning from
17 combat missions or contingency operations; or
18 “(C) detailed steps that prescribe how to perform a specific task that is—
19 “(i) related to, or incidental to, a combat mission, force protection
20 operation, or contingency operation; or
21 “(ii) directly related to preparing for, going to, or returning from
22 combat missions, force protection operations, or contingency operations.

1 “(6) RULES FOR THE USE OF FORCE.—The term ‘rules for the use of force’ means
2 directives issued to guide United States forces on the use of force during various
3 operations.
4 “(7) RULES OF ENGAGEMENT.—The term ‘rules of engagement’ means directives
5 issued by a competent military authority that delineate the circumstances and limitations
6 under which the armed forces will initiate or continue combat engagement with other
7 forces encountered.”.
8 (i) CLERICAL AMENDMENT.—The item relating to section 130e in the table of sections at
9 the beginning of chapter 3 of such title is amended to read as follows:

“130e. Nondisclosure of certain sensitive military information.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend section 130e of title 10, United States Code (U.S.C.), to authorize the Department of Defense to withhold sensitive, but unclassified, military tactics, techniques, or procedures; rules for the use of force; and military rules of engagement, from release to the public under section 552 of title 5, U.S.C. (known as the Freedom of Information Act (FOIA)), if public disclosure could reasonably be expected to provide an operational military advantage to an adversary.

The decision of the Supreme Court in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), significantly narrowed the long-standing administrative understanding of the scope of Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)). Before that decision, the Department was authorized to withhold sensitive information on critical infrastructure and military tactics, techniques, and procedures from release under FOIA pursuant to Exemption 2. Section 130e of title 10, U.S.C., was established in the National Defense Authorization Act for Fiscal Year 2012 to reinstate protection from disclosure of critical infrastructure security information. This proposal similarly would amend section 130e to add protections for military tactics, techniques, and procedures (TTPs); rules for the use of force; and rules of engagement that, if publicly disclosed, could reasonably be expected to provide an operational or tactical military advantage to an adversary such that the adversary could potentially use the information to circumvent or negatively impact military operations or actions in whole or in part. Military TTPs, rules for the use of force; and rules of engagement are analogous to law enforcement techniques and procedures, which Congress has afforded protection under FOIA Exemption 7(E).

The effectiveness of U.S. military operations is dependent upon adversaries, or potential adversaries, not obtaining advance knowledge of sensitive TTPs, rules for the use of force; or rules of engagement that will be employed in such tactical operations. If an adversary or potential adversary obtains knowledge of this sensitive information, the adversary would gain invaluable knowledge on how our forces operate in given tactical military situations. This knowledge could then, in turn, enable the adversary to counter the TTPs, rules for use of force, or rules of engagement by identifying and exploiting any weaknesses. From this, the defense of the homeland, success of the operation, and the lives of U.S. military forces would be seriously jeopardized. Furthermore, the probability of successful cyber operations would be limited with the public release of cyber-related TTPs. This proposal would add a layer of mission assurance to unclassified cyber operations and enhance the Department of Defense's ability to project cyber effects while protecting national security resources.

This proposal additionally would make minor amendments in section 130e to: (1) clarify the citation for the purposes of the OPEN FOIA Act of 2009; (2) remove references to reflect the merger of the Director of Administration and Management with the Deputy Chief Management Officer of the Department of Defense; and (3) remove the prohibition on further delegation.

It is important to note that the terms tactics, techniques, and procedures, as used in the context of this proposal, will not be applied in an overly broad manner to withhold from public disclosure information related to the handling of disciplinary matters, investigations, acquisitions, intelligence oversight, oversight of contractors, allegations of sexual harassment or sexual assault, allegations of prisoner and detainee maltreatment, installation management activities, etc. However, depending on the nature of the information, other provisions of law may require that such information not be released publicly in whole or in part.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request. Exemptions for the release of certain information under FOIA would generate minimal savings to the Administration by avoiding the preparation of select materials for release.

Changes to Existing Law: The proposal would make the following changes to section 130e of title 10, United States Code:

§130e. ~~Treatment under Freedom of Information Act of critical infrastructure security information~~ Nondisclosure of certain sensitive military information

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense ~~critical infrastructure security~~ information from disclosure ~~pursuant to section 552(b)(3) of title 5,~~ upon a written determination that—

(1) the information is—

(A) Department of Defense critical infrastructure security information;

(B) covered information pertaining to military tactics, techniques, or procedures; or

(C) covered information pertaining to rules of engagement or rules for the use of force; and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) DESIGNATION OF DEPARTMENT OF DEFENSE ~~CRITICAL INFRASTRUCTURE SECURITY~~ INFORMATION.—In addition to any other authority or requirement regarding protection from dissemination of information, the Secretary may designate information as being ~~Department of Defense critical infrastructure security identified~~ information identified in subsection (a)(1), including during the course of creating such information, to ensure that such information is not disseminated without authorization. Information so designated is subject to the determination process under subsection (a) to determine whether to exempt such information from disclosure described in such subsection.

(c) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—(1) Department of Defense ~~critical infrastructure security~~ information covered by a written determination under subsection (a) or designated under subsection (b) that is provided to a State or local government shall remain under the control of the Department of Defense.

(2)(A) A State or local law authorizing or requiring a State or local government to disclose Department of Defense ~~critical infrastructure security~~ information that is covered by a written determination under subsection (a) shall not apply to such information.

(B) If a person requests pursuant to a State or local law that a State or local government disclose information that is designated as ~~Department of Defense critical infrastructure security~~ information exempt from disclosure under subsection (b), the State or local government shall provide the Secretary an opportunity to carry out the determination process under subsection (a) to determine whether to exempt such information from disclosure pursuant to subparagraph (A).

~~(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.~~

(~~e~~ d) TRANSPARENCY.—Each determination of the Secretary~~, or the Secretary's designee,~~ under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, ~~though the Office of the Director of Administration and Management~~ in accordance with guidelines prescribed by the Secretary.

(e) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—This section shall be treated as a statute that specifically exempts certain matters from disclosure under section 552 of title 5, as described in subsection (b)(3) of that section.

(f) DEFINITIONS.—In this section~~, the term~~:

(1) ADVERSARY.—The term “adversary” means a party acknowledged as potentially hostile to a friendly party and against which the use of force may be envisaged.

(2) COVERED INFORMATION PERTAINING TO MILITARY TACTICS, TECHNIQUES, OR PROCEDURES.—The term ‘covered information pertaining to military tactics, techniques,

or procedures' means information pertaining to military tactics, techniques, or procedures that identifies a method for using equipment or personnel to accomplish a specific mission under a particular set of operational or exercise conditions (including offensive, defensive, force protection, cyberspace, stability, civil support, freedom of navigation, operations security, counter intelligence, and intelligence collection operations) the public disclosure of which could reasonably be expected to provide a military advantage to an adversary.

(3) COVERED INFORMATION PERTAINING TO RULES OF ENGAGEMENT OR RULES FOR THE USE OF FORCE.—The term 'covered information pertaining to rules of engagement or rules for the use of force' means information pertaining to rules of engagement or rules for the use of force the public disclosure of which could reasonably be expected to provide an operational military advantage to an adversary.

(4) DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—The term "Department of Defense critical infrastructure security information" means sensitive but unclassified information that, if disclosed, would reveal capabilities or vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including—

(A) information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected equipment and systems owned or operated by or on behalf of the Department of Defense~~,~~;

(B) ~~including~~ vulnerability assessments prepared by or on behalf of the Department of Defense~~,~~;

(C) explosives safety information, ~~(~~including storage and handling information~~),~~; and

(D) other site-specific information on or relating to installation security.

(5) MILITARY TACTICS, TECHNIQUES, AND PROCEDURES.—The terms 'military tactics, techniques, and procedures' means—

(A) the employment and ordered arrangement of military forces in relation to each other;

(B) a non-prescriptive way or method used to perform a mission, function, or task that is—

(i) related to or incidental to combat missions or contingency operations; or

(ii) directly related to preparing for, going to, or returning from combat missions or contingency operations; or

(C) detailed steps that prescribe how to perform a specific task that is—

(i) related to, or incidental to, a combat mission, force protection operation, or contingency operation; or

(ii) directly related to preparing for, going to, or returning from combat missions, force protection operations, or contingency operations.

(6) RULES FOR THE USE OF FORCE.—The term "rules for the use of force" means directives issued to guide United States forces on the use of force during various operations.

(7) RULES OF ENGAGEMENT.—The term “rules of engagement” means directives issued by a competent military authority that delineate the circumstances and limitations under which the armed forces will initiate or continue combat engagement with other forces encountered.

1 **SEC. ___. PLACEMENT ON THE EXECUTIVE SCHEDULE FOR DEPARTMENT OF**

2 **DEFENSE DIRECTORS OF THE NATIONAL SECURITY AGENCY AND**

3 **THE NATIONAL RECONNAISSANCE OFFICE.**

4 Section 5314 of title 5, United States Code, is amended by inserting after the item

5 relating to the Executive Secretary, National Space Council the following new items:

6 "Director of the National Security Agency.

7 "Director of the National Reconnaissance Office.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend section 5314 of title 5, United States Code, to set the pay for the Director of the National Security Agency and the Director of the National Reconnaissance Office at Level III of the Executive Schedule. This legislation is required to correct the omission of the positions under the provisions of title 5, United States Code, governing the pay for Presidentially-appointed, Senate-confirmed positions. This level of pay would be consistent with the stature and responsibilities of each of the positions.

The National Security Agency was established by President Truman in 1952 and was given specific administrative authorities by the National Security Agency Act of 1959 (50 U.S.C. 3602 et seq.). Section 401 of the Intelligence Authorization Act for Fiscal Year 2014 (Public Law 113–126) amended section 2 of the National Security Agency Act of 1959 to specify that "the Director of the National Security Agency shall be appointed by the President, by and with the advice and consent of the Senate." Section 401 established in statute the position of the Director of the National Security Agency as a presidentially-appointed and Senate confirmed position, but did not place the position in a level of the Executive Service. This position has typically been filled by a general or flag officer who has been appointed to head the National Security Agency and the Central Security Service, and has concurrently served as Commander of United States Cyber Command. The proposed legislation is required in anticipation that a future civilian Director of the National Security Agency may be appointed.

As specified in DoD Directive 5100.20, the Director of the National Security Agency, under the authority, direction, and control of the Under Secretary of Defense for Intelligence, serves as the principal advisor to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the Combatant Commanders on signals intelligence (SIGINT), advises the Director of National Intelligence (DNI) and the Director of Defense Intelligence on all matters under the purview of the DNI concerning SIGINT and serves as the SIGINT Functional Manager. In the exercise of these responsibilities, the Director of the National Security Agency plans, organizes,

directs, and manages the agency and all assigned resources to provide peacetime, contingency, crisis, and combat SIGINT and information assurance support to the operational Armed Forces of the United States.

The National Reconnaissance Office was established in September of 1961 in response to the Soviet launch of the Sputnik satellite. Section 411 of the Intelligence Authorization Act for FY 2014 (Public Law 113-125, July 7, 2014) amended the National Security Act of 1947 (50 U.S.C 3001 et seq), adding Section 106A to specify that "the Director of the National Reconnaissance Office shall be appointed by the President, by and with the advice and consent of the Senate." Section 411 established in statute the position of the Director of the National Reconnaissance Office as presidentially-appointed and Senate confirmed, but did not place the position in a level of the Executive Service. The position has previously been held by a general or flag officer, a civilian appointee on a term executive appointment, or by a career intelligence executive.

As specified in DoD Directive 5105.23, the Director of the National Reconnaissance Office, under the authority, direction, and control of the Under Secretary of Defense for Intelligence, serves as the principal advisor on overhead reconnaissance to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Combatant Commanders, the Secretary of the Air Force, and the DoD Executive Agent for Space. The Director is responsible for the management and operations of the National Reconnaissance Office, its program activities, and the acquisition of its systems. The position directs and manages all assigned resources to provide peacetime, contingency, crisis, and combat overhead reconnaissance support to the Armed Forces of the United States, and delivers intelligence, surveillance, and reconnaissance capabilities, information products, services, and tools in response to national-level tasking in coordination with the Functional Managers.

Budget Implications: The Department of Defense estimates this proposal would cost approximately $0.230 million for FY 2021 if the Director, NSA were a civilian appointee. The Director, NRO position would be cost-neutral as this change converts an existing Defense Intelligence Senior Executive Service Position to a Presidentially- Appointed, Senate Confirmed position This proposal would be funded from National Intelligence Program accounts. This is funded in the FY 2021 President's Budget request.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
NRO						National Intelligence Program			
NSA	$0.23	$0.232	$0.234	$0.236	$0.239	National Intelligence Program			

Total	$0.230	$0.232	$0.234	$0.236	$0.239				

Cost Methodology: The costs reflects the proposed salary and benefits load of the Executive Schedule for each position, with a 1.0% projected increase each year.

Changes to Existing Law: This proposal would amend section 5314 of title 5, United States Code, as follows:

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * *

Executive Secretary, National Space Council.
Director, National Security Agency.
Director, National Reconnaissance Office.

* * * * *

1 **SEC. ___. ONE-YEAR EXTENSION OF CERTAIN EXPIRING BONUS AND SPECIAL**
2 **PAY AUTHORITIES.**

3 (a) AUTHORITIES RELATING TO RESERVE FORCES.—Section 910(g) of title 37, United
4 States Code, relating to income replacement payments for reserve component members
5 experiencing extended and frequent mobilization for active duty service, is amended by striking
6 "December 31, 2020" and inserting "December 31, 2021".

7 (b) TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS.—The following
8 sections of title 10, United States Code, are amended by striking "December 31, 2020" and
9 inserting "December 31, 2021":

10 (1) Section 2130a(a)(1), relating to nurse officer candidate accession program.

11 (2) Section 16302(d), relating to repayment of education loans for certain health
12 professionals who serve in the Selected Reserve.

13 (c) AUTHORITIES RELATING TO NUCLEAR OFFICERS.—Section 333(i) of title 37, United
14 States Code, is amended by striking "December 31, 2020" and inserting "December 31, 2021".

15 (d) AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY,
16 AND BONUS AUTHORITIES.—The following sections of title 37, United States Code, are amended
17 by striking "December 31, 2020" and inserting "December 31, 2021":

18 (1) Section 331(h), relating to general bonus authority for enlisted members.

19 (2) Section 332(g), relating to general bonus authority for officers.

20 (3) Section 334(i), relating to special aviation incentive pay and bonus authorities
21 for officers.

22 (4) Section 335(k), relating to special bonus and incentive pay authorities for
23 officers in health professions.

1 (5) Section 336(g), relating to contracting bonus for cadets and midshipmen

2 enrolled in the Senior Reserve Officers' Training Corps.

3 (6) Section 351(h), relating to hazardous duty pay.

4 (7) Section 352(g), relating to assignment pay or special duty pay.

5 (8) Section 353(i), relating to skill incentive pay or proficiency bonus.

6 (9) Section 355(h), relating to retention incentives for members qualified in

7 critical military skills or assigned to high priority units.

8 (e) AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR

9 HOUSING.—Section 403(b)(7)(E) of title 37, United States Code, is amended by striking

10 "December 31, 2020" and inserting "December 31, 2021".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

This proposal would extend certain expiring bonus and special pay authorities.

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2021. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member's average monthly civilian income and the member's total monthly military compensation.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2021. The Reserve components historically have found it challenging to meet the required manning in the health care professions. These incentives, which target nurse and critical health care profession skills, are essential to meet required manning levels. The financial assistance and health professions loan repayment programs have proven to be powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending these authorities is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2021. These incentives enable the Navy to

attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets, and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Subsection (d) of this proposal would extend through December 31, 2021, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (e) of this proposal would extend through December 31, 2021, the Secretary of Defense authority to prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof is located in an area covered by a declaration by the President that a major disaster exists; or contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

ONE YEAR EXTENSION AUTHORITIES FOR RESERVE FORCES:

Budget Implications: This section will extend for one year critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service. Dedicated resources are included within the Fiscal Year (FY) 2021 President's Budget request.

ONE YEAR EXTENSION OF TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS:

Budget Implications: This section will extend for one year critical accession and retention incentive programs, which the military departments fund annually. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of approximately $46.6 million

annually for FY2021 through FY2025 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. Tables 2a and 2b included the numbers and funding for the pay authorities listed in subsection (b). The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army Res	$20.7	$20.7	$20.7	$20.7	$20.7	Reserve Personnel, Army	01		
Army National Guard	$20.6	$20.6	$20.6	$20.6	$20.6	National Guard Personnel, Army	01		
Navy Res	$2.3	$2.3	$2.3	$2.3	$2.3	Reserve Personnel, Navy	01		
AF Res	$2.2	$2.2	$2.2	$2.2	$2.2	Reserve Personnel, Air Force	01		
Air National Guard	$.8	$.8	$.8	$.8	$.8	National Guard Personnel, Air Force	01		
Total	$46.6	$46.6	$46.6	$46.6	$46.6				

NUMBER OF PERSONNEL AFFECTED									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army Res	1,117	1,117	1,117	1,117	1,117	Reserve Personnel, Army	01		
Army National Guard	554	554	554	554	554	National Guard Personnel, Army	01		
Navy Res	129	129	129	129	129	Reserve Personnel, Navy	01		
AF Res	80	80	80	80	80	Reserve Personnel, Air Force	01		
Air National Guard	33	33	33	33	33	National Guard Personnel, Air Force	01		
Total	1,913	1,913	19134	1,913	1,913				

ONE YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Budget Implications: This section will extend for one year the critical accession and retention incentive programs the Navy funds each year. The Navy has already projected expenditures for these incentives and programmed them into budget proposals. The Navy has projected expenditures of just over $99.1 million annually, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2021 through 2025. The Army and Air Force are not authorized in the statute to pay these bonuses. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Navy	$96.5	$96.5	$96.5	$96.5	$96.5	Military Personnel, Navy	01, 03		
Navy Res	$2.6	$2.6	$2.6	$2.6	$2.6	Reserve Personnel, Navy	01		
Total	$99.1	$99.1	$99.1	$99.1	$99.1				

NUMBER OF PERSONNEL AFFECTED									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Navy	2,724	2,724	2,724	2,724	2,724	Military Personnel, Navy	01, 03		
Navy Res	175	175	175	175	175	Reserve Personnel, Navy	01		
Total	2,899	2,899	2,899	2,899	2,899				

ONE YEAR EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Budget Implications: This section will extend for one year the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted and officer bonuses, aviation bonuses and incentives, non-physician health professions pays, hazardous duty pays, assignment and special duty pays, skill incentive pays, and critical skill retention bonuses. This section does not include the nuclear officer pays, which are located above. Specifically, the military departments have projected expenditures of approximately $5.3 billion annually from FY 2021 through FY 2025 for these incentives in their budget proposals, to

be funded from the Military Personnel accounts. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT ($ MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army	$1,426	$1,426	$1,426	$1,426	$1,426	Military Personnel, Army	01, 02		
ARNG	$260.5	$260.5	$260.5	$260.5	$260.5	National Guard Personnel, Army	01		
USAR	$237.4	$237.4	$237.4	$237.4	$237.4	Reserve Personnel, Army	01		
Navy	$1,694	$1,694	$1,694	$1,694	$1,694	Military Personnel, Navy	01, 02		
USNR	$44.5	$44.5	$44.5	$44.5	$44.5	Reserve Personnel, Navy	01		
Marine Corps	$262	$262	$262	$262	$262	Military Personnel, Marine Corps	01, 02		
USMCR	$10.1	$10.1	$10.1	$10.1	$10.1	Reserve Personnel, Marine Corps	01		
Air Force	$1,144	$1,144	$1,144	$1,144	$1,144	Military Personnel, Air Force	01, 02		
Air National Guard	$104.2	$104.2	$104.2	$104.2	$104.2	National Guard Personnel, Air Force	01		
AF Res	$71	$71	$71	$71	$71	Reserve Personnel, Air Force	01		
Total	$5,254	$5,254	$5,254	$5,254	$5,254				

NUMBER OF PERSONNEL AFFECTED									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army	241,837	241,837	241,837	241,837	241,837	Military Personnel, Army	01, 02		
ARNG	51,168	51,168	51,168	51,168	51,168	National Guard Personnel, Army	01		

USAR	68,398	68,398	68,398	68,398	68,398	Reserve Personnel, Army	01		
Navy	333,957	333,957	333,957	333,957	333,957	Military Personnel, Navy	01, 02		
USNR	5,897	5,897	5,897	5,897	5,897	Reserve Personnel, Navy	01		
Marine Corps	43,620	43,620	43,620	43,620	43,620	Military Personnel, Marine Corps	01, 02		
USMCR	744	744	744	744	744	Reserve Personnel, Marine Corps	01		
Air Force	136,808	136,808	136,808	136,808	136,808	Military Personnel, Air Force	01, 02		
Air National Guard	6,617	6,617	6,617	6,617	6,617	National Guard Personnel, Air Force	01		
AF Res	12,471	12,471	12,471	12,471	12,471	Reserve Personnel, Air Force	01		
Total	901,517	901,517	901,517	901,517	901,517				

ONE YEAR EXTENSION OF AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING:

Budget Implications: This section will extend for one year the Secretary of Defense authority to temporarily increase basic allowance for housing rates for areas hit by a major disaster or experiencing a sudden increase in the number of members of the armed forces assigned to an installation. Currently the Department is not utilizing this authority, however, the authority is necessary to provide assistance to members impacted by a disaster such as Hurricane Florence in South Carolina and Hurricane Michael in Florida. The military departments do not project expenditures for this allowance in their budget proposals.

Changes to Existing Laws: This proposal would make the following changes to title 10 and title 37, United States Code:

TITLE 10, UNITED STATES CODE

*****

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2020~~ December 31, 2021, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid

an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

*****

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

*****

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2020~~ <u>December 31, 2021</u>.

*****

TITLE 37, UNITED STATES CODE

*****

§ 331. General bonus authority for enlisted members

*****

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ <u>December 31, 2021</u>.

*****

§ 332. General bonus authority for officers

*****

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ <u>December 31, 2021</u>.

*****

§ 333. Special bonus and incentive pay authorities for nuclear officers

*****

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ <u>December 31, 2021</u>.

*****

§ 334. Special aviation incentive pay and bonus authorities for officers

*****

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ <u>December 31, 2021</u>.

*****

§ 335. Special bonus and incentive pay authorities for officers in health professions

*****

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

*****

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

*****

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2020~~ December 31, 2021.

*****

§ 351. Hazardous duty pay

*****

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2020~~ December 31, 2021.

*****

§ 352. Assignment pay or special duty pay

*****

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

*****

§ 353. Skill incentive pay or proficiency bonus

*****

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

*****

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

*****

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2020~~ December 31, 2021, and no agreement under this section may be entered into after that date.

*****

§ 403. Basic allowance for housing

*****

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—*****

*****

(7)(A) *****

*****

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2020~~ December 31, 2021.

*****

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

*****

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2020~~ December 31, 2021, unless the entitlement of the member to payments under this section is commenced on or before that date.

*****

1 **SEC.___. EXTENSION OF HEALTH CARE PROFESSIONALS: ENHANCED**

2 **APPOINTMENT AND COMPENSATION AUTHORITY FOR**

3 **PERSONNEL FOR CARE AND TREATMENT OF WOUNDED AND**

4 **INJURED MEMBERS OF THE ARMED FORCES.**

5 Paragraphs (1) and (2) of section 1599c(b) of title 10, United States Code, are

6 amended by striking “December 31, 2020” and inserting “December 31, 2025”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would extend the termination date of the authorities in section 1599c of title 10, United States Code (U.S.C.), for an additional five years with a new termination date of December 31, 2025.

Section 1599c allows the Secretary of Defense to exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38, U.S.C., for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary to provide or enhance the capacity of the Department to provide care and treatment for members of the Armed Forces who are wounded or injured on active duty in the Armed Forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department.

The authority further authorizes the Secretary to designate any category of healthcare occupations within the Department as shortage category positions or critical need occupations and utilize the authorities in section 3304 of title 5, U.S.C., to recruit and appoint qualified persons directly to positions so designated. This expedited hiring authority is critical to allowing the Department to hire highly qualified candidates into healthcare career fields.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President’s Budget request.

Changes to Existing Law: This proposal would make the following changes to section 1599c of title 10, United States Code:

§ 1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces

(a) In General.—

(1) The Secretary of Defense may, at the discretion of the Secretary, exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department of Defense.

(2)(A) For purposes of section 3304 of title 5, the Secretary of Defense may—

(i) designate any category of medical or health professional positions within the Department of Defense as a shortage category occupation or critical need occupation; and

(ii) utilize the authority in such section to recruit and appoint qualified persons directly in the competitive service to positions so designated.

(B) In using the authority provided by this paragraph, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(C) Any designation by the Secretary for purposes of subparagraph (A)(i) shall be based on an analysis of current and future Department of Defense workforce requirements.

(b) Termination of Authority.—

(1) The authority of the Secretary of Defense under subsection (a)(1) to exercise authorities available under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense expires ~~December 31, 2020~~ December 31, 2025.

(2) The Secretary may not appoint a person to a position of employment under subsection (a)(2) after ~~December 31, 2020~~ December 31, 2025.

1 **SEC. ____. EXPANSION OF GOLD STAR LAPEL BUTTON ELIGIBILITY TO**

2 **STEPBROTHERS AND STEPSISTERS.**

3 Section 1126 of title 10, United States Code, is amended—

4 (1) in subsection (c), by striking "may be replaced" and all that follows before the

5 period at the end and inserting "may be replaced upon application and without cost"; and

6 (2) in subsection (d)—

7 (A) in paragraph (3), by striking "and half sisters" and inserting "half

8 sisters, stepbrothers, and stepsisters"; and

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

10 "(9) The terms 'stepbrother' and 'stepsister' shall be defined in regulations

11 prescribed by the Secretary of Defense under subsection (b).".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would extend and enhance authority for the Secretary of Defense to furnish one gold star lapel button to stepbrothers and stepsisters who may have grown up in the same household as the service member. Today, the only types of siblings authorized to receive the gold star lapel button are brothers, sisters, half-brothers, and half-sisters. Section 1126(d)(4) of title 10, United States Code (U.S.C.), includes stepchildren; however, section 1126(d)(3) of such title does not include stepsiblings as next of kin. To remedy this situation, amendments to section 1126 of title 10, U.S.C., are warranted. The Gold Star and Surviving Family Member Representatives Program expressed concerns to the Casualty Advisory Board from surviving stepbrothers and stepsisters who grew up together in the same household as their deceased military family member. They feel that their relationships within the family are similar to a brother, sister, half-brother, or half-sister, as they shared the same parents when living in the same household and grew up with a similar relationship as other siblings.

This proposal would also eliminate the requirement for an eligible family member to pay for a replacement Gold Star Lapel Button that has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the family member to whom it was furnished. The cost of providing a replacement Gold Star Lapel Button ($1.78 each) is insignificant compared to the significant loss the family member suffered due to the death of their loved one.

Budget Implications: This proposal has no significant budget impact. Any incidental costs are accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 1126 of title 10 U.S.C.:

§1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces-

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958-

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of-

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button ~~may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution~~ may be replaced upon application and without cost.

(d) In this section:

(1) The term "widow" includes widower.

(2) The term "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term "next of kin" includes only children, brothers, sisters, half brothers, ~~and half sisters~~ half sisters, stepbrothers, and stepsisters.

(4) The term "children" includes stepchildren and children through adoption.

(5) The term "World War I" includes the period from April 6, 1917, to March 3, 1921.

(6) The term "World War II" includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term "military operations" includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term "peacekeeping force" includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(9) The terms “stepbrother” and “stepsister” shall be defined in regulations prescribed by the Secretary of Defense under subsection (b).

1 **SEC. ___. EXPANSION OF ELIGIBILITY FOR HEARING AIDS FOR PEDIATRIC**

2 **DEPENDENTS**.

3 Section 1077(a)(16) of title 10, United States Code, is amended by inserting "or any

4 dependent who is 18 years old or younger," after "but only for a dependent of a member of the

5 uniformed services on active duty".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would extend eligibility for hearing aids authorized under section 1077(a)(16) of title 10, United States Code, to all pediatric dependents. Extension of the hearing aid benefit to include all pediatric dependents recognizes the critical role that hearing intervention can play in the development of the brains of children and adolescents. The current law restricts hearing aids to the dependents of active duty uniformed service members (including spouses and children, in addition to other active duty service member dependents defined in section 1072); there is no age restriction. This limited benefit is largely a cost-saving restriction, due to the increasing levels of hearing loss in older populations (disabling hearing loss increases from two percent for adults ages 45 to 54, to 8.5 percent for adults ages 55 to 64, to 25 percent for ages 65 to 74, up to 50 percent for ages 75 and older). Retirees and their dependents (particularly spouses) are more likely to be older, with an increased likelihood to need hearing amplification. However, the existing restriction impacts pediatric dependents other than dependents of active duty service members (including children of retirees), despite the fact that hearing loss in the pediatric population is both less prevalent (two to three per 1000 children are born with detectable hearing loss) and more damaging. In some cases, a pediatric dependent may be eligible for a hearing aid while the service member is on active duty, and then no longer be eligible once their sponsor retires. This proposal recognizes that hearing aids in children do more than amplify sound; they aid in brain development. Failure to correct hearing loss at a young age can impact the child's development into adulthood and can result in additional costs to the TRICARE Program, including behavioral, occupational, and speech-language therapies. Therefore, this proposals provides that all pediatric dependents should be eligible for hearing aids under an expansion of the hearing aid benefit, while continuing to exclude the costliest population (retirees and their dependents over the age of 18).

Beginning around the age of six months to a year, an infant's brain undergoes changes to the language center. At birth, infant brains have the capacity to learn any language, but during this developmental period, the child's experience causes the brain to create pathways specific to the child's native language. During this time, the infant begins to specialize in his or her ability to discriminate the native language, while losing the ability to do so for other languages. The process is typically completed between ages five and six and requires the child's active participation in order to gain experiences related to sensory perception. This process impacts not

just the child's ability to speak and understand auditory language, but to comprehend language in general, including written language. While development of the language centers of the brain typically completes around age five, higher cognitive functions continue to develop until around ages 15 to 18 when the child reaches adult levels of brain development. Access to hearing intervention throughout childhood and adolescence impacts higher cognition, including reasoning, problem-solving, literacy rates, self-esteem, and the ability of the child to interact in an age-appropriate manner with peers and adults.

Much of the research on brain development and the critical role played by early hearing intervention has occurred since section 702 of Public Law 107-107, which authorized hearing aids for dependents of active duty service members, was signed into law in 2001. Since that time, the American Academy of Pediatrics has issued guidance advocating hearing intervention no later than six months of age for infants with confirmed hearing loss, arguing that hearing is essential for linguistic competency and literacy and that failure to do so can ultimately result in lower education and employment levels in adulthood. The Joint Committee on Infant Hearing also advocates hearing intervention by the age of six months, with access to high-quality technology including hearing aids and cochlear implants. Since the passage of Public Law 107-107, 23 States have passed legislation mandating that insurance providers cover some level of hearing aid intervention for children. State caps vary from 12 to 24 years of age, with a majority using the age of 18 as the cutoff point (three states mandate coverage for adults). While TRICARE has no legal requirement to follow State insurance coverage requirements, the increasing number of States requiring coverage for hearing aids for children underlines a growing understanding of the importance of early intervention for hearing-impaired children.

