1 **SEC. ___. AMENDMENTS RELATING TO LIFE CYCLE MANAGEMENT AND**

2 **PRODUCT SUPPORT.**

3 Section 2337(b)(2) of title 10, United States Code, is amended—

4 (1) by striking “and” at the end of subparagraph (H);

5 (2) by striking the period at the end of subparagraph (I) and inserting a semicolon;

6 and

7 (3) by adding at the end the following new subparagraphs:

8 “(J) ensure the product support arrangements include product support

9 integrator and product support provider participation in the development of the

10 supply catalog and the standardization program to eliminate overlapping and

11 duplicate specifications and reduce the number of items that are generally similar;

12 and

13 “(K) ensure the product support arrangements identify the responsibilities

14 of the product support integrators or product support providers to notify

15 responsible Department of Defense officials on all issues identified that could

16 result in the loss, or impending loss, of manufacturers or suppliers of items, raw

17 materials, or software.”.

Section-by-Section Analysis

This proposal would amend section 2337 of title 10, United States Code, by specifying two new Product Support Manager (PSM) responsibilities. The first new responsibility will require the PSM to ensure manufacturers and sources of supply of parts are included in weapon system programs of the Department of Defense (DoD), and work together to develop the supply catalog and in the standardization program to streamline item specifications and item count. The purpose of this change is to provide a single catalog system with standardized information and reduced duplication to help the Military Departments, the Defense Logistics Agency (DLA), and the General Services Administration (GSA) operate more efficiently. Lack of manufacturer participation in the catalog system and standardization program has already lead to significant

overlap and duplication of similar items, which increases the burden to maintain the Defense Supply Catalog, and creates inefficiencies for users of the catalog (i.e. the Military services, the DLA, and the GSA). Requiring manufacturers and suppliers to participate in the supply catalog and standardization programs will streamline supply operations and improve support to the Warfighter.

The second new responsibility requires the PSM to direct manufacturers and sources of supply of parts included in DoD weapon systems programs to notify the Product Support management team on all issues identified that could result in the loss, or impending loss, of manufacturers or suppliers of items, raw materials, or software for the weapon system. Too often the DoD is only notified after an actual loss has occurred which can cause production slips, or out-of-cycle re-designs. An example of this after–the-fact notification occurred when the DoD was notified two years after a manufacturer decided to stop production on a key electronic micro-switch found within the Hellfire missile which was also found in several other missile systems. Without a massive, OSD-led management review and top-down execution oversight, the DoD could have run out of micro-switch inventory, preventing the manufacture of hundreds of valuable missiles.

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. This proposal is not expected to increase the overall budget requirements of the DoD since the new requirements require the PSM to develop the appropriate methodology to gain contractor cooperation on supply catalog data, standardization, and notification of impeding manufacture and supply losses.

Changes to Existing Law: This proposal would amend section 2337 of title 10, United States Code, as follows:

§ 2337. Life-cycle management and product support

(a) Guidance on Life-Cycle Management.—The Secretary of Defense shall issue and maintain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) Product Support Managers.—

(1) Requirement.— The Secretary of Defense shall require that each major weapon system be supported by a product support manager in accordance with this subsection.

(2) Responsibilities.—A product support manager for a major weapon system shall—

(A) develop and implement a comprehensive product support strategy for the weapon system;

(B) use appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy, including cost-benefit analyses as outlined in Office of Management and Budget Circular A–94;

(D) ensure achievement of desired product support outcomes through development and implementation of appropriate product support arrangements;

(E) adjust performance requirements and resource allocations across product support integrators and product support providers as necessary to optimize implementation of the product support strategy;

(F) periodically review product support arrangements between the product support integrators and product support providers to ensure the arrangements are consistent with the overall product support strategy;

(G) prior to each change in the product support strategy or every five years, whichever occurs first, revalidate any business-case analysis performed in support of the product support strategy;

(H) ensure that the product support strategy maximizes small business participation at the appropriate tiers; ~~and~~

(I) ensure that product support arrangements for the weapon system describe how such arrangements will ensure efficient procurement, management, and allocation of Government-owned parts inventories in order to prevent unnecessary procurements of such parts~~.~~ ;

(J) ensure the product support arrangements include product support integrator and product support provider participation in the development of the supply catalog and the standardization program to eliminate overlapping and duplicate specifications and reduce the number of items that are generally similar; and

(K) ensure the product support arrangements identify the responsibilities of the product support integrators or product support providers to notify responsible Department of Defense officials on all issues identified that could result in the loss, or impending loss, of manufacturers or suppliers of items, raw materials, or software.

(c) Definitions.—In this section:

(1) Product support.— The term “product support” means the package of support functions required to field and maintain the readiness and operational capability of major weapon systems, subsystems, and components, including all functions related to weapon system readiness.

(2) Product support arrangement.—The term “product support arrangement” means a contract, task order, or any type of other contractual arrangement, or any type of agreement or non-contractual arrangement within the Federal Government, for the

performance of sustainment or logistics support required for major weapon systems, subsystems, or components. The term includes arrangements for any of the following:

(A) Performance-based logistics.

(B) Sustainment support.

(C) Contractor logistics support.

(D) Life-cycle product support.

(E) Weapon systems product support.

(3) Product support integrator.—The term “product support integrator” means an entity within the Federal Government or outside the Federal Government charged with integrating all sources of product support, both private and public, defined within the scope of a product support arrangement.

(4) Product support provider.—The term “product support provider” means an entity that provides product support functions. The term includes an entity within the Department of Defense, an entity within the private sector, or a partnership between such entities.

(5) Major weapon system.—The term “major weapon system” means a major system within the meaning of section 2302d(a) of this title.

1 **SEC. ___. AVENUES OF APPEAL FOR CLAIMS UNDER THE FAIR LABOR**

2 **STANDARDS ACT OF 1938.**

3 Section 18 of the Fair Labor Standards Act of 1938 (29 U.S.C. 218) is amended by

4 adding at the end the following new subsection:

5 "(c)(1) Notwithstanding any other provision of law, challenges to—

6 "(A) exemption status determinations;

7 "(B) entitlements to minimum wage; or

8 "(C) overtime pay,

9 for work covered by this Act by Federal employees covered by part 551 of title 5, Code of

10 Federal Regulations, shall be processed exclusively using either the claims process prescribed in

11 section 551.705 of such title or through applicable judicial review.

12 "(2) This subsection applies to all current and future challenges and supersedes

13 government-wide regulations containing contrary provisions.".

[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 18 of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. 218) to limit FLSA challenges by Federal employees to either the claims process detailed in the Office of Personnel Management (OPM) regulation at section 551.705 of title 5, Code of Federal Regulations (CFR) or through judicial review. This proposal will preclude FLSA challenges under the terms of a negotiated grievance procedure and ensure more consistent, timely reviews of FLSA claims. It would affect all Federal employees, regardless of funding source.

Presently, employees within a bargaining unit are required to use the negotiated grievance procedure if they wish to challenge FLSA exemption status or overtime entitlements and the matter is not excluded from the scope of the applicable negotiated grievance procedure. If unresolved, the grievances are ultimately raised to arbitration. A decision on the matter is then rendered by a third-party arbitrator, typically a non-Federal attorney or educator with no training or experience with the complexity of FLSA and Federal overtime entitlements. Arbitrators'

decisions can vary widely, even in grievances with a similar fact pattern, thus preventing consistent, accurate application of the FLSA requirements.

Without this proposal, arbitrators, without FLSA expertise, will continue to render wildly inconsistent decisions in FLSA cases providing grievants significant monetary awards. These arbitration holdings fail to give the Government a reliable body of law on which it may build responsive and correct personnel policies. Such decisions may deviate widely from the relevant provisions of the FLSA. Significantly, arbitrators' awards are subject to very limited review by the Federal Labor Relations Authority (the Authority). In the Authority's review of awards, an arbitrator's interpretations of the facts and their remedies is not normally subject to review.

This legislation would remove arbitrators and the Authority from addressing FLSA challenges and, instead, have the employees' agencies, OPM, or the courts determine whether the agency complied with FLSA requirements. In addition to problems with consistency and correctness, negotiated grievances and arbitration concerning FLSA can take years to reach final resolution. Once a grievance is filed, there is frequently lengthy discovery, numerous steps of the grievance or arbitration process, and possible exceptions filed with the Authority. These steps can delay final resolution of the FLSA claim for many years. Some cases may take over a decade to reach final resolution.

The issues with negotiated grievance procedures are not present with the agency or OPM review process. 5 CFR 551.706 requires FLSA claims filed with the agency or OPM to contain specific and comprehensive information regarding the claim at the time it is submitted. The OPM review process is typically much shorter. As an example, in an overtime entitlement case, OPM issued a decision within five months of receipt. *See* OPM decision number F-0025-09-03. While OPM may take longer than this to resolve some cases, the agency/OPM channels of review are considerably less time consuming and consequently more fair to the parties.