TRICARE covers implantable hearing devices, such as auditory brainstem implants, auditory osseointegrated implants, and middle ear implants (both fully and partially implantable), under the prosthetic benefit, but is prevented from extending that benefit to traditional hearing aids by the statutory exclusion restricting hearing aids to dependents of active duty uniformed service members. The statutory revision in this proposal would increase access to hearing interventions for a highly vulnerable population, while maintaining cost controls by continuing to restricting access for older beneficiaries. Existing requirements for profound hearing loss would remain unchanged.

Budgetary Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are included in the fiscal year 2021 President's Budget. It details resource requirements associated with this proposal including both health care costs (i.e., costs to provide hearing aids) and administrative costs. The cost for the first year of the benefit is higher than for subsequent years due to both one-time start-up administrative costs (0.21M) and pent-up demand by beneficiaries who either have not purchased hearing aids or who purchased lower-cost/lower-quality hearing aids out of pocket and choose to have them replaced (2.08M). Additionally, the first year cost includes a full year of health care costs, but would be lower depending on the date the legislation went into effect (reduced approximately .11M per month after October 1, 2020). This estimate assumes that hearing aids would need to be replaced every five years and includes all costs associated with the hearing aid, including fitting and repairs. The estimate also assumes that existing requirements regarding significant hearing loss and administration of the hearing aid benefit currently in place

for active duty family members would remain unchanged for the beneficiary population in this proposal, with the exception of cost-shares, which are higher for non-active duty family members. This cost estimate recognizes that some TRICARE-eligible children not currently enrolled in TRICARE would be enrolled by their parents due to the new benefit, and accounts for their total health care costs. Not included in this estimate are any potential cost offsets due to reductions in other services due to early hearing intervention, such as speech, occupational, or behavioral therapy.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Defense Health	4.11	1.88	1.97	2.07	2.17	Operation and Maintenance, Defense Health Program	01	02_01	-

Changes to Existing Law: This proposal would make the following changes to section 1077 of title 10, United States Code:

§1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

* * * * *

(16) Except as provided by subsection (g), a hearing aid, but only for a dependent of a member of the uniformed services on active duty or any dependent who is 18 years old or younger, and only if the dependent has a profound hearing loss, as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries.

* * * * *

1 **SEC. __. APPOINTMENT OF COUNCIL OF DIRECTORS OF THE HENRY M.**

2 **JACKSON FOUNDATION FOR THE ADVANCEMENT OF MILITARY**

3 **MEDICINE.**

4 (a) IN GENERAL.—Section 178(c) of title 10, United States Code, is amended—

5 (1) in paragraph (1), by striking "composed of" and all that follows through the

6 period at the end and inserting the following: "composed of seven individuals appointed by

7 the Secretary of Defense. Such individuals may not be officers or employees of the Federal

8 Government (other than for purposes of membership on the Council) nor be members of the

9 Board of Regents under section 2113a of this title. The members of the Council shall be

10 removable at will by, and subject to the plenary supervision of, the Secretary of Defense.";

11 and

12 (2) in paragraph (2)—

13 (A) in the matter preceding subparagraph (A), by striking "clause (C) of";

14 and

15 (B) in subparagraph (B)—

16 (i) by striking "ex officio members of the Council" and inserting

17 "Secretary";

18 (ii) by striking "two" the first place it appears and inserting "three";

19 and

20 (iii) by striking "two" the last place it appears and inserting "four".

21 (b) RULE OF CONSTRUCTION AND TREATMENT OF PRIOR DECISIONS.—Nothing in the

22 amendments made by this section shall be construed to invalidate any action taken by the

23 Foundation or the Council of Directors prior to the effective date of the amendments made by this

24 section. The Council, as appointed pursuant to subsection (a) of this section, may ratify any

25 decision made by the Council prior to the date this section becomes effective if the Council

1 independently evaluates the merits of the decision and concludes that the decision was appropriate.

2 Any decision ratified in accordance with this subsection shall be treated as valid and lawful as of

3 the date it was originally made.

4 (c) EFFECTIVE DATE.—The amendments made by this section shall be effective January 1,

5 2021. The terms of any members of the Council of Directors holding office as of December 31 ,

6 2020, shall terminate on December 31 , 2020. The Secretary of Defense shall appoint the members

7 of the Council of Directors by January 1, 2021.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would resolve constitutional defects in the current provisions of law governing appointment of members of the Council of Directors of the Henry M. Jackson Foundation for the Advancement of Military Medicine. Currently, the Council is composed of the Chairmen and Ranking Members of the House and Senate Armed Services Committees, the President (referred to in the statute as "Dean") of the Uniformed Services University of the Health Sciences (USUHS), and several additional members appointed by those five *ex officio* members. Section 739 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 increased from four to six the number of additional members. With respect to this provision, the President's signing statement included the following:

> [S]ection 739 would deepen existing violations of the Appointments Clause, the Incompatibility Clause, and the separation of powers contained within the statute that established the Henry M. Jackson Foundation for the Advancement of Military Medicine. President Reagan signed that legislation on the understanding that these constitutional defects would be remedied (see Statement on Signing the Foundation for the Advancement of Military Medicine Act of 1983, 1 Pub. Papers 782, 782 (May 27, 1983)), but that has not happened. The Attorney General and the Secretary of Defense should confer about measures that would allow this Foundation to continue its important work in compliance with the Constitution.

The concern reflected in the President's signing statement is consistent not only with President Reagan's signing statement when the authorizing legislation was first enacted, but also with the recent Supreme Court decision in *Department of Transportation v. Ass'n of American Railroads,* 135 S. Ct. 1225 (2015), relating to the Board of Directors and operations of Amtrak. To remedy the constitutional defects, this proposal would provide that the Foundation's Council of Directors be made up of seven individuals appointed and removable by, and subject to the plenary supervision of, the Secretary of Defense. Seven is

the current number of members exclusive of the members of Congress. To avoid any appearance of conflicting interests, the proposal also provides that Council members may not be officers or employees of the Federal Government or members of the USUHS Board of Regents.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to section 178 of title 10, United States Code:

§178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the "Foundation") which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the "Council") composed of.-

~~(A) the Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,~~

~~(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and~~

~~(C) six members appointed by the ex officio members of the Council designated in clauses (A) and (B).~~

seven individuals appointed by the Secretary of Defense. Such individuals may not be officers or employees of the Federal Government (other than for purposes of membership on the Council) nor be members of the Board of Regents under section 2113a of this title. The members of the Council shall be removable at will by, and subject to the plenary supervision of, the Secretary of Defense

(2) The term of office of each member of the Council appointed under ~~clause (C) of~~ paragraph (1) shall be four years, except that-

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ~~ex-officio members of the Council~~ Secretary at the time of the appointment, ~~two~~ three at the end of two years and ~~two~~ four at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to-

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

1 **SEC. __. IMPROVED PROTECTION OF CERTAIN FACILITIES AND ASSETS FROM**
2 **UNMANNED AIRCRAFT THREATS.**
3 Section 130i of title 10, United States Code, is amended—
4 (1) in subsection (a)—
5 (A) by striking “officers and civilian employees” and inserting “officers,
6 civilian employees, and contract personnel”; and
7 (B) by inserting “or a temporarily covered facility or asset for the duration
8 of the period for which the Secretary determines there is a high risk of loss to the
9 facility or asset” after “a covered facility or asset”;
10 (2) by striking subsection (i);
11 (3) by redesignating subsection (j) as subsection (i); and
12 (4) in subsection (i), as redesignated by paragraph (3) of this section—
13 (A) in subparagraph (C) of paragraph (3)—
14 (i) in clause (viii), by striking “; or” and inserting a semicolon;
15 (ii) in clause (ix), by striking the period and inserting a semicolon;
16 and
17 (iii) by adding at the end the following new clauses:
18 “(x) organizing, training, equipping, and other functions at
19 Department of Defense installations necessary to prepare the armed forces
20 to deploy and conduct military operations in support of a contingency
21 operation;
22 “(xi) deployment and sustainment of the armed forces in support of
23 a contingency operation;

1 “(xii) a military training route (as defined in section 183a(h)(6) of
2 this title);
3 “(xiii) an Army arsenal (as defined in section 7541(d)(1) of this
4 title); or
5 “(xiv) production, storage, transportation, or decommissioning of
6 chemical or biological materials by the Department.”;
7 (C) by redesignating paragraph (6) as paragraph (7); and
8 (D) by inserting after paragraph (5) the following new paragraph:
9 “(6) The term ‘temporarily covered facility or asset’ means a facility or asset
10 determined by the Secretary of Defense to be temporarily at high risk of loss due to a
11 specific, highly significant vulnerability or due to specific indications that such a facility
12 or asset is a target for hostile action.”.

[Please note: the “changes to existing law” section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

The proliferation and operation of unmanned aircraft are a rapidly increasing risk to the installations, activities, and personnel of the Department of Defense (DoD). This proposal would make several amendments to section 130i of title 10, U.S. Code, to clarify and strengthen this authority to mitigate the threat that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered DoD facility or asset.

The proposal would amend subsection (a) by authorizing the Secretary of Defense to take such actions described in subsection (b)(1), as developed in coordination with the Secretary of Transportation, that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a temporarily covered facility or asset. A DoD facility or asset that is not directly associated with a covered mission can temporarily be at high risk of loss due to a specific, highly significant vulnerability or specific indications that such a facility or asset is a target for hostile action. The authority to mitigate the threat to a temporarily covered facility or asset would enable the Secretary of Defense to adapt to emerging vulnerabilities and threats in a timely manner, but only for the duration of the emerging high risk.

This proposal would amend subsection (j)(3)(C) by updating the definition of a covered facility or asset to include a facility or asset that relates to four additional DoD missions that are critical to national security.

Clause (x) would add "organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation." The Secretaries of the Army, Navy, and Air Force (pursuant to sections 3013(b), 5013(b), and 8013(b) of title 10, U.S. Code) are responsible for, and have the authority necessary to conduct, all affairs of their Military Departments to prepare military units and personnel to deploy in order to conduct contingency operations in support of the national security interests of the United States. The Secretaries are also responsible for the safety and security of their installations and the personnel and activities that are present at their installations. The proliferation of UAS in the United States is a flight hazard to the conduct of these affairs. In addition, the conduct of these affairs would be a high-value target for future adversaries for surveillance – a threat to operations security – or, potentially, to facilitate attacks on such units and personnel before they can deploy to the address a contingency.

Clause (xi) would add "deployment and sustainment of the armed forces in support of a contingency operation." Certain facilities and assets are critical to the ability of the United States to deploy and sustain the armed forces during a contingency. These include, for example, ports and airfields at which personnel, equipment, and supplies are aggregated and shipped; airfields at which transport and air refueling aircraft are located; and ports at which vessels of the Military Sealift Command and the National Defense Reserve Fleet are based. All are essential components of the Department's ability to project power and sustain the armed forces once deployed, and all are potentially vulnerable to threats posed by unmanned aircraft.

Clause (xii) would add "a military training route (as defined in section 183a(h)(6) of this title)." In accordance with section 183a(h)(6), the term "military training route" means "a training route developed as part of the Military Training Route Program, carried out jointly by the Federal Aviation Administration and the Secretary of Defense, for use by the armed forces for the purpose of conducting low-altitude, high-speed military training." The proliferation of UAS in the United States is a clear and present flight hazard to low-altitude, high-speed military training.

Clause (xiii) would add "an Army arsenal (as defined in section 7541(d)(1) of this title)." In accordance with section 7541(d)(1), the term "army arsenal" means "a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both."

Clause (xiv) would add DoD "production, storage, transportation, or decommissioning of chemical and biological materials." Clause (xiii) would permit DoD to mitigate the threat posed by unmanned aircraft of the limited number of facilities responsible for the highly sensitive function of producing, storing, transporting, or decommissioning chemical and biological materials. This would include specialized DoD laboratories.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Air Force	61	77	74	56	56	Operation and Maintenance, Air Force, Procurement, Air Force, Research, Development, Test and Evaluation, Air Force	03	31 (BLI) 12C (SAG)	64287F
Navy	14.18	5.55	6.00	5.89	6.01	Research, Development, Test and Evaluation, Navy	Various	Various	0604636N
Navy	13.95	9.91	9.91	12.71	33.18	Operation and Maintenance, Navy	Various	Various	
Navy	21.78	7.10	26.21	30.00	10.36	Other Procurement, Navy	Various	Various	Various
USMC	0.02	0.03	0.03	0.03	0.02	USMC O&M, Procurement, RDT&E	01 03 07	1A2A 3006 0206313M	0206626M 0206211M 0206313M
Army	0	0	0	0	0	Army does not intend to use this authority.			
Total	110.93	99.59	116.15	104.63	105.57				

*Air Force, Army, and Navy assert that FY 2025 budget data is not releasable prior to the FY 2021 PBR.

Changes to Existing Law: This proposal would amend section 130i of title 10, United States Code, as follows:

§ 130i. Protection of certain facilities and assets from unmanned aircraft

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers,

~~and~~ civilian employees, and contract personnel of the Department of Defense with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset or a temporarily covered facility or asset for the duration of the period for which the Secretary determines there is a high risk of loss to the facility or asset.

(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph are the following:

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

(2) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) REGULATIONS AND GUIDANCE.—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2)(A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings shall include—

(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

(B) a description of instances where actions described in subsection (b)(1) have been taken;

(C) how the Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, but may be accompanied by an additional classified briefing.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) vest in the Secretary of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

~~(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3)(C) 1 shall terminate on December 31, 2023.~~

~~(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2023, the President certifies to Congress that such extension is in the national security interests of the United States.~~

(~~j~~i) DEFINITIONS.—In this section:

(1) The term "appropriate congressional committees" means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Commerce, Science, and Transportation of the Senate; and

(C) the Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) The term "budget", with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term "covered facility or asset" means any facility or asset that—

(A) is identified by the Secretary of Defense, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

(B) is located in the United States (including the territories and possessions of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; ~~or~~

(ix) a Major Range and Test Facility Base (as defined in section 196(i) of this title)~~.~~;

(x) organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation;

(xi) deployment and sustainment of the armed forces in support of a contingency operation;

(xii) a military training route (as defined in section 183a(h)(6) of this title);

(xiii) an Army arsenal (as defined in section 7541(d)(1) of this title); or

(xiv) production, storage, transportation, or decommissioning of chemical or biological materials by the Department.

(4) The term "defense budget materials", with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(5) The terms "electronic communication", "intercept", "oral communication", and "wire communication" have the meanings given those terms in section 2510 of title 18.

(6) The term "temporarily covered facility or asset" means a facility or asset determined by the Secretary of Defense to be temporarily at high risk of loss due to a specific, highly significant vulnerability or due to specific indications that such a facility or asset is a target for hostile action.

(~~6~~7) The terms "unmanned aircraft" and "unmanned aircraft system" have the meanings given those terms in section 44801 of title 49.

1 **SEC. ___. INTER-EUROPEAN AIR FORCES ACADEMY.**

2 Section 350 of title 10, United States Code, is amended by inserting before the period

3 at the end of subsection (b) the following: ", or that are eligible for assistance under chapter

4 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.)".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would authorize the Secretary of the Air Force and Combatant Commanders to provide military education and training in the EUCOM area of responsibility (AOR) at the Inter-European Air Forces Academy (IEAFA) to additional partner nations when schoolhouse capacity permits.

Specifically, the amendment would modify the "purpose" of section 350 of title 10, United States Code, to read: "The purpose of the Academy shall be to provide military education and training to military personnel of countries that are members of the North Atlantic Treaty Organization or signatories to the Partnership for Peace Framework Documents, or that are eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).".

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request

Changes to Existing Law: This proposal would amend section 350 of title 10, United States Code, as follows:

§ 350. Inter-European Air Forces Academy

(a) Operation.-The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-European Air Forces Academy (in this section referred to as the "Academy").

(b) Purpose.-The purpose of the Academy shall be to provide military education and training to military personnel of countries that are members of the North Atlantic Treaty Organization or signatories to the Partnership for Peace Framework Documents, or that are eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(c) Limitations.-

(1) Concurrence of secretary of state.-Military personnel of a country may be provided education and training under this section only with the concurrence of the Secretary of State.

(2) Assistance otherwise prohibited by law.-Education and training may not be provided under this section to the military personnel of any country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

(d) Supplies and Clothing.-The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving education and training under this section the following:

(1) Transportation incident to such education and training.

(2) Supplies and equipment to be used during such education and training.

(3) Billeting, food, and health services in connection with the receipt of such education and training.

(e) Living Allowance.-The Secretary of the Air Force may pay to a person receiving education and training under this section a living allowance at a rate to be prescribed by the Secretary, taking into account the rates of living allowances authorized for a member of the Armed Forces under similar circumstances.

(f) Funding.-Amounts for the operations and maintenance of the Academy, and for the provision of education and training through the Academy, may be paid from funds available for the Air Force for operation and maintenance.

1 **SEC. __. JOINT FORCES STAFF COLLEGE NAME CHANGE.**

2 Subtitle A of title 10, United States Code, is amended by striking "Joint Forces Staff

3 College" each place it appears and inserting "Joint Forces War College" in the following

4 provisions:

5 (1) Section 663(c)(3).

6 (2) The item relating to section 2156 in the table of sections at the beginning of

7 chapter 107.

8 (3) Section 2154(a)(2)(A).

9 (4) Section 2155(a)(2).

10 (5) Section 2156 (including the section heading).

11 (6) Section 2162(b)(2).

12 (7) Section 2165(b)(3).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would change the current title of Joint Forces Staff College (JFSC) to the Joint Forces War College (JFWC). "Staff College" no longer accurately reflects the institution's mission and role within National Defense University (NDU) and the broader Joint Professional Military Education (JPME) community.

In 1989, when JFSC (originally the Armed Forces Staff College) was assigned its current mission, the Joint and Combined Warfighting School (JCWS) took on the task to produce JPME-II certified officers, and was one of three JPME II granting schools (the others being National War College and Eisenhower School, formerly Industrial College of the Armed Forces) within the Department of Defense. As originally envisioned, JFSC, through the then 12-week (now 10-week) JCWS JPME II course, focused on the operational level of war. JPME II certification was originally intended to be a preparatory course for officers' en-route to their first Joint assignment.

In 2005, the law was changed to authorize Service War college courses of at least 10-months in duration to award JPME II credit. In 2006, the Joint Advanced Warfighting School (JAWS), a senior War college equivalent, was designated at the Joint Forces Staff College and

certified to award JPME II credit. In 2019, to better serve the Joint force in today's global security environment, JFSC incorporated the Chairman of the Joint Chiefs of Staff's Force Development vision for professional military education by refocusing the JCWS JPME II curriculum at the strategic-operational nexus, the same level as all other War college JPME II curricula.

With a refocused curriculum, the shift from a "Staff" college to a "War" college is more evident when considering the traditional Staff and War college curricular focus. Traditionally, Service Staff colleges teach joint operations and leader development from the standpoint of Service forces in a joint force supported by Service component commands. Staff colleges offer selected mid-grade officers a chance to step out of the field and the realm of small unit tactics to study the larger operational sphere of warfare. War college attendees study theater- and national-level strategies and processes, and focus on warfighting from the combatant command, Joint Staff, and DoD perspectives. War college curricula is at the strategic-operational nexus of warfare, and graduates often assume high-level command, staff, and policy responsibilities in the national security arena.

JFSC is currently enhancing its JCWS curriculum to meet the Chairman's PME vision for JPME II level curriculum. JAWS, as a senior-level joint school, will continue to provide education to senior Service officers. The educational focus of the JFWC will be on the operational and strategic nexus of war vice the tactical or lower level operational (Service component) realm. With this proposed change, the enhanced JCWS and JAWS will be JPME-II granting programs under the Joint Forces War College component of the National Defense University.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request.

Changes to Existing Law: This proposal would make the following changes to subtitle A of title 10, United States Code:

§ 663. Joint duty assignments after completion of joint professional military education

(a) JOINT QUALIFIED OFFICERS.—The Secretary of Defense shall ensure that each officer designated as a joint qualified officer who graduates from a school within the National Defense University specified in subsection (c) shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

* * * * *

(c) COVERED SCHOOLS WITHIN THE NATIONAL DEFENSE UNIVERSITY.—For purposes of this section, a school within the National Defense University specified in this subsection is one of the following:

(1) The National War College.

(2) The Dwight D. Eisenhower School for National Security and Resource Strategy.

(3) The Joint Forces ~~Staff~~ War College.

* * * * *

§ 2154. Joint professional military education: three-phase approach

(a) THREE-PHASE APPROACH.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school or at a joint intermediate level school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of—

(A) a joint professional military education curriculum taught in residence at, or offered through, the Joint Forces ~~Staff~~ War College or a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution; or

(B) a senior level service course of at least ten months that has been designated and certified by the Secretary of Defense as a joint professional military education course.

(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

(b) SEQUENCED APPROACH.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

* * * * *

§ 2155. Joint professional military education Phase II program of instruction

(a) PREREQUISITE OF COMPLETION OF JOINT PROFESSIONAL MILITARY EDUCATION PHASE I PROGRAM OF INSTRUCTION.—(1) After September 30, 2009, an officer of the armed forces may not be accepted for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully

completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis under exceptional circumstances, as determined by the Chairman. An officer selected to receive such an exception shall have knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces ~~Staff~~ War College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

* * * * *

§ 2156. Joint Forces ~~Staff~~ War College: duration of principal course of instruction

(a) Duration.—The duration of the principal course of instruction offered at the Joint Forces ~~Staff~~ War College may not be less than 10 weeks of resident instruction.

(b) Definition.—In this section, the term “principal course of instruction” means any course of instruction offered at the Joint Forces ~~Staff~~ War College as Phase II joint professional military education.

* * * * *

§ 2162. Preparation of budget requests for operation of professional military education schools

(a) Uniform Cost Accounting.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall promulgate a uniform cost accounting system for use by the Secretaries of the military departments in preparing budget requests for the operation of professional military education schools.

(b) Preparation of Budget Requests.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) As executive agent for funding professional development education at the National Defense University, including the Joint Forces ~~Staff~~ War College, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall prepare the annual budget for professional development education operations at the National Defense University and set forth that request as a separate budget request in the materials submitted to Congress in support of the budget request for the Department of Defense. Nothing in the preceding sentence affects policies in effect on December 28, 2001, with respect to budgeting for the funding of logistical and base

operations support for components of the National Defense University through the military departments.

(3) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the operation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

* * * * *

§ 2165. National Defense University: component institutions

(a) In General.—There is a National Defense University in the Department of Defense.

(b) Component Institutions.—The National Defense University consists of the following institutions:

(1) The National War College.

(2) The Dwight D. Eisenhower School for National Security and Resource Strategy.

(3) The Joint Forces ~~Staff~~ War College.

(4) The Institute for National Strategic Studies.

(5) The College of Information and Cyberspace.

(6) Any other educational institution of the Department of Defense that the Secretary considers appropriate and designates as an institution of the university.

* * * * *

1 **SEC. __. LIMITATION ON LENGTH OF OVERSEAS FORWARD DEPLOYMENT OF**

2 **NAVAL VESSELS.**

3 Section 323(b) of the National Defense Authorization Act for Fiscal Year 2019 (10

4 U.S.C. 8690 note) is amended—

5 (1) by striking “In the case” and inserting “(1) Subject to paragraph (2), in the

6 case”; and

7 (2) by adding at the end the following new paragraph:

8 “(2) The Secretary of the Navy may waive the limitation under paragraph (1) with

9 respect to a naval vessel in the same manner as provided for in subsection (c) of section

10 8690 of title 10, United States Code, with respect to the limitation in subsection (a) of

11 that section.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal grants the Secretary of the Navy the authority to waive the limitation on returning naval vessels that were “forward deployed” overseas for more than 10 years as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2019.

Navy understands the intent of Congress to re-assign a U.S. homeport within a 3-year timeframe (AUG 2018 – to – AUG 2021) for those ships currently “forward deployed” overseas in excess of 10 years. This proposal grants the Secretary of the Navy the flexibility needed to adjust the departure date of a currently “forward deployed” ship if needed to meet mission requirements and reduce operational risk.

This proposal has no budget implications since the proposed change provides the Secretary of the Navy the ability to waive a congressional requirement with justification, as the planned operational use of affected ships is included in the FY 2021 Budget request.

Budget Implications: No budgetary impact.

Changes to Existing Law: This proposal would make the following changes to section 323 of the National Defense Authorization Act for Fiscal Year 2019:

SEC. 323. LIMITATION ON LENGTH OF OVERSEAS FORWARD DEPLOYMENT OF NAVAL VESSELS.

(a) LIMITATION.—

* * * * *

(b) TREATMENT OF CURRENTLY DEPLOYED VESSELS.—(1) Subject to paragraph (2), in ~~In~~ the case of any naval vessel that has been forward deployed overseas for a period in excess of ten years as of the date of the enactment of this Act, the Secretary of the Navy shall ensure that such vessel is assigned a homeport in the United States by not later than three years after the date of the enactment of this Act.

(2) The Secretary of the Navy may waive the limitation under paragraph (1) with respect to a naval vessel in the same manner as provided for in subsection (c) of section 8690 of title 10, United States Code, with respect to the limitation in subsection (a) of that section.

* * * * *

1 **SEC. ___. EXCLUSION OF ACTIVE DUTY STATUS FOR REQUIRED MEDICAL**
2 **EVALUATION AND CARE FROM THE FIVE-YEAR SERVICE**
3 **LIMITATION ESTABLISHED IN THE UNIFORMED SERVICES**
4 **EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT.**

5 (a) IN GENERAL.—Section 4312(c)(4)(A) of title 38, United States Code, is amended—
6 (1) by inserting "12301(h)," after "12301(g),"; and
7 (2) by striking "331, 332, 359, 360, 367, or 712" and inserting "2127, 2128, 2308,
8 2309, 2314, or 3713".
9 (b) APPLICABILITY.—The amendment made by subsection (a)(1) of this section shall
10 apply to a member of a uniformed service who is ordered to or retained on active duty under
11 section 12301(h) of title 10, United States Code, after the date of the enactment of this Act.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would add active duty status for medical care to the list of authorities excluded from the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) five-year service limit. Currently, section 12301(h) of title 10, United States Code (U.S.C.), states that "When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty – to receive medical care; to be medically evaluated for disability or other purposes; or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member." Currently, section 12301(h) of title 10, U.S.C., is not identified as a statutory exemption under USERRA. The result is that reserve component Service members receiving medical care under section 12301(h) of title 10, U.S.C., authority, some of whom are assigned to wounded warrior units for significant amounts of time, have this period of service counted against their individual five-year cumulative absence limitation as defined in USERRA.

After discussions with representatives from the Department of Labor and the military representatives to the Department of Defense USERRA Working Group, it was determined that adding section 12301(h) of title 10, U.S.C., to the list of statutory exemptions identified in section 4312(c)(4)(A) of title 38, U.S.C., is a justifiable exemption across all Services, and will

help avoid the confusion often created for Service members and employers when exempting periods of service via secretarial authority.

In addition, this proposal includes a conforming amendment that is required due to the redesignation of sections in title 14, U.S.C., by Public Law 115-282.

Budget Implications: No budget impact. This change only impacts determinations of whether a Service member has met or exceeded their five-year limitation for reemployment benefits with their current civilian employer.

Changes to Existing Law: This proposal would make the following changes to section 4312 of title 38, United States Code:

*****

§4312. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE IN THE UNIFORMED SERVICES.

*****

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if-

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service-

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing

by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is-

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12301(h), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section ~~331, 332, 359, 360, 367, or 712~~ 2127, 2128, 2308, 2309, 2314, or 3713 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

* * * * *

SEC. ___. MILITARY HEALTH SYSTEM FRAUD AND ABUSE PREVENTION PROGRAM.

(a) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1073d the following new section:

"§1073e. Health care fraud and abuse prevention

"(a) AUTHORITY.—(1) The Secretary of Defense is authorized to conduct a program to prevent and remedy fraud and abuse in health care programs of the Department of Defense, including all programs carried out under this chapter.

"(2) At the discretion of the Secretary, the program may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency.

"(b) CIVIL MONETARY PENALTIES.—(1) The authorities granted to the Secretary of Defense and the Inspector General of the Department of Defense under section 1128A(m) of the Social Security Act (42 U.S.C. 1320a-7a(m)) shall be available to the Secretary and the Inspector General in carrying out the program authorized by subsection (a).

"(2) Except to the extent inconsistent with this section, the provisions of such section 1128A apply to civil monetary penalties under this subsection.

"(c) TREATMENT OF AMOUNTS COLLECTED.—(1) Amounts collected under subsection (b) shall be credited to appropriations currently available at the time of collection for expenses of the affected Department of Defense health care program.

"(2) Any such amounts may be used to support the administration of the program authorized by subsection (a), including support for interagency agreements entered into under subsection (d).

"(3) The authority provided under this subsection shall be in addition to the authority provided under section 1079a of this title.

1 “(d) INTERAGENCY AGREEMENTS.—The Secretary of Defense is authorized to enter into
2 agreements with the Secretary of Health and Human Services, the Attorney General, and heads
3 of other Federal agencies for the effective and efficient implementation of the program
4 authorized by subsection (a).
5 “(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed as limiting any
6 authority of the Inspector General of the Department of Defense under any other provision of
7 law.
8 “(f) DEFINITIONS.—In this section:
9 “(1) The term ‘fraud and abuse’ means any conduct for which a civil monetary
10 penalty may be assessed under subsection (b).
11 “(2) The term ‘Defense Health Agency’ means the organizational entity
12 established by the Secretary of Defense under section 191 of this title for the
13 administration of programs under this chapter.”.
14 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
15 amended by inserting after the item relating to section 1073d the following new item:

“1073e. Health care fraud and abuse prevention.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would insert a new section 1073e in title 10, United States Code (U.S.C.), to specifically authorize an enhanced Department of Defense health care fraud and abuse prevention program and provide means for its effective and efficient operation. This is in recognition that TRICARE has been victimized by health care fraud and abuse. Subsection (a) of the new section specifically authorizes the program and provides that it may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency. Subsection (b) of the new section allows the program to include existing legal authority under the Social Security Act for the heads of Federal agencies and the Inspectors General of those agencies that operate Federal health care programs to assess civil monetary penalties in a manner comparable to the longstanding and successful program of the Department of Health and Human Services (HHS) to combat fraud and abuse against Medicare and

Medicaid. DoD has implemented this authority under the Social Security Act in a proposed regulation at 84 FR 18437, which amends Department of Defense regulations by adding 32 CFR Part 200. Subsection (c) of the new section provides that civil monetary penalty amounts collected will be credited to the appropriation available for the Department of Defense health care program affected for the fiscal year in which the amount is collected. Penalties cannot be imposed or collected until the Final Rule is published at the end of 2019. This extends the current rule under 10 U.S.C. 1079a that refunds and other amounts collected under CHAMPUS/TRICARE are credited to the Defense Health Program appropriation and available for use under that program. Any penalty amounts collected may be used to support the operation of the fraud and abuse prevention program. Under the HHS program and the existing Social Security Act provisions, civil monetary penalty amounts are credited to the Federal Hospital Insurance Trust Fund or applicable Medicaid account and may be used to support health care fraud and abuse prevention. Subsection (d) of the new section authorizes interagency agreements with the Department of Health and Human Services, the Department of Justice, and other agencies for the effective and efficient implementation of the fraud and abuse prevention program. Subsections (e) and (f) of the new section make clear that the section does not limit existing authorities of the DoD Inspector General and provide applicable definitions.

Budgetary Implications: This section would reduce Defense Health Program requirements by $74 million from FY 2021 – FY 2025. The savings estimates were based on recent history of TRICARE fraud and abuse audits and investigations that, for a variety of reasons, did not result in criminal or civil actions by the Department of Justice under other legal authorities. The saving estimates were based on the estimate of 50 cases per year with an average penalty of $600,000 per case and a collection rate of 60%. Additionally, the estimated recovery amount subtracts out appeal costs, full-time equivalent costs, and administrative costs. The initial estimated amount of recovery is limited as it is anticipated that it will take DoD a few years to attain full operational capability. The resources saved are reflected in the table below and are included within the FY 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Defense Health	(8)	(16)	(16)	(17)	(18)	Operation and Maintenance, Defense Health Program	01	5_01	-

Changes to Existing Law: This proposal would insert a new section in chapter 55 of title 10, United States Code, as shown in full in the legislative language above.

1 **SEC. ___. MISSION TRAINING THROUGH DISTRIBUTED SIMULATION**.

2 (a) AUTHORITY.—Section 346 of title 10, United States Code, is amended—

3 (1) by striking the section designation and heading and inserting the following:

4 **"§346. Mission training of United States and foreign forces through distributed simulation**

5 **and networked technology";**

6 (2) in subsection (a)—

7 (A) in the subsection heading, by inserting "TRAINING AND" before

8 DISTRIBUTION AUTHORIZED";

9 (B) in the matter preceding paragraph (1), by striking "interoperability"

10 and inserting "interoperability and integration";

11 (C) in paragraph (1), by inserting "persistent advanced networked training

12 and exercise activities, also referred to as mission training through distributed

13 simulation, and other" before "electronically-distributed learning content"; and

14 (D) in paragraph (2), by striking "computer software" and inserting

15 "hardware and software"; and

16 (3) in subsection (c)—

17 (A) in the matter preceding paragraph (1), by striking "shall include" and

18 inserting "may include"; and

19 (B) by adding at the end the following:

20 "(3) Advanced distributed network training events and computer-assisted

21 exercises.".

1 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of

2 chapter 16 of such title is amended by striking the item relating to section 346 and inserting the

3 following:

"346. Mission training of United States and foreign forces through distributed simulation and networked technology.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Description:

This proposal would amend section 346 of title 10, United States Code (title 10), to authorize the Secretary of Defense to utilize mission training through distributed simulation (MTDS) activities in military training with friendly foreign forces. MTDS seeks to incorporate live friendly foreign forces into a virtual training environment in lieu of simulated or contractor representation of those forces to enhance interoperability and encourage further strategic partnerships with key allies and partners.

The modification to this authority is consistent with the consolidation of security cooperation authorities into chapter 16 of title 10. These modifications also are consistent with updates to existing authorities accounting for emergent technological capabilities and requirements for high-end systems training activities with partners and allies seeking to increase interoperability and to familiarize themselves with systems procured from the United States. These changes modernize section 346 of title 10 to account for emergent requirements not captured by the original authority.

This authority is necessary because training is recognized as a defense service, and direct or incidental training will be provided by U.S. forces to military forces of friendly foreign countries during this type of activity. These training and exercise events will normally be executed during U.S. forces' combat readiness training events. MTDS, in effect, broadens the training audience available through networked activities, thus increasing the fidelity and depth of training for U.S. and friendly foreign forces. Allowing for this type of virtual integration may also reduce the cost of training and exercises by bringing dissimilar forces together in distributed events, requiring fewer travel expenses and reducing the wear and tear on actual weapon systems. Conducting this type of training through MTDS would be even more critical for training and exercise support as we, and our allies and partners, increasingly rely on advanced weapons systems like the F-35 fighter. At least 50 percent of the training for the F-35 can only be conducted in advanced networked environments.

History: U.S. Air Forces in Europe (USAFE) has temporarily executed MTDS activities under authority granted in section 350 of title 10 (Inter-European Air Forces Academy – IEAFA), as part of a "Simulation and Exercise Management Training Activity." The primary purpose of section 350 is for training of foreign nations' forces in professional military education and technical skills training activities, not persistent advanced networked training and exercises focused mainly on U.S. forces.

Section 321 of title 10 allows for training with allies and partners, but it only allows for the payment of incremental expenses for “developing” countries in most circumstances. Section 333 of title 10 also has a broad training authority, but it is tied to institutional capacity-building requirements, which are unnecessary for many of our partners that would be involved in MTDS. Section 346 of title 10 closely mirrors the intent of MTDS, both for facilitating high-end partners and allowing the payment of incremental expenses; however, to be used effectively, section 346 must be modified to account for the emergent requirements for “live” training in complex environments, increasingly utilized with the F-35.

Discussion: As MTDS activities and emerging technologies supporting synthetic and blended live, virtual, and constructive (LVC) environments continue to expand rapidly, more training and exercises will be conducted in these environments. For many weapon systems, outside of actual combat, MTDS provides the only environment to conduct training in anti-access/area-denial (A2/AD) operations. By supporting the inclusion of friendly foreign forces into the virtual training, we will be providing U.S. forces more realistic training on interoperability and will be doing it in a cost-effective manner—obviating the need either to: 1) program simulated allied or partnered forces into the scenario; or 2) conduct the training in the real-world environment, when possible. The scale, rapidity, and importance of this type of training activity with friendly foreign forces necessitate a flexible global authority, as well as specified authorization to allow for the inclusion of the types of partner activities that MTDS requires.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request.

RESOURCE IMPACT ($MILLIONS)								
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
MTDS	15.0	15.0	15.0	15.0	15.0	Operation and Maintenance, Air Force	01	3400
Total	15.0	15.0	15.0	15.0	15.0			

Changes to Existing Law: This proposal would amend section 346 of title 10, United States Code, as follows

~~**§346. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces**~~

§346. Mission training of United States and foreign forces through distributed simulation and networked technology

(a) Training and Distribution Authorized.-To enhance ~~interoperability~~ interoperability and integration between the armed forces and military forces of friendly foreign countries, the Secretary of Defense, with the concurrence of the Secretary of State, may-

(1) provide to personnel referred to in subsection (b) persistent advanced networked training and exercise activities, also referred to as mission training through distributed simulation, and other

electronically distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including ~~computer software~~hardware and software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) Authorized Recipients.-The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) Education and Training.-Any education and training provided under subsection (a) ~~shall include~~ may include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(3) Advanced distributed network training events and computer-assisted exercises.

(d) Applicability of Export Control Regimes.-The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the transfer of military technology to foreign countries.

(e) Guidance on Utilization of Authority.-

(1) Guidance required.-The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) Modification.-If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

1 **SEC. ____. CLARIFICATION OF OFFICE OF SPECIAL NEEDS POLICY FOR**

2 **INDIVIDUALIZED SERVICES PLANS.**

3 Section 1781c(d)(4) of title 10, United States Code, is amended by striking subparagraph

4 (F) and inserting the following new subparagraph:

5 "(F) Procedures for the development of an individualized services plan for those

6 military family members with special needs who have requested support and have a

7 completed family needs assessment.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would clarify that individualized services plans need only be provided to military families with special needs who have requested support, rather than to all families. This issue was identified in a May 2018 United States Government Accountability Office (GAO) study, GAO 18-348, "*DoD Should Improve Its Oversight of the Exceptional Family Member Program*." As written, the current statute requires each military family member with special needs to have a plan developed. Services Plans are developed by family support personnel/case managers in collaboration with the family following the completion of a family needs assessment and are not necessary for every military family. The purpose of the Services Plan is to identify, document, and track the goals and objectives established by the family and outline and prioritize non-clinical services. The requirement to provide and monitor individualized plans for all families is burdensome and unnecessary and would require significant additional funding to execute as written. If this proposal is not accepted, the Department of Defense projects that it will require an additional $4.67M to meet the current standard outlined in section 1781c(d) of title 10, United States Code (U.S.C); as such, this proposal will lead to cost avoidance should it be accepted. Moreover, as the proposal would align the requirements of section 1781c with the appropriate and effective standard to which the Department is currently executing, it would require no additional funding.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget. The Department projects that if this proposal is not accepted, meeting the existing standard outlined in 10 U.S.C. 1781c(d) would require an additional $4.67M of resources requested within the Fiscal Year (FY) 2021 President's Budget. These amounts are not currently budgeted specifically for this purpose, but are instead programmed to support the priorities of the National Defense Strategy implementation within the appropriations listed in the table below. If this proposal is not enacted, these funds would have to be redirected away from their current requirements and priorities in order to cover the costs of

meeting the existing statute. This is reflected as a negative in the table to reflect the cost avoidance of implementing vs not implementing the proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element**
Army Exceptional Family Member Program (EFMP)	-3.11	-3.17	-3.23	-3.30	-3.36	Operation and Maintenance, Army	1	131	
Navy EFMP	-0.41	-0.41	-0.42	-0.43	-0.43	Operation and Maintenance, Navy			
Marine Corps EFMP	-0.22	-0.22	-0.23	-0.23	-0.23	Operation and Maintenance, Marine Corps			
Air Force EFMP	-0.93	-0.95	-0.97	-0.99	-1.01	Operation and Maintenance, Air Force			
Total	-4.67	-4.75	-4.85	-4.95	-5.03	--	-	--	--

Changes to Existing Law: This proposal would amend section 1781c of title 10, United States Code, as follows:

§1781c. Office of Special Needs

(a) Establishment.-There is in the Office of Military Family Readiness Policy the Office of Special Needs (in this section referred to as the "Office").

(b) Purpose.-The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

(c) Responsibilities.-The Office shall have the responsibilities as follows:

(1) To develop and implement a comprehensive policy on support for military families with special needs as required by subsection (d).

(2) To establish and oversee the programs required by subsection (e).

(3) To identify gaps in services available through the Department of Defense for military families with special needs.

(4) To develop plans to address gaps identified under paragraph (3) through appropriate mechanisms, such as enhancing resources and training and ensuring the provision of special assistance to military families with special needs and military parents of individuals with special needs (including through the provision of training and seminars to members of the armed forces).

(5) To monitor the programs of the military departments for the assignment of members of the armed forces who are members of military families with special needs, and the programs

for the support of such military families, and to advise the Secretary of Defense on the adequacy of such programs in conjunction with the preparation of future-years defense programs and other budgeting and planning activities of the Department of Defense.

(6) To monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs.

(7) To conduct periodic reviews of best practices in the United States in the provision of medical and educational services for children with special needs.

(8) To carry out such other matters with respect to the programs and activities of the Department of Defense regarding military families with special needs as the Under Secretary of Defense for Personnel and Readiness shall specify.

(d) Policy.-(1) The Office shall develop, and update from time to time, a uniform policy for the Department of Defense regarding military families with special needs. The policy shall apply with respect to members of the armed forces without regard to their location, whether within or outside the continental United States.

(2) The policy developed under this subsection shall include elements regarding the following:

(A) The assignment of members of the armed forces who are members of military families with special needs.

(B) Support for military families with special needs.

(3) In addressing the assignment of members of the armed forces under paragraph (2)(A), the policy developed under this subsection shall, in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty, provide for such members each of the following:

(A) Assignment to locations where care and support for family members with special needs are available.

(B) Stabilization of assignment for a minimum of 4 years.

(4) In addressing support for military families under paragraph (2)(B), the policy developed under this subsection shall provide the following:

(A) Procedures to identify members of the armed forces who are members of military families with special needs.

(B) Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.

(C) Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military department for the support of military families with special needs.

(D) Procedures to ensure the coordination of Department of Defense health care programs and support programs for military families with special needs, and the coordination of such programs with other

Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.

(E) Requirements for resources (including staffing) to ensure the availability through the Department of Defense of appropriate numbers of case managers to provide individualized support for military families with special needs.

~~(F) Requirements regarding the development and continuous updating of an individualized services plan (medical and educational) for each military family with special needs.~~

(F) Procedures for the development of an individualized services plan for those military family members with special needs who have requested support and have a completed family needs assessment.

(G) Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

(e) Programs.-(1) The Office shall establish, maintain, and oversee a program to provide information and referral services on special needs matters to military families with special needs on a continuous basis regardless of the location of the member's assignment. The program shall provide for timely access by members of such military families to individual case managers and counselors on matters relating to special needs.

(2) The Office shall establish, maintain, and oversee a program of outreach on special needs matters for military families with special needs. The program shall-

(A) assist military families in identifying whether or not they have a member with special needs; and

(B) provide military families with special needs with information on the services, support, and assistance available through the Department of Defense regarding such members with special needs, including information on enrollment in programs of the military departments for such services, support, and assistance.

(3)(A) The Office shall provide support to the Secretary of each military department in the establishment and sustainment by such Secretary of a program for the support of military families with special needs under the jurisdiction of such Secretary. Each program shall be consistent with the policy developed by the Office under subsection (d).

(B) Each program under this paragraph shall provide for appropriate numbers of case managers for the development and oversight of individualized services plans for educational and medical support for military families with special needs.

(C) Services under a program under this paragraph may be provided by contract or other arrangements with non-Department of Defense entities qualified to provide such services.

(f) Resources.-The Secretary of Defense shall assign to the Office such resources, including personnel, as the Secretary considers necessary for the discharge of the responsibilities of the Office, including a sufficient number of members of the armed forces to ensure appropriate representation by the military departments in the personnel of the Office.

(g) Reports. (1) Not later than April 30 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the activities of the Office.

(2) Each report under this subsection shall include the following:

(A) A description of any gaps in services available through the Department of Defense for military families with special needs that were identified under subsection (c)(3).

(B) A description of the actions being taken, or planned, to address such gaps, including any plans developed under subsection (c)(4).

(C) Such recommendations for legislative action as the Secretary considers appropriate to provide for the continuous improvement of support and services for military families with special needs.

1 **SEC. ___. SELECTED RESERVE MEMBERS PARTICIPATION IN ARMED FORCES**

2 **HEALTH PROFESSIONS SCHOLARSHIP PROGRAM.**

3 (a) ESTABLISHMENT OF PROGRAM.—Section 2121 of title 10, United States Code, is

4 amended—

5 (1) in subsection (a)(1), by striking “on active duty”;

6 (2) in subsection (c)(2), in the first sentence, by striking “prior active service” and

7 inserting “prior active or selected reserve service”; and

8 (3) by adding at the end the following new subsection:

9 “(e) The Secretary of a military department, under regulations prescribed by the Secretary

10 of Defense, may authorize members who agree to qualify in critical wartime specialties to

11 participate in the program in return for a commitment to subsequent service in the Selected

12 Reserve of the Ready Reserve.”.

13 (b) SERVICE OBLIGATION FOR PROGRAM PARTICIPANTS.—Section 2123 of such title is

14 amended—

15 (1) by amending the section heading to read as follows:

16 **“§ 2123. Members of the program: military service obligation; failure to complete training;**

17 **release from program”;**

18 (2) in subsections (a), (b), and (d) by striking “an active duty” and inserting “a

19 military service”;

20 (3) in subsection (c)—

21 (A) by striking “perform active duty” and inserting “perform military

22 service”; and

23 (B) by striking “active duty obligation” and inserting “service obligation”;

1 (4) in subsection (e)—

2 (A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4),

3 respectively;

4 (B) by inserting after paragraph (1) the following new paragraph:

5 "(2) A member of the program who is relieved of the member's reserve service obligation

6 under this subchapter before completion of that reserve obligation may be given, with or without

7 the consent of the member, any of the following alternative obligations, as determined by the

8 Secretary of the military department concerned:

9 "(A) A reserve service obligation in another armed force for a period of time not

10 less than the member's remaining service obligation.

11 "(B) Repayment to the Secretary of Defense of a percentage of the total cost

12 incurred by the Secretary under this subchapter on behalf of the member pursuant to the

13 repayment provisions of section 303a(e) or 373 of title 37."; and

14 (C) in paragraph (3), as redesignated by subparagraph (A) of this

15 paragraph—

16 (i) by striking "an active duty obligation" and inserting "a military

17 service obligation"; and

18 (ii) by striking "active duty service obligation" and inserting

19 "military service obligation".

20 (c) CONFORMING AMENDMENTS.—Chapter 105 of such title is amended—

21 (1) in the heading for subchapter I, by striking "**FOR ACTIVE SERVICE**"; and

22 (2) in sections 2126(b)(1)(B) and 2128(c), by striking "active duty obligation";

23 and inserting "military service obligation".

1 (d) CLERICAL AMENDMENTS.—Chapter 105 of such title is amended—

2 (1) in the table of subchapters at the beginning of such chapter, by striking the

3 item relating to subchapter I and inserting the following new item:

"I. Health Professions Scholarship and Financial Assistance Program ……………………………..……………2120";
and

4

5 (2) in the table of sections at the beginning of subchapter I, by striking the item

6 relating to section 2123 and inserting the following new item:

"2123. Members of the program: military service obligation; failure to complete training; release from the program.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This legislative proposal would allow the Secretaries of the military departments to expand participation in the Armed Forces Health Professions Financial Assistance Programs (AFHPSP) to members of the Selected Reserve. Currently, chapter 105 of title 10, United States Code (U.S.C.), requires participants in the Armed Forces Health Professions Scholarship Programs (AFHPSP) to fulfill their service obligations on active duty.

The Total Force requires each component to have the right number and specialty mix of medical professionals to support the National Defense Strategy. The Selected Reserve cannot effectively recruit and retain health professionals in specialties critical to sustaining the Nation's wartime missions. Currently, the Selected Reserve has 36.8% of authorized physicians, despite offering $25,000 to $50,000 yearly bonuses and up to $250,000 in loan repayment. In specific medical fields the situation is worse: the Selected Reserve has 32% of its authorized end-strength in general surgery; 10% in orthopedic surgery; 33% in emergency medicine; and 57% in family medicine. The continuing shortfall degrades the Selected Reserve's readiness and capability, draws active duty medical corps officers from their units and responsibilities to fill gaps created by missing reserve component physicians, and downgrades the ability of the Total Medical Force to support operations across the spectrum of contingencies, including potential conflicts with near-peer adversaries.

This proposal would allow the Secretaries of the military departments to allow individuals to participate in AFHPSP and, upon completion of training, would complete their service obligation in the Selected Reserve. This proposal is consistent with the regulatory guidance promulgated by the Secretary of Defense for those individuals participating in the Health Professions Stipend Program for the reserve components under chapter 1608 of title 10, U.S.C. The proposal would not increase the number of AFHPSP participants beyond those

currently authorized under section 2124 of title 10, U.S.C., as the scholarships awarded for Selected Reserve service would be offset by proportionally lower Active Duty scholarships.

This proposal would allow Secretaries to determine the length of Selected Reserve Duty at the time at which participants contract with the Services and the program. Participants choosing the Selected Reserve program would be expected to serve a longer obligation than those selecting the Active Duty program.

This proposal would also allow each Secretary to specify which critical war specialties a student may choose for graduate medical education. Students would acknowledge this at the time of contracting with the Service and program. Students who fail to complete the program or match into one of the pre-specified critical war specialties will be subject to potential recoupment, Selected Reserve service, or civilian service similar to that required of Active Duty program participants (10 U.S.C. 2123).

This proposal would significantly increase the number of physicians with critical wartime specialties in the Selected Reserve.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. The only impact would be the administrative costs associated with implementing the change. This program would be cost neutral with respect to the cost of students in medical school (bonus, stipend, tuition, fees, books, equipment). The amount each recipient/participant receives (~86K annually) is the same regardless of whether they will fulfill their service obligations on Active Duty or in the Selected Reserves. The full complement of 6,300 authorized positions are not filled every year. This proposal would allow each Service Secretary to dedicate a pre-determined number of AFHPSP scholarships to be awarded to medical students willing to contract for Selected Reserve service, based on the quality and number of applications received. The number of scholarships awarded for Selected Reserve service would be offset by proportionately fewer scholarships awarded for Active Duty service. Upon program completion, Selected Reserve AFHPSP recipients must agree to train in critical wartime specialties designated by the Service Secretary. The Service Secretary will provide Selected Reserve AFHPSP participants with that Service's list of critical wartime specialties at the time they contract for the program, and will require the participants to pursue training in one of those specialties or a specialty subsequently added to the critical wartime specialty list.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
AFHPSP Administration	$0.2	$0.2	$0.2	$0.2	$0.2	Operation and Maintenance, Defense Health Program	OA74	A74VV	N/A
Total	$0.2	$0.2	$0.2	$0.2	$0.2				

Changes to Existing Law: This proposal would make the following changes to subchapter I of chapter 105 of title 10, United States Code:

SUBCHAPTER I — HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM ~~FOR ACTIVE SERVICE~~

* * * * *

§ 2121. Establishment

(a)(1) For the purpose of obtaining adequate numbers of commissioned officers ~~on active duty~~ who are qualified (A) in the various health professions or (B) as a health professional with specific skills to assist in providing mental health care to members of the armed forces, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, may establish and maintain a health professions scholarship and financial assistance program for his department.

(2) Under the program of a military department, the Secretary of that military department shall allocate a portion of the total number of scholarships to members of the program described in paragraph (1)(B) for the purpose of assisting such members to pursue a degree at the masters and doctoral level in any of the following disciplines:

(A) Social work.

(B) Clinical psychology.

(C) Psychiatry.

(D) Other disciplines that contribute to mental health care programs in that military department.

(b) The program shall consist of courses of study and specialized training in designated health professions, with obligatory periods of military training.

(c)(1) Persons participating in the program shall be commissioned officers in reserve components of the armed forces. Members pursuing a course of study shall serve on active duty in pay grade O–1 with full pay and allowances of that grade for a period of 45 days during each year of participation in the program. Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under section 12207 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program. They shall be detailed as students at accredited civilian institutions, located in the United States or Puerto Rico, for the purpose of acquiring knowledge or training in a designated health profession. In addition, members of the program shall, under regulations prescribed by the Secretary of Defense, receive military and professional training and instruction.

(2) If a member of the uniformed services selected to participate in the program as a medical student has prior active or selected reserve service in a pay grade and with years of service credited for pay that would entitle the member, if the member remained in the former grade, to a

rate of basic pay in excess of the rate of basic pay for regular officers in the grade of second lieutenant or ensign, the member shall be paid basic pay based on the former grade and years of service credited for pay. The amount of such basic pay for the member shall be increased on January 1 of each year by the percentage by which basic pay is increased on average on that date for that year, and the member shall continue to receive basic pay based on the former grade and years of service until the date, whether occurring before or after the conclusion of such participation, on which the basic pay for the member in the member's actual grade and years of service credited for pay exceeds the amount of basic pay to which the member is entitled based on the member's former grade and years of service.

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at a monthly rate established by the Secretary of Defense, but not to exceed a total of $30,000 per year. The maximum annual amount of the stipend shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(e) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may authorize members who agree to qualify in critical wartime specialties to participate in the program in return for a commitment to subsequent service in the Selected Reserve of the Ready Reserve.

* * * * *

§2123. Members of the program: ~~active duty~~ military service obligation; failure to complete training; release from program

(a) A member of the program incurs ~~an active duty~~ a military service obligation. The amount of his obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each year of participation in the program.

(b) A period of time spent in military intern or residency training shall not be creditable in satisfying ~~an active duty~~ a military service obligation imposed by this section.

(c) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to ~~perform active duty~~ perform military service in an appropriate military capacity in accordance with the ~~active duty obligation~~ service obligation imposed by this section.

(d) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member of the program who is dropped from the program from ~~an active~~

~~duty~~ a military service obligation imposed by this section, but such relief shall not relieve him from any military obligation imposed by any other law.

(e)(1) A member of the program who is relieved of the member's active duty obligation under this subchapter before the completion of that active duty obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A service obligation in another armed force for a period of time not less than the member's remaining active duty service obligation.

(B) A service obligation in a component of the Selected Reserve for a period not less than twice as long as the member's remaining active duty service obligation.

(C) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member pursuant to the repayment provisions of section 303a(e) or 373 of title 37.

(2) A member of the program who is relieved of the member's reserve service obligation under this subchapter before the completion of that reserve obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A reserve service obligation in another armed force for a period of time not less than the member's remaining reserve service obligation.

(B) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member pursuant to the repayment provisions of section 303a(e) or 373 of title 37.

(~~2~~3) In addition to the alternative obligations specified in paragraph (1) and (2), if the member is relieved of ~~an active duty obligation~~ a military service obligation by reason of the separation of the member because of a physical disability, the Secretary of the military department concerned may give the member a service obligation as a civilian employee employed as a health care professional in a facility of the uniformed services for a period of time equal to the member's remaining ~~active duty obligation~~ military service obligation.

(~~3~~4) The Secretary of Defense shall prescribe regulations describing the manner in which an alternative obligation may be given under this subsection.

* * * * *

§ 2126. Members of the program: service credit

(a) Service Not Creditable.—Except as provided in subsection (b), service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205 of title 37.

(b) Service Creditable for Certain Purposes.—(1) The Secretary concerned may authorize service performed by a member of the program in pursuit of a course of study under this subchapter to be counted in accordance with this subsection if the member—

(A) completes the course of study;

(B) completes the ~~active duty obligation~~ military service obligation imposed under section 2123(a) of this title; and

(C) possesses a specialty designated by the Secretary concerned as critically needed in wartime.

(2) Service credited under paragraph (1) counts only for the award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

(3) The number of points credited to a member under paragraph (1) for a year of participation in a course of study is 50. The points shall be credited to the member for one of the years of that participation at the end of each year after the completion of the course of study that the member serves in the Selected Reserve and is credited under section 12732(a)(2) of this title with at least 50 points. The points credited for the participation shall be recorded in the member's records as having been earned in the year of the participation in the course of study.

(4) Service may not be counted under paragraph (1) for more than four years of participation in a course of study as a member of the program.

(5) A member of the Selected Reserve may be considered to be in an active status while pursuing a course of study under this subchapter only for purposes of sections 12732(a) and 12733(3) of this title.

(6) A member is not entitled to any retroactive award of, or increase in, pay or allowances under title 37 by reason of an award of service credit under paragraph (1).

* * * * *

§ 2128. Accession bonus for members of the program

(a) Availability of Bonus.—The Secretary of Defense may offer a person who enters into an agreement under section 2122(a)(2) of this title an accession bonus of not more than $20,000 as part of the agreement.

(b) Relation to Other Payments.—An accession bonus paid a person under this section is in addition to any other amounts payable to the person under this subchapter.

(c) Repayment.—A person who receives an accession bonus under this section, but fails to comply with the agreement under section 2122(a)(2) of this title or to commence or complete the ~~active duty obligation~~ military service obligation imposed by section 2123 of this title, shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

1 **SEC. ___. AUTHORITY TO ENTER INTO PATIENT MOVEMENT AGREEMENTS**
2 **WITH ALLIES.**
3 (a) IN GENERAL.—Subchapter II of chapter 138 of title 10, United States Code, is
4 amended by adding at the end the following new section:
5 **"§ 2350m. Reciprocal patient movement agreements**
6 "(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary of Defense
7 may, with the concurrence of the Secretary of State, enter into a bilateral or multilateral
8 memorandum of understanding (or other formal agreement) with one or more governments of
9 partner countries that provides for the—
10 "(1) interchangeable, non-reimbursable use of patient movement personnel, either
11 individually or as members of a patient movement crew or team, and equipment,
12 belonging to one partner country to perform patient movement services aboard the
13 aircraft, vessels, or vehicles of another partner country;
14 "(2) reciprocal recognition and acceptance of national professional credentials,
15 certifications, and licenses of patient movement personnel;
16 "(3) reciprocal recognition and acceptance of national certifications, approvals,
17 and licenses of equipment used in the provision of patient movement services; and
18 "(4) acceptance of agreed-upon standards for the provision of patient movement
19 services by aircraft, vessel, or vehicle, including, where desirable and otherwise
20 permitted by law, the harmonization of patient treatment standards and procedures.
21 "(b) CERTIFICATIONS.—(1) Prior to entering into a memorandum of understanding (or
22 other formal agreement) with the government of a partner country under this section, the
23 Secretary of Defense, or designee, shall certify, in writing, that the partner country's professional

24 credentials, certifications, licenses, and approvals for both patient movement personnel and

25 patient movement equipment—

26 "(A) meet or exceed the equivalent standards of the United States for similar

27 personnel and equipment; and

28 "(B) will provide for a level of care comparable to, or better than, that provided

29 by the Department of Defense.

30 "(2) Certifications made by the Secretary of Defense, or designee, under paragraph (1)

31 shall be reviewed and recertified annually.

32 "(c) SUSPENSIONS.—In the event the Secretary of Defense, or designee, is unable to

33 recertify a partner country, as required by subsection (b), use of that partner country's personnel

34 or equipment by the Department of Defense under a memorandum of understanding (or other

35 formal agreement) concluded pursuant to subsection (a) shall be suspended until such time as the

36 Secretary of Defense, or designee, is able to recertify the partner country.

37 "(d) DEFINITIONS.—In this section:

38 "(1) PARTNER COUNTRY.—The term 'partner country' refers to any of the

39 following:

40 "(A) A country that is a member of the North Atlantic Treaty

41 Organization.

42 "(B) Australia, New Zealand, Japan, and the Republic of Korea.

43 "(C) Any other country designated as a partner country for the purposes of

44 this section by the Secretary of Defense, with the concurrence of the Secretary of

45 State.

46 “(2) PATIENT MOVEMENT.—The term ‘patient movement’ refers to the act or

47 process of moving wounded, ill, injured, or other persons (including contaminated,

48 contagious, and potentially exposed patients) to obtain medical, surgical, mental health,

49 and dental care or treatment.”.

50 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such

51 subchapter is amended by adding at the end the following new item:

“2350m. Reciprocal patient movement agreements.”.

Section-by-Section Analysis

The Department of Defense currently relies heavily on the Air Force to provide both inter- and intra-theater airlift for patient movement purposes. Contingency operations during the last 18 years have significantly taxed Air Force assets, and the lack of dedicated aircraft for patient movement purposes makes the patient movement enterprise, of which U.S. Transportation Command (USTRANSCOM) is the global manager, dependent on available cargo aircraft. Several U.S. allies and partners fly the same or similar cargo aircraft (specifically the C-17 and C-130), use similar equipment, and train their patient movement personnel similarly to the Air Force. Currently, there is a very laborious, ill-defined, and time-intensive waiver process that has to be undertaken each time patient movement personnel fly on a partner country’s aircraft. In addition, to the extent the Department of Defense (DoD) or a partner country provides patient movement services to another, it currently must be accomplished in the context of a bilateral acquisition and cross-servicing agreement (ACSA) concluded under section 2342 of title 10, United States Code, which involves complex request and accounting procedures and reimbursement. The required request and accounting procedures under an ACSA severely limits the ability to use an ACSA just to move patients on another partner country’s aircraft in a timely fashion. The bilateral or multilateral exchange of patient movement personnel or equipment under such agreements is all but impossible. The proposed legislation would enable the use of comparable patient movement assets on DoD and partner country aircraft, vessels, or vehicles, thereby expanding the pool of available assets for time-critical and mass casualty patient movement at little to no cost to the DoD.