If this proposal is enacted, employees will have all the options available in 5 CFR 551.705 to seek review of an FLSA determination. This will ensure that individuals or organizations with expertise in FLSA will render determinations regarding FLSA appeals or challenges. It will also help expedite such decisions and reduce the period of time to resolve disputes among the parties, which frequently interfere with overall mission accomplishment.

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 potential for economic savings would be reflected in fewer divergent arbitration decisions awarding unjustified backpay or payments settling grievances without fully addressing the merits of the claims. As for manpower savings, that could be realized by eliminating negotiated grievances over FLSA matters; while we may see a reduction in manpower needed to process the negotiated grievances, such reductions would be offset by the potential increase in manpower needed by the agencies to address the increased FLSA claims filed with the agency. As such, this legislation would result in a realignment but not reduction of manpower.

Changes to Existing Law: This proposal would make the following changes to section 18 of the Fair Labor Standards Act (29 U.S.C. 218):

§ 18. Relation to other laws

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

(b) Notwithstanding any other provision of this chapter (other than section 213(f) of this title) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, or

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 207(a)(1) of this title.

(c)(1) Notwithstanding any other provision of law, challenges to—

(A) exemption status determinations;

(B) entitlements to minimum wage; or

(C) overtime pay,

for work covered by this Act by Federal employees covered by part 551 of title 5, Code of Federal Regulations, shall be processed exclusively using either the claims process prescribed in section 551.705 of such title or through applicable judicial review.

(2) This subsection applies to all current and future challenges and supersedes government-wide regulations containing contrary provisions.

1 **SEC. ___. CRITERIA FOR CERTAIN CURRENT AND FORMER LAW**
2 **ENFORCEMENT OFFICERS TO CARRY CONCEALED WEAPONS.**

3 (a) CURRENT LAW ENFORCEMENT OFFICERS.—Section 926B of title 18, United States
4 Code, is amended—

5 (1) in subsection (c)—

6 (A) in paragraph (5), by striking "and" at the end;

7 (B) in paragraph (6), by striking the period at the end and inserting ";
8 and"; and

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

10 "(7) if qualifying based on employment with the Department of Defense, the
11 Secretary concerned may require satisfactory completion of an on-the-job
12 probationary period sufficient to demonstrate the individual's competence and ability
13 prior to certification as a qualified law enforcement officer.";

14 (2) by redesignating subsections (e) and (f) and subsections (f) and (g),
15 respectively; and

16 (3) by inserting after subsection (d) the following new subsection:

17 "(e) If an individual is unable to possess a firearm or ammunition under section
18 922(g) of this title—

19 "(1) the individual's identification required by subsection (d) is null and void;
20 and

21 "(2) the individual shall—

22 "(A) lose the individual's status as a qualified law enforcement officer
23 under this section; and

1 "(B) immediately surrender the individual's identification required by
2 subsection (d) to the issuing agency for the purpose of, as determined by the
3 agency—
4 "(i) destruction; or
5 "(ii) annotation that clearly indicates that the individual is not
6 authorized to carry a firearm.".
7 (b) FORMER LAW ENFORCEMENT OFFICERS.—Section 926C of such title is amended—
8 (1) by redesignating subsection (e) as subsection (f); and
9 (2) by inserting after subsection (d) the following new subsection:
10 "(e) If an individual is unable to possess a firearm or ammunition under section
11 922(g) of this title—
12 "(1) the individual's identification required by subsection (d) is null and void;
13 and
14 "(2) the individual shall—
15 "(A) lose the individual's status as a qualified retired law enforcement
16 officer under this section; and
17 "(B) immediately surrender the individual's identification required by
18 subsection (d) to the issuing agency for the purpose of, as determined by the
19 agency—
20 "(i) destruction; or
21 "(ii) annotation that clearly indicates that the individual is not
22 authorized to carry a firearm.".

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 926B of title 18, United States Code, to authorize a Service Secretary to implement a probationary period before classification of a Department of Defense law enforcement official as a "qualified law enforcement officer" for the purposes of carrying a concealed weapon under that section. Additionally, this proposal would amend sections 926B and 926C of such title to require that an individual convicted of an offense punishable by more than one year in prison, a misdemeanor for domestic violence, or otherwise prohibited under Federal law from possessing or receiving a firearm to surrender for destruction or annotation the identification card authorizing the individual to carry a concealed firearm.

Currently, an 18-year-old Service member who just graduated from a Service's law enforcement/military police training school meets the requirements on his or her first day on the job to be a "qualified law enforcement officer" under section 926B(c) of such title and is therefore authorized to carry a concealed firearm. There is no mandated "on-the-job" probationary period to monitor job performance prior to being a "qualified law enforcement officer." This proposal would authorize the Service Secretary concerned to impose a probationary period ensuring that the respective Services have a degree of control with regards to when a law enforcement officer within DOD is qualified to carry a concealed weapon under this statute.

Under section 922(g) of such title, an individual with a conviction punishable by imprisonment for a term exceeding one year, a misdemeanor conviction for domestic violence, or a host of other criteria is not authorized to possess a firearm. While section 922(g) still applies to current or former law enforcement officers who possess identification cards under section 926B or 926C of such title, nothing in these latter statutes requires an individual to surrender the individual's identification card upon losing the right to possess or receive a firearm under section 922(g). This proposal would close this gap and require an individual who loses the right to possess a firearm to surrender for destruction or annotation the identification card that otherwise would authorize the individual to carry a concealed firearm.

This proposal will ensure military law enforcement officials have demonstrated competence and ability prior to meeting the definition of a "qualified law enforcement officer." Additionally, if a "qualified law enforcement officer" commits a disqualifying offense, the individual must surrender for destruction or annotation the individual's credential/qualified law enforcement officer identification card authorizing concealed carry of a firearm.

Budget Implications: This proposal has no budgetary impact. This action will not have any impact on current or future Department of Defense or Service component budgets. The onus to turn-in an invalid Law Enforcement Officer Safety Act (LEOSA) credential rests with the individual. The current level of effort by the Army Office of the Provost Marshal General, through its standard operating procedures, accounts for the LEOSA credentials record management and supported within its program. Application and costs for processing LEOSA credentials remain through Service component no-cost contracts.

Changes to Existing Law: This proposal would make the following changes to sections 926B and 926C of title 18, United States Code:

§926B. Carrying of concealed firearms by qualified law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that-

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified law enforcement officer" means an employee of a governmental agency who-

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; ~~and~~

(6) is not prohibited by Federal law from receiving a firearm~~.~~; and

(7) if qualifying based on employment with the Department of Defense, the Secretary concerned may require satisfactory completion of an on-the-job probationary period sufficient to demonstrate the individual’s competence and ability prior to certification as a qualified law enforcement officer.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law enforcement officer of the agency.

(e) If an individual is unable to possess a firearm or ammunition under section 922(g) of this title—

(1) the individual’s identification required by subsection (d) is null and void; and

(2) the individual shall—

(A) lose the individual’s status as a qualified law enforcement officer under this section; and

(B) immediately surrender the individual's identification required by subsection (d) to the issuing agency for the purpose of, as determined by the agency—

(i) destruction; or

(ii) annotation that clearly indicates that the individual is not authorized to carry a firearm.

(~~e~~f) As used in this section, the term "firearm"-

(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(3) does not include-

(A) any machinegun (as defined in section 5845 of the National Firearms Act);

(B) any firearm silencer (as defined in section 921 of this title); and

(C) any destructive device (as defined in section 921 of this title).

(~~f~~g) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice).

§926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that-

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law enforcement officer" means an individual who-

(1) separated from service in good standing from service with a public agency as a law enforcement officer;

(2) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;

(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is-

(1) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2)(A) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and

(B) a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met-

(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

(e) If an individual is unable to possess a firearm or ammunition under section 922(g) of this title—

(1) the individual's identification required by subsection (d) is null and void; and

(2) the individual shall—

(A) lose the individual's status as a qualified retired law enforcement officer under this section; and

(B) immediately surrender the individual's identification required by subsection (d) to the issuing agency for the purpose of, as determined by the agency—

(i) destruction; or

(ii) annotation that clearly indicates that the individual is not authorized to carry a firearm.

(~~e~~f) As used in this section-

(1) the term "firearm"-

(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(C) does not include-

(i) any machinegun (as defined in section 5845 of the National Firearms Act);

(ii) any firearm silencer (as defined in section 921 of this title); and

(iii) any destructive device (as defined in section 921 of this title).

(2) the term "service with a public agency as a law enforcement officer" includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

1 **SEC. ___. ENLISTMENTS: COMPILATION OF DIRECTORY AND OTHER**

2 **PROSPECTIVE RECRUIT INFORMATION.**

3 (a) COMPILATION OF PROSPECTIVE RECRUIT INFORMATION.—Section 503 of title 10,

4 United States Code, is amended—

5 (1) by striking the section designation and heading and inserting the following:

6 **"§503. Enlistments: recruiting campaigns; compilation of directory and other prospective**

7 **recruit information";**

8 (2) in subsection (a)(1), by striking "Regular Army" and all that follows before

9 the period at the end and inserting "regular and reserve components of the Army, Navy,

10 Air Force, Marine Corps, and Coast Guard";

11 (3) by redesignating subsections (c) and (d) as subsections (d) and (e),

12 respectively; and

13 (4) by inserting after subsection (b) the following new subsection:

14 "(c) COMPILATION OF OTHER PROSPECTIVE RECRUIT INFORMATION.—(1) The Secretary

15 of Defense may collect and compile other prospective recruit information pertaining to

16 individuals who are—

17 "(A) 17 years of age or older or in the eleventh grade (or its equivalent) or higher;

18 and

19 "(B) enrolled in a secondary school in the United States (including its territories

20 and possessions) or the Commonwealth of Puerto Rico.

21 "(2) The Secretary may make prospective recruit information collected and compiled

22 under this subsection available to the armed forces for military recruiting purposes. Such

23 information may not be disclosed for any other purpose and may not be maintained for more than

1 3 years after the date the information pertaining to such person is first collected and compiled
2 under this subsection.
3 “(3) Other prospective recruit information collected and compiled under this subsection
4 shall be confidential, and a person who has had access to such information may not disclose the
5 information except for the purposes described in paragraph (2).
6 “(4) In this subsection, the term ‘prospective recruit information’ means information for
7 use in identifying prospective recruits, tailoring marketing efforts to reach the primary recruit
8 market, and measuring the return on investment of ongoing marketing efforts.”.
9 (c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the
10 amendments made by this section.
11 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of such
12 title is amended by striking the item relating to section 503 and inserting the following new item:

“503. Enlistments: recruiting campaigns; compilation of directory and other prospective recruit information.”.

[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 will allow the Department of Defense to collect data for recruiting purposes beyond currently prescribed directory information. The proposed modification will benefit the recruiting efforts of all Services (all Components) to ensure the right message gets to the right person at the right time.

Current authorities restrict the information the Department is allowed to collect and jeopardizes the Department’s ability to sustain the All-Volunteer Force. Greater flexibility in the specific language contained in section 503 of title 10, United States Code, is necessary to allow the Services to leverage modern technology and techniques to gain efficiencies in the ever-increasingly difficult task of recruiting. Adding a new subsection, “Compilation of Other Prospective Recruit Information,” would provide the Department the unique opportunity to align its recruiting and marketing capabilities to modern techniques currently used in the private industry. This information would be used to help identify prospective recruits, to tailor marketing efforts aimed at reaching the primary recruit market, to better measure return on investment of its

advertising efforts, and to maximize customer relationship management by getting the right message to the right person at the right time.

Budget Implications: This proposal has no budget implications There are no costs or movement of funds for the Department related to this initiative. It will merely allow the Services (all Components) to better tailor their message to potential recruits.

Changes to Existing Law: This section would make the following changes to section 503 of title 10, United States Code:

~~§503. Enlistments: recruiting campaigns; compilation of directory information~~
§503. Enlistments: recruiting campaigns; compilation of directory and other prospective recruit information

(a) Recruiting Campaigns.-
(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the ~~Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard~~ regular and reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.
(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) Compilation of Directory Information.-(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.
(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.
(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.
(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).
(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.
(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to

the Secretary.

(c) Compilation of Other Prospective Recruit Information.—(1) The Secretary of Defense may collect and compile other prospective recruit information pertaining to individuals who are—

(A) 17 years of age or older or in the eleventh grade (or its equivalent) or higher; and

(B) enrolled in a secondary school in the United States (including its territories and possessions) or the Commonwealth of Puerto Rico.

(2) The Secretary may make prospective recruit information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose and may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(3) Other prospective recruit information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose the information except for the purposes described in paragraph (2).

(4) In this subsection, the term "prospective recruit information" means information for use in identifying prospective recruits, tailoring marketing efforts to reach the primary recruit market, and measuring the return on investment of ongoing marketing efforts.

~~(c)~~(d) Access to Secondary Schools.-

(1)(A) Each local educational agency receiving assistance under the Elementary and Secondary Education Act of 1965-

(i) shall provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; and

(ii) shall, upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, and telephone listings, notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)).

(B) A local educational agency may not release a student's name, address, and telephone listing under subparagraph (A)(ii) without the prior written consent of a parent of the student if the student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local educational agency shall notify parents of the rights provided under the preceding sentence.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day period, the Secretary of Defense

determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Secretary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary-

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to-

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to a private secondary school that maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term "local educational agency" means-

(i) a local educational agency, within the meaning of that term in section 8101 of the Elementary and Secondary Education Act of 1965; and

(ii) a private secondary school.

(B) The term "recruiting access" means access requested as described in paragraph (1).

(C) The term "senior executive" has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term "specified congressional committees" means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term "member of the House of Representatives" includes a Delegate or Resident Commissioner to Congress.

~~(d)~~(e) Directory Information Defined.-In this section, the term "directory information" has the meaning given that term in subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

1 **SEC. ___. DEPARTMENT OF DEFENSE PARTICIPATION IN EUROPEAN**
2 **PROGRAM ON MULTILATERAL EXCHANGE OF SURFACE**
3 **TRANSPORTATION SERVICES.**
4 (a) IN GENERAL.—Subchapter II of chapter 138 of title 10, United States Code, is
5 amended by adding at the end the following new section:
6 **"§ 2350m. Participation in European program on multilateral exchange of surface**
7 **transportation services**
8 "(a) PARTICIPATION AUTHORIZED.—
9 "(1) IN GENERAL.—The Secretary of Defense may, with the concurrence of the
10 Secretary of State, authorize the participation of the United States in the Surface
11 Exchange of Services program (in this section referred to as the 'SEOS program') of the
12 Movement Coordination Centre Europe.
13 "(2) SCOPE OF PARTICIPATION.—Participation in the SEOS program under
14 paragraph (1) may include—
15 "(A) the reciprocal exchange or transfer of surface transportation on a
16 reimbursable basis or by replacement-in-kind; or
17 "(B) the exchange of surface transportation services of equal value.
18 "(b) WRITTEN ARRANGEMENTS OR AGREEMENTS.—
19 "(1) ARRANGEMENT OR AGREEMENT REQUIRED.—The participation of the United
20 States in the SEOS program under subsection (a) shall be in accordance with a written
21 arrangement or agreement entered into by the Secretary of Defense, with the concurrence
22 of the Secretary of State, and the Movement Coordination Centre Europe.

“(2) FUNDING ARRANGEMENTS.—If facilities, equipment, or funds of the Department of Defense are used to support the SEOS program, the written arrangement or agreement entered into under paragraph (1) shall specify the details of any equitable cost sharing or other funding arrangement.

“(3) OTHER ELEMENTS.—Any written arrangement or agreement entered into under paragraph (1) shall require that any accrued credits and liabilities resulting from an unequal exchange or transfer of surface transportation services shall be liquidated, not less than once every five years, through the SEOS program.

“(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b)(1), the Secretary of Defense may—

“(1) from funds available to the Department of Defense for operation and maintenance, pay the equitable share of the United States for the operating expenses of the Movement Coordination Centre Europe and the SEOS consortium; and

“(2) assign members of the armed forces or civilian personnel of the Department of Defense, from among members and personnel within billets authorized for the United States European Command, to duty at the Movement Coordination Centre Europe as necessary to fulfill the obligations of the United States under that arrangement or agreement.

“(d) CREDITING OF RECEIPTS.—Any amount received by the United States as part of the SEOS program shall be credited, at the option of the Secretary of Defense, to—

“(1) the appropriation, fund, or account used in incurring the obligation for which such amount is received; or

1 “(2) an appropriate appropriation, fund, or account currently available for the
2 purposes for which the expenditures were made.
3 “(e) EXPIRATION.—The authority provided by this section to participate in the SEOS
4 program shall expire five years after the date on which the Secretary of Defense first enters into a
5 written arrangement or agreement under subsection (b). The Secretary shall publish notice of
6 such date on a public website of the Department of Defense.
7 “(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be
8 construed to authorize the use of foreign sealift in violation of section 2631 of this title.”.
9 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is
10 amended by adding at the end the following new item:

“2350m. Participation in European program on multilateral exchange of surface transportation services.”.