This proposal authorizes memoranda of understanding (or other formal agreements) addressing three major hurdles to patient movement interoperability: the ability to practice medicine on aircraft by formally recognizing and accepting the credentialing and licensure of patient movement personnel as outlined in NATO STANAG 3204 and the Air Force Interoperability Council; the approval, standardization, and utilization of medical equipment on aircraft; and, to the extent allowed by law, the harmonization of patient treatment standards and procedures. A requirement that the Secretary of Defense, or designee, continually review and recertify partner country patient movement equipment and personnel meet or exceed U.S. standards, and provide a standard of care comparable to or greater than that provided by the

DoD, will ensure DoD and partner country patients are provided the same high-quality level of care as that currently provided by the DoD.

The proposed legislation will facilitate interoperability among key partner countries and, in a resource-constrained environment, provide a quick and safe expansion of patient movement capacity at little to no cost to the DoD and its partners. The timely expansion of capacity will be critical if there is a need for large-scale movement of casualties, from either contingency operations or humanitarian disaster relief operations, and will ultimately save lives.

Issues such as claims adjudication, reporting requirements, the standardization of equipment, the issuance of prescription medicine, and the return of medical equipment used in patient movement to the country of origin will be expanded upon in implementing arrangements or agreements with any participating partner country.

Although most patient movement occurs using aircraft, the possibility of using vessels and vehicles to perform this function exists. Consequently, the proposed legislation has been drafted to address the potential for using all modes for patient movement.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal would add a new section to chapter 138 of title 10, United States Code. The new section is shown in full in the legislative text above.

1 **SEC. ___. GRANTING OF AUTHORITY FOR SECRETARY OF DEFENSE TO**

2 **MANAGE PROVIDER TYPE REFERRAL AND SUPERVISION**

3 **REQUIREMENTS UNDER TRICARE PROGRAM.**

4 Section 1079(a)(12) of title 10, United States Code, is amended, in the first sentence, by

5 striking "or certified clinical social worker," and inserting "certified clinical social worker, or

6 other class of provider as designated by the Secretary,".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal increases the Department of Defense's (DOD) flexibility in determining which provider types under the TRICARE Program may diagnose or assess a mental or physical illness, injury, or bodily malfunction, and, by extension, the extent to which referrals and supervision are required for these provider types. Under current law, TRICARE beneficiaries must be assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker. This requires that one of the listed providers manage the care provided by any other provider under the TRICARE program. This statutory limitation on provider status is unique to TRICARE and not seen in private insurance programs. Significantly, it fails to take into account the increased education and training of other allied health professionals since the statute was enacted and the evolving nature of health care delivery and coverage.

Some current TRICARE-authorized providers operate under State scopes of practice and licensures that permit them to treat patients without supervision by other categories of providers; however, TRICARE's statute prohibits them from doing so when treating TRICARE beneficiaries. These providers may have sufficient education and expertise to assess, diagnose, and treat patients within their scopes of practice. For example, physical therapists were once only required to have a bachelor's degree; this requirement has since been raised to a master's degree and, due to recent changes enacted by the Commission on Accreditation in Physical Therapy Education, new practitioners require a doctorate degree. However, physical therapists working under TRICARE are required to be referred to and supervised by one of the provider types currently listed in the statute. The Defense Health Agency is limited in its ability under existing law to independently assess provider types and determine appropriate supervision and referral requirements when the provider type is not listed in the statute by name.

Current law excludes independent practice by a large number of providers under TRICARE whose scopes of practice and licensure might otherwise allow it. Additionally, referral and supervision requirements may require TRICARE beneficiaries to make extra visits to

primary care providers in order to receive continued care by an allied health professional, and adds to the burden on those providers and expense to beneficiaries. This statutory revision would not change the Defense Health Agency's authority to require supervision or referrals for any type of provider. Adoption of this legislation would not immediately change the supervision and referral requirements for any specific type of provider under TRICARE or eliminate the need for supervision and referrals program-wide; however, once granted this authority, the Defense Health Agency could review existing supervision and referral requirements and initiate changes to regulation if deemed appropriate. Additionally, this legislation would give the Defense Health Agency the ability to set supervision and referral requirements specific to the provider type when adding new types of authorized providers under the regulation.

Budgetary Implications: No budget impact. This assumes no additional costs will be incurred or saved based on this proposal, given that additional regulatory and policy changes would be required in order for costs to be incurred (or saved). While the proposal would permit the Secretary of Defense to exercise additional discretion in supervision and referral requirements for individual provider classes, no such change would automatically occur. Increased access to authorized providers might increase health care costs, but could also decrease health care costs for visits to primary care or other providers that currently must supervise or refer to a provider not listed in section 1079(a)(12) of title 10, United States Code. Any changes to referral and supervision requirements for a particular provider type will require regulatory changes; the Defense Health Agency will evaluate cost impact prior to pursuing any changes to the regulation.

Changes to Existing Law: This proposal would amend section 1079(a)(12) of title 10, United States Code, as follows:

§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

* * * * *

(12) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, ~~or~~ certified clinical social worker, or other category of provider as approved by the Secretary, as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

* * * * *

1 **SEC. ___. REMOVAL OF CHRISTIAN SCIENCE PROVIDERS AS AUTHORIZED**

2 **PROVIDERS UNDER THE TRICARE PROGRAM**

3 (a) REPEAL.—Section 1079(a)(4) of title 10, United States Code, is repealed.

4 (b) CONFORMING AMENDMENT.—Section 1079(a)(12) of such title is amended, in the

5 first sentence, by striking “, except as authorized in paragraph (4)”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Section 1079(a) of title 10, United States Code, authorizes the services of Christian Science practitioners and carves out those services as an exception to the requirement that all services covered under the TRICARE program be medically necessary. This creates an inequity in the TRICARE program, as other services that are not medically necessary, including other faith-based healing services, are not covered. Additionally, it diverts resources away from the overall lethality of the Armed Forces.

This proposal would remove Christian Science practitioners as authorized providers, thereby reinforcing the requirement that TRICARE only cover medically necessary services and aligning TRICARE with the health care insurance industry, which by-in-large, does not pay for Christian Science services. While a few insurers cover Christian Science services, the industry has trended towards exclusion of these providers and services as covered medical benefits, as they are neither medically necessary, nor medical in nature.

The authorization of Christian Science practitioners and associated statutory exemption of Christian Science services from the medical necessity requirement was originally enacted because members of the Church of Christ, Science (the Church) were originally instructed to seek the care of Christian Science practitioners in lieu of other clinicians, including physicians. However, the Church has changed its position and no longer prohibits members from seeking traditional medical care, so this statutory exemption is no longer necessary.

Christian Science practitioner services include prayer, recommending certain biblical and Christian Science writings, and answering spiritual questions. The scope of care does not include any form of psychological treatment, including counseling or therapy; utilizing any form of medical technology or treatment, including diagnosis, prognosis, drugs (medicated, herbal, vitamin-based products or remedies); or physical therapy or any form of physical contact or therapeutic measures.

TRICARE recognizes the important place that personal faith has in beneficiaries’ lives; however, this must be balanced with the charge of TRICARE to support a medically ready force, as well as increased efforts to improve the lethality of the Armed Forces, and thus it is incumbent on the program to use taxpayer dollars for care that is medically necessary and supported by reliable evidence, including peer-reviewed clinical trials. In addition, covering faith-based

healing of one faith but not others creates an inherent lack of parity in the TRICARE benefit. This proposal removes outdated legislation that is no longer necessary given that members of the Church are now able to seek traditional medical care. It also restores parity and promotes evidence-based medicine by eliminating Christian Science practitioners as an independent class of provider and the associated exemption of Christian Science services from the requirement in section 1079 that TRICARE-covered services be medically necessary. Christian Science practitioners would not be prohibited from coverage if they were able to meet the requirements of an otherwise authorized TRICARE provider type (for example, a skilled nursing facility).

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request. In FY 2018, 53 services were reported as being provided by Christian Science practitioners at a total cost to the TRICARE Program of approximately $3,000. Executing this proposal would lead to no additional administrative costs. As a result, there are minimal cost savings and no expenditures that would result.

Changes to Existing Law: This proposal would make the following changes to section 1079 of title 10, United States Code:

§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

* * * * *

(4) ~~Under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided.~~ Repealed.

…

* * * * *

(12) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided~~, except as authorized in paragraph (4)~~. Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

…

* * * * *

1 **SEC. ___. REPEAL OF REQUIREMENTS TO ESTABLISH DEFENSE HEALTH**
2 **AGENCY RESEARCH AND DEVELOPMENT, TO ESTABLISH**
3 **DEFENSE HEALTH AGENCY PUBLIC HEALTH, AND TO DESIGNATE**
4 **DEFENSE HEALTH AGENCY AS A COMBAT SUPPORT AGENCY.**

5 Section 1073c of title 10, United States Code, is amended—

6 (1) in subsection (d), by striking "as a combat support agency under section 193
7 of this title";

8 (2) by striking subsection (e); and

9 (3) by redesignating subsections (f) and (g) as subsections (e) and (f),
10 respectively.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This legislative proposal would repeal the requirements for the Secretary of Defense, acting through the Director of the Defense Health Agency, to: 1) establish a subordinate organization comprised of the Army Medical Research and Materiel Command (MRMC) and other medical research organizations and activities to be called the Defense Health Agency Research and Development; 2) establish a subordinate organization comprised of the Army Public Health Command, the Navy–Marine Corps Public Health Command, Air Force public health programs, and other related defense health activities to be called the Defense Health Agency Public Health; and 3) designate the Defense Health Agency (DHA) as a Combat Support Agency. This proposal does not affect continuing with the designation for creating the Center of Excellence for Joint Biomedical Research, Development, and Acquisition Management.

Risk If Legislative Proposal Is Not Adopted

This proposal is necessary to ensure that the Secretaries of the military departments are capable of performing those functions that are in direct support of Operating Forces to execute the U.S. National Security and Defense Strategies. These responsibilities include control over Military Service-specific medical research, product development, acquisition, and medical logistics programs involved with battlefield casualty care. Ensuring that these programs are synchronized and integrated with other warfighting functions to ensure proper combat casualty care, military medical readiness, and lethality, as well as to ensure a continued synchronized response to emerging public health threats in a timely and efficient manner. If this proposal is

not adopted, the Department incurs substantial risk in both the transition of the Military Medical Treatment Facilities (MTFs) to the DHA and fielding equipping solutions and materiel to the warfighter.

Background on Transfer of Military Healthcare Capabilities to DHA

The Military Health System (MHS) is currently undergoing a historic transformation as the DHA assumes authority, direction, and control for MTFs around the globe. The DHA should be focused on building a world class healthcare delivery system by merging the three Service medical departments. There is enormous complexity merging three global health care systems, complicated by the cultural and organization differences between these systems. Additionally, the DHA is already responsible for implementing the Electronic Health Record across the enterprise. As a result of the complexities involved in this process, the National Defense Authorization Act for Fiscal Year 2019 extended the transfer of the administration of MTFs from the original date of October 1, 2018, to September 30, 2021. Transferring medical research and development and public health to the DHA during an already complex reform effort poses significant risk to systems that serve both our warfighters and their beneficiaries.[1]

DHA's role as a Combat Support Agency (CSA) has created uncertainty regarding responsibility and authorities. Removing the CSA designation in statute will allow the Secretary of Defense to determine what functions are aligned to the Military Services and what functions are aligned to DHA. The CSA designation also creates redundancy with the Services who provide ready, trained, and equipped medical formations. Appropriately aligning capabilities and responsibilities will unburden DHA and allow it to focus on MTFs while streamlining the Services' ability to generate ready medical formations.

Department of Defense Study on Medical Research and Public Health Reforms

The Department of Defense has been studying the transfer of military public health organizations and medical research and development activities from the military medical departments to the DHA. The assessment and recommended courses of action are not complete due to the intricacies of these systems. For example, the study group determined that medical logistics was outside the scope of the study involving medical research. However, the current statutory language transfers both Army organizations responsible for medical research and development, as well as operational medical logistics.

Army Essential Responsibilities

While DHA is assuming control of MTFs, this proposal ensures the Army will remain in control of essential medical research and materiel functions that support readiness, combat

[1] In establishing Army Futures Command (AFC), the Army intended to realign elements of the Army's modernization enterprise and bring unity of effort to the future force development process, including medical research and development and public health. AFC will manage all Army Concepts, Capability Development, Science and Technology activities, informed by Army and Joint future force capabilities and requirements. Consolidation of requirements development and science and technology activities will drive the accelerated capability development needed for near-peer competition.

casualty care, and lethality in combat environments across multiple domains with full life-cycle infrastructure (research labs, product development/program management, acquisition, medical logistics, and contracting). These functions are not focused primarily on care at MTFs. Most capabilities employed in MTFs are developed by civilian medicine industry; whereas, capabilities developed by Army's research, development, acquisition, and logistics are inherently oriented toward operational medicine for warfighters.

The Army research, development, and logistics capabilities inherent in this mission involve funding the Defense Health Program (DHP) and the Chemical and Biological Defense Program. This funding directly provides cutting-edge materiel, technology, and capabilities that enhance the readiness of operational units for all Service members against medical threats while also fulfilling Military Service and Joint requirements.

Medical programs must also be synchronized and integrated with other warfighting functions to ensure proper combat casualty care, military medical readiness, and lethality. The clearest examples of this synchronization include medical variants of air-and-ground vehicles, as well as casualty support capabilities for other non-medical vehicles in austere environments. Moving medical research, development, and acquisition will decrease system synchronization and integration away from system developers, thereby complicating research, development, and acquisition within the Military Services and eliminating other essential Service specific capabilities.

Impact of Transfer of Research and Development Capabilities to DHA

A new DHA research and development organization would add additional layers of review. As reported in numerous U.S. Government Accountability Office reports (e.g., GAO-17-499) and contrary to previous Department of Defense reform initiatives, these layers will produce greater inefficiencies in medical research and development and impede modernization efforts. Producing the systems and knowledge necessary to care for Service members will be hampered by these additional layers.

System acquisition of related non-medical warfighting capabilities will also be hampered. Medical research, development, and acquisition responsibilities are co-located within MRMC, which effectively supports both Joint and Military Service activities. Moving it from Army management to agency management will specifically produce inefficiencies for the Army that are contrary to best practices described by the GAO and others. As conditions during war may change rapidly, medical research and development is essential to respond quickly and effectively to support warfighter capabilities and survivability. If MRMC's medical research and development assets are not left with the Army, the Army's ability to fulfill its title 10 responsibilities and integrate medical capabilities with warfighting systems for Service members will be degraded and at risk.

Impact of Transfer of Public Health Capabilities to DHA

Transferring the Army Public Health Center and other Army public health capabilities to the DHA creates an organizational seam between the clients of the Army Public Health Enterprise,

our Senior Mission Commanders, and the public health service providers. This transfer reduces the agility of the Army Public Health Enterprise to respond to emerging public health threats in a timely manner, and may increase costs and organizational friction, increasing the risks to Army war-fighting capabilities.

Conclusion

In conclusion, the historic MHS transformation is important for standardizing care across the MTFs and creating efficiencies. However, we should not transfer capabilities for military-relevant and field-based military medical knowledge and systems. Army systems and management of medical research, development, and acquisition by MRMC has worked well as evidenced by robust congressional special interest commitments and engagement. In addition to putting this at risk, moving MRMC out from Army management puts medical readiness, battlefield, and operational quality of care, modernization, efficiency, interoperability, and integration with related non-medical Army and Joint weapon system acquisitions, and Military Service flexibility at risk. The Department requires time to implement the current large-scale reforms. This proposal mitigates risks to critical capabilities during the implementation of these reforms.

Budget Implications: This proposal has no budget implications. The repeal of subsection (e) of section 1073c of title 10, United States Code, which required the transfer of Medical Research and Materiel Command and Public Health Command to the Defense Health Agency, will maintain these capabilities within the Army under currently authorized funding and personnel requirements.

Changes to Existing Law: This proposal would make the following changes to section 1073c title 10, United States Code:

§1073c. Administration of Defense Health Agency and military medical treatment facilities

(a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES.—(1) In accordance with paragraph (5), by not later than September 30, 2021, the Director of the Defense Health Agency shall be responsible for the administration of each military medical treatment facility, including with respect to—

(A) provision and delivery of health care within each such facility;

(B) management of privileging, scope of practice, and quality of health care provided within each such facility;

(C) budgetary matters;

(D) information technology;

(E) health care administration and management;

(F) supply and equipment;

(G) administrative policy and procedure;

(H) military medical construction; and

(I) any other matters the Secretary of Defense determines appropriate.

(2) In addition to the responsibilities set forth in paragraph (1), the Director of the Defense Health Agency shall, commencing when the Director begins to exercise responsibilities under that paragraph, have the authority—

(A) to direct, control, and serve as the primary rater of the performance of commanders or directors of military medical treatment facilities;

(B) to direct and control any intermediary organizations between the Defense Health Agency and military medical treatment facilities;

(C) to determine the scope of medical care provided at each military medical treatment facility to meet the military personnel readiness requirements of the senior military operational commander of the military installation;

(D) to identify the capacity of each military medical treatment facility to support clinical readiness standards of health care providers established by the Secretary of a military department or the Assistant Secretary of Defense for Health Affairs;

(E) to determine total workforce requirements at each military medical treatment facility;

(F) to determine, in coordination with each Secretary of a military department, manning, including joint manning, assigned to military medical treatment facilities and intermediary organizations;

(G) to select, after considering nominations from the Secretaries of the military departments, commanders or directors of military medical treatment facilities;

(H) to address personnel staffing shortages at military medical treatment facilities; and

(I) to select among service nominations for commanders or directors of military medical treatment facilities.

(3) The military commander or director of each military medical treatment facility shall be responsible for—

(A) on behalf of the military departments, ensuring the readiness of the members of the armed forces at such facility; and

(B) on behalf of the Defense Health Agency, furnishing the health care and medical treatment provided at such facility.

(4) If the Secretary of Defense determines it appropriate, a military director (or any other senior military officer or officers) of a military medical treatment facility may be a commanding officer for purposes of chapter 47 of this title (the Uniform Code of Military Justice) with respect to military personnel assigned to the military medical treatment facility.

(5) The Secretary of Defense shall establish a timeline to ensure that each Secretary of a military department transitions the administration of military medical treatment facilities from such Secretary to the Director of the Defense Health Agency pursuant to paragraph (1) by the date specified in such paragraph.

(6) The Secretary of Defense shall establish within the Defense Health Agency a professional staff to provide policy, oversight, and direction to carry out paragraphs (1) and (2). The Secretary shall carry out this paragraph by appointing the positions specified in subsections (b) and (c).

(b) DHA ASSISTANT DIRECTOR.—(1) There is in the Defense Health Agency an Assistant Director for Health Care Administration. The Assistant Director shall—

(A) be a career appointee within the Department; and

(B) report directly to the Director of the Defense Health Agency.

(2) The Assistant Director shall be appointed from among individuals who have the education and experience to perform the responsibilities of the position.

(3) The Assistant Director shall be responsible for the following:

(A) Establishing priorities for health care administration and management.

(B) Establishing policies, procedures, and direction for the provision of direct care at military medical treatment facilities.

(C) Establishing priorities for budgeting matters with respect to the provision of direct care at military medical treatment facilities.

(D) Establishing policies, procedures, and direction for clinic management and operations at military medical treatment facilities.

(E) Establishing priorities for information technology at and between the military medical treatment facilities.

(c) DHA DEPUTY ASSISTANT DIRECTORS.—(1)(A) There is in the Defense Health Agency a Deputy Assistant Director for Information Operations.

(B) The Deputy Assistant Director for Information Operations shall be responsible for policies, management, and execution of information technology operations at and between the military medical treatment facilities.

(2)(A) There is in the Defense Health Agency a Deputy Assistant Director for Financial Operations.

(B) The Deputy Assistant Director for Financial Operations shall be responsible for the policy, procedures, and direction of budgeting matters and financial management with respect to the provision of direct care at military medical treatment facilities.

(3)(A) There is in the Defense Health Agency a Deputy Assistant Director for Health Care Operations.

(B) The Deputy Assistant Director for Health Care Operations shall be responsible for the policy, procedures, and direction of health care administration in the military medical treatment facilities.

(4)(A) There is in the Defense Health Agency a Deputy Assistant Director for Medical Affairs.

(B) The Deputy Assistant Director for Medical Affairs shall be responsible for policy, procedures, and direction of clinical quality and process improvement, patient safety, infection control, graduate medical education, clinical integration, utilization review, risk management, patient experience, and civilian physician recruiting at military medical treatment facilities.

(5) Each Deputy Assistant Director appointed under paragraphs (1) through (4) shall report directly to the Assistant Director for Health Care Administration.

(d) CERTAIN RESPONSIBILITIES OF DHA DIRECTOR.—(1) In addition to the other duties of the Director of the Defense Health Agency, the Director shall coordinate with the Joint Staff Surgeon to ensure that the Director most effectively carries out the responsibilities of the Defense Health Agency ~~as a combat support agency under section 193 of this title~~.

(2) The responsibilities of the Director shall include the following:

(A) Ensuring that the Defense Health Agency meets the operational needs of the commanders of the combatant commands.

(B) Coordinating with the military departments to ensure that the staffing at the military medical treatment facilities supports readiness requirements for members of the armed forces and health care personnel.

(C) Ensuring that the Defense Health Agency meets the military medical readiness requirements of the senior military operational commander of the military installations.

~~(e) ADDITIONAL DHA ORGANIZATIONS.— Not later than September 30, 2022, the Secretary of Defense shall, acting though the Director of the Defense Health Agency, establish within the Defense Health Agency the following:~~

~~(1) A subordinate organization, to be called the Defense Health Agency Research and Development—~~

~~(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Research and Development);~~

~~(B) comprised of the Army Medical Research and Materiel Command and such other medical research organizations and activities of the armed forces as the Secretary considers appropriate; and~~

~~(C) responsible for coordinating funding for Defense Health Program Research, Development, Test, and Evaluation, the Congressionally Directed Medical Research Program, and related Department of Defense medical research.~~

~~(2) A subordinate organization, to be called the Defense Health Agency Public Health—~~

~~(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Public Health); and~~

~~(B) comprised of the Army Public Health Command, the Navy–Marine Corps Public Health Command, Air Force public health programs, and any other related defense health activities that the Secretary considers appropriate, including overseas laboratories focused on preventive medicine, environmental health, and similar matters.~~

(~~f~~e) TREATMENT OF DEPARTMENT OF DEFENSE FOR PURPOSES OF PERSONNEL ASSIGNMENT.— In implementing this section—

(1) the Department of Defense shall be considered a single agency for purposes of civilian personnel assignment under title 5; and

(2) the Secretary of Defense may reassign any employee of a component of the Department of Defense or a military department in a position in the civil service (as defined in section 2101 of title 5) to any other component of the Department of Defense or military department.

(~~g~~f) DEFINITIONS.—In this section:

(1) The term "career appointee" has the meaning given that term in section 3132(a)(4) of title 5.

(2) The term "Defense Health Agency" means the Defense Agency established pursuant to Department of Defense Directive 5136.13, or such successor Defense Agency.

(3) The term "military medical treatment facility" means—

(A) any fixed facility of the Department of Defense that is outside of a deployed environment and used primarily for health care; and

(B) any other location used for purposes of providing health care services as designated by the Secretary of Defense.

1 **SEC. ___. REPEAL OF THE MISSOURI RIVER TASK FORCE – NORTH DAKOTA.**

2 Section 705 of the Water Resources Development Act of 2000 (Public Law 106-541; 114

3 Stat. 2696) is repealed.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal repeals the language authorizing the Missouri River (North Dakota) Task Force ("the North Dakota Task Force"), authorized under section 705 of the Water Resources Development Act of 2000 (Public Law 106-541). The objective of the North Dakota Task Force was to advise the Secretary of the Army on a plan to reduce Missouri River siltation in North Dakota and assist the Government in meeting the objectives of the Pick-Sloan program (formerly called the Missouri River Basin Project) which approved the plan for the conservation, control, and use of water resources in the Missouri River Basin. The North Dakota Task Force was to develop and recommend, to the Secretary of the Army, critical restoration projects that promoted conservation practices in the Missouri River watershed, the general control and removal of sediment from the Missouri River, the protection of recreation on the Missouri River from sedimentation, the protection of Native American and non-Native American historical and cultural sites along the Missouri River from erosion, erosion control along the Missouri River, or any combination of these activities.

The sense of Congress, as identified in the Federal Advisory Committee Act (Public Law 92-463), is that "advisory committees should be terminated when they are no longer carrying out the purposes for which they are established."

Since its establishment, the North Dakota Task Force has not had a sufficient number of members appointed by the Governor of North Dakota to reach quorum and, thus, has not held a single meeting. It has submitted zero recommendations to the Department of Defense (DoD), including the required report and plan. The lack of work by the North Dakota Task Force has made its objectives obsolete by the passage of time. Therefore, the DoD, in consultation with the General Services Administration, administratively suspended the North Dakota Task Force on October 7, 2016 due to inactivity.

Terminating the North Dakota Task Force removes any administrative burden from DoD for this administratively suspended advisory committee. Termination of the North Dakota Task Force does not eliminate Government work on protecting the Missouri River as the Army Corps of Engineers and Department of Interior continue to hold these vital conversations in an agency-to-agency working group and work directly with State, local, tribal, and territorial members to enable engagement.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year 2021 President's Budget.

Changes to Existing Law: This proposal would amend the Water Resources Development Act of 2000 (Public Law 106-541; 114 Stat. 2696) as follows:

~~Sec. 705. MISSOURI RIVER TASK FORCE~~
~~(a) ESTABLISHMENT.— There is established the Missouri River Task Force.~~
~~(b) MEMBERSHIP.—The Task Force shall be composed of—~~
~~(1) the Secretary (or a designee), who shall serve as Chairperson;~~
~~(2) the Secretary of Agriculture (or a designee);~~
~~(3) the Secretary of Energy (or a designee);~~
~~(4) the Secretary of the Interior (or a designee); and~~
~~(5) the Trust.~~
~~(c) DUTIES.—The Task Force shall—~~
~~(1) meet at least twice each year;~~
~~(2) vote on approval of the plan, with approval requiring votes in favor of the plan by a majority of the members;~~
~~(3) review projects to meet the goals of the plan; and~~
~~(4) recommend to the Secretary critical projects for implementation.~~
~~(d) ASSESSMENT.—~~
~~(1) IN GENERAL.—Not later than 18 months after the date on which funding authorized under this title becomes available, the Secretary shall transmit to the other members of the Task Force a report on—~~
~~(A) the impact of the siltation of the Missouri River in the State, including the impact on—~~
~~(i) the Federal, State, and regional economies;~~
~~(ii) recreation;~~
~~(iii) hydropower generation;~~
~~(iv) fish and wildlife; and~~
~~(v) flood control;~~
~~(B) the status of Indian and non-Indian historical and cultural sites along the Missouri River;~~
~~(C) the extent of erosion along the Missouri River (including tributaries of the Missouri River) in the State; and~~
~~(D) other issues, as requested by the Task Force.~~
~~(2) CONSULTATION.—In preparing the report under paragraph (1), the Secretary shall consult with—~~
~~(A) the Secretary of Energy;~~
~~(B) the Secretary of the Interior;~~
~~(C) the Secretary of Agriculture;~~
~~(D) the State; and~~
~~(E) Indian tribes in the State.~~
~~(e) PLAN FOR USE OF FUNDS MADE AVAILABLE BY THIS TITLE.—~~
~~(1) IN GENERAL.—Not later than 3 years after the date on which funding authorized under this title becomes available, the Task Force shall prepare a plan for the use of funds made available under this title.~~

~~(2) CONTENTS OF PLAN.—The plan shall provide for the manner in which the Task Force shall develop and recommend critical restoration projects to promote—~~

~~(A) conservation practices in the Missouri River watershed;~~

~~(B) the general control and removal of sediment from the Missouri River;~~

~~(C) the protection of recreation on the Missouri River from sedimentation;~~

~~(D) the protection of Indian and non-Indian historical and cultural sites along the Missouri River from erosion;~~

~~(E) erosion control along the Missouri River; or~~

~~(F) any combination of the activities described in subparagraphs (A) through (E).~~

~~(3) PLAN REVIEW AND REVISION.—~~

~~(A) IN GENERAL.—The Task Force shall make a copy of the plan available for public review and comment before the plan becomes final in accordance with procedures established by the Task Force.~~

~~(B) REVISION OF PLAN.—~~

~~(i) IN GENERAL.—The Task Force may, on an annual basis, revise the plan.~~

~~(ii) PUBLIC REVIEW AND COMMENT.—In revising the plan, the Task Force shall provide the public the opportunity to review and comment on any proposed revision to the plan.~~

~~(f) CRITICAL RESTORATION PROJECTS.—~~

~~(1) IN GENERAL.—After the plan is approved by the Task Force under subsection (c)(2), the Secretary, in coordination with the Task Force, shall identify critical restoration projects to carry out the plan.~~

~~(2) AGREEMENT.—The Secretary may carry out a critical restoration project after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) and this section.~~

~~(3) INDIAN PROJECTS.—To the maximum extent practicable, the Secretary shall ensure that not less than 30 percent of the funds made available for critical restoration projects under this title shall be used exclusively for projects that are—~~

~~(A) within the boundary of an Indian reservation; or~~

~~(B) administered by an Indian tribe.~~

~~(g) COST SHARING.—~~

~~(1) ASSESSMENT.—~~

~~(A) FEDERAL SHARE.—The Federal share of the cost of carrying out the assessment under subsection (d) shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.—The non-Federal share of the cost of carrying out the assessment may be provided in the form of services, materials, or other in-kind contributions.~~

~~(2) PLAN.—~~

~~(A) FEDERAL SHARE.—The Federal share of the cost of preparing the plan shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.—Not more than 50 percent of the non-Federal share of the cost of preparing the plan may be provided in the form of services, materials, or other in-kind contributions.~~

~~(3) CRITICAL RESTORATION PROJECTS.—~~

~~(A) IN GENERAL.—A non-Federal cost share shall be required to carry out any project under subsection (f) that does not primarily benefit the Federal Government, as determined by the Task Force.~~

~~(B) FEDERAL SHARE.—The Federal share of the cost of carrying out a project under subsection (f) for which the Task Force requires a non-Federal cost share under subparagraph (A) shall be 65 percent, not to exceed $5,000,000 for any project.~~

~~(C) NON-FEDERAL SHARE.—~~

~~(i) IN GENERAL.—Not more than 50 percent of the non-Federal share of the cost of carrying out a project described in subparagraph (B) may be provided in the form of services, materials, or other in-kind contributions.~~

~~(ii) REQUIRED NON-FEDERAL CONTRIBUTIONS.—For any project described in subparagraph (B), the nonfederal interest shall—~~

~~(I) provide all land, easements, rights-of-way, dredged material disposal areas, and relocations;~~

~~(II) pay all operation, maintenance, replacement, repair, and rehabilitation costs; and~~

~~(III) hold the United States harmless from all claims arising from the construction, operation, and maintenance of the project.~~

~~(iii) CREDIT.—The Secretary shall credit the non-Federal interest for all contributions provided under clause (ii)(I).~~

1 **SEC. ___. REPEAL OF THE MISSOURI RIVER TASK FORCE – SOUTH DAKOTA.**

2 Section 905 of the Water Resources Development Act of 2000 (Public Law 106-541; 114

3 Stat. 2709) is repealed.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal repeals the language authorizing the Missouri River (South Dakota) Task Force ("the South Dakota Task Force"), authorized under section 905 of the Water Resources Development Act of 2000 (Public Law 106-541). The objective of the South Dakota Task Force was to advise the Secretary of the Army on a plan to reduce Missouri River siltation in South Dakota and assist the Government in meeting the objectives of the Pick-Sloan program (formerly called the Missouri River Basin Project) which approved the plan for the conservation, control, and use of water resources in the Missouri River Basin. The South Dakota Task Force was to develop and recommend, to the Secretary of the Army, critical restoration projects that promoted conservation practices in the Missouri River watershed, the general control and removal of sediment from the Missouri River, the protection of recreation on the Missouri River from sedimentation, the protection of Native American and non-Native American historical and cultural sites along the Missouri River from erosion, erosion control along the Missouri River, or any combination of these activities.

The sense of Congress, as identified in the Federal Advisory Committee Act (Public Law 92-463), is that "advisory committees should be terminated when they are no longer carrying out the purposes for which they are established."

Since its establishment, the South Dakota Task Force has not had a sufficient number of members appointed by the Governor of South Dakota to reach quorum and, thus, has not held a single meeting. It has submitted zero recommendations to the Department of Defense (DoD), including the required report and plan. The lack of work by the South Dakota Task Force has made its objectives obsolete by the passage of time. Therefore, the DoD, in consultation with the General Services Administration, administratively suspended the South Dakota Task Force on October 7, 2016, due to inactivity.

Terminating the South Dakota Task Force removes any administrative burden from DoD for this administratively suspended advisory committee. Termination of the South Dakota Task Force does not eliminate Government work on protecting the Missouri River, as the Army Corps of Engineers and Department of Interior continue to hold these vital conversations in an agency-to-agency working group and work directly with State, local, tribal, and territorial members to enable engagement.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year 2021 President's Budget.

Changes to Existing Law: This proposal would amend the Water Resources Development Act of 2000 (Public Law 106–541; 114 Stat. 2709) as follows:

~~SEC. 905. MISSOURI RIVER TASK FORCE.~~

~~(a) ESTABLISHMENT.—There is established the Missouri River Task Force.~~

~~(b) MEMBERSHIP.—The Task Force shall be composed of— (1) the Secretary (or a designee), who shall serve as Chairperson;~~

~~(2) the Secretary of Agriculture (or a designee);~~

~~(3) the Secretary of Energy (or a designee);~~

~~(4) the Secretary of the Interior (or a designee); and~~

~~(5) the Trust.~~

~~(c) DUTIES.—The Task Force shall—~~

~~(1) meet at least twice each year;~~

~~(2) vote on approval of the plan, with approval requiring votes in favor of the plan by a majority of the members;~~

~~(3) review projects to meet the goals of the plan; and~~

~~(4) recommend to the Secretary critical projects for implementation.~~

~~(d) ASSESSMENT.—~~

~~(1) IN GENERAL.—Not later than 18 months after the date on which funding authorized under this title becomes available, the Secretary shall submit to the other members of the Task Force a report on—~~

~~(A) the impact of the siltation of the Missouri River in the State, including the impact on—~~

~~(i) the Federal, State, and regional economies;~~

~~(ii) recreation;~~

~~(iii) hydropower generation;~~

~~(iv) fish and wildlife; and~~

~~(v) flood control;~~

~~(B) the status of Indian and non-Indian historical and cultural sites along the Missouri River;~~

~~(C) the extent of erosion along the Missouri River (including tributaries of the Missouri River) in the State; and~~

~~(D) other issues, as requested by the Task Force.~~

~~(2) CONSULTATION.—In preparing the report under paragraph (1), the Secretary shall consult with—~~

~~(A) the Secretary of Energy;~~

~~(B) the Secretary of the Interior;~~

~~(C) the Secretary of Agriculture;~~

~~(D) the State; and~~

~~(E) Indian tribes in the State.~~

~~(e) PLAN FOR USE OF FUNDS MADE AVAILABLE BY THIS TITLE.—~~

~~(1) IN GENERAL.—Not later than 3 years after the date on which funding authorized under this title becomes available, the Task Force shall prepare a plan for the use of funds made available under this title.~~

~~(2) CONTENTS OF PLAN.—The plan shall provide for the manner in which the Task Force shall develop and recommend critical restoration projects to promote—~~

~~(A) conservation practices in the Missouri River watershed;~~

~~(B) the general control and removal of sediment from the Missouri River;~~

~~(C) the protection of recreation on the Missouri River from sedimentation;~~

~~(D) the protection of Indian and non-Indian historical and cultural sites along the Missouri River from erosion;~~

~~(E) erosion control along the Missouri River; or~~

~~(F) any combination of the activities described in subparagraphs (A) through (E).~~

~~(3) PLAN REVIEW AND REVISION.—(A) IN GENERAL.—The Task Force shall make a copy of the plan available for public review and comment before the plan becomes final, in accordance with procedures established by the Task Force.~~

~~(B) REVISION OF PLAN.—~~

~~(i) IN GENERAL.—The Task Force may, on an annual basis, revise the plan.~~

~~(ii) PUBLIC REVIEW AND COMMENT.—In revising the plan, the Task Force shall provide the public the opportunity to review and comment on any proposed revision to the plan.~~

~~(f) CRITICAL RESTORATION PROJECTS.—~~

~~(1) IN GENERAL.—After the plan is approved by the Task Force under subsection (c)(2), the Secretary, in coordination with the Task Force, shall identify critical restoration projects to carry out the plan.~~

~~(2) AGREEMENT.—The Secretary may carry out a critical restoration project after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) and this section.~~

~~(3) INDIAN PROJECTS.—To the maximum extent practicable, the Secretary shall ensure that not less than 30 percent of the funds made available for critical restoration projects under this title shall be used exclusively for projects that are—~~

~~(A) within the boundary of an Indian reservation; or~~

~~(B) administered by an Indian tribe.~~

~~(g) COST SHARING.—~~

~~(1) ASSESSMENT.—~~

~~(A) FEDERAL SHARE.—The Federal share of the cost of carrying out the assessment under subsection (d) shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.—The non-Federal share of the cost of carrying out the assessment may be provided in the form of services, materials, or other in-kind contributions.~~

~~(2) PLAN.—~~

~~(A) FEDERAL SHARE.—The Federal share of the cost of preparing the plan under subsection (e) shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.—Not more than 50 percent of the non-Federal share of the cost of preparing the plan may be provided in the form of services, materials, or other in-kind contributions.~~

~~(3) CRITICAL RESTORATION PROJECTS.—~~

~~(A) IN GENERAL.—A non-Federal cost share shall be required to carry out any critical restoration project under subsection (f) that does not primarily benefit the Federal Government, as determined by the Task Force.~~

~~(B) FEDERAL SHARE.—The Federal share of the cost of carrying out a project under subsection (f) for which the Task Force requires a non-Federal cost share under subparagraph (A) shall be 65 percent, not to exceed $5,000,000 for any critical restoration project.~~

~~(C) NON-FEDERAL SHARE.—(i) IN GENERAL.—Not more than 50 percent of the non-Federal share of the cost of carrying out a project described in subparagraph (B) may be provided in the form of services, materials, or other in-kind contributions.~~

~~(ii) REQUIRED NON-FEDERAL CONTRIBUTIONS.—For any project described in subparagraph (B), the nonFederal interest shall—(I) provide all land, easements, rights-of-way, dredged material disposal areas, and relocations;~~

~~(II) pay all operation, maintenance, replacement, repair, and rehabilitation costs; and~~

~~(III) hold the United States harmless from all claims arising from the construction, operation, and maintenance of the project.~~

~~(iii) CREDIT.—The Secretary shall credit the nonFederal interest for all contributions provided under clause (ii)(I).~~

1 **SEC. ___. AUTHORITY TO PLAN, DESIGN, AND CONSTRUCT, OR LEASE,**
2 **SHARED MEDICAL FACILITIES WITH DEPARTMENT OF**
3 **VETERANS AFFAIRS.**

4 (a) AUTHORITY OF DEPARTMENT OF DEFENSE.—

5 (1) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by
6 inserting after section 1104 the following new section:

7 **"§1104a. Shared medical facilities with Department of Veterans Affairs**

8 "(a) AGREEMENTS.—The Secretary of Defense may enter into agreements with the
9 Secretary of Veterans Affairs for the planning, design, and construction, or the leasing, of
10 facilities to be operated as shared medical facilities.

11 "(b) TRANSFER OF FUNDS BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense
12 may transfer to the Secretary of Veterans Affairs amounts as follows:

13 "(A) Amounts, not in excess of the amount authorized by law for an unspecified
14 minor military construction project, for the construction of a shared medical facility if—

15 "(i) the amount of the share of the Department of Defense for the
16 estimated cost of the project does not exceed the amount authorized under section
17 2805(a)(2) of this title; and

18 "(ii) the other requirements of such section have been met with respect to
19 funds identified for transfer.

20 "(B) Amounts appropriated for the Defense Health Program for the purpose of the
21 planning, design, and construction, or the leasing of space, for a shared medical facility.

22 "(2) The authority to transfer funds under this section is in addition to any other authority
23 to transfer funds available to the Secretary of Defense.

1 "(3) Section 2215 of this title does not apply to a transfer of funds under this subsection.

2 "(c) TRANSFER OF FUNDS TO SECRETARY OF DEFENSE.—(1) Any amount transferred
3 under title 38 to the Secretary of Defense by the Secretary of Veterans Affairs for necessary
4 expenses for the planning, design, and construction of a shared medical facility, where the
5 amount of the share of the Department of Defense for the cost of such project does not exceed
6 the amount specified in section 2805(a)(2) of this title, may be credited to accounts of the
7 Department of Defense available for the construction of a shared medical facility.

8 "(2) Amounts transferred under title 38 to the Secretary of Defense by the Secretary of
9 Veterans Affairs for the purpose of the planning and design, or the leasing of space, for a shared
10 medical facility may be credited to accounts of the Department of Defense available for such
11 purposes, and may be used for such purposes.

12 "(3) Using accounts credited with transfers from the Secretary of Veterans Affairs under
13 paragraph (1), the Secretary of Defense may carry out unspecified minor military construction
14 projects, if the share of the Department of Defense for the cost of such project does not exceed
15 the amount specified in section 2805(a)(2) of this title.

16 "(d) MERGER OF AMOUNTS TRANSFERRED.—Any amount transferred to the Secretary of
17 Veterans Affairs pursuant to subsection (b), and any amount transferred to the Secretary of
18 Defense as described in subsection (c), shall be merged with, and be available for the same
19 purposes and the same time period as, the appropriation or fund to which transferred.

20 "(e) SHARED MEDICAL FACILITY DEFINED.—In this section, the term 'shared medical
21 facility' means a building or buildings, or a campus, intended to be used by both the Department
22 of Defense and the Department of Veterans Affairs for the provision of health-care services,
23 whether under the jurisdiction of the Secretary of Defense or the Secretary of Veterans Affairs,

1 and whether or not located on a military installation or on real property under the jurisdiction of
2 the Secretary of Veterans Affairs. Such term includes any necessary building and auxiliary
3 structure, garage, parking facility, mechanical equipment, abutting sidewalks, and
4 accommodations for attending personnel.”.

5 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
6 amended by inserting after the item relating to section 1104 the following new item:

“1104a. Shared medical facilities with Department of Veterans Affairs.”.

7 (b) AUTHORITY OF DEPARTMENT OF VETERANS AFFAIRS.—

8 (1) IN GENERAL.—Chapter 81 of title 38, United States Code, is amended by
9 inserting after section 8111A the following new section:

10 **“§8111B. Shared medical facilities with Department of Defense**

11 “(a) AGREEMENTS.—The Secretary of Veterans Affairs may enter into agreements with
12 the Secretary of Defense for the planning, design, and construction, or the leasing, of facilities to
13 be operated as shared medical facilities.

14 “(b) TRANSFER OF FUNDS BY SECRETARY OF VETERANS AFFAIRS.—(1) The Secretary of
15 Veterans Affairs may transfer to the Department of Defense amounts appropriated for
16 ‘Construction, minor projects’ for use for the planning, design, or construction of a shared
17 medical facility, if the estimated share of the project costs of the Department of Veterans Affairs
18 does not exceed the amount specified in section 8104(a)(3) of this title.

19 “(2) The Secretary of Veterans Affairs may transfer to the Department of Defense
20 amounts appropriated for ‘Construction, major projects’ for use for the planning, design, or
21 construction of a shared medical facility if—

22 “(A) the estimated share of the project costs of the Department of Veterans
23 Affairs exceeds the amount specified in section 8104(a)(3) of this title; and

1 "(B) the other requirements of section 8104 of this title have been met with
2 respect to funds identified for transfer.
3 "(3) The Secretary of Veterans Affairs may transfer to the Department of Defense
4 amounts appropriated to the applicable Department medical appropriation for the purpose of
5 leasing space for a shared medical facility, if the estimated share of the Department of Veterans
6 Affairs for the lease costs does not exceed the threshold for a major medical facility lease
7 pursuant to section 8104(a)(3)(B) of this title.
8 "(c) TRANSFER OF FUNDS TO SECRETARY OF VETERANS AFFAIRS.—(1) Any amount
9 transferred under title 10 to the Secretary of Veterans Affairs by the Secretary of Defense for
10 necessary expenses for the planning, design, and construction of a shared medical facility, if the
11 estimated share of the project costs of the Department of Veterans Affairs does not exceed the
12 amount specified in section 8104(a)(3) of this title, may be credited to the 'Construction, minor
13 projects' account of the Department of Veterans Affairs and used for the necessary expenses of
14 constructing such shared medical facility.
15 "(2) Any amount transferred under title 10 to the Secretary of Veterans Affairs by the
16 Secretary of Defense for necessary expenses for the planning, design, and construction of a
17 shared medical facility, if the estimated share of the project costs of the Department of Veterans
18 Affairs exceeds the amount specified in section 8104(a)(3) of this title, may be credited to the
19 'Construction, major projects' account of the Department of Veterans Affairs and used for the
20 necessary expenses of constructing such shared medical facility if the other requirements of
21 section 8104 of this title have been met with respect to funds identified for the transfer.
22 "(3) Any amount transferred under title 10 to the Secretary of Veterans Affairs by the
23 Secretary of Defense for the purpose of leasing space for a shared medical facility may be

1 credited to accounts of the Department of Veterans Affairs available for such purposes, and may
2 be used for such purposes.
3 "(d) MERGER OF AMOUNTS TRANSFERRED.—Any amount transferred to the Secretary of
4 Defense pursuant to subsection (b), and any amount transferred to the Secretary of Veterans
5 Affairs as described in subsection (c), shall be merged with, and be available for the same
6 purposes and the same time period as, the appropriation or fund to which transferred.
7 "(e) SHARED MEDICAL FACILITY DEFINED.—In this section, the term 'shared medical
8 facility' means a building or buildings, or a campus, intended to be used by both the Department
9 of Defense and the Department of Veterans Affairs for the provision of health-care services,
10 whether under the jurisdiction of the Secretary of Defense or the Secretary of Veterans Affairs,
11 and whether or not located on a military installation or on real property under the jurisdiction of
12 the Secretary of Veterans Affairs. Such term includes any necessary building and auxiliary
13 structure, garage, parking facility, mechanical equipment, abutting sidewalks, and
14 accommodations for attending personnel.".
15 (c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
16 amended by inserting after the item relating to section 8111A the following new item:

"8111B. Shared medical facilities with Department of Defense.".

Section-by-Section Analysis

This proposal would extend the collaborative relationship between the Department of Defense (DoD) and Department of Veterans Affairs (VA) beyond the sharing of existing health care resources and permit proactive, joint planning and capital investment in shared medical facilities with the goal of improving access to and the continuity, quality, and cost effectiveness of the direct health care provided to the Departments' respective beneficiaries. Joint construction and leasing of shared medical facilities to meet the combined requirements of both Departments fall outside of the existing statutory authorities of section 1104 of title 10, United States Code (U.S.C.), and section 8111 of title 38, U.S.C., for DoD-VA resource sharing of existing health care resources. This legislation would permit the Departments to optimize expenditures to enable collaboration where the Secretaries determine it is in the best interest of the Departments

to do so. There is a corresponding legislative proposal by VA, which includes the addition of a new section in title 38, U.S.C., to facilitate and permit this joint effort.

Subsection (a) of this proposal would create a new section in chapter 55 of title 10, U.S.C., to allow the Department of Defense to enter into agreements with the Department of Veterans Affairs for the planning, designing, constructing, or leasing of shared medical facilities with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Departments to their respective beneficiaries.

Subsection (a) also would provide authority to the Departments to both transfer and accept funds appropriated for planning and design, minor construction projects, and leasing of shared medical facilities. Specifically, both Departments desire authority to use minor construction dollars within their respective thresholds to fund worthy collaborative projects, without having the aggregation of these funds convert a minor project into a major one. This legislative proposal would provide authority to both Departments to transfer and accept funds appropriated for minor projects. Each Department’s contribution for minor construction is limited to its respective dollar threshold and contributions from the other Department are not counted towards the receiving Department’s minor construction threshold. The result is that a minor construction project may be carried out using funds combined by both Departments as long as neither Department exceeds their respective minor construction authority.

While the Economy Act clearly includes purchasing and contracting, including services for renting and leasing, within the authorized support services, the Departments do not currently have sufficient statutory authority under the Economy Act, or elsewhere, to permit the transfer and receipt of funds between Departments to lease a shared medical facility (one that exceeds the needs of either Department individually but would meet the combined requirements). Consequently, this legislative proposal also would permit the Departments to transfer funds in furtherance of a combined/joint lease for shared medical facilities.

As a result of joint facility planning and shared services supported by the like legislation, DoD and VA beneficiaries will have more and easier access to healthcare facilities. In addition, DoD may realize a savings in facility lifecycle costs through future DoD/VA co-locations and joint facility operations. Over the years, DoD built large hospitals and clinics at installations where missions and healthcare delivery practices have changed. These changes have resulted in potential available capacity. That capacity may be used by the VA. When VA and DoD identify specific opportunities to co-locate or jointly operate facilities, the burden of facility operating costs can then shift from DoD only to DoD/VA sharing.

Facility operating cost sharing is significant. In the lifecycle of a healthcare facility, the two major cost components are the initial construction costs and the long-term operating/upkeep costs. Through a 50 or more year facility life, the initial construction cost is about 10% of the lifecycle cost and the operating/upkeep costs are 90%. For example, a facility that costs $100M to construct will require approximately $900M for operating/upkeep over its lifecycle.

Currently the Capital Asset Planning Committee has presented 9 facilities to the Joint Executive Committee (JEC) as possible candidates for joint planning study. The JEC fully endorses this proposed legislation.

DoD Facility Enterprise is collaborating with the VA Market Assessment Teams to determine DoD and VA beneficiary medical care requirements in 11 markets, in coordination with the implementation of the VA Mission Act.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE REQUIREMENTS ($ MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Defense Health Program	0.0	0.0	0.0	$1.65	$0.65	Defense Health Program, Operation and Maintenance	07	070	-

Changes to Existing Law: This proposal would add a new section 1104a to chapter 55 of title 10, United States Code, and a new section 8111B to chapter 81 of title 38, United States Code, as shown in full in the legislative text above.

1 **SEC. ___. SUBMISSION TO CONGRESS OF FUTURE-YEARS DEFENSE PROGRAM.**

2 Section 221 of title 10, United States Code, is amended—

3 (1) by amending subsection (d) to read as follows:

4 "(d) The Secretary of Defense shall also make each future-years defense program

5 available to the Congressional Budget Office, the Comptroller General of the United States, and

6 the Congressional Research Service."; and

7 (2) by striking subsection (e).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would remove the statutory requirement to submit an Unclassified Future-Years Defense Program (FYDP) to the Congress, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service. It would also remove the requirement to certify the accuracy of the input to the FYDP. The proposal retains delivery of a classified FYDP to the Congress and other offices.

The FYDP, by its design, is a comprehensive, detailed, classified display over a five-to seven year time horizon of all of the forces, manpower, and funding required to resource the U.S. defense strategy. The FYDP is designed as an internal Department of Defense (DoD) decision tool. It presents a coherent view of the Department's program, and to be of use the FYDP must integrate classified and unclassified information and make their relationships explicit.

The Department is concerned that attempting publication of unclassified FYDP data might inadvertently reveal sensitive information. With the ready availability of data mining tools and techniques, and the large volume of data on the Department's operations and resources already available in the public domain, additional unclassified FYDP data, if it were released, potentially allows adversaries to derive sensitive information by compilation about the Department's weapons development, force structure, and strategic plans. Due to the lack of knowledge about the information that adversaries already possess, the Department seeks to limit release of additional unclassified information in this format. Even aside from exposing vulnerabilities, additional unclassified FYDP data may allow adversaries to target additional intelligence exploitation efforts.

The Department is also concerned about the potential harm to its interactions with commercial interests by release of FYDP information prior to the budget year. Exposing resources allocated to future acquisition plans may encourage bids and other development activities not beneficial to the Government. The Department has long-standing policies that are

designed to prevent the release of FYDP information to prevent commercial interests from gaining an unfair advantage in future acquisition actions. These policies require that Department of Defense contractor personnel must have a valid "need to know" before being permitted to access any planning, programming, budgeting, or execution information, including the FYDP, whether classified or unclassified.

The breadth and depth of the data that would be contained in an unclassified FDYP, as a compilation, would be greater than any other document the Department produces. The conclusions and inferences that could be drawn from the data it would contain could cause serious risk to the national defense. However, because of that very depth and breadth, it is difficult, if not impossible, to know up front what those conclusions and inferences would be, especially when combined with information from other sources. Unfortunately, the current Federal processes for protecting sensitive but unclassified information are much weaker than those for classified data, and so the risk of inadvertent disclosure of all or part of an unclassified FYDP is much higher than the Department considers prudent.

Under this proposal, the Department would continue to provide the Congress with the full classified FYDP as a combined representation of classified and unclassified data. The Department would welcome discussions on an alternative that would provide the Congress with the information they require to satisfy their oversight requirements.

The proposal would also strike the requirement that Department of Defense officials certify that the data used to construct the FYDP is accurate. This requirement is unnecessary as information from these systems is already used to provide the President's Budget.

Budget Implications: The resources required to implement the current statutory requirement are included within the Fiscal Year (FY) 2021 President's Budget request. If CAPE's legislative proposal is enacted, the estimated savings shown in the table below would be applied to the next highest priority within CAPE's budget. CAPE already builds the FYDP and is currently required to provide to Congress the full, classified FYDP. This language does not relieve DoD of that requirement. This proposal would simply avoid additional workload in terms of coordination, certification, and review of classification markings, information, and displays.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element**
	(.15)	(.15)	(.05)	(.05)	(.05)	Operation and Maintenance, Defensewide	Multiple	Multiple	Multiple
Total	(.15)	(.15)	(.05)	(.05)	(.05)	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 221 of title 10, United States Code:

§221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, not later than five days after the date on which the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

(d)~~(1)~~ The Secretary of Defense shall also make each future-years defense program available to the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service. ~~The Secretary of Defense shall make available to Congress, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service each future-years defense program. under this section as follows:~~

~~(A) By making such program available electronically in the form of an unclassified electronic database.~~

~~(B) By delivering printed copies of such program to the congressional defense committees.~~

~~(2) In the event inclusion of classified material in a future-years defense program would otherwise render the totality of the program classified for purposes of this subsection—~~

~~(A) such program shall be made available to Congress in unclassified form, with such material attached as a classified annex; and~~

~~(B) such annex shall be submitted to the congressional defense committees, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service.''.~~

~~(e) Each future-years defense program under this subsection shall be accompanied by a certification by the Under Secretary of Defense (Comptroller), in the case of the Department of~~

~~Defense, and the comptroller of each military department, in the case of such military department, that any information entered into the Standard Data Collection System of the Department of Defense, the Comptroller Information System, or any other data system, as applicable, for purposes of assembling such future-years defense program was accurate.~~

1 **SEC. ___. TERMINATION OF THE LAKE EUFAULA ADVISORY COMMITTEE.**

2 Section 3133(b) of the Water Resources Development Act of 2007 (Public Law 110–114;

3 121 Stat. 1141) is amended by adding at the end the following:

4 "(5) TERMINATION.—The Committee shall terminate 30 days after submitting its

5 final recommendations to the Corps of Engineers.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal concludes the termination of the Lake Eufaula Advisory Committee (LEAC) authorized under section 3133 of the Water Resources Development Act of 2007. The LEAC's objective was to maximize the use of available Lake Eufaula storage in a balanced approach that incorporates advice from representatives from all the project purposes to ensure that the full value of the reservoir is realized by the United States. The LEAC held its last meeting on January 29, 2018, and presented three recommendations to the Tulsa District Commander of the Army Corps of Engineers (USACE) on April 13, 2018. The USACE has implemented two of those recommendations. The Secretary of the Army, as the Department of Defense Sponsor for this advisory committee, believes that the committee has met its statutory objectives with its final report and recommendations.

The sense of Congress as identified in FACA (Public Law 92-463) is that "advisory committees should be terminated when they are no longer carrying out the purposes for which they are established." Current DoD policy is to "continually evaluate advisory committee requirements and, when appropriate, request termination when the advisory committee's objectives have been accomplished …".

Since its last meeting in 2018, the LEAC has not met, and the Army has determined that there is no further need for it to meet, agreeing to its administrative suspension and termination via email on October 24, 2018. The DoD, in consultation with the General Services Administration, made the LEAC administratively inactive on November 8, 2018, pending final termination, which requires this statutory language change. Congress was also notified of this status change via letter on November 8, 2018.

Finalizing the LEAC's termination removes any administrative burden from DoD for an advisory committee that has accomplished its objectives.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would amend section 3133(b) of the Water Resources Development Act of 2007 (Public Law 110–114; 121 Stat. 1141) as follows:

(b) LAKE EUFAULA ADVISORY COMMITTEE.—

(1) IN GENERAL.— In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Secretary shall establish an advisory committee for the Lake Eufaula, Canadian River, Oklahoma project authorized by the first section of the River and Harbor Act of July 24, 1946 (60 Stat. 635).

(2) PURPOSE.— The purpose of the committee shall be advisory only.

(3) DUTIES.— The committee shall provide information and recommendations to the Corps of Engineers regarding the operations of Lake Eufaula for the project purposes for Lake Eufaula.

(4) COMPOSITION.— The Committee shall be composed of members that equally represent the project purposes for Lake Eufaula.

(5) TERMINATION.—The Committee shall terminate 30 days after submitting its final recommendations to the Corps of Engineers.

1 **SEC. ___. EXTENSION OF AUTHORITY ON TRAINING FOR EASTERN EUROPEAN**

2 **NATIONAL SECURITY FORCES IN THE COURSE OF**

3 **MULTILATERAL EXERCISES.**

4 Section 1251(h) of the National Defense Authorization Act for Fiscal Year 2016

5 (Public Law 114-92)), as amended by section 1205 of the National Defense Authorization

6 Act for Fiscal Year 2018 (Public Law 115-91), is further amended by striking "December

7 31, 2020" each place it appears and inserting "December 31, 2023".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would extend the authority under section 1251 of the National Defense Authorization Act for Fiscal Year (FY) 2016 from December 31, 2020, to December 31, 2023. Without this amendment, the Secretary of Defense would lose this authority to provide training to our most vulnerable European allies and partners.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. Substantively, the proposal would simply extend section 1251. The limitations in section 1251 with regard to expenditures for incremental expenses and the sources of funds would remain unchanged. Accordingly, this proposal would not increase U.S. Government expenditures.

RESOURCE REQUIREMENTS ($MILLIONS)								
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
Warsaw Initiative Fund	7	7	7	0	0	Operation and Maintenance, Defense-Wide	01	0100
Building Partner Capacity	1	1	1	0	0	Operation and Maintenance, Army	01	2020
NATO Response Force	8	8	8	0	0	Operation and Maintenance, Army	01	2020
Traditional Commander Activities	3	3	3	0	0	Operation and Maintenance, Army	01	2020

Partnership Development Program	6	6	6	0	0	Operation and Maintenance, Army	01	2020
Additional Activities/European Deterrence Initiative	0	0	0	0	0	Operation and Maintenance, Army, OCO	01	2020
Total	25	25	25	0	0			

Changes to Existing Law: This proposal would make the following changes to section 1251 of the National Defense Authorization Act for Fiscal Year 2016:

SEC. 1251. TRAINING FOR EASTERN EUROPEAN NATIONAL SECURITY FORCES IN THE COURSE OF MULTILATERAL EXERCISES.

(a) Authority.-The Secretary of Defense may provide the training specified in subsection (b), and pay the incremental expenses incurred by a country as the direct result of participation in such training, for the national security forces provided for under subsection (c).

(b) Types of Training.-The training provided to the national security forces of a country under subsection (a) shall be limited to training that is-

(1) provided in the course of the conduct of a multilateral exercise in which the United States Armed Forces are a participant;
(2) comparable to or complimentary of the types of training the United States Armed Forces receive in the course of such multilateral exercise; and
(3) for any purpose as follows:
(A) To enhance and increase the interoperability of the security forces to be trained to increase their ability to participate in coalition efforts led by the United States or the North Atlantic Treaty Organization (NATO).
(B) To increase the capacity of such security forces to respond to external threats.
(C) To increase the capacity of such security forces to respond to hybrid warfare.
(D) To increase the capacity of such security forces to respond to calls for collective action within the North Atlantic Treaty Organization.

(c) Eligible Countries.-

(1) In general.-Training may be provided under subsection (a) to the national security forces of the countries determined by the Secretary of Defense, with the concurrence of the Secretary of State, to be appropriate recipients of such training from among the countries as follows:
(A) Countries that are a signatory to the Partnership for Peace Framework Documents, but not a member of the North Atlantic Treaty Organization.
(B) Countries that became a member of the North Atlantic Treaty Organization after January 1, 1999.
(2) Eligible countries.-Before providing training under subsection (a), the Secretary of Defense shall, in coordination with the Secretary of State, submit to the Committees on Armed Services of the Senate and the House of Representatives a list of the countries

determined pursuant to paragraph (1) to be eligible for the provision of training under subsection (a).

(d) Funding of Incremental Expenses.-

(1) Annual funding.-Of the amounts specified in paragraph (2) for a fiscal year, up to a total of $28,000,000 may be used to pay incremental expenses under subsection (a) in that fiscal year.

(2) Amounts.-The amounts specified in this paragraph are as follows:

(A) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Army, and available for the Combatant Commands Direct Support Program for that fiscal year.

(B) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Defense-wide, and available for the Wales Initiative Fund for that fiscal year.

(C) Amounts authorized to be appropriated for a fiscal year for overseas contingency operations for operation and maintenance, Army, and available for additional activities for the European Deterrence Initiative for that fiscal year.