Section-by-Section Analysis

This proposal would authorize the Secretary of Defense to participate in the Surface Exchange of Services (SEOS) program relating to the coordination or the exchange of surface transportation capacity and services. This program would be limited to the reciprocal exchange or transfer of surface transportation on a reimbursable basis or by replacement-in-kind or the exchange of surface transportation services of equal value. The SEOS program is part of the Movement Coordination Centre Europe (MCCE), a European-based consortium of 28 member nations, including the United States, that coordinates a variety of surface transportation services, including rail, road, and sealift services from a headquarters in the Netherlands. The SEOS program is an arrangement among a number of European-based countries that provides a multi-national framework for the exchange of surface transportation services. SEOS currently consists of 23 participating countries that are also members of the MCCE.

The proposal would also clarify that the United States could: (1) pay its equitable share of the costs and activities of such programs; (2) detail Department of Defense (DoD) personnel to such programs; and (3) provide for the liquidation of obligations incurred and credits received as part of the multinational program concerned over a period not to exceed five years. This proposal would not change the law governing the DoD Transportation Working Capital Fund (TWCF). The proposal would also provide that any amount received by the United States as part of the program would be credited to: (1) the appropriation, fund, or account established in incurring the obligation for which such amount is received; or (2) an appropriation, fund, or account currently available for the purposes for which such obligation was made.

U.S. participation in this exchange program is an optimal way to gain efficiencies. For example, current members of the SEOS program have access to a pool of nationally owned assets, rail assets, and sealift capabilities that could be used to support other nations and "pay" for the use of an asset when it is convenient by providing an equivalent service to any member of the pool within a five-year cycle.

The most important aspect of the proposal is the capability DoD would gain in times of crisis. During a crisis, U.S. organic assets might be limited or constrained in order to meet military objectives. Cultivating multinational relationships through the MCCE and the programs it generates, such as SEOS, can ensure immediate access to partner transportation resources. The use of the MCCE has already proved to be successful in the ability to augment U.S. organic transportation shortfalls in the U.S. European Command (USEUCOM) Area of Responsibility (AOR).

Nothing in this proposal, if enacted, would authorize the use of foreign sealift in violation of the Cargo Preference Act of 1904 (10 U.S.C. 2631). The DoD's use of sealift arranged under SEOS would be limited to circumstances in which U.S. flag shipping has been determined to be unavailable.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. Source of funds would be the U.S. Transportation Command's Transportation Working Capital Fund pursuant to a memorandum of agreement between that command and the U.S. European Command.

RESOURCE IMPACT ($MILLIONS)								
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
SEOS	.025	.025	.025	.025	.025	Operations and Maintenance, Air Force	01	3400
Total	.025	.025	.025	.025	.025			

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. ___. CLARIFICATION OF AUTHORITY TO SOLICIT GIFTS IN SUPPORT OF**
2 **THE MISSION OF THE DEFENSE POW/MIA ACCOUNTING AGENCY**
3 **TO ACCOUNT FOR MEMBERS OF THE ARMED FORCES AND**
4 **DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES LISTED AS**
5 **MISSING.**

6 Section 1501a of title 10, United States Code, is amended—

7 (1) in subsection (e)(1), by inserting "solicit," after "the Secretary may"; and

8 (2) in subsection (f)(2)—

9 (A) by inserting "solicitation or" after "provide that"; and

10 (B) by striking "acceptance or use" and inserting "solicitation, acceptance,

11 or use".

[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 1501a of title 10, United States Code, to allow the Department to solicit for gifts that would be used to facilitate accounting for persons missing from designated past conflicts. The Department currently has authority to accept gifts of personal property, services, and money to assist in accounting for missing persons. The Office of Legal Counsel has concluded that the express authority to accept gifts in statutes similar to section 1501a(e), includes the implied authority to solicit gifts. *See* Memorandum for the Director of Office of Government Ethics, from Assistant Attorney General, Office of Legal Counsel (January 19, 2001). The explicit authorization to solicit gifts (including gifts of service) is necessary for the Department to appropriately implement an effective program and regulations that are not subject to changing policy limitations and legal interpretations. The proposed amendments to subsections (e) and (f) would explicitly authorize the Secretary to solicit gifts to facilitate accounting for missing persons, thus allowing the Department to more fully utilize its current authority to accept gifts.

Accounting for U.S. personnel who are missing from designated past conflicts is one of the Department's essential missions. Through it, we demonstrate to DoD personnel and their families the commitment to never leave a comrade behind. If enacted the proposal would provide the Department with additional funding to increase the number of missing persons from past conflicts that the Department accounts for annually.

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 REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	.050	.050	.050	.050	.050	O&M DW	BA4		0901636DPA
Total	.050	.050	.050	.050	.050				

Changes to Existing Law: This proposal would make the following changes to section 1501a of title 10, United States Code:

§1501a. Public-private partnerships; other forms of support

(a) PUBLIC-PRIVATE PARTNERSHIPS.—The Secretary of Defense may enter into arrangements known as public-private partnerships with appropriate entities outside the Government for the purposes of facilitating the activities of the designated Defense Agency. The Secretary may only partner with foreign governments or foreign entities with the concurrence of the Secretary of State. Any such arrangement shall be entered into in accordance with authorities provided under this section or any other authority otherwise available to the Secretary. Regulations prescribed under subsection (f)(1) shall include provisions for the establishment and implementation of such partnerships. An employee of an entity outside the Government that has entered into a public-private partnership with the designated Defense Agency under this section shall be considered to be an employee of the Federal Government by reason of participation in such partnership only for the purposes of section 552a of title 5 (relating to maintenance of records on individuals).

(b) ACCEPTANCE OF VOLUNTARY PERSONAL SERVICES.—The Secretary of Defense may accept voluntary services to facilitate accounting for missing persons in the same manner as the Secretary of a military department may accept such services under section 1588(a)(9) of this title.

(c) COOPERATIVE AGREEMENTS AND GRANTS.—

(1) IN GENERAL.—The Secretary of Defense may enter into a cooperative agreement with, or make a grant to, a private entity for purposes related to support of the activities of the designated Defense Agency.

(2) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding section 2304(k) of this title, the Secretary may enter such cooperative agreements or grants on a sole-source basis pursuant to section 2304(c)(5) of this title.

(d) USE OF DEPARTMENT OF DEFENSE PERSONAL PROPERTY.—The Secretary may allow a private entity to use, at no cost, personal property of the Department of Defense to assist the entity in supporting the activities of the designated Defense Agency.

(e) ACCEPTANCE OF GIFTS.—

(1) AUTHORITY TO ACCEPT.—Subject to subsection (f)(2), the Secretary may solicit, accept, hold, administer, spend and use any gift of personal property, money or services made on the condition that the gift be used for the purpose of facilitating accounting for missing persons pursuant to section 1501(a)(2)(C) of this title.

(2) GIFT FUNDS.—Gifts and bequests of money accepted under this subsection shall be deposited in the Treasury in the Department of Defense General Gift Fund.

(3) USE OF GIFTS.—Personal property and money accepted under this subsection may be used by the Secretary, and services accepted under this subsection may be performed, without further specific authorization in law.

(4) EXPENSES OF TRANSFER.—The Secretary may pay all necessary expenses in connection with the conveyance or transfer of a gift accepted under this subsection.

(5) EXPENSES OF CARE.—The Secretary may pay or authorize the payment of all reasonable and necessary expenses in connection with the care of a gift accepted under this subsection.

(6) TREATMENT.—For the purposes of Federal income, estate, and gift taxes, any personal property, money, or services accepted under this subsection shall be considered as a gift, devise, or bequest to or for the use of the United States.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to implement this section.

(2) LIMITATION.—Such regulations shall provide that solicitation or acceptance of a gift (including a gift of services) or use of a gift under this section may not occur if the nature or circumstances of the solicitation, acceptance, or use would compromise the integrity, or the appearance of integrity, of any program of the Department of Defense or any individual involved in such program.

(g) DEFINITIONS.—In this section:

(1) COOPERATIVE AGREEMENT.—The term "cooperative agreement" means an authorized cooperative agreement as described in section 6305 of title 31.

(2) GRANT.—The term "grant" means an authorized grant as described in section 6304 of title 31.

(3) GIFT.—The term "gift" includes a devise or bequest.

1 **SEC. ____. EXPANSION OF GEOGRAPHIC AREA OF SUPPORT FOR NATO**

2 **SUPPORT ORGANIZATIONS.**

3 Section 2350d(b)(1) of title 10, United States Code, is amended by inserting after "in

4 Europe" the following: ", out-of-area, and contingency operations".

Section-by-Section Analysis

This resubmission legislative proposal would insert the words "out-of-area, and contingency operations" in subsection 10 U.S.C. 2350d(b)(1), expanding the geographic area of support, which will positively support current and future NATO global operations. This legislative proposal would revise the statute to remove the geographic limitation associated with support or procurement partnership agreements with one or more governments of other member countries of the NATO participating in the operation of the NATO Support and Procurement Organization (NSPO) and its executive agencies. The "out-of-area, and contingency operations" removes the geographic limitation negatively impacting support to current and future NATO global operations, and inserting of the words "out-of-area, and contingency operations" would align with the President's call for greater NATO support to defeat the Islamic State of Iraq and the Levant (ISIS). The rationale for the proposed change to 10 U.S.C. 2350d(b)(1) is to enable use of support or procurement partnership agreements to support ongoing operations in Afghanistan and enable effective assistance mechanisms to aid potential NATO operations in efforts, for example, to defeat terrorism in Iraq, Syria, Africa, or other areas of the world.

Budget Implications: No budgetary impact. This proposal would have no effect on the Department of Defense budget. The proposal neither changes any existing authorities nor provides any new authorities. Amending current law to conform to the existence of NATO global operations does not have any budget effect.

Changes to Existing Law: This proposal would amend section 2350d of title 10, United States Code, as follows:

TITLE 10, UNITED STATES CODE

§2350d. Cooperative logistic support agreements: NATO countries

(a) General Authority.-

(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Support or Procurement Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Support and Procurement Organization and its executive agencies. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement-

(A) shall be entered into pursuant to the terms of the charter of the NATO Support and Procurement Organization and its executive agencies; and

(B) shall provide for the common logistic support activities common to the participating countries.

(2) Such an agreement may provide for-

(A) the transfer of logistics support, supplies, and services by the United States to the NATO Support and Procurement Organization and its executive agencies; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) Authority of Secretary.-Under the terms of a Support or Procurement Partnership Agreement, the Secretary of Defense-

(1) may agree that the NATO Support and Procurement Organization and its executive agencies may enter into contracts for supply and acquisition of logistics support in Europe, out-of-area, and contingency operations for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the NATO Support and Procurement Organization and its executive agencies to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Support and Procurement Organization and its executive agencies to provide cooperative logistics support.

(c) Sharing of Administrative Expenses.-Each Support or Procurement Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) Application of Chapter 137.-Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a Support or Procurement Partnership Agreement.

(e) Application of Arms Export Control Act.-Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Support and Procurement Organization and its executive agencies for the purposes of a Support or Procurement Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) Supplemental Authority.-The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

1 **SEC. ___. CLARIFICATION OF AUTHORITY TO WAIVE CERTAIN EXPENSES FOR**

2 **ACTIVITIES OF THE REGIONAL CENTERS FOR SECURITY**

3 **STUDIES.**

4 Section 342 of title 10, United States Code, is amended—

5 (1) by redesignating subsections (g) through (j) as subsections (h) through (k),

6 respectively; and

7 (2) by inserting after subsection (f) the following new subsection:

8 "(g) PAYMENT OF PERSONNEL COSTS.—Funds available to carry out this section may be

9 used for the payment of personnel expenses, including travel, transportation, and subsistence

10 expenses.".

[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 amendment allows the Secretary of Defense to waive the "incremental cost" (transportation, subsistence, and activities) of foreign military officers and foreign defense and security personnel attending Regional Centers (RC) pursuant to 10 U.S.C. 342 (Regional Centers for Security Studies).

RCs have a statutory responsibility to serve as a forum for bilateral and multilateral research, communication, exchange of ideas, and training involving military and civilian participants. On behalf of the Secretary of Defense, the RCs advance U.S. security policy objectives and priorities by engaging partner nation security practitioners in a dialogue on a range of mutually concerning security issues. It is in the U.S. interest to bring together partner nation strategic level thinkers to build consensus around U.S. security priorities—no other venue exists within the Department to systematically engage foreign strategic thinkers around U.S. security interests.

The benefit of approving this legislative proposal affirms the Department's ability to message and promote U.S. national security interests with both traditional and developing global security partners because: (1) the RC's promote multilateral exchange of ideas focused on U.S. strategic interests; (2) the multilateral nature of events result in an environment where U.S. security objectives are advanced through consensus and dialogue; and (3) events aim to build broad support and understanding of U.S. security priorities. This approach is in alignment with

the Secretary's vision in the National Defense Strategy of strengthening alliances and partnerships, with countries who share our aspirations of freedom and prosperity.

The incorporation of the RC authority (formerly 10 U.S.C. 184) into chapter 16 of title 10, U.S.C., caused an unintended consequence affecting the RCs ability to pay for participant travel related expenses. DoD GC opined that the long-standing practice of paying travel and per diem costs for foreign government officials to attend RC activities using section 342 is not permitted since the new language is now inconsistent with the definitions set forth in section 301 of chapter 16. This legislative proposal would align section 342 with the definitions in section 301 and other sections in chapter 16.

This legislative proposal is consistent with existing authorities in sections 322 (Special operations forces: training with friendly foreign forces), 341 (Department of Defense State Partnership Program), and 345 (Regional Defense Combating Terrorism Fellowship Program) which include the reimbursement of travel cost within each authority.

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)**
	$73.4	$74.8	76.3	$77.8	$79.4	Operation and Maintenance, Defense-Wise	04	4GTD	0800101T
Air Force	Air Force does not intend to use this authority, which they would have funded in the following account: Operations and Maintenance, Air Force account								
Army	Army does not intend to use this authority, which they would have funded in the following account: Operations and Maintenance, Army account								
Navy	Navy does not intend to use this authority, which they would have funded in the following account: Operations and Maintenance, Navy account								
Total	$73.4	$74.8	$76.3	$77.8	$79.4	---	---	---	---

Changes to Existing Law: This proposal would make the following changes to section 342 of title 10, United States Code:

§ 342. Regional Centers for Security Studies

(a) IN GENERAL.-The Secretary of Defense shall administer the Department of Defense Regional Centers for Security Studies in accordance with this section as international venues for bilateral and multilateral research, communication, exchange of ideas, and training involving military and civilian participants.

(b) REGIONAL CENTERS SPECIFIED.—(1) A Department of Defense Regional Center for Security Studies is a Department of Defense institution that-

(A) is operated, and designated as such, by the Secretary of Defense for the study of security issues relating to a specified geographic region of the world; and

(B) serves as a forum for bilateral and multilateral research, communication, exchange of ideas, and training involving military and civilian participants.

(2) The Department of Defense Regional Centers for Security Studies are the following:

(A) The George C. Marshall European Center for Security Studies, established in 1993 and located in Garmisch-Partenkirchen, Germany.

(B) The Daniel K. Inouye Asia-Pacific Center for Security Studies, established in 1995 and located in Honolulu, Hawaii.

(C) The William J. Perry Center for Hemispheric Defense Studies, established in 1997 and located in Washington, D.C.

(D) The Africa Center for Strategic Studies, established in 1999 and located in Washington, D.C.

(E) The Near East South Asia Center for Strategic Studies, established in 2000 and located in Washington, D.C.

(3) No institution or element of the Department of Defense may be designated as a Department of Defense Regional Center for Security Studies for purposes of this section, other than the institutions specified in paragraph (2).

(c) REGULATIONS.-The administration of the Regional Centers under this section shall be carried out under regulations prescribed by the Secretary. The regulations shall prioritize within the respective areas of focus of each Regional Center the functional areas for engagement of territorial and maritime security, transnational and asymmetric threats, and defense sector governance.

(d) PARTICIPATION.-Participants in activities of the Regional Centers may include United States and foreign military, civilian, and nongovernmental personnel.

(e) EMPLOYMENT AND COMPENSATION OF FACULTY.-At each Regional Center, the Secretary may, subject to the availability of appropriations-

(1) employ a Director, a Deputy Director, and as many civilians as professors, instructors, and lecturers as the Secretary considers necessary; and

(2) prescribe the compensation of such persons, in accordance with Federal guidelines.

(f) PAYMENT OF COSTS.-(1) Participation in activities of a Regional Center shall be on a reimbursable basis (or by payment in advance), except in a case in which reimbursement is waived in accordance with paragraph (3).

(2) For a foreign national participant, payment of costs may be made by the participant, the participant's own government, by a Department or agency of the United States other than the Department of Defense, or by a gift or donation on behalf of one or more Regional Centers accepted under section 2611 of this title on behalf of the participant's government.

(3)(A) The Secretary of Defense may waive reimbursement of the costs of activities of the Regional Centers for foreign military officers and foreign defense and security personnel from a developing country if the Secretary determines that attendance of such personnel without reimbursement is in the national security interest of the United States. Costs for which reimbursement is waived pursuant to this paragraph shall be paid from appropriations available to the Regional Centers.