(3) Availability of funds for activities across fiscal years.-Amounts available in a fiscal year pursuant to this subsection may be used for incremental expenses of training that begins in that fiscal year and ends in the next fiscal year.

(4) Regulations.—

(A) In general.—The Secretary of Defense shall prescribe regulations for payment of incremental expenses under subsection (a). Not later than 120 days after the date of the enactment of this paragraph, the Secretary shall submit the regulations to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) Procedures to be included.—The regulations required under subparagraph (A) shall include procedures—

(i) to require reimbursement of incremental expenses from non-developing countries determined pursuant to subsection (c) to be eligible for the provision of training under subsection (a); and

(ii) to provide for a waiver of the requirement of reimbursement of incremental expenses under clause (i), on a case-by case basis, if the Secretary of Defense determines special circumstances exist to provide for the waiver.

(C) Quarterly report.—The Secretary of Defense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, on a quarterly basis, a report that includes a description of each waiver of the requirement of reimbursement of incremental expenses under subparagraph (B)(i) that was in effect at any time during the preceding calendar quarter.

(D) Non-developing country defined.—In this paragraph, the term 'non-developing country' means a country that is not a developing country, as such term is defined in section 301(4) of title 10, United States Code.

(e) Briefing to Congress on Use of Authority.-Not later than 90 days after the end of each fiscal year in which the authority in subsection (a) is used, the Secretary shall brief the Committees on

Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.

(f) Construction of Authority.-The authority provided in subsection (a) –

(1) is in addition to any other authority provided by law authorizing the provision of training for the national military forces of a foreign country, including Chapter 16 of title 10, United States Code; and

(2) shall not be construed to include authority for the training of irregular forces, groups, or individuals.

(g) Incremental Expenses Defined.-In this section, the term 'incremental expenses' has the meaning given such term in section 301(5) of title 10, United States Code.

(h) Termination of Authority.-The authority under this section shall terminate on ~~December 31, 2020~~ December 31, 2023. Any activity under this section initiated before that date may be completed, but only using funds available for the period beginning on October 1, 2015, and ending on ~~December 31, 2020~~ December 31, 2023.

1 **SEC.___. MEMBERSHIP OF BOARD OF REGENTS OF UNIFORMED SERVICES**

2 **UNIVERSITY OF THE HEALTH SCIENCES.**

3 (a) IN GENERAL.—Section 2113a(b) of title 10, United States Code, is amended—

4 (1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5),

5 respectively; and

6 (2) by inserting after paragraph (2) the following new paragraph:

7 "(3) the Director of the Defense Health Agency, who shall be an ex officio

8 member;".

9 (b) STATUTORY CONSTRUCTION.—The amendments made by this section may not be

10 construed to invalidate any action taken by the Uniformed Services University of the Health

11 Sciences or its Board of Regents prior to the effective date of this section.

12 (c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January

13 1, 2021.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislation text would amend existing law.]

Section–by-Section Analysis

This proposal would augment the Uniformed Services University of the Health Sciences (USUHS) Board of Regents membership with the Director of the Defense Health Agency (DHA) as a voting, ex officio member. Presently, the DHA Director is not a member of the USUHS Board of Regents, only a non-voting advisor. This amendment would recognize the role and authority of the DHA Director at an equal level with the Service Surgeon Generals on the Board of Regents.

USUHS is a primary source of developing the next generation of military healthcare providers, educators, and scientists in the Military Health System (MHS) through its School of Medicine, Graduate School of Nursing, Postgraduate Dental College, and College of Allied Health Sciences. The primary venues for this education and research are in the military treatment facilities (MTFs). These MTFs are now coming under the administration, direction, and control of the DHA Director, rather than the Surgeons General of the military Services. It is paramount that USUHS and the DHA Director have a synergistic relationship where students, residents, and faculty receive clinical exposure. This education and research opportunity benefits not only the

students, residents, and faculty, but benefits the care received by the beneficiary. As a member of the USUHS Board of Regents, the DHA Director would be able to ensure this synergy between the University and the MTFs.

Changes to Existing Law: This proposal would make the following changes to section 2113a of title 10, United States Code:

§2113a. Board of Regents

(a) In General.—To assist the Secretary of Defense in an advisory capacity, there is a Board of Regents of the University.

(b) Membership.—The Board shall consist of—

(1) nine persons outstanding in the fields of health care, higher education administration, or public policy who shall be appointed from civilian life by the Secretary of Defense;
(2) the Secretary of Defense, or his designee, who shall be an ex officio member;
(3) the Director of the Defense Health Agency, who shall be an ex officio member;
~~(3)~~(4) the surgeons general of the uniformed services, who shall be ex officio members; and
~~(4)~~(5) the President of the University, who shall be a nonvoting ex officio member.

(c) Term of Office.—The term of office of each member of the Board (other than ex officio members) shall be six years except that—

(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and
(2) any member whose term of office has expired shall continue to serve until his successor is appointed.

(d) Chairman.—One of the members of the Board (other than an ex officio member) shall be designated by the Secretary as Chairman. He shall be the presiding officer of the Board.

(e) Compensation.—Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.

(f) Meetings.—The Board shall meet at least once a quarter.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle D—United States Space Force

Sec. 931. Clarification of Space Force and Chief of Space Operations authorities.
Sec. 932. Department of the Air Force provisions in title 10, United States Code.
Sec. 933. Other provisions of title 10, United States Code.
Sec. 934. Pay and allowances.
Sec. 935. Veterans' benefits.
Sec. 936. Other provisions of the United States Code.
Sec. 937. Applicability to other provisions of law.

Subtitle D—United States Space Force

SEC. 931. CLARIFICATION OF SPACE FORCE AND CHIEF OF SPACE OPERATIONS AUTHORITIES.

(a) COMPOSITION OF SPACE FORCE.—Section 9081 of title 10, United States Code, is amended by striking subsection (b) and inserting the following new subsection:

"(b) COMPOSITION.—The Space Force consists of—

"(1) the Regular Space Force;

"(2) all persons appointed or enlisted in, or conscripted into, the Space Force, including those not assigned to units, necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency; and

"(3) all Space Force units and other Space Force organizations, including installations and supporting and auxiliary combat, training, administrative, and logistic elements.".

(b) FUNCTIONS.—Section 9081 of such title is further amended—

(1) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking "provide";

1 (B) in paragraph (1)—

2 (i) by inserting “provide” before “freedom”; and

3 (ii) by striking “; and” and inserting a semicolon;

4 (C) in paragraph (2)—

5 (i) by inserting “provide” before “prompt”; and

6 (ii) by striking the period and inserting a semicolon; and

7 (2) by transferring paragraphs (1), (2), and (3) of subsection (d) so as to appear

8 after paragraph (2) of subsection (c) and redesignating the transferred paragraphs as

9 paragraphs (3), (4), and (5), respectively;

10 (3) in paragraph (4) of subsection (c), as transferred and redesignated by

11 paragraph (2) of this subsection, by striking “and to space” and inserting “to, and through

12 space”; and

13 (4) by striking subsection (d).

14 (c) CLARIFICATION OF CHIEF OF SPACE OPERATIONS AUTHORITIES.—

15 (1) CLARIFICATION.—Section 9082 of title 10, United States Code, is amended—

16 (A) in subsection (a)—

17 (i) in paragraph (1), by striking “of the Air Force” and inserting “of

18 the Space Force”;

19 (ii) by adding at the end the following new paragraphs:

20 “(3) The President may appoint an officer as Chief of Space Operations only if—

21 “(A) the officer has had significant experience in joint duty assignments; and

22 “(B) such experience includes at least one full tour of duty in a joint duty

23 assignment (as defined in section 664(d) of this title) as a general officer.

"(4) The President may waive paragraph (3) in the case of an officer if the President determines such action is necessary in the national interest.";

(B) in subsection (b), by striking "grade of general" and inserting "grade in the Space Force equivalent to the grade of general in the Air Force"; and

(C) in subsection (d)—

(i) at the end of paragraph (4), by striking "and";

(ii) by redesignating paragraph (5) as paragraph (6); and

(iii) by inserting after paragraph (4) the following new paragraph:

"(5) perform duties prescribed for the Chief of Space Operations by sections 171 and 2547 of this title and other provision of law; and".

(2) TEMPORARY AUTHORITY TO APPOINT AIR FORCE OFFICER AS CHIEF.—Notwithstanding section 9082(a) of such title, as amended by paragraph (1) of this subsection, until December 20, 2023, the President may appoint, by and with the advice and consent of the Senate, a Chief of Space Operations from the general officers of the Air Force.

(d) OFFICER CAREER FIELD FOR SPACE REPEAL.—Section 9083 of such title is repealed.

(e) COMMANDS: TERRITORIAL ORGANIZATION—Chapter 908 of such title, as amended by subsection (d) of this section, is amended by adding at the end the following new section:

"**§ 9083. Commands: territorial organization**

"(a) ORGANIZATIONS.—Except as otherwise prescribed by law or by the Secretary of Defense, the Space Force shall be divided into such organizations as the Secretary of the Air Force may prescribe.

1 “(b) AREAS.—For Space Force purposes, the United States, its possessions, and other
2 places in which the Space Force is stationed or is operating, may be divided into such areas as
3 directed by the Secretary. Officers of the Space Force may be assigned to command Space Force
4 activities, installations, and personnel in those areas. In the discharge of the Space Force's
5 functions or other functions authorized by law, officers so assigned have the duties and powers
6 prescribed by the Secretary.”.
7 (f) REGULAR SPACE FORCE.—Chapter 908 of such title, as amended by subsection (e) of
8 this section, is further amended by adding at the end the following new section:
9 **“§ 9084. Regular Space Force: composition**
10 “(a) IN GENERAL.—The Regular Space Force is the component of the Space Force that
11 consists of persons whose continuous service on active duty in both peace and war is
12 contemplated by law, and of retired members of the Regular Space Force.
13 “(b) COMPOSITION.—The Regular Space Force includes—
14 “(1) the officers and enlisted members of the Regular Space Force; and
15 “(2) the retired officers and enlisted members of the Regular Space Force.”.
16 (g) TABLE OF SECTIONS AMENDMENTS.—The table of sections at the beginning of chapter
17 908 of such title is amended by striking the item relating to section 9083 and inserting the
18 following new items:

“9083. Commands: territorial organization.
“9084. Regular Space Force: composition.”.

19 **SEC. 932. DEPARTMENT OF THE AIR FORCE PROVISIONS IN TITLE 10, UNITED**
20 **STATES CODE.**
21 (a) ORGANIZATION.—

1 (1) SECRETARY OF THE AIR FORCE.—Section 9013 of title 10, United States Code,
2 is amended—
3 (A) in subsection (f), by inserting "and Space Force" after "Officers of the
4 Air Force"; and
5 (B) in subsection (g)(1), by inserting "and Space Force" after "members of
6 the Air Force".
7 (2) OFFICE OF THE SECRETARY OF THE AIR FORCE.—Section 9014 of such title is
8 amended—
9 (A) in subsection (c)—
10 (i) in paragraph (1), by striking "and the Air Staff" and inserting ",
11 the Air Staff, and the Office of the Chief of Space Operations";
12 (ii) in paragraph (2), by inserting "or the Office of the Chief of
13 Space Operations" after "the Air Staff";
14 (iii) in paragraph (3), by striking "to the Chief of Staff and to the
15 Air Staff" and all that follows through the period and inserting "to the
16 Chief of Staff of the Air Force and the Air Staff, and to the Chief of Space
17 Operations and the Office of the Chief of Space Operations, and shall
18 ensure that each such office or entity provides the Chief of Staff and
19 Chief of Space Operations such staff support as the Chief concerned
20 considers necessary to perform the Chief's duties and responsibilities.";
21 and
22 (iv) in paragraph (4)—

1 (I) by inserting "and the Office of the Chief of Space
2 Operations" after "the Air Staff"; and
3 (II) by inserting "and the Chief of Space Operations" after
4 "Chief of Staff";
5 (B) in subsection (d)—
6 (i) in paragraph (1), by striking "and the Air Staff" and inserting ",
7 the Air Staff, and the Office of the Chief of Space Operations";
8 (ii) in paragraph (2), by inserting "and the Office of the Chief of
9 Space Operations" after "the Air Staff"; and
10 (iii) in paragraph (4), by striking "to the Chief of Staff of the Air
11 Force and to the Air Staff" and all that follows through the period and
12 inserting "to the Chief of Staff of the Air Force and the Air Staff, and to
13 the Chief of Space Operations and the Office of the Chief of Space
14 Operations, and shall ensure that each such office or entity provides the
15 Chief of Staff and Chief of Space Operations such staff support as the
16 Chief concerned considers necessary to perform the Chief's duties and
17 responsibilities."; and
18 (C) in subsection (e)—
19 (i) by striking "and the Air Staff" and inserting ", the Air Staff, and
20 the Office of the Chief of Space Operations"; and
21 (ii) by striking "to the other" and inserting "to any of the others".
22 (3) SECRETARY OF THE AIR FORCE: SUCCESSORS TO DUTIES.—Section 9017(4) of
23 such title is amended by inserting before the period the following: "of the Air Force and

1 the Chief of Space Operations, in the order prescribed by the Secretary of the Air Force

2 and approved by the Secretary of Defense".

3 (4) INSPECTOR GENERAL.—Section 9020 of such title is amended—

4 (A) in subsection (a)—

5 (i) by inserting "Department of the" after "Inspector General of

6 the"; and

7 (ii) by inserting "or the Space Force" after "general officers of the

8 Air Force";

9 (B) in subsection (b)—

10 (i) in the matter preceding paragraph (1), by striking "or the Chief

11 of Staff" and inserting ", the Chief of Staff of the Air Force, or the Chief

12 of Space Operations";

13 (ii) in paragraph (1), by inserting "Department of the" before "Air

14 Force"; and

15 (iii) in paragraph (2), by striking "or the Chief of Staff" and

16 inserting ", the Chief of Staff, or the Chief of Space Operations" ; and

17 (C) in subsection (e), by inserting "or the Space Force" before "for a tour

18 of duty".

19 (5) THE AIR STAFF: FUNCTION; COMPOSITION.—Section 9031(b)(8) of such title is

20 amended by inserting "or the Space Force" after "of the Air Force".

21 (6) SURGEON GENERAL: APPOINTMENT; DUTIES.—Section 9036(b) of such title is

22 amended—

(A) in paragraph (1), by striking “Secretary of the Air Force and the Chief of Staff of the Air Force on all health and medical matters of the Air Force” and inserting “Secretary of the Air Force, the Chief of Staff of the Air Force, and the Chief of Space Operations on all health and medical matters of the Air Force and the Space Force”; and

(B) in paragraph (2), by inserting “and the Space Force” after “of the Air Force” both places it appears.

(7) JUDGE ADVOCATE GENERAL, DEPUTY JUDGE ADVOCATE GENERAL: APPOINTMENT; DUTIES.—Section 9037 of such title is amended—

(A) in subsection (e)(2)(B), by inserting “or the Space Force” after “of the Air Force”; and

(B) in subsection (f)(1), by striking “the Secretary of the Air Force or the Chief of Staff of the Air Force” and inserting “the Secretary of the Air Force, the Chief of Staff of the Air Force, or the Chief of Space Operations”.

(8) CHIEF OF CHAPLAINS: APPOINTMENT; DUTIES.—Section 9039(a) of such title is amended by striking “in the Air Force” and inserting “for the Air Force and the Space Force”.

(9) PROVISION OF CERTAIN PROFESSIONAL FUNCTIONS FOR THE SPACE FORCE.—Section 9063 of title 10, United States Code, is amended—

(A) in subsections (a) through (i), by striking “in the Air Force” each place it appears and inserting “in the Air Force and the Space Force”; and

(B) in subsection (i), as amended by subparagraph (A) of this paragraph, by inserting “or the Space Force” after “members of the Air Force”.

1 (b) PERSONNEL.—

2 (1) GENDER-FREE BASIS FOR ACCEPTANCE OF ORIGINAL ENLISTMENTS.—

3 (A) IN GENERAL.—Section 9132 of such title is amended—

4 (i) in the heading, by inserting "**and Regular Space Force**" before

5 the colon; and

6 (ii) by inserting "or the Regular Space Force" after "Regular Air

7 Force".

8 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9132

9 in the table of sections at the beginning of chapter 913 of such title is amended to

10 read as follows:

"9132. Regular Air Force and Regular Space Force: gender-free basis for acceptance of original enlistments.".

11 (2) REENLISTMENT AFTER SERVICE AS AN OFFICER.—

12 (A) IN GENERAL.—Section 9138 of such title is amended—

13 (i) in the heading, by inserting "**and Regular Space Force**" before

14 the colon; and

15 (ii) in subsection (a)—

16 (I) by inserting "or the Regular Space Force" after "Regular

17 Air Force" both places it appears; and

18 (II) by inserting "or the Space Force" after "officer of the

19 Air Force" both places it appears.

20 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9138

21 in the table of sections at the beginning of chapter 913 of such title is amended to

22 read as follows:

"9138. Regular Air Force and Regular Space Force: reenlistment after service as an officer.".

1 (3) APPOINTMENTS IN THE REGULAR AIR FORCE AND THE REGULAR SPACE FORCE.—

2 (A) HEADING; TABLE OF SECTIONS.—The heading of chapter 915 of such
3 title is amended by adding "**AND REGULAR SPACE FORCE**" after "**AIR**
4 **FORCE**", and the item relating to such chapter in the table of chapters at the
5 beginning of part II of subtitle D of such title is amended by inserting "**and**
6 **Regular Space Force**" after "**Air Force**".

7 (B) IN GENERAL.—Section 9160 of such title is amended—

8 (i) by inserting "or the Regular Space Force" after "Regular Air
9 Force"; and

10 (ii) by inserting "or the Space Force" before the period.

11 (4) RETIRED COMMISSIONED OFFICERS: STATUS.—Section 9203 of such title is
12 amended by inserting "or the Space Force" after "the Air Force".

13 (5) DUTIES: CHAPLAINS; ASSISTANCE REQUIRED OF COMMANDING OFFICERS.—
14 Section 9217(a) of such title is amended by inserting "or the Space Force" after "the Air
15 Force".

16 (6) RANK: COMMISSIONED OFFICERS SERVING UNDER TEMPORARY
17 APPOINTMENTS.—Section 9222 of such title is amended by inserting "or the Space Force"
18 after "the Air Force" both places it appears.

19 (7) REQUIREMENT OF EXEMPLARY CONDUCT.—Section 9233 of such title is
20 amended—

21 (A) in the matter preceding paragraph (1), by inserting "and the Space
22 Force" after "the Air Force"; and

1 (B) in paragraph (3), by inserting "or the Space Force, respectively," after
2 "the Air Force".
3 (8) ENLISTED MEMBERS: OFFICERS NOT TO USE AS SERVANTS.—Section 9239 of
4 such title is amended by inserting "or the Space Force" after "Air Force" both places it
5 appears.
6 (9) PRESENTATION OF UNITED STATES FLAG UPON RETIREMENT.—Section 9251(a)
7 of such title is amended by inserting "or the Space Force" after "member of the Air
8 Force".
9 (10) SERVICE CREDIT: REGULAR ENLISTED MEMBERS; SERVICE AS AN OFFICER TO BE
10 COUNTED AS ENLISTED SERVICE.—Section 9252 of such title is amended—
11 (A) by inserting "or the Regular Space Force" after "Regular Air Force";
12 and
13 (B) by inserting "in the Space Force," after "in the Air Force,".
14 (11) WHEN SECRETARY MAY REQUIRE HOSPITALIZATION.—Section 9263 of such
15 title is amended by inserting "or the Space Force" after "member of the Air Force".
16 (12) DECORATIONS AND AWARDS.—
17 (A) IN GENERAL.—Chapter 937 of such title is amended by inserting "or
18 the Space Force" after "the Air Force" each place it appears in the following
19 provisions:
20 (i) Section 9271.
21 (ii) Section 9272.
22 (iii) Section 9273.
23 (iv) Section 9276

1 (v) Section 9281 other than the first reference in subsection (a).

2 (vi) Section 9286(a) other than the first reference.

3 (B) MEDAL OF HONOR; AIR FORCE CROSS; DISTINGUISHED-SERVICE MEDAL:
4 DELEGATION OF POWER TO AWARD.—Section 9275 of such title is amended by
5 inserting "or space" after "separate air".

6 (13) TWENTY YEARS OR MORE: REGULAR OR RESERVE COMMISSIONED OFFICERS.—
7 Section 9311(a) of such title is amended by inserting "or the Space Force" after "officer
8 of the Air Force".

9 (14) TWENTY TO THIRTY YEARS: ENLISTED MEMBERS.—Section 9314 of such title
10 is amended by inserting "or the Space Force" after "member of the Air Force".

11 (15) THIRTY YEARS OR MORE: REGULAR ENLISTED MEMBERS.—Section 9317 of
12 such title is amended by inserting "or the Space Force" after "Air Force".

13 (16) THIRTY YEARS OR MORE: REGULAR COMMISSIONED OFFICERS.—Section 9318
14 of such title is amended by inserting "or the Space Force" after "Air Force".

15 (17) FORTY YEARS OR MORE: AIR FORCE OFFICERS.—

16 (A) IN GENERAL.—Section 9324 of such title is amended—

17 (i) in the heading, by inserting "**and Space Force**" after "**Air**
18 **Force**"; and

19 (ii) in subsections (a) and (b), by inserting "or the Space Force"
20 after "Air Force".

21 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9324
22 in the table of sections at the beginning of chapter 941 of such title is amended to
23 read as follows:

"9124. Forty years or more: Air Force and Space Force officers.".

1 (18) COMPUTATION OF YEARS OF SERVICE: VOLUNTARY RETIREMENT; ENLISTED

2 MEMBERS.—Section 9325(a) of such title is amended by inserting "or the Space Force"

3 after "Air Force".

4 (19) COMPUTATION OF YEARS OF SERVICE: VOLUNTARY RETIREMENT; REGULAR

5 AND RESERVE COMMISSIONED OFFICERS.—Section 9326(a) of such title is amended by

6 inserting "or the Space Force" after "Air Force" both places it appears.

7 (20) COMPUTATION OF RETIRED PAY: LAW APPLICABLE.—Section 9329 of such

8 title is amended by inserting "or the Space Force" after "Air Force".

9 (21) RETIRED GRADE.—

10 (A) GENERAL RULE.—Section 9341 of such title is amended—

11 (i) in subsection (a), by inserting "or the Space Force" after

12 "regular commissioned officer of the Air Force"; and

13 (ii) in subsection (b), by inserting "or a Regular of the Space

14 Force" after "Air Force".

15 (B) HIGHER GRADE AFTER 30 YEARS OF SERVICE: WARRANT OFFICERS AND

16 ENLISTED MEMBERS.—Section 9344 of such title is amended—

17 (i) in subsection (a), by inserting "or the Space Force" after

18 "member of the Air Force";

19 (ii) in subsection (b)(1), by inserting "or the Space Force" after

20 "Air Force"; and

21 (iii) in subsection (b)(2), by inserting "or the Regular Space Force"

22 after "Regular Air Force".

1 (C) RESTORATION TO FORMER GRADE: RETIRED WARRANT OFFICERS AND
2 ENLISTED MEMBERS.—Section 9345 of such title is amended by inserting "or the
3 Space Force" after "member of the Air Force".
4 (D) RETIRED LISTS.—Section 9346 of such title is amended—
5 (i) in subsections (a) and (d), by inserting "or the Regular Space
6 Force" after "Regular Air Force";
7 (ii) in subsection (b)(1), by inserting before the semicolon the
8 following: ", or for commissioned officers of the Space Force other than
9 of the Regular Space Force"; and
10 (iii) in subsections (b)(2) and (c), by inserting "or the Space Force"
11 after "Air Force".
12 (22) RECOMPUTATION OF RETIRED PAY TO REFLECT ADVANCEMENT ON RETIRED
13 LIST.—Section 9362(a) of such title is amended by inserting "or the Space Force" after
14 "Air Force".
15 (23) FATALITY REVIEWS.—Section 9381(a) of such title is amended by inserting
16 "or the Space Force" after "Air Force" in each of paragraphs (1), (2), and (3).
17 (c) TRAINING.—
18 (1) MEMBERS OF AIR FORCE: DETAIL AS STUDENTS, OBSERVERS, AND
19 INVESTIGATORS AT EDUCATIONAL INSTITUTIONS, INDUSTRIAL PLANTS, AND HOSPITALS.—
20 (A) IN GENERAL.—Section 9401 of title 10, United States Code, is
21 amended—
22 (i) in the heading, by inserting "**and Space Force**" after "**Air**
23 **Force**";

1 (ii) in subsection (a), by inserting “and the Space Force” after
2 “members of the Air Force”;
3 (iii) in subsection (b), by inserting “or the Regular Space Force”
4 after “Regular Air Force”;
5 (iv) in subsection (e), by inserting “or the Space Force” after “Air
6 Force”; and
7 (v) in subsection (f), by inserting “or the Regular Space Force”
8 after “Regular Air Force”.
9 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9401
10 in the table of sections at the beginning of chapter 951 of such title is amended to
11 read as follows:

“9401. Members of Air Force and Space Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.”.

12 (2) ENLISTED MEMBERS OF AIR FORCE: SCHOOLS.—
13 (A) IN GENERAL.—Section 9402 of such title is amended—
14 (i) in the heading, by inserting “**or Space Force**” after “**Air**
15 **Force**”;
16 (ii) in subsection (a)—
17 (I) in the first sentence, by inserting “and the Space Force”
18 after “members of the Air Force”; and
19 (II) in the third sentence, by inserting “and Space Force
20 officers” after “Air Force officers”; and
21 (iii) in subsection (b), by inserting “or the Space Force” after “Air
22 Force” each place it appears.

1 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9402
2 in the table of sections at the beginning of chapter 951 of such title is amended to
3 read as follows:

"9402. Enlisted members of Air Force or Space Force: schools.".

4 (3) SERVICE SCHOOLS: LEAVES OF ABSENCE FOR INSTRUCTORS.—Section 9406 of
5 such title is amended by inserting "or Space Force" after "Air Force".
6 (4) DEGREE GRANTING AUTHORITY FOR UNITED STATES AIR FORCE INSTITUTE OF
7 TECHNOLOGY.—Section 9414(d)(1) of such title is amended by inserting "or the Space
8 Force" after "needs of the Air Force".
9 (5) UNITED STATES AIR FORCE INSTITUTE OF TECHNOLOGY: ADMINISTRATION.—
10 Section 9414b(a)(2) is amended by inserting "or the Space Force" after "the Air Force"
11 each place it appears.
12 (6) COMMUNITY COLLEGE OF THE AIR FORCE: ASSOCIATE DEGREES.—Section 9415
13 of such title is amended—
14 (A) in subsection (a) in the matter preceding paragraph (1), by striking "in
15 the Air Force" and inserting "in the Department of the Air Force"; and
16 (B) in subsection (b)—
17 (i) in paragraph (1), by inserting "or the Space Force" after "Air
18 Force";
19 (ii) in paragraph (2), by striking "other than" and all that follows
20 through "schools" and inserting "other than the Air Force or the Space
21 Force who are serving as instructors at Department of the Air Force
22 training schools"; and

(iii) in paragraph (3), by inserting "or the Space Force" after "Air Force".

(7) AIR FORCE ACADEMY ESTABLISHMENT; SUPERINTENDENT; FACULTY.—Section 9431(a) of such title is amended by striking "Air Force cadets" and inserting "cadets".

(8) AIR FORCE ACADEMY SUPERINTENDENT; FACULTY: APPOINTMENT AND DETAIL.—Section 9433(a) of such title is amended by inserting "or the Space Force" after "Air Force".

(9) AIR FORCE ACADEMY PERMANENT PROFESSORS; DIRECTOR OF ADMISSIONS.—Section 9436 of such title is amended—

(A) in subsection (a)—

(i) in the first sentence, by inserting "in the Air Force or the equivalent grade in the Space Force" after "colonel";

(ii) in the second sentence, by inserting "and a permanent professor appointed from the Regular Space Force has the grade equivalent to a colonel in the Regular Air Force" after "grade of colonel"; and

(iii) in the third sentence, by inserting "in the Air Force or an equivalent grade in the Space Force" after "lieutenant colonel"; and

(B) in subsection (b)—

(i) in the first sentence, "in the Air Force or an equivalent grade in the Space Force" after "colonel" each place it appears; and

(ii) in the second sentence, by inserting "and a person appointed from the Regular Space Force has a grade equivalent to a colonel in the Regular Air Force" after "grade of colonel".

1 (10) CADETS: APPOINTMENT; NUMBERS, TERRITORIAL DISTRIBUTION.—Section
2 9442 of such title is amended—
3 (A) by striking "Air Force Cadets" each place it appears and inserting
4 "cadets"; and
5 (B) in subsection (b)(2), by inserting "or the Regular Space Force" after
6 "Regular Air Force".
7 (11) CADETS: AGREEMENT TO SERVE AS OFFICER.—Section 9448(a)(2)(A) of such
8 title is amended by inserting "or the Regular Space Force" after "Regular Air Force".
9 (12) CADETS: ORGANIZATION; SERVICE; INSTRUCTION.—Section 9449 of such title
10 is amended by striking subsection (d).
11 (13) CADETS: HAZING.—Section 9452(c) of such title is amended—
12 (A) by striking "an Air Force cadet" and inserting "a cadet"; and
13 (B) by striking "or Marine Corps" and inserting "Marine Corps, or Space
14 Force".
15 (14) CADETS: DEGREE AND COMMISSION ON GRADUATION.—Section 9453(b) of
16 such title is amended by inserting "or the Regular Space Force" after "Regular Air
17 Force".
18 (15) SUPPORT OF ATHLETIC PROGRAMS.—Section 9462(c)(2) of such title is
19 amended by striking "personnel of the Air Force" and inserting "personnel of the
20 Department of the Air Force".
21 (16) SCHOOLS AND CAMPS: ESTABLISHMENT: PURPOSE.—Section 9481 of such title
22 is amended by inserting ", the Space Force," after "members of the Air Force,".
23 (17) SCHOOLS AND CAMPS: OPERATION.—Section 9482 of such title is amended—

(A) in paragraph (4), by inserting "or the Regular Space Force" after "Regular Air Force"; and

(B) in paragraph (7) in the matter preceding subparagraph (A), by inserting "or Space Force" after "Air Force".

(d) SERVICE, SUPPLY, AND PROCUREMENT.—

(1) EQUIPMENT: BAKERIES, SCHOOLS, KITCHENS, AND MESS HALLS.—Section 9536 of title 10, United States Code, is amended in the matter preceding paragraph (1) by inserting "or the Space Force" after "the Air Force".

(2) RATION.—Section 9561 of such title is amended—

(A) in subsection (a)—

(i) in the first sentence, by inserting "and the Space Force ration" after "the Air Force ration"; and

(ii) in the second sentence, by inserting "or the Space Force" after "the Air Force"; and

(B) in subsection (b), by inserting "or the Space Force" after "the Air Force".

(3) CLOTHING.—Section 9562 of such title is amended by inserting "and the Space Force" after "the Air Force".

(4) CLOTHING: REPLACEMENT WHEN DESTROYED TO PREVENT CONTAGION.—Section 9563 of such title is amended by inserting "or the Space Force" after "member of the Air Force".