(B)(i) The Secretary of Defense may, with the concurrence of the Secretary of State, waive reimbursement otherwise required under this subsection of the costs of activities of the Regional Centers for personnel of nongovernmental and international organizations who participate in activities of the Regional Centers that enhance cooperation of nongovernmental organizations and international organizations with United States forces if the Secretary of Defense determines that attendance of such personnel without reimbursement is in the national security interest of the United States.

(ii) The amount of reimbursement that may be waived under clause (i) in any fiscal year may not exceed $1,000,000.

(4) Funds accepted for the payment of costs shall be credited to the appropriation then currently available to the Department of Defense for the Regional Center that incurred the costs. Funds so credited shall be merged with the appropriation to which credited and shall be available to that Regional Center for the same purposes and same period as the appropriation with which merged.

(5) Funds available for the payment of personnel expenses under section 312 of this title are also available for the costs of the operation of the Regional Centers.

(6) Funds available to carry out this section, including funds accepted under paragraph (4) and funds available under paragraph (5), shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

(g) PAYMENT OF PERSONNEL COSTS.—Funds available to carry out this section may be used for the payment of personnel expenses, including travel, transportation, and subsistence expenses.

(~~g~~h) SUPPORT TO OTHER AGENCIES.-The Director of a Regional Center may enter into agreements with the Secretaries of the military departments, the heads of the Defense Agencies, and, with the concurrence of the Secretary of Defense, the heads of other Federal departments and agencies for the provision of services by that Regional Center under this section. Any such participating department and agency shall transfer to the Regional Center funds to pay the full costs of the services received.

(~~h~~i) AUTHORITIES SPECIFIC TO MARSHALL CENTER.-(1) The Secretary of Defense may authorize participation by a European or Eurasian country in programs of the George C. Marshall Center for Security Studies (in this subsection referred to as the "Marshall Center") if the Secretary determines, after consultation with the Secretary of State, that such participation is in the national interest of the United States.

(2)(A) In the case of any person invited to serve without compensation on the Marshall Center Board of Visitors, the Secretary of Defense may waive any requirement for financial disclosure that would otherwise apply to that person solely by reason of service on such Board.

(B) A member of the Marshall Center Board of Visitors may not be required to register as an agent of a foreign government solely by reason of service as a member of the Board.

(C) Notwithstanding section 219 of title 18, a non-United States citizen may serve on the Marshall Center Board of Visitors even though registered as a foreign agent.

(3)(A) The Secretary of Defense may waive reimbursement of the costs of conferences, seminars, courses of instruction, or similar educational activities of the Marshall Center for military officers and civilian officials from states located in Europe or the territory of the former Soviet Union if the Secretary determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

(B) Costs for which reimbursement is waived pursuant to subparagraph (A) shall be paid from appropriations available for the Center.

(~~i~~j) AUTHORITIES SPECIFIC TO INOUYE CENTER.-(1) The Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Daniel K. Inouye Center for Security Studies for military officers and civilian officials of foreign countries if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States.

(2) Costs for which reimbursement is waived pursuant to paragraph (1) shall be paid from appropriations available for the Center.

(~~j~~k) ANNUAL REVIEW OF PROGRAM STRUCTURE AND PROGRAMS OF CENTERS.-(1) The Secretary shall on an annual basis review the program and structure of each Regional Center in order to determine whether such Regional Center is appropriately aligned with the strategic priorities of the Department of Defense and the applicable geographic combatant commands.

(2) The Secretary may revise the program, structure, or both of a Regional Center following an annual review under paragraph (1) in order to more appropriately align the Regional Center with strategic priorities and the geographic combatant commands as described in that paragraph.

1 **SEC. ___. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE ANNUAL**
2 **LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION**
3 **ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING**
4 **OVERSEAS.**

5 (a) EXTENSION OF AUTHORITY.—Section 1101(a) of the Duncan Hunter National Defense
6 Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as most recently
7 amended by section 1105 of the National Defense Authorization Act for Fiscal Year 2020
8 (Public Law 116-92), is further amended by striking "through 2020" and inserting "through
9 2021".

10 (b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date
11 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 has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAAs, most recently section 1105 of the FY 2020 NDAA. The provision is currently in effect through calendar year 2020. The authority under that section is similar to that previously provided in the NDAAs since FY 2006.

This proposal would provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in the geographic area of U.S. Central Command (USCENTCOM) and former USCENTCOM regions that are now part of U.S. Africa Command (USAFRICOM) and are military operations or in response to a national emergency declared by the President.

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive

Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2021, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

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 Department of Defense estimates this proposal would cost $2.784 million for FY 2021. This proposal would be funded from the Component and Defense Agency operation and maintenance fund accounts. The limitation relief is for those people who are deployed in support of Overseas Contingency Operations (OCO). The funding is requested in the military departments' Operation and Maintenance OCO budgets by cost breakdown structure category. The number of personnel affected in FY 2020 is estimated to be approximately 2,760. The number of affected personnel Defense-wide in FY 2021 is estimated to be the same. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below.

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	$2.056					Operation and Maintenance, Army OCO	Multiple	Multiple	
Navy	$.166					Operation and Maintenance, Navy OCO	Multiple	Multiple	
USMC	$.083					Operation and Maintenance, USMC OCO	Multiple	Multiple	
Air Force	$.195					Operation and Maintenance, Air Force OCO	Multiple	Multiple	
DLA	$.150					Defense Working Capital Funds, Defense-wide OCO	Multiple	Multiple	
DCMA	$.070					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
DISA	$.025					Operation and Maintenance,	Multiple	Multiple	

						Defense-wide OCO			
DCAA	$.007					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
OSD	$.020					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
DFAS	$.006					Defense Working Capital Funds, Defense-wide, OCO	Multiple	Multiple	
WHS	$.003					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
Joint Staff	$.003					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
Total	$2.784								

Cost Methodology: The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2018, the additional cost for overtime in excess of the annual premium pay limitation was approximately $2.7 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2021, but the above scenario illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

PERSONNEL IMPACT (END STRENGTH)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army	2,044					Operation and Maintenance, Army OCO	Multiple	Multiple	
Navy	166					Operation and Maintenance, Navy OCO	Multiple	Multiple	
USMC	81					Operation and Maintenance, USMC OCO	Multiple	Multiple	

Air Force	193					Operation and Maintenance, Air Force OCO	Multiple	Multiple	
DLA	149					Defense Working Capital Funds, Defense-wide OCO	Multiple	Multiple	
DCMA	69					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
DISA	24					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
DCAA	6					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
OSD	19					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
DFAS	5					Defense Working Capital Funds, Defense-wide, OCO	Multiple	Multiple	
WHS	2					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
Joint Staff	2					Operation and Maintenance, Defense-wide OCO	Multiple	Multiple	
Total	2,760								

Changes to Existing Law: This proposal would amend section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615) as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During calendar years 2009 ~~through 2020~~ through 2021, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency

may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

(1) a military operation, including a contingency operation; or

(2) an operation in response to a national emergency declared by the President.

(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.

(c) ADDITIONAL PAY NOT CONSIDERED BASIC PAY.—To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

(d) REGULATIONS.—The Director of the Office of Personnel Management may issue regulations to ensure appropriate consistency among heads of executive agencies in the exercise of authority granted by this section.

SEC. __. SECRETARY OF DEFENSE PROFESSIONAL MILITARY EDUCATION PROGRAM FOR FOREIGN PARTNERS.

(a) IN GENERAL.—Subchapter V of chapter 16 of title 10, United States Code, is amended by adding at the end the following new section:

"**§ 353. Secretary of Defense professional military education program for foreign partners.**

"(a) PROGRAM.—The Secretary of Defense may carry out a program under which the Secretary may pay costs associated with the professional military education of the uniformed military forces of friendly foreign countries, including English language education, to advance the security cooperation objectives of the United States.

"(b) PROVISION OF CERTAIN COSTS.—In carrying out this section, the Secretary may pay the costs of course tuition, transportation, travel, and subsistence for foreign students.

"(c) REGULATIONS.—The Secretary shall carry out this section under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of State. Such regulations shall ensure that—

"(1) the Secretary of Defense, in consultation with the Secretary of State, develops, plans, and implements activities under this section that advance the security cooperation objectives of the United States and support theater security cooperation planning of the combatant commands;

"(2) each of the Secretary of Defense and the Secretary of State designates an individual at the lowest appropriate level of the Department of Defense or the Department of State, as applicable, who shall be responsible for the consultation regarding activities conducted under this section; and

1 "(3) activities under this section are appropriately coordinated with, and do not

2 duplicate or conflict with, activities under International Military Education and Training

3 authorities.".

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

5 subchapter is amended by adding at the end the following new item:

"353. Secretary of Defense professional military education program for foreign partners.".