(5) COLORS, STANDARDS, AND GUIDONS OF DEMOBILIZED ORGANIZATIONS: DISPOSITION.—Section 9565 of such title is amended—

1 (A) in subsection (a) in the matter preceding paragraph (1), by inserting
2 "or the Space Force" after "organizations of the Air Force"; and
3 (B) in subsection (b), by inserting "or the Space Force" after "the Air
4 Force".
5 (6) UTILITIES: PROCEEDS FROM OVERSEAS OPERATIONS.—Section 9591 of such
6 title is amended by inserting "or the Space Force" after "the Air Force".
7 (7) QUARTERS: HEAT AND LIGHT.—Section 9593 of such title is amended by
8 inserting "and the Space Force" after "the Air Force".
9 (8) AIR FORCE MILITARY HISTORY INSTITUTE: FEE FOR PROVIDING HISTORICAL
10 INFORMATION TO THE PUBLIC.—
11 (A) IN GENERAL.—Section 9594 of such title is amended—
12 (i) in the heading, by inserting "**Department of the**" before "**Air**
13 **Force**";
14 (ii) in subsections (a) and (d), by inserting "Department of the"
15 before "Air Force Military History" each place it appears; and
16 (iii) in subsection (e)(1)—
17 (I) by inserting "Department of the" before "Air Force
18 Military History"; and
19 (II) by inserting "and the Space Force" after "materials of
20 the Air Force".
21 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9594
22 in the table of sections at the beginning of chapter 9657 of such title is amended to
23 read as follows:

"9594. Department of the Air Force Military History Institute: fee for providing historical information to the public.".

1 (9) SUBSISTENCE AND OTHER SUPPLIES: MEMBERS OF ARMED FORCES; VETERANS;
2 EXECUTIVE OR MILITARY DEPARTMENTS AND EMPLOYEES; PRICES.—Section 9621 of such
3 title is amended—
4 (A) in subsection (a)—
5 (i) in paragraph (1), by inserting "and the Space Force" after "the
6 Air Force"; and
7 (ii) in paragraph (2) , by inserting "and the Space Force" after "the
8 Air Force";
9 (B) in subsection (b), by inserting "or the Space Force" after "the Air
10 Force";
11 (C) in subsection (c), by inserting "or the Space Force" after "the Air
12 Force";
13 (D) in subsection (d), by striking "or Marine Corps" and inserting "Marine
14 Corps, or Space Force";
15 (E) in subsection (e), by inserting "or the Space Force" after "the Air
16 Force" each place it appears;
17 (F) in subsection (f), by inserting "or the Space Force" after "the Air
18 Force"; and
19 (G) in subsection (h), by inserting "or the Space Force" after "the Air
20 Force" each place it appears.
21 (10) RATIONS: COMMISSIONED OFFICERS IN FIELD.—Section 9622 of such title is
22 amended by inserting "and the Space Force" after "officers of the Air Force".

1 (11) MEDICAL SUPPLIES: CIVILIAN EMPLOYEES OF THE AIR FORCE.—Section
2 9624(a) of such title is amended—
3 (A) by striking “air base” and inserting “Air Force or Space Force military
4 installation”; and
5 (B) by striking “Air Force when” and inserting “Department of the Air
6 Force when”.
7 (12) ORDNANCE PROPERTY: OFFICERS OF ARMED FORCES; CIVILIAN EMPLOYEES OF
8 AIR FORCE.—Section 9625 of such title is amended—
9 (A) in subsection (a), by inserting “or the Space Force” after “officers of
10 the Air Force”; and
11 (B) in subsection (b), by striking “Air Force” and inserting “Department of
12 the Air Force”.
13 (13) SUPPLIES: EDUCATIONAL INSTITUTIONS.—Section 9627 of such title is
14 amended—
15 (A) by inserting “or the Space Force” after “for the Air Force”;
16 (B) by inserting “or the Space Force” after “officer of the Air Force”; and
17 (C) by inserting “and space” after “professor of air”
18 (14) SUPPLIES: MILITARY INSTRUCTION CAMPS.—Section 9654 of such title is
19 amended—
20 (A) by inserting “or Space Force” after “an Air Force”; and
21 (B) by inserting “or space” before “science”.

1 (15) DISPOSITION OF EFFECTS OF DECEASED PERSONS BY SUMMARY COURT-
2 MARTIAL.—Section 9712(a)(1) of such title is amended by inserting “or the Space Force”
3 after “the Air Force”.
4 (16) ACCEPTANCE OF DONATIONS: LAND FOR MOBILIZATION, TRAINING, SUPPLY
5 BASE, OR AVIATION FIELD.—
6 (A) IN GENERAL.—Section 9771 of such title is amended—
7 (i) in the heading, by striking “**or aviation field**” and inserting
8 “**aviation field, or space mission-related facility**”; and
9 (ii) in paragraph (2), by inserting “or space mission-related
10 facility” after “aviation field”.
11 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9771
12 in the table of sections at the beginning of chapter 979 of such title is amended to
13 read as follows:

“9771. Acceptance of donations: land for mobilization, training, supply base, aviation field, or space-related facility.”.

14 (17) ACQUISITION AND CONSTRUCTION: AIR BASES AND DEPOTS.—
15 (A) IN GENERAL.—Section 9773 of such title is amended—
16 (i) in subsection (a)—
17 (I) by striking “permanent air bases” and inserting
18 “permanent Air Force and Space Force military installations”;
19 (II) by striking “existing air bases” and inserting “existing
20 installations”; and
21 (III) by inserting “or the Space Force” after “training of the
22 Air Force”;

1 (ii) in the heading and in subsections (b) and (c), by striking "air
2 bases" each place it appears and inserting "installations"; and
3 (iii) in subsection (c)—
4 (I) in paragraph (1), by inserting "or Space Force" after
5 "Air Force"; and
6 (II) in paragraphs (3) and (4), by inserting "or the Space
7 Force" after "Air Force" both places it appears.
8 (B) TABLE OF SECTIONS AMENDMENT.—The item relating to section 9773
9 in the table of sections at the beginning of chapter 979 of such title is amended to
10 read as follows:

"9773. Acquisition and construction: installations and depots.".

11 (18) EMERGENCY CONSTRUCTION: FORTIFICATIONS.—Section 9776 of such title is
12 amended by striking "air base" and inserting "installation".
13 (19) USE OF PUBLIC PROPERTY.—Section 9779(a) of such title is amended by
14 inserting "or the Space Force" after "economy of the Air Force".
15 (20) DISPOSITION OF REAL PROPERTY AT MISSILE SITES.—Section 9781(a)(2) of
16 such title is amended—
17 (A) in the matter preceding subparagraph (A), by striking "Air Force" and
18 inserting "Department of the Air Force";
19 (B) in subparagraph (A), by striking "Air Force" the first two places it
20 appears and inserting "Department of the Air Force"; and
21 (C) in subparagraph (C), by striking "Air Force" and inserting
22 "Department of the Air Force".

1 (21) MAINTENANCE AND REPAIR OF REAL PROPERTY.—Section 9782 of such title is
2 amended in subsections (c) and (d) by inserting "or the Space Force" after "the Air
3 Force" both places it appears.
4 (22) SETTLEMENT OF ACCOUNTS: REMISSION OR CANCELLATION OF INDEBTEDNESS
5 OF MEMBERS.—Section 9837(a) of such title is amended by inserting "or the Space
6 Force" after "member of the Air Force".
7 (23) FINAL SETTLEMENT OF OFFICER'S ACCOUNTS.—Section 9840 of such title is
8 amended by inserting "or the Space Force" after "Air Force".
9 (24) PAYMENT OF SMALL AMOUNTS TO PUBLIC CREDITORS.—Section 9841 of such
10 title is amended by inserting "or Space Force" after "official of Air Force".
11 (25) SETTLEMENT OF ACCOUNTS OF LINE OFFICERS.—Section 9842 of such title is
12 amended—
13 (A) by inserting "or the Space Force" after "Air Force"; and
14 (B) by striking "Comptroller General" both places it appears and inserting
15 "Secretary of the Air Force".
16 **SEC. 933. OTHER PROVISIONS OF TITLE 10, UNITED STATES CODE.**
17 (a) TABLE OF SUBTITLES.—The table of subtitles at the beginning of title 10, United
18 States Code, is amended by striking the item relating to subtitle D and inserting the following
19 new item:

"**D. Air Force and Space Force** **9011**".

20 (b) DEFINITIONS.—Section 101 of such title is amended—
21 (1) in subsection (a)(9)(C), by inserting "and the Space Force" after "concerning
22 the Air Force"; and
23 (2) in subsection (b)—

1 (A) in paragraph (4), by inserting "or an officer of the Space Force serving
2 in or having an equivalent grade" before the period; and
3 (B) in paragraph (13), by striking "or Marine Corps" and inserting
4 "Marine Corps, or Space Force".
5 (c) OTHER PROVISIONS OF SUBTITLE A.—
6 (1) SPACE FORCE I.—Subtitle A of such title is further amended by striking "and
7 Marine Corps" each place it appears and inserting "Marine Corps, and Space Force" in
8 the following provisions:
9 (A) Section 116(a)(1) in the matter preceding subparagraph (A).
10 (B) Section 533(a)(2).
11 (C) Section 646.
12 (D) Section 661(a).
13 (E) Section 712(a).
14 (F) Section 717(c)(1).
15 (G) Subsections (c) and (d) of section 741.
16 (H) Section 1111(b)(4).
17 (I) Subsections (a)(2)(A) and (c)(2)(A)(ii) of section 1143.
18 (J) Section 1174(j).
19 (K) Section 1463(a).
20 (L) Section 1566.
21 (M) Section 2217(c).
22 (N) Section 2259(a).
23 (O) Section 2640(j).

(2) SPACE FORCE II.—Such subtitle is further amended by striking “Marine Corps,” each place it appears and inserting “Marine Corps, Space Force,” in the following provisions:

(A) Section 123(a).

(B) Section 172(a).

(C) Section 518.

(D) The item relating to section 747 in the table of sections at the beginning of chapter 43.

(E) Section 747 (including the heading).

(F) Section 749.

(G) Section 1552(c).

(H) Section 2632(c).

(I) Section 2686(a).

(J) Section 2733(a).

(3) SPACE FORCE III.—Such subtitle is further amended by striking “or Marine Corps” each place it appears and inserting “Marine Corps, or Space Force” in the following provisions:

(A) Section 125(b).

(B) Section 541(a).

(C) Section 601(a).

(D) Section 603(a).

(E) Section 619(a).

(F) Section 619a(a).

1 (G) Section 631.
2 (H) Section 632(a).
3 (I) Section 637(a)(2).
4 (J) Section 638(a).
5 (K) Section 741.
6 (L) Section 771.
7 (M) Section 772.
8 (N) Section 773.
9 (O) Section 1123.
10 (P) Section 1143(d).
11 (Q) Section 1174(a)(2).
12 (R) Section 1251(a).
13 (S) Section 1252(a).
14 (T) Section 1253(a).
15 (U) Paragraphs (1) and (2)(A) of section 1370(a).
16 (V) Section 1375.
17 (W) Section 1413a(h).
18 (X) Section 1551.
19 (Y) Section 1561(a).
20 (Z) Section 1733(b)(1)(A)(ii).
21 (AA) Section 2102(a).
22 (BB) Section 2103a(a).
23 (CC) Section 2104.

1 (DD) Section 2107.

2 (EE) Section 2421.

3 (FF) Section 2631(a).

4 (GG) Section 2787(a).

5 (4) REGULAR SPACE FORCE I.—Such subtitle is further amended by striking "or
6 Regular Marine Corps" each place it appears and inserting "Regular Marine Corps, or
7 Regular Space Force" in the following provisions:

8 (A) Section 531(c).

9 (B) Section 532(a) in the matter preceding paragraph (1).

10 (C) Subsections (a)(1), (b)(1), and (f) of section 533.

11 (D) Section 633(a).

12 (E) Section 634(a).

13 (F) Section 635.

14 (G) Section 636(a).

15 (H) Section 647(c).

16 (I) Section 688(b)(1).

17 (J) Section 1181.

18 (5) REGULAR SPACE FORCE II.—Such subtitle is further amended by striking
19 "Regular Marine Corps," each place it appears and inserting "Regular Marine Corps,
20 Regular Space Force," in the following provisions:

21 (A) Section 505.

22 (B) Section 506.

23 (C) Section 508.

1 (6) JOINT STAFF MATTERS.—

2 (A) APPOINTMENT OF CHAIRMAN.—Section 152(b)(1)(B) of such title is
3 amended by striking “or the Commandant of the Marine Corps” and inserting “the
4 Commandant of the Marine Corps, or the Chief of Space Operations”.

5 (B) INCLUSION OF THE SPACE FORCE ON THE JOINT STAFF.—Section
6 155(a)(2)(C) of such title is amended by inserting “and the Space Force” after
7 “the Air Force”.

8 (7) ARMED FORCES POLICY COUNCIL.—Section 171(a) of such title is amended—

9 (A) in paragraph (15), by striking “and”;

10 (B) in paragraph (16), by striking the period and inserting “; and”; and

11 (C) by adding at the end the following new paragraph:

12 “(17) the Chief of Space Operations.”.

13 (8) JOINT REQUIREMENTS OVERSIGHT COUNCIL.—Section 181(c)(1) of such title is
14 amended by adding at the end the following new subparagraph:

15 “(F) A Space Force officer in the grade equivalent to the grade of general
16 in the Air Force.”.

17 (9) UNFUNDED PRIORITIES.—Section 222a(b) of such title is amended—

18 (A) by redesignating paragraph (5) as paragraph (6); and

19 (B) by inserting after paragraph (4) the following new paragraph:

20 “(5) The Chief of Space Operations.”.

21 (10) THEATER SECURITY COOPERATION EXPENSES.—Section 312(b)(3) of such title
22 is amended by inserting “the Chief of Space Operations,” after “the Commandant of the
23 Marine Corps,”.

1 (11) WESTERN HEMISPHERE INSTITUTE.—Section 343(e)(1)(E) of such title is

2 amended by inserting “or Space Force” after “for the Air Force”.

3 (12) ORIGINAL APPOINTMENTS OF COMMISSIONED OFFICERS.—Section 531(a) of

4 such title is amended—

5 (A) in paragraph (1)—

6 (i) by striking “and in the grades” and inserting “, in the grades”;

7 and

8 (ii) by inserting “, and in the equivalent grades in the Regular

9 Space Force” after “Regular Navy”; and

10 (B) in paragraph (2)—

11 (i) by striking “and in the grades” and inserting “, in the grades”;

12 and

13 (ii) by inserting “, and in the equivalent grades in the Regular

14 Space Force” after “Regular Navy”.

15 (13) SERVICE CREDIT UPON ORIGINAL APPOINTMENT AS A COMMISSIONED

16 OFFICER.—Section 533(b)(2) of such title is amended by striking “or captain in the Navy”

17 and inserting “, captain in the Navy, or an equivalent grade in the Space Force”.

18 (14) POSITIONS OF IMPORTANCE AND RESPONSIBILITY: GENERALS AND LIEUTENANT

19 GENERALS; ADMIRALS AND VICE ADMIRALS.—Section 601 of such title is amended—

20 (A) in subsection (a)—

21 (i) in the first sentence, by striking “general or admiral or

22 lieutenant general or vice admiral” and inserting “general or admiral,

1 lieutenant general or vice admiral, or the equivalent grades in the Space
2 Force"; and
3 (ii) in the second sentence, by inserting "or an equivalent grade in
4 the Space Force" after "colonel";
5 (B) in subsection (b) in the matter preceding paragraph (1), by striking "or
6 vice admiral" and inserting "vice admiral, or equivalent grades in the Space
7 Force";
8 (C) in subsection (c)(2)—
9 (i) by striking "major general or rear admiral" each place it appears
10 and inserting "major general, rear admiral, or an equivalent grade in the
11 Space Force"; and
12 (ii) by striking "brigadier general or rear admiral (lower half)" and
13 inserting "brigadier general, rear admiral (lower half), or an equivalent
14 grade in the Space Force"; and
15 (D) in subsection (d)—
16 (i) in paragraph (1)—
17 (I) by striking "lieutenant general or vice admiral" and
18 inserting "lieutenant general, vice admiral, or an equivalent grade
19 in the Space Force"; and
20 (II) by striking "general or admiral" and inserting "general,
21 admiral, or an equivalent grade in the Space Force";

1 (ii) in paragraph (2), by striking "or lieutenant general or vice
2 admiral" and inserting ", lieutenant general or vice admiral, or equivalent
3 grades in the Space Force".
4 (15) APPOINTMENTS IN TIME OF WAR OR NATIONAL EMERGENCY.—Section 603(a)
5 of such title is amended by striking "major general or rear admiral" and inserting "major
6 general, rear admiral, or an equivalent grade in the Space Force".
7 (16) SENIOR JOINT OFFICER POSITIONS: RECOMMENDATIONS SO THE SECRETARY OF
8 DEFENSE.—Section 604(a)(1)(A) of such title is amended by inserting "and the name of at
9 least one Space Force officer" after "Air Force officer".
10 (17) PROMOTION TO CERTAIN GRADES FOR OFFICERS WITH CRITICAL SKILLS.—
11 Section 605 of such title is amended by inserting "or in an equivalent grade in the Space
12 Force" after "or Marine Corps" each place it appears.
13 (18) CONVENING OF SELECTION BOARDS.—Section 611(a) of such title is amended
14 by inserting "and each equivalent permanent grade in the Space Force" after "Marine
15 Corps".
16 (19) ELIGIBILITY FOR CONSIDERATION FOR PROMOTION: TIME-IN-GRADE AND
17 OTHER REQUIREMENTS.—Section 619 of such title is amended—
18 (A) in subsection (a)—
19 (i) in paragraph (1)—
20 (I) in the matter preceding subparagraph (A), by inserting
21 "or an equivalent grade in the Space Force" after "first lieutenant";
22 (II) in subparagraph (A), by inserting "or an equivalent
23 grade in the Space Force" after "ensign"; and

1 (III) in subparagraph (B), by inserting “or an equivalent
2 grade in the Space Force” after “(junior grade)”;
3 (ii) in paragraph (2)—
4 (I) in the matter preceding subparagraph (A), by inserting
5 “or an equivalent grade in the Space Force” after “first lieutenant”;
6 (II) in subparagraph (A), by inserting “or an equivalent
7 grade in the Space Force” after “lieutenant colonel”; and
8 (III) in subparagraph (B), by inserting “or an equivalent
9 grade in the Space Force” after “brigadier general”;
10 (B) in subsection (b)(2), by inserting “or an equivalent grade in the Space
11 Force” after “captain”;
12 (C) in subsection (c)(3)(A)—
13 (i) in the matter preceding clause (i), by striking “brigadier general
14 or rear admiral (lower half) officers in the grade of colonel” and inserting
15 “brigadier general, rear admiral (lower half), or an equivalent grade in the
16 Space Force officers in the grade of colonel or an equivalent grade in the
17 Space Force”; and
18 (ii) in clause (i), by striking “brigadier general or rear admiral
19 (lower half)” and inserting “brigadier general, rear admiral (lower half), or
20 an equivalent grade in the Space Force”; and
21 (D) in subsection (d)—
22 (i) in paragraph (4) by inserting “or an equivalent grade in the
23 Space Force” after “first lieutenant”; and

1 (ii) in paragraph (5), by inserting "or an equivalent grade in the
2 Space Force" after "captain".
3 (20) ELIGIBILITY FOR CONSIDERATION FOR PROMOTION: DESIGNATION AS JOINT
4 QUALIFIED OFFICER REQUIRED BEFORE PROMOTION TO GENERAL OR FLAG GRADE;
5 EXCEPTIONS.—Section 619a of such title is amended—
6 (A) in subsection (a), by striking "brigadier general or rear admiral (lower
7 half)" and inserting "brigadier general, rear admiral (lower half), or an equivalent
8 grade in the Space Force";
9 (B) in subsection (b)(4), by striking "brigadier general or rear admiral
10 (lower half)" and inserting "brigadier general, rear admiral (lower half), or an
11 equivalent grade in the Space Force";
12 (C) in subsection (f), by inserting "or an equivalent grade in the Space
13 Force" after "brigadier general"; and
14 (D) in subsection (g), by striking "lieutenant general or vice admiral" and
15 inserting "lieutenant general, vice admiral, or an equivalent grade in the Space
16 Force".
17 (21) PROMOTIONS: HOW MADE.—Section 624 of such title is amended—
18 (A) in subsection (a)—
19 (i) in paragraph (2), by striking "first lieutenant or lieutenant
20 (junior grade)" and inserting "first lieutenant, lieutenant (junior grade), or
21 an equivalent grade in the Space Force"; and
22 (ii) in paragraph (3)(A), by inserting "or an equivalent grade in the
23 Space Force" after "first lieutenant"; and

1 (B) in subsection (c)—

2 (i) by striking “or lieutenant (junior grade)” and inserting

3 “lieutenant (junior grade)”; and

4 (ii) by inserting “or in equivalent grades in the Space Force,” after

5 “Navy,”.

6 (22) AUTHORITY TO VACATE PROMOTIONS TO GRADES OF BRIGADIER GENERAL AND

7 REAR ADMIRAL (LOWER HALF).—Section 625 of such title is amended—

8 (A) in subsection (b), by adding at the end the following sentence: “An

9 officer of the Space Force whose promotion is vacated under this section holds

10 the regular grade in the Space Force equivalent to the grade of colonel in the Air

11 Force.”; and

12 (B) in subsection (c), by striking “brigadier general or rear admiral (lower

13 half)” and inserting “brigadier general, rear admiral (lower half), or the equivalent

14 grade in the Space Force”.

15 (23) TABLE OF SECTIONS FOR SUBCHAPTER III OF CHAPTER 36.—The table of

16 sections at the beginning of subchapter III of chapter 36 of such title is amended by

17 striking the items relating to sections 631 through 636 and inserting the following new

18 items:

“631. Effect of failure of selection for promotion: first lieutenants, lieutenants (junior grade), and equivalent grades in the Space Force.
“632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps, lieutenants and lieutenant commanders of the Navy, and equivalent grades in the Space Force.
“633. Retirement for years of service: regular lieutenant colonels, commanders, and equivalent grades in the Space Force.
“634. Retirement for years of service: regular colonels, Navy captains, and equivalent grades in the Space Force.
“635. Retirement for years of service: regular brigadier generals, rear admirals (lower half), and equivalent grades in the Space Force.
“636. Retirement for years of service: regular officers in grades above brigadier general, rear admiral (lower half), and equivalent grades in the Space Force.”.

1 (24) EFFECT OF FAILURE OF SELECTION FOR PROMOTION: FIRST LIEUTENANTS AND
2 LIEUTENANTS (JUNIOR GRADE).—Section 631 of such title is amended—
3 (A) in the heading, by striking "**and lieutenants (junior grade)**" and
4 inserting "**, lieutenants (junior grade), and equivalent grades in the Space**
5 **Force**";
6 (B) in subsection (a) in the matter preceding paragraph (1)—
7 (i) by inserting "or an equivalent grade in the Space Force" after
8 "first lieutenant"; and
9 (ii) by inserting "or an equivalent grade in the Space Force" after
10 "captain"; and
11 (C) in subsection (d), by inserting "or an equivalent grade in the Space
12 Force" after "first lieutenant".
13 (25) EFFECT OF FAILURE OF SELECTION FOR PROMOTION: CAPTAINS AND MAJORS OF
14 THE ARMY, AIR FORCE, AND MARINE CORPS AND LIEUTENANTS AND LIEUTENANT
15 COMMANDERS OF THE NAVY.—Section 632 of such title is amended—
16 (A) in the heading, by striking "**and lieutenants and lieutenant**
17 **commanders of the Navy**" and inserting "**, lieutenants and lieutenant**
18 **commanders of the Navy, and equivalent grades in the Space Force**"; and
19 (B) in subsection (a) in the matter preceding paragraph (1), by inserting
20 "or equivalent grades in the Space Force" after "or major".
21 (26) RETIREMENT FOR YEARS OF SERVICE: REGULAR LIEUTENANT COLONELS AND
22 COMMANDERS.—Section 633 of such title is amended—

1 (A) in the heading, by striking "**and commanders**" and inserting "**, commanders, and equivalent grades in the Space Force**"; and

3 (B) in subsection (a)—

4 (i) by inserting "or an equivalent grade in the Space Force" after "lieutenant colonel"; and

6 (ii) by striking "colonel or captain" and inserting "colonel, captain, or an equivalent grade in the Space Force".

8 (27) RETIREMENT FOR YEARS OF SERVICE: REGULAR COLONELS AND NAVY CAPTAINS.—Section 634 of such title is amended—

10 (A) in the heading, by striking "**and Navy captains**" and inserting "**, Navy captains, and equivalent grades in the Space Force**"; and

12 (B) in subsection (a)—

13 (i) by inserting "or an equivalent grade in the Space Force" after "colonel"; and

15 (ii) by striking "brigadier general or rear admiral (lower half)" and inserting "brigadier general, rear admiral (lower half), or an equivalent grade in the Space Force".

18 (28) RETIREMENT FOR YEARS OF SERVICE: REGULAR BRIGADIER GENERALS AND REAR ADMIRALS (LOWER HALF).—Section 635 of such title is amended—

20 (A) in the heading, by striking "**brigadier generals and rear admirals (lower half)**" and inserting "**brigadier generals, rear admirals (lower half), and equivalent grades in the Space Force**";

1 (B) by inserting "or an equivalent grade in the Space Force" after
2 "brigadier general"; and
3 (C) by inserting ", or an equivalent grade in the Space Force," after "major
4 general".
5 (29) RETIREMENT FOR YEARS OF SERVICE: REGULAR OFFICERS IN GRADES ABOVE
6 BRIGADIER GENERAL AND REAR ADMIRAL (LOWER HALF).—Section 636 of such title is
7 amended—
8 (A) in the heading, by striking "**brigadier general and rear admiral**
9 **(lower half)**" and inserting "**brigadier general, rear admiral (lower half), and**
10 **equivalent grades in the Space Force**";
11 (B) in subsection (a)—
12 (i) in the heading, by striking "MAJOR GENERALS AND REAR
13 ADMIRALS" and inserting "MAJOR GENERALS, REAR ADMIRALS, AND
14 EQUIVALENT SPACE FORCE OFFICERS"; and
15 (ii) by inserting "or an equivalent grade in the Space Force" after
16 "major general";
17 (C) in subsection (b)—
18 (i) in the heading, by striking "LIEUTENANT GENERALS AND VICE
19 ADMIRALS" and inserting "LIEUTENANT GENERALS, VICE ADMIRALS, AND
20 EQUIVALENT SPACE FORCE OFFICERS"; and
21 (ii) by striking " lieutenant general or vice admiral" and inserting
22 "lieutenant general, vice admiral, or an equivalent grade in the Space
23 Force"; and

1 (D) in subsection (c)—

2 (i) in the heading, by striking "GENERALS AND ADMIRALS" and

3 inserting "GENERALS, ADMIRALS, AND EQUIVALENT SPACE FORCE

4 OFFICERS"; and

5 (ii) by striking "general or admiral" and inserting "general,

6 admiral, or an equivalent grade in the Space Force".

7 (30) SELECTION OF REGULAR OFFICERS FOR CONTINUATION ON ACTIVE DUTY.—

8 Section 637 of such title is amended—

9 (A) in subsection (a)—

10 (i) in paragraph (2)—

11 (I) by striking "or the regular grade" and inserting "the

12 regular grade";

13 (II) by inserting "or an equivalent grade in the Space

14 Force" after "in the Navy,"; and

15 (III) by striking "major or lieutenant commander" and

16 inserting "major, lieutenant commander, or an equivalent grade in

17 the Space Force"; and

18 (ii) in paragraph (3)—

19 (I) by striking "major or lieutenant commander" and

20 inserting "major, lieutenant commander, or an equivalent grade in

21 the Space Force"; and

1 (II) by striking “lieutenant colonel or commander” and
2 inserting “lieutenant colonel, commander, or an equivalent grade in
3 the Space Force”; and
4 (B) in subsection (b)(2)—
5 (i) in the first sentence, by striking “or rear admiral may” and
6 inserting “rear admiral, or equivalent grades in the Space Force may”; and
7 (ii) in the second sentence, by striking “major general or rear
8 admiral” and inserting “major general, rear admiral, or an equivalent grade
9 in the Space Force”.
10 (31) SELECTIVE EARLY RETIREMENT.—Section 638 of such title is amended—
11 (A) in subsection (a)(1)—
12 (i) in subparagraph (A)—
13 (I) by striking “lieutenant colonel or commander” and
14 inserting “lieutenant colonel, commander, or an equivalent grade in
15 the Space Force”;
16 (II) by inserting “colonel or” and inserting “colonel”; and
17 (III) by inserting “, or an equivalent grade in the Space
18 Force” after “captain”;
19 (ii) in subparagraph (B)—
20 (I) by striking “colonel or” and inserting “colonel,”; and
21 (II) by striking “captain who” and inserting “captain, or an
22 equivalent grade in the Space Force”;

1 (iii) in subparagraph (C), by striking “brigadier general or rear
2 admiral (lower half)” and inserting “brigadier general, rear admiral (lower
3 half), or an equivalent grade in the Space Force”; and
4 (iv) in subparagraph (D), by striking “major general or rear
5 admiral” and inserting “major general, rear admiral, or an equivalent grade
6 in the Space Force”;
7 (B) in subsection (b)—
8 (i) in paragraph (1)(A), by striking “brigadier general or rear
9 admiral (lower half)” and inserting “brigadier general, rear admiral (lower
10 half), or an equivalent grade in the Space Force”; and
11 (ii) in paragraph (2), by striking “or rear admiral” and inserting
12 “rear admiral, or equivalent grades in the Space Force”; and
13 (C) in subsection (c), by striking “brigadier general or rear admiral (lower
14 half)” and inserting “brigadier general, rear admiral (lower half), or an equivalent
15 grade in the Space Force”.
16 (32) DEFINITIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT.—
17 Section 645(1)(A) of such title is amended—
18 (A) in clause (i)—
19 (i) by striking “or captain,” and inserting “captain,”; and
20 (ii) by inserting “or an equivalent grade in the Space Force, for
21 officers of the Space Force,” after “Navy,”; and
22 (B) in clause (ii)—
23 (i) by striking “or captain or” and inserting “captain or”; and

1 (ii) by inserting "or equivalent grades in the Space Force, for
2 officers of the Space Force," after "Navy,".
3 (33) FORCE SHAPING AUTHORITY.—Section 647(a)(2) of such title is amended by
4 striking "of that armed force".
5 (34) MEMBERS: REQUIRED SERVICE.—Section 651(b) of such title is amended by
6 striking "of his armed force".
7 (35) MANAGEMENT POLICIES FOR JOINT QUALIFIED OFFICERS.—Section 661 of
8 such title is amended—
9 (A) in subsection (b)(3)(C)—
10 (i) by striking "captain or," and inserting "captain,"; and
11 (ii) by striking "lieutenant" and inserting "lieutenant, or in the case
12 of the Space Force, an equivalent grade in the Space Force";
13 (B) in subsection (c)—
14 (i) in paragraph (3) in the matter preceding subparagraph (A), by
15 striking "brigadier general or rear admiral (lower half)" and inserting
16 "brigadier general, rear admiral (lower half), or an equivalent grade in the
17 Space Force"; and
18 (ii) in paragraph (5), by striking "brigadier general or rear admiral
19 (lower half)" and inserting "brigadier general, rear admiral (lower half), or
20 an equivalent grade in the Space Force";
21 (C) in subsection (d)—
22 (i) by striking "or, in the" and inserting ", in the"; and

1 (ii) by striking “lieutenant commander” and inserting “lieutenant
2 commander, or in the case of the Space Force, an equivalent grade in the
3 Space Force”; and
4 (D) in subsection (f)—
5 (i) by striking “or, in the” and inserting “, in the”; and
6 (ii) by striking “lieutenant” and inserting “lieutenant, or in the case
7 of the Space Force, an equivalent grade in the Space Force”.
8 (36) CAREER FLEXIBILITY TO ENHANCE RETENTION OF MEMBERS.—Section
9 710(c)(1) of such title is amended by striking “the armed force concerned” and inserting
10 “an armed force”.
11 (37) SENIOR MEMBERS OF MILITARY STAFF COMMITTEE OF UNITED NATIONS.—
12 Section 711 of such title is amended by inserting “or Space Force” after “Air Force”.
13 (38) RANK: CHIEF OF SPACE OPERATIONS.—Chapter 43 of such title is amended—
14 (A) in the table of sections at the beginning by striking the item relating to
15 section 743 and inserting the following new item:

“743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps; Chief of Space Operations.”; and

16 (B) in section 743—
17 (i) in the heading, by inserting “**; Chief of Space Operations**”
18 after “**Commandant of the Marine Corps**”;
19 (ii) by striking “and the Commandant of the Marine Corps” and
20 inserting “the Commandant of the Marine Corps, and the Chief of Space
21 Operations”; and

1 (iii) by striking “and Marine Corps” and inserting “Marine Corps,
2 and Space Force”.
3 (39) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of such title (Uniform
4 Code of Military Justice) is amended—
5 (A) in section 822(a)(7) (article 22), by striking “Marine Corps” and
6 inserting “Marine Corps, or the commanding officer of a corresponding unit of
7 the Space Force”;
8 (B) in section 823(a) (article 23)—
9 (i) in paragraph (2)—
10 (I) by striking “Air Force base” and inserting “Air Force or
11 Space Force military installation”; and
12 (II) by striking “or the Air Force” and inserting “the Air
13 Force, or the Space Force”; and
14 (ii) in paragraph (4), by inserting “or a corresponding unit of the
15 Space Force” after “Air Force”; and
16 (C) in section 824(a)(3) (article 24), by inserting “or a corresponding unit
17 of the Space Force” after “Air Force”.
18 (40) SERVICE AS CADET OR MIDSHIPMAN NOT COUNTED FOR LENGTH OF SERVICE.—
19 Section 971(b)(2) of such title is amended by striking “or Air Force” and inserting “, Air
20 Force, or Space Force”.
21 (41) REFERRAL BONUS.—Section 1030(h)(3) of such title is amended by inserting
22 “and the Space Force” after “concerning the Air Force”.