Section-by-Section Analysis

This proposal would authorize the Secretary of Defense to carry out a broad range of education programs for the uniformed military forces of friendly foreign countries. The purpose of the proposal is twofold. First, it would help DoD reach the Secretary's stated strategic goal of increasing International Professional Military Education (I-PME) by 10% by the end of FY 2021 and 50% by the end of FY 2025, as a critical tool in great power competition. Second, it would authorize DoD to carry out – under its own authorities, but in consultation with the Secretary of State – education programs that go beyond the combatting terrorism and irregular warfare focus of 10 U.S.C. 345. This would allow DoD to concentrate the expansion of I-PME programs in line with the National Defense Strategy's focus on great power competition.

Budget Implications: Funding for this proposal is included in the FY 2021 President's Budget Request. The Defense Security Cooperation Agency (DSCA) reallocated funding from existing resources to support I-PME.

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)**
Defense Security Cooperation Agency	$3.0	$6.0	$9.0	$12.0	$15.0				
Total	$3.0	$6.0	$9.0	$12.0	$15.0	Operation and Maintenance, Defense Wide-	04---	---4GTD	---

Changes to Existing Law: This proposal would add a new section to chapter 16 of title 10, United States Code, the full text of which is shown in the legislative language above.

1 **SEC. ___. LEASES: NON-EXCESS PROPERTY OF MILITARY DEPARTMENTS AND**
2 **DEFENSE AGENCIES TO MUSEUM FOUNDATIONS.**
3 (a) IN GENERAL.—Section 2667 of title 10, United States Code, is amended—
4 (1) in subsection (b)—
5 (A) in paragraph (7), by striking "and" at the end;
6 (B) in paragraph (8), by striking the period at the end and inserting ";
7 and"; and
8 (C) by adding at the end the following new paragraph:
9 "(9) in the case of a lease of a museum facility to a museum foundation, may
10 provide for use in generating revenue for activities of the museum facility and for such
11 administrative purposes as may be necessary to support the facility.";
12 (2) in subsection (i), by adding at the end the following new paragraph:
13 "(6) The term 'museum foundation' means any entity—
14 "(A) qualifying as an exempt organization under section 501(c)(3) of the
15 Internal Revenue Code of 1986; and
16 "(B) incorporated for the primary purpose of supporting a Department of
17 Defense museum."; and
18 (3) in subsection (k)—
19 (A) in the subsection heading, by inserting "AND MUSEUMS" after "LEASES
20 FOR EDUCATION"; and
21 (B) by inserting "or to a museum foundation" before the period at the end.
22 (b) REPEALS.—The following provisions of law are repealed:

1 (1) Section 2852 of the National Defense Authorization Act for Fiscal Year 2006

2 (Public Law 109-163; 119 Stat. 3530).

3 (2) Section 2884(e) of the Floyd D. Spence National Defense Authorization Act

4 for Fiscal Year 2001 (Public Law 106-398; 114 Stat. 1654A-440).

[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 expands and codifies the authority provided by Section 2852 of NDAA FY 2006 and Section 2884 of NDAA FY 2001 by exempting all foundations that support Department of the Defense (DOD) museums (hereinafter "museum foundations") from the requirement under 10 USC 2§667 to pay fair-market-value rent consideration for space they occupy within DON museum facilities for generating revenue and administrative activities. Current law only allows two Department of the Navy (DON) museum foundations—the Naval Historical Foundation (NHF) and the Marine Corps Heritage Foundation MCHF—to pay less than fair-market-value rent consideration to the DON, and only the NHF can rent out DON museum facilities to generate revenue.

All DON museums are supported by non-profit foundations that exist primarily to support each museum. These museum foundations have provided monetary gifts and in-kind support totaling tens of millions of dollars over the past 20 years, and currently provide millions of dollars in support through annual donations. In some cases, the museum foundations have also funded the construction of the museum buildings in which certain DON museums and foundations now operate.

Most non-federal entity occupants of a military facility to pay fair-market-value rent consideration for the space they occupy under 10 USC §2667. Though 10 USC §2667 exempts some entities from this requirement, museum foundations are not currently exempted. Requiring museum foundations to pay fair-market-value rent consideration will not increase net revenue or benefit to the DOD. It would instead result in additional costs to DOD museums through reduced donations from museum foundations. Fair-market-value rent consideration could instead be used by museum foundations to fund museum programs and exhibits that are more advantageous to the DOD than rental consideration. Allowing all museum foundations to use the space they occupy to generate revenue is also advantageous to the DOD because the revenue the museum foundations generate directly benefits DOD museums.

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: The proposal would make the following changes to existing law:

Title 10, United States Code

* * * * *

§2667. Leases: non-excess property of military departments and Defense Agencies

(a) Lease Authority.-Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that-

(1) is under the control of the Secretary concerned;

(2) is not for the time needed for public use; and

(3) is not excess property, as defined by section 102 of title 40.

(b) Conditions on Leases.-A lease under subsection (a)-

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;

(5) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease;

(6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease;

(7) may not provide for a leaseback by the Secretary concerned with an annual payment in excess of $500,000, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount; ~~and~~

(8) shall provide that any facilities constructed on the property may be constructed using commercial standards in a manner that provides force protection safeguards appropriate to the activities conducted in, and the location of, such facilities~~.~~ ; and

(9) in the case of a lease of museum facility to a museum foundation, may provide for use in generating revenue for activities of the museum facility and for such administrative purposes as may be necessary to support the facility.

* * *

(i) Definitions.-In this section:

(1) The term "administrative expenses" means only those expenses related to assessing, negotiating, executing, and managing lease and easement transactions. The term does not include any Government personnel costs.

(2) The term "community support facility" includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title).

(3) The term "community support services" includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(4) The term "military installation" has the meaning given such term in section 2687 of this title.

(5) The term "Secretary concerned" means-

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning the Defense Agencies.

(6) The term “museum foundation” means any entity—

(A) Qualifying as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986; and

(B) Incorporated for the primary purpose of supporting a Department of Defense museum.

(j) Exclusion of Certain Lands.-This section does not apply to oil, mineral, or phosphate lands.

(k) Leases for Education and Museums.-Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease, if the lease is to a local education agency or an elementary or secondary school (as those terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) or to a museum foundation.

* * * * *

National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163)

~~SEC. 2852. LEASE OR LICENSE OF UNITED STATES NAVY MUSEUM FACILITIES AT WASHINGTON NAVY YARD, DISTRICT OF COLUMBIA.~~

~~(a) Leases and Licenses Authorized.— The Secretary of the Navy may lease or license to the Naval Historical Foundation any portion of the facilities located at the Washington Naval Yard, District of Columbia, that house the United States Navy Museum for the purpose of permitting the Foundation to carry out the following activities:~~

~~(1) Generation of revenue for the United States Navy Museum through the rental of facilities to the public, commercial and non-profit entities, State and local governments, and other Federal agencies.~~

~~(2) Performance of administrative activities in support of the United States Navy Museum.~~

~~(b) Limitation.— Activities carried out at a facility subject to a lease or license under subsection (a) must be consistent with the operations of the United States Navy Museum.~~

~~(c) Consideration.— The amount of consideration paid in a year by the Naval Historical Foundation to the United States for the lease or license of facilities under subsection (a) may not exceed the actual cost, as determined by the Secretary, of the annual operation and maintenance of the facilities.~~

~~(d) Deposit and Use of Proceeds.— Consideration paid under subsection (c) shall be deposited into the appropriations account available for the operation and maintenance of the United States Navy Museum. The Secretary may use the amounts so deposited to cover costs associated with the operation and maintenance of the Museum and its exhibits.~~

~~(e) Additional Terms and Conditions.— The Secretary may require such additional terms and conditions in connection with a lease or license under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.~~

* * * * *

Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398)

* * * * *

SEC. 2884. DEVELOPMENT OF MARINE CORPS HERITAGE CENTER AT MARINE CORPS BASE, QUANTICO, VIRGINIA.

(a) Authority To Enter Into Joint Venture for Development.— The Secretary of the Navy may enter into a joint venture with the Marine Corps Heritage Foundation, a not-for-profit entity, for the design and construction of a multipurpose facility to be used for historical displays for public viewing, curation, and storage of artifacts, research facilities, classrooms, offices, and associated activities consistent with the mission of the Marine Corps University. The facility shall be known as the Marine Corps Heritage Center.

(b) Authority To Accept Certain Land.— (1) The Secretary may, if the Secretary determines it to be necessary for the facility described in subsection (a), accept without compensation any portion of the land known as Locust Shade Park which is now offered by the Park Authority of the County of Prince William, Virginia, as a potential site for the facility.

(2) The Park Authority may convey the land described in paragraph (1) to the Secretary under this section without regard to any limitation on its use, or requirement for its replacement upon conveyance, under section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-8(f)(3)) or under any other provision of law.