1 (42) RETURN TO ACTIVE DUTY FROM TEMPORARY DISABILITY.—Section 1211(a) of
2 such title is amended—
3 (A) in the matter preceding paragraph (1), by striking "or the Air Force"
4 and inserting ", the Air Force, or the Space Force"; and
5 (B) in paragraph (6)—
6 (i) by striking "or the Air Force, who" and inserting "the Air Force,
7 or the Space Force who"; and
8 (ii) by striking "or the Air Force, as" and inserting "the Air Force,
9 or the Space Force, as".
10 (43) AGE 62: REGULAR COMMISSIONED OFFICERS IN GRADES BELOW GENERAL AND
11 FLAG OFFICER GRADES; EXCEPTIONS.—Section 1251(a) of such title is amended—
12 (A) by striking "brigadier general or rear admiral (lower half)" and
13 inserting "brigadier general, rear admiral (lower half)"; and
14 (B) by inserting "or an equivalent grade in the Space Force, in the case of
15 the Space Force," after "the Navy,".
16 (44) AGE 64: REGULAR COMMISSIONED OFFICERS IN GENERAL AND FLAG OFFICER
17 GRADES; EXCEPTIONS.—Section 1253(b) of such title is amended by striking "major
18 general or rear admiral" and inserting "major general, rear admiral, or an equivalent
19 grade in the Space Force".
20 (45) COMMISSIONED OFFICERS: GENERAL RULE; EXCEPTIONS.—Section 1370 of
21 such title is amended—
22 (A) in subsection (a)(2)—

1 (i) in subparagraph (A), by striking "major or lieutenant
2 commander" and inserting "major, lieutenant commander, or an equivalent
3 grade in the Space Force";
4 (ii) in subparagraph (E), by striking "lieutenant general or vice
5 admiral" and inserting "lieutenant general, vice admiral, or an equivalent
6 grade in the Space Force";
7 (iii) in subparagraph (F)—
8 (I) by striking "and the number of" and inserting "the
9 number of"; and
10 (II) by inserting "and the number of officers of the Space
11 Force in equivalent grades" after "Navy,";
12 (iv) in subparagraph (G)—
13 (I) by striking "and the total number of" and inserting "the
14 total number of"; and
15 (II) by inserting "and the total number of officers of the
16 Space Force in equivalent grades" after "Navy,";
17 (B) in subsection (c)(1), by striking "general or admiral or lieutenant
18 general or vice admiral" and inserting "general or admiral, lieutenant general or
19 vice admiral, or equivalent grades in the Space Force"; and
20 (C) in subsection (d)—
21 (i) in paragraph (2), by striking "lieutenant colonel or commander"
22 and inserting "lieutenant colonel, commander, or an equivalent grade in
23 the Space Force"; and

1 (ii) in paragraph (3)(A), by striking “major or lieutenant

2 commander” and inserting “major, lieutenant commander, or an equivalent

3 grade in the Space Force”.

4 (46) YEARS OF SERVICE.—Section 1405(c) of such title is amended by striking “or

5 Air Force” and inserting “, Air Force, or Space Force”.

6 (47) RETIRED PAY BASE FOR PERSONS WHO BECAME MEMBERS BEFORE SEPTEMBER

7 8, 1980.—Section 1406 of such title is amended—

8 (A) in the heading of subsection (e), by inserting “AND SPACE FORCE”

9 after “AIR FORCE”; and

10 (B) in subsection (i)(3)—

11 (i) in subparagraph (A)—

12 (I) by redesignating clause (v) as clause (vi); and

13 (II) by inserting after clause (iv) the following new clause:

14 “(v) Chief of Space Operations.”; and

15 (ii) in subparagraph (B)—

16 (I) by redesignating clause (v) as clause (vi); and

17 (II) by inserting after clause (iv) the following new clause:

18 “(v) The senior enlisted advisor of the Space Force.”.

19 (48) SPECIAL REQUIREMENTS FOR MILITARY PERSONNEL IN ACQUISITION FIELD.—

20 Section 1722a(a) of such title is amended by striking “and the Commandant of the

21 Marine Corps (with respect to the Army, Navy, Air Force, and Marine Corps,

22 respectively)” and inserting “, the Commandant of the Marine Corps, and the Chief of

1 Space Operations (with respect to the Army, Navy, Air Force, Marine Corps, and Space
2 Force, respectively)".
3 (49) SENIOR MILITARY ACQUISITION ADVISORS.—Section 1725(e)(1)(C) of such
4 title is amended by inserting "and Space Force" before the period.
5 (50) MILITARY FAMILY READINESS COUNCIL.—Section 1781a(b)(1) of such title
6 is amended by striking "Marine Corps, and Air Force" each place it appears and inserting
7 "Air Force, Marine Corps, and Space Force".
8 (51) FINANCIAL ASSISTANCE PROGRAM FOR SPECIALLY SELECTED MEMBERS.—
9 Section 2107 of such title is amended—
10 (A) in subsection (a)—
11 (i) by striking "or as a" and inserting ", as a"; and
12 (ii) by inserting "or as an officer in an equivalent grade in the
13 Space Force" after "Marine Corps,";
14 (B) in subsection (b)—
15 (i) in paragraph (3), by striking "the reserve component of the
16 armed force in which he is appointed as a cadet or midshipman" and
17 inserting "the reserve component of an armed force"; and
18 (ii) in paragraph (5), by striking "reserve component of that armed
19 force" each place it appears and inserting "reserve component of an armed
20 force"; and
21 (C) in subsection (d), by striking "second lieutenant or ensign" and
22 inserting "second lieutenant, ensign, or an equivalent grade in the Space Force".

(52) SPACE RAPID CAPABILITIES OFFICE.—Section 2273a(d)(3) of such title is amended by striking “United States Strategic Command, acting through the United States Space Command,” and inserting “United States Space Command”.

(53) ACQUISITION-RELATED FUNCTIONS OF CHIEFS OF THE ARMED FORCES.—Section 2547(a) of such title is amended by striking “and the Commandant of the Marine Corps” and inserting “the Commandant of the Marine Corps, and the Chief of Space Operations”.

(54) AGREEMENTS RELATED TO MILITARY TRAINING, TESTING, AND OPERATIONS—Section 2684a(i) of such title is amended by inserting “Space Force,” before “or Defense-wide activities” each place it appears.

(d) PROVISIONS OF SUBTITLE B.—

(1) IN GENERAL.—Subtitle B of such title is amended by striking “or Marine Corps” each place it appears and inserting “Marine Corps, or Space Force” in the following provisions:

(A) Section 7452(c).

(B) Section 7621(d).

(2) COMPUTATION OF YEARS OF SERVICE.—Section 7326(a)(1) of such title is amended by striking “or the Air Force” and inserting “, the Air Force, or the Space Force”.

(e) PROVISIONS OF SUBTITLE C.—

(1) IN GENERAL.—Subtitle C of such title is amended by striking “or Marine Corps” each place it appears and inserting “Marine Corps, or Space Force” in the following provisions:

1 (A) Section 8464(f).

2 (B) Section 8806(d).

3 (2) SALES PRICES.—Chapter 879 of such title is amended—

4 (A) in the table of sections at the beginning by striking the item relating to

5 section 8802 and inserting the following:

"8802. Sales: members of Army, Air Force, and Space Force; prices."; and

6 (B) in section 8802—

7 (i) in the heading, by striking "**and Air Force**" and inserting "**, Air**

8 **Force, and Space Force**"; and

9 (ii) by striking "or the Air Force" and inserting ", the Air Force, or

10 the Space Force".

11 (3) SALES TO CERTAIN VETERANS.—Section 8803 of such title is amended by

12 striking "or the Marine Corps" and inserting "the Marine Corps, or the Space Force".

13 (4) SCOPE OF CHAPTER ON PRIZE.—Section 8851 of such title is amended by

14 striking "or the Air Force" and inserting ", the Air Force, or the Space Force".

15 **SEC. 934. PAY AND ALLOWANCES.**

16 (a) DEFINITIONS.—Section 101 of title 37, United States Code, is amended—

17 (1) in paragraphs (3) and (4), by inserting "Space Force," after "Marine Corps,"

18 each place it appears; and

19 (2) in paragraph (5)(C), by inserting "and the Space Force" after "Air Force".

20 (b) BASIC PAY RATES.—

21 (1) COMMISSIONED OFFICERS.—Footnote 2 of the table titled "COMMISSIONED

22 OFFICERS" in section 601(c) of the John Warner National Defense Authorization Act for

1 Fiscal Year 2007 (Public Law 109-364; 37 U.S.C. 1009 note) is amended by inserting

2 after "*Commandant of the Marine Corps,*" the following: "*Chief of Space Operations,*".

3 (2) ENLISTED MEMBERS.— Footnote 2 of the table titled "ENLISTED MEMBERS" in

4 section 601(c) of the John Warner National Defense Authorization Act for Fiscal Year

5 2007 (Public Law 109-364; 37 U.S.C. 1009 note) is amended by inserting after "*Sergeant*

6 *Major of the Marine Corps,*" the following: "*the senior enlisted advisor of the Space*

7 *Force,*".

8 (c) PAY GRADES: ASSIGNMENT TO; GENERAL RULES.—Section 201(a) of title 37, United

9 States Code, is amended—

10 (1) by striking "(a) For the purpose" and inserting "(a)(1) Subject to paragraph

11 (2), for the purpose"; and

12 (2) by adding at the end the following new paragraph:

13 "(2) For the purpose of computing their basic pay, commissioned officers of the Space

14 Force are assigned to the pay grades in the table in subsection (a) by grade or rank in the Air

15 Force that is equivalent to the grade or rank in which such officers are serving in the Space

16 Force.".

17 (d) PAY OF SENIOR ENLISTED MEMBERS.—Section 210(c) of such title is amended—

18 (1) by redesignating paragraph (5) as paragraph (6); and

19 (2) by inserting after paragraph (4) the following new paragraph (5):

20 "(5) The senior enlisted advisor of the Space Force.".

21 (e) ALLOWANCES OTHER THAN TRAVEL AND TRANSPORTATION ALLOWANCES.—

22 (1) PERSONAL MONEY ALLOWANCE.—Section 414 of such title is amended—

1 (A) in subsection (a)(5), by inserting “Chief of Space Operations,” after
2 “Commandant of the Marines Corps,”; and
3 (B) in subsection (b), by inserting “the senior enlisted advisor of the Space
4 Force,” after “the Sergeant Major of the Marine Corps,”.
5 (2) CLOTHING ALLOWANCE: ENLISTED MEMBERS.—Section 418(d) of such title is
6 amended—
7 (A) in paragraph (1), by inserting “Space Force,” after “Air Force,”; and
8 (B) in paragraph (4), by inserting “the Space Force,” after “the Air
9 Force,”.
10 (f) TRAVEL AND TRANSPORTATION ALLOWANCES: PARKING EXPENSES.—Section 481i(b)
11 of such title is amended by striking “or Marine Corps” and inserting “Marine Corps, or Space
12 Force”.
13 (g) LEAVE.—
14 (1) ADDITION OF SPACE FORCE.—Chapter 9 of such title is amended by inserting
15 “Space Force,” after “Marines Corps,” each place it appears in the following provisions:
16 (A) Subsections (b)(1) and (e)(1) of section 501.
17 (B) Section 502(a).
18 (C) Section 503(a).
19 (2) ADDITION OF REGULAR SPACE FORCE.—Section 501(b)(5)(C) of such title is
20 amended by striking “or Regular Marine Corps” and inserting “Regular Marine Corps, or
21 Regular Space Force”.
22 (h) ALLOTMENT AND ASSIGNMENT OF PAY.—Subsections (a), (c), and (d) of section 701
23 of such title are each amended by inserting “Space Force,” after “Air Force,”.

(i) FORFEITURE OF PAY—Chapter 15 of such title is amended—

(1) in section 802, by striking “or Marine Corps” and inserting “Marine Corps, or Space Force”; and

(2) in section 803, by striking “or the Air Force” and inserting “, the Air Force, or the Space Force”.

(j) EFFECT ON PAY OF EXTENSION OF ENLISTMENT.—Section 906 of such title is amended by inserting “Space Force,” after “Marine Corps,”.

(k) ADMINISTRATION OF PAY.—Chapter 19 of such title is amended—

(1) in section 1005, by striking “and of the Air Force” and inserting “, the Air Force, and the Space Force”; and

(2) in section 1007—

(A) in subsections (b), (d), (f), and (g), by striking “or the Air Force” and inserting “, the Air Force, or the Space Force”; and

(B) in subsection (e), by striking “or Marine Corps” and inserting “Marine Corps, or Space Force”.

SEC. 935. VETERANS’ BENEFITS.

(a) REFERENCES TO MILITARY, NAVAL, OR AIR SERVICE AMENDED TO ADD SPACE SERVICE.—Title 38, United States Code, is amended by striking “or air service” and inserting “air, or space service” each place it appears in the following provisions:

(1) Paragraphs (2), (5), (12), (16), (17), (18), and (24) of section 101.

(2) Section 105.

(3) Section 106.

(4) Section 1101.

1 (5) Section 1103.

2 (6) Section 1110.

3 (7) Section 1112.

4 (8) Section 1113.

5 (9) Section 1131.

6 (10) Section 1132.

7 (11) Section 1133.

8 (12) Section 1137.

9 (13) Section 1141.

10 (14) Section 1153.

11 (15) Section 1301.

12 (16) Section 1302.

13 (17) Section 1310.

14 (18) Section 1521(j).

15 (19) Section 1541(h).

16 (20) Section 1710(a)(2)(B).

17 (21) Section 1712.

18 (22) Section 1712A.

19 (23) Section 1717.

20 (24) Section 1720A.

21 (25) Section 1720D.

22 (26) Section 1720E.

23 (27) Section 1720G.

1 (28) Section 1720I.
2 (29) Section 1781.
3 (30) Section 1783.
4 (31) Section 1922.
5 (32) Section 2002.
6 (33) Section 2101A.
7 (34) Section 2301.
8 (35) Section 2302.
9 (36) Section 2303.
10 (37) Section 2306.
11 (38) Section 2402(a)(1).
12 (39) Section 3018B.
13 (40) Section 3102.
14 (41) Section 3103.
15 (42) Section 3113.
16 (43) Section 3501.
17 (44) Section 3512.
18 (45) Section 3679.
19 (46) Section 3701.
20 (47) Section 3712.
21 (48) Section 3729.
22 (49) Section 3901.
23 (50) Section 5103A.

1 (51) Section 5110.

2 (52) Section 5111.

3 (53) Section 5113.

4 (54) Section 5303.

5 (55) Section 6104.

6 (56) Section 6105.

7 (57) Section 6301.

8 (58) Section 6303.

9 (59) Section 6304.

10 (60) Section 8301.

11 (b) DEFINITIONS.—

12 (1) ARMED FORCES.—Paragraph (10) of section 101 of such title is amended by

13 inserting “Space Force,” after “Air Force,”.

14 (2) SECRETARY CONCERNED.—Paragraph (25)(C) of such section is amended by

15 inserting “or the Space Force” before the semicolon.

16 (3) FORMER PRISONER OF WAR.—Paragraph (32) of such section is amended by

17 striking “naval or air service” and inserting “naval, air, or space service”.

18 (c) PLACEMENT OF EMPLOYEES IN MILITARY INSTALLATIONS.—Section 701 of such title is

19 amended—

20 (1) by striking “and Air Force” and inserting “Air Force, and Space Force”; and

21 (2) by striking “or air service” and inserting “air, or space service”.

1 (d) CONSIDERATION TO BE ACCORDED TIME, PLACE, AND CIRCUMSTANCES OF SERVICE.—
2 Section 1154(b) of such title is amended by striking “or air organization” and inserting “air, or
3 space organization”.
4 (e) SPECIAL PROVISIONS RELATING TO PENSION.—
5 (1) IN GENERAL.—Section 1562(a) of such title is amended by inserting “Space
6 Force,” after “Air Force,” both places it appears.
7 (2) SUBCHAPTER HEADING.—The heading of subchapter IV of chapter 15 of such
8 title is amended by inserting “**SPACE FORCE,**” after “**AIR FORCE,**”, and the item
9 relating to such subchapter in the table of sections at the beginning of chapter 15 of such
10 title is amended by inserting “SPACE FORCE,” after “AIR FORCE,”.
11 (f) PREMIUM PAYMENTS.—Section 1908 of such title is amended by inserting “Space
12 Force,” after “Marine Corps,”.
13 (g) SECRETARY CONCERNED.—Section 3020(l)(3) of such title is amended by inserting
14 “or the Space Force” before the semicolon.
15 (h) DEFINITIONS.—Section 3301(2)(C) of such title is amended by inserting “or the Space
16 Force” after “Air Force”.
17 (i) PROVISION OF CREDIT PROTECTION AND OTHER SERVICES.—Section 5724(c)(2) of
18 such title is amended by striking “or Marine Corps” and inserting “Marine Corps, or Space
19 Force”.
20 **SEC. 936. OTHER PROVISIONS OF THE UNITED STATES CODE.**
21 (a) TITLE 5; DEFINITION OF ARMED FORCES.—Section 2101(2) of title 5, United States
22 Code, is amended by inserting after “Marine Corps,” the following: “Space Force,”.
23 (b) TITLE 14.—

1 (1) VOLUNTARY RETIREMENT.—Section 2152 of title 14, United States Code, is
2 amended by striking "or Marine Corps" and inserting "Marine Corps, or Space Force".
3 (2) COMPUTATION OF LENGTH OF SERVICE.—Section 2513 of such title is amended
4 by inserting after "Air Force," the following: "Space Force,".
5 (c) TITLE 18; FIREARMS AS NONMAILABLE.—Section 1715 of such title is amended by
6 inserting "Space Force," after "Marine Corps,".
7 (d) TITLE 31.—
8 (1) DEFINITIONS RELATING TO CLAIMS.—Section 3701(a)(7) of title 31, United
9 States Code, is amended by inserting "Space Force," after "Marine Corps,".
10 (2) COLLECTION AND COMPROMISE.—Section 3711(f) of such title is amended in
11 paragraphs (1) and (3) by inserting "Space Force," after "Marine Corps," each place it
12 appears.
13 (e) TITLE 41; HONORABLE DISCHARGE CERTIFICATE IN LIEU OF BIRTH CERTIFICATE.—
14 Section 6309 of title 41, United States Code, is amended by inserting "Space Force," after
15 "Marine Corps,".
16 (f) TITLE 51; POWERS OF THE ADMINISTRATION IN PERFORMANCE OF FUNCTIONS.—
17 Section 20113(l) of title 51, United States Code, is amended by striking "and Marine Corps" and
18 inserting "Marine Corps, and Space Force".
19 **SEC. 937. APPLICABILITY TO OTHER PROVISIONS OF LAW.**
20 (a) SECRETARY OF DEFENSE AUTHORITY.—The authority of the Secretary of Defense with
21 respect to the Air Force or members of the Air Force under any covered provision of law may be
22 exercised by the Secretary with respect to the Space Force or members of the Space Force.

1 (b) SECRETARY OF THE AIR FORCE AUTHORITY.—The authority of the Secretary of the
2 Air Force with respect to the Air Force or members of the Air Force under any covered provision
3 of law may be exercised with respect to the Space Force or members of the Space Force.
4 (c) BENEFITS FOR MEMBERS.—A member of the Space Force shall be eligible for any
5 benefit under a covered provision of law that is available to a member of the Air Force under the
6 same terms and conditions as the provision of law applies to members of the Air Force.
7 (d) COVERED PROVISION OF LAW DEFINED.—In this section, the term "covered provision
8 of law" means a provision of law other than a provision of title 5, 10, 14, 18, 31, 37, 38, 41, or
9 51, United States Code.

Section-by-Section Analysis

This legislative proposal would make technical and conforming changes to various provisions of existing law in title 10 and other relevant titles of the United States Code (USC) that are necessary to fully integrate the Space Force into current law following the establishment of the Space Force by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020

This proposal makes the necessary conforming amendments to provisions of law in the relevant titles of the USC that have been enacted as positive law. The vast majority of these amendments are to titles 10 and 37 of the USC, the principal titles involving authorities of the Armed Forces and pay and benefits for the uniformed services. Additional conforming changes are also needed in titles 5, 14, 18, 31, 38, 41, and 51 as various provisions relate specifically to the Armed Forces or members of the Armed Forces. These amendments are largely intended to insert "Space Force" where existing law currently addresses the "Army, Navy, Air Force, and Marine Corps".

Notably, in amending the provisions relevant to military members serving in specific grades, the proposal inserts references to officers of the Space Force serving in an equivalent grade to an officer in the Air Force. The Department is currently engaged in an evaluation of the appropriate grade structure for the Space Force and this proposal allows Space Force members to be treated equally to their counterparts in the other Armed Forces, while maintaining the opportunity for the Department to determine the appropriate grade structure for the Space Force.

Additionally, in section 931 the proposal clarifies that the function of the Space Force is to organize, train, and equip forces; clarifies that the Chief of Space Operations should be selected from officers of the Space Force or Air Force and, beginning four years after establishment, only the Space Force; and repeals the requirement for an officer career field for space in the Air Force. Section 937 is a general savings provision to ensure that with respect to any provision of law not addressed by the proposal that involves an authority of the Secretary of Defense or the Secretary of the Air Force with respect to the Air Force, the relevant Secretary can exercise the same authority with respect to the Space Force. The savings provision also allows members of the Space Force to be treated the same as other members of the Armed Forces under other provisions of law that were not specifically amended to reference Space Force members.

SEC. __. UPDATING INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY.

(a) IN GENERAL.—Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 2687 note) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless and indemnify in full the persons and entities described in paragraph (2) from any suit, liability, or judgment arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property) that results from the release of any hazardous substance or pollutant or contaminant as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law."; and

(B) in paragraph (3), by striking "or threatened release";

(2) in subsection (b)(4), by striking "defending or";

(3) in subsection (c)(1)—

(A) by striking "payments to" and all that follows through "referred to in" and inserting "payments under"; and

(B) by striking "or defend"; and

(4) in subsection (d)—

(A) by striking "or threatened release"; and

(B) by striking "or petroleum or petroleum derivative".

1 (b) SOURCE OF FUNDS.—Subsection (c) of such section is further amended by adding at
2 the end the following new paragraph:
3 "(3) Notwithstanding any other provision of law, funds made available under section
4 1304 of title 31, United States Code, shall be available to pay claims in excess of $100,000 that
5 are otherwise payable under this section.".
6 (c) RELATIONSHIP TO FEDERAL CLEANUP LAW.—Subsection (e) of such section is
7 amended to read as follows:
8 "(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as
9 affecting or modifying in any way any provision of the Comprehensive Environmental
10 Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et. seq.). Any claim for
11 environmental remediation or cleanup costs or natural resource damages may not be pursued
12 under this section.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would update and clarify Section 330 of the National Defense Authorization Act for Fiscal Year 1993. It addresses three issues: 1) the duty to defend requirement, 2) funding for indemnification, and 3) cases extending Section 330's requirements to cleanup costs. Since its passage over twenty five years ago, DoD has had a limited number of requests for DoD to "defend" a private party identified in subsection (a)(2). DoD, however, is not authorized to represent these private or State parties, and lacks independent litigation authority in accordance with 5 U.S.C. §3106. The President's signing statement for the FY1993 NDAA contained specific statements concerning Section 330's duty to defend, including that "the Secretary of Defense will 'settle or defend' claims in litigation through attorneys provided by the Department of Justice."[1] The Department of Justice conducts all litigation in which DoD

[1] Presidential signing statement accompanying the 1993 National Defense Authorization Act, Public Law 102-484 ("I also note that section 330, under which the Secretary of Defense may 'settle or defend' certain claims, should not be understood to detract from the Attorney General's plenary litigating authority. Accordingly, to the extent provided in current law, the Secretary of Defense will 'settle or defend' claims in litigation through attorneys provided by the Department of Justice."). See also, 83 Fed. Reg. 34471, 34472 (July 20, 2018) (stating that, for litigation under section 330, "it is understood that the DoD will act through the [DOJ] when appearing before the courts").

has an interest or is a party in accordance with 28 U.S.C. § 516, and has determined that it is unable to defend the enumerated entities in Section 330 due to inherent conflicts of interest. For these reasons, DoD is proposing to delete the duty to defend requirement from subsections (a)(1) and (b)(4) in Section 330, as it cannot be practically implemented. The duty to "hold harmless and indemnify in full" remains in Section 330.

This proposal also provides a specific source of funding. Section 330 and its legislative history are silent as to the source of funds appropriate to cover indemnity requests. While the base closure laws were evaluated by DoD, funds appropriated in accordance with the applicable Base Closure and Realignment Act can only be used for specific purposes that do not extend to the indemnification requests received. The Judgment Fund is a permanent, indefinite appropriation which is generally available to pay amounts owed by the United States, under judgments, compromise settlements and certain administrative awards. 73 Comp. Gen. 46 (1993). Since Section 330's enactment, DoD has certified that no DoD funds are available to settle claims brought pursuant to Section 330, and those claims and judgments were instead paid from the Judgment Fund. In accordance with this historical practice, and consistent with 10 U.S.C. §2733[2], which established a similar structure for personal injury and property damage claims for DoD, DoD proposes to insert a new subsection (c)(3) into Section 330 which allows the use of DoD funds to settle meritorious Section 330 claims up to $100,000, and the Judgment Fund for amounts over $100,000. This limit is needed as DoD recently published regulations at 32 CFR 175.1-.6 to provide for an administrative claims process for Section 330.

This proposal also addresses court cases that have extended Section 330 to cleanup costs, rather than recognizing that this provision is limited to "any claim for personal injury or property damage". Additionally, these cases did not acknowledge that Section 330 already contained a provision concerning the federal cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and CERCLA provides its own cost recovery process. Cases such as *Indian Harbor Ins. Co. v. U.S.*, 704 F.3d 949 (Fed. Cir. 2013), and *Richmond Am. Homes of Colo., Inc. v. U.S.*, 75 Fed. Cl. 376 (2007), allowed reimbursement for environmental cleanup costs under Section 330, by pointing to phrases such as "cost or other fee", "economic loss", "demand or action" or "threatened release." In addition to deleting these phrases to clarify the intent of Section 330, subsection (e) of section 330 will clarify that claims for environmental remediation or cleanup costs, must be pursued under CERCLA and not under Section 330. The proposal also deletes "or petroleum or petroleum derivative" in order to make the provision consistent with CERCLA.

Budget Implications: No budget impact.

Changes to Existing Law: This proposal would make the following changes to section 330 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 2687 note):

SEC. 330. INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY.

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[2] 10 U.S.C. §2733(d) states that if the Secretary considers that a claim for personal injury or property damage "in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31."

(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless~~, defend,~~ and indemnify in full the persons and entities described in paragraph (2) from ~~and against~~ any suit, ~~claim, demand or action,~~ liability, or judgment~~, cost or other fee~~ arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property ~~or economic loss~~) that results from~~, or is in any manner predicated upon,~~ the release ~~or threatened release~~ of any hazardous substance or pollutant or contaminant, ~~or petroleum or petroleum derivative~~ as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

(2) The persons and entities described in this paragraph are the following:

(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release ~~or threatened release~~, paragraph (1) shall not apply.

(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of ~~defending or~~ settling the claim or action.

(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments ~~to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in~~ under subsection (a)(1), the Secretary may settle ~~or defend~~, on behalf of that person, the claim for personal injury or property damage.

(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle ~~or defend~~
the claim, the person may not be afforded indemnification with respect to that claim under this section.

(3) Notwithstanding any other provision of law, funds made available under section 1304 of title 31, United States Code, shall be available to pay claims in excess of $100,000 that are otherwise payable under this section.

(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release ~~or threatened release~~ of a hazardous substance or pollutant or contaminant ~~or petroleum or petroleum derivative~~ as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way ~~section 120(h)~~ any provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et. seq. ~~9620(h)~~). Any claim for environmental remediation or cleanup costs or natural resource damages may not be pursued under this section.

(f) DEFINITIONS.—In this section:

(1) The terms “facility”, “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601 (9), (14), (22), and (33)).

(2) The term “military installation” has the meaning given such term under section 2687(e)(1) of title 10, United States Code.

(3) The term “base closure law” means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act.