(c) Design and Construction.— For each phase of development of the facility described in subsection (a), the Secretary may—

(1) permit the Marine Corps Heritage Foundation to contract for the design, construction, or both of such phase of development; or

(2) accept funds from the Marine Corps Heritage Foundation for the design, construction, or both of such phase of development.

(d) Acceptance Authority.— Upon completion of construction of any phase of development of the facility described in subsection (a) by the Marine Corps Heritage Foundation to the satisfaction of the Secretary, and the satisfaction of any financial obligations incident thereto by the Marine Corps Heritage Foundation, the facility shall become the property of the Department of the Navy with all right, title, and interest in and to facility being in the United States.

~~(e) Lease of Facility.— (1) The Secretary may lease, under such terms and conditions as the Secretary considers appropriate for the joint venture authorized by subsection (a), portions of the facility developed under that subsection to the Marine Corps Heritage Foundation for use in generating revenue for activities of the facility and for such administrative purposes as may be necessary for support of the facility.~~

~~(2) The amount of consideration paid the Secretary by the Marine Corps Heritage Foundation for the lease under paragraph [114 STAT. 1654A-441] (1) may not exceed an amount equal to the actual cost (as determined by the Secretary) of the operation of the facility.~~

~~(3) Notwithstanding any other provision of law, the Secretary shall use amounts paid under paragraph (2) to cover the costs of operation of the facility.~~

(f)) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the joint venture authorized by subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

1 **SEC. ___. MILITARY MUSEUM CONTRIBUTOR RECOGNITION.**

2 Section 2601 of title 10, United States Code, is amended—

3 (1) in subsection (a)(2), by inserting after subparagraph (B) the following new

4 subparagraph:

5 "(C) The Secretary concerned may display, at a military museum, recognition for an

6 individual or organization that contributes money to a nonprofit entity described in subparagraph

7 (A), or an individual or organization that contributes a gift directly to the armed force concerned

8 for the benefit of a military museum, whether or not the contribution is subject to the condition

9 that recognition be provided. The Secretaries concerned shall prescribe uniform regulations

10 governing the circumstances under which contributor recognition may be provided, appropriate

11 forms of recognition, and suitable display standards."; and

12 (2) in subsection (e), by striking "or the Coast Guard Academy" and inserting "the

13 Coast Guard Academy, or a military museum".

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

Section-by-Section Analysis

This proposal would amend section 2601 of title 10, United States Code, *General Gift Funds*, to enable Service Secretaries to provide recognition at military museums to: 1) non-profit organizations and their contributors who provide support to military museum programs; and 2) individuals that contribute personal items directly to a military museum. Enacting this proposal will strengthen civilian community engagement and partnerships with military museums around the country.

Current laws limit the Service Secretaries from formally recognizing non-profit organizations and their donors that contribute to the support of military museum programs. The current law requires actions by DoD personnel and military museums to avoid actual, or the appearance of, commercialization, preferential treatment, or endorsement of any product, service or enterprise. As a result, limited forms of donor recognition have been allowed consistent with these limitations, such as letters or certificates of appreciation, news releases, and photo opportunities. This update removes many of those restrictions, allowing the Service Secretaries

to appropriately recognize donors for their gifts to military museums at the museums so that visitors are aware of their contribution.

The various authorities that impact gift acceptance within the Department of Defense do not currently allow military museums to recognize a particular gift via the memorialization process. This proposal would add the military museums to current authority that allows the Service Secretaries to accept gifts for the military service academies in exchange for possible memorializations and formal recognition. The acceptance of a gift with the imposition of naming rights would have to reflect favorably upon the United States and the Department of Defense. Additionally, the Service Secretaries would issue uniform regulations ensuring gifts conditioned on naming rights follow appropriate naming conventions and suitable display standards.

By comparison, under 20 U.S.C. § 55, the Smithsonian Institution is authorized to "receive money or other property by gift, bequest, or devise, and to hold and dispose of the same in promotion of the purposes thereof." This statute places no restrictions on the receipt of gifts or donor or contributor recognition. The Smithsonian Institution can also recognize donors in various ways, including naming or re-naming all or a portion of a facility, exhibition, or program. The Smithsonian Institute can recognize donors at events and programs, at exhibits, and at all Smithsonian facilities. Since the Smithsonian Institution is subject to different legal authorities, they are able to take a more aggressive role in soliciting gifts and providing recognition to their donors.

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 2601 of title 10, United States Code, as follows:

§2601. General gift funds

(a) General Authority to Accept Gifts.-(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary.

(2)(A) Notwithstanding section 1342 of title 31, the Secretary concerned may accept a gift of services for a military museum program from a nonprofit entity established for the purpose of supporting a military museum program. Employees or personnel of a nonprofit entity who provide a gift of services under this subparagraph may not be considered to be employees of the United States.

(B) For the use and benefit of a military museum program, the Secretary concerned may solicit from a bona fide collector a gift of books, manuscripts, works of art, historical artifacts, drawings, plans, models, or condemned or obsolete combat materiel.

(C) The Secretary concerned may display, at a military museum, recognition for an individual or organization that contributes money to a nonprofit entity described in subparagraph (A), or an

individual or organization that contributes a gift directly to the armed force concerned for the benefit of a military museum, whether or not the contribution is subject to the condition that recognition be provided. The Secretaries concerned shall prescribe uniform regulations governing the circumstances under which contributor recognition may be provided, appropriate forms of recognition, and suitable display standards.

(b) Additional Authority to Accept Gifts to Benefit Certain Members, Dependents, and Civilian Employees.-(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, money, or services made on the condition that the gift, devise, or bequest be used for the benefit of-

(A) members of the armed forces, including members performing full-time National Guard duty under section 502(f) of title 32, who incur a wound, injury, or illness while in the line of duty;

(B) civilian employees of the Department of Defense who incur a wound, injury, or illness while in the line of duty;

(C) dependents of such members or employees; and

(D) survivors of such members or employees who are killed.

(2) The Secretary concerned may not accept a gift of services from a foreign government or international organization under this subsection. A gift of real property, personal property, or money from a foreign government or international organization may be accepted under this subsection only if the gift is not designated for a specific individual.

(3) The Secretary of Defense shall prescribe regulations specifying the conditions that may be attached to a gift, devise, or bequest accepted under this subsection.

(c) Gift Funds.-Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) or (b) shall be deposited in the Treasury in the following accounts:

(1) The Department of the Army General Gift Fund, in the case of deposits made by the Secretary of the Army.

(2) The Department of the Navy General Gift Fund, in the case of deposits made by the Secretary of the Navy.

(3) The Department of the Air Force General Gift Fund, in the case of deposits made by the Secretary of the Air Force.

(4) The Coast Guard General Gift Fund, in the case of deposits made by the Secretary of Homeland Security.

(5) The Department of Defense General Gift Fund, in the case of deposits made by the Secretary of Defense.

(d) Use of Gifts; Prohibitions.-(1) Except as provided in paragraph (2), property and money accepted under subsection (a) or (b) may be used by the Secretary concerned, and services accepted under such subsections may be performed, without further specific authorization in law.

(2) Property, money, and services may not be accepted under subsection (a) or (b)-

(A) if the use of the property or money or the performance of the services in connection with any program, project, or activity would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity;

(B) if the conditions attached to the property, money, or services are inconsistent with applicable law or regulations;

(C) if the Secretary concerned determines that the use of the property or money or the performance of the services would reflect unfavorably on the ability of the Department of Defense or the Coast Guard, any employee of the Department or Coast Guard, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner; or

(D) if the Secretary concerned determines that the use of the property or money or the performance of the services would compromise the integrity or appearance of integrity of any program of the Department of Defense or Coast Guard, or any individual involved in such a program.

(3) The Secretary concerned may disburse funds deposited in a gift fund referred to in subsection (c) for the purposes specified in subsections (a) and (b), subject to the terms of the gift, devise, or bequest.

(e) Acceptance of Real Property Gifts; Naming Rights.-(1) The Secretary concerned may accept a gift under subsection (a) or (b) consisting of the provision, acquisition, enhancement, or construction of real property offered to the United States Military Academy, the Naval Academy, the Air Force Academy, ~~or~~ the Coast Guard Academy, or a military museum even though the gift will be subject to the condition that the real property, or a portion thereof, bear a specified name.

(2) The authority conferred by this subsection may be delegated by the Secretary concerned only to a civilian official appointed by the President, by and with the advice and consent of the Senate.

(3) A gift may not be accepted under paragraph (1) if-

(A) the acceptance of the gift or the imposition of the naming-rights condition would reflect unfavorably upon the United States, as provided in subsection (d)(2); or

(B) the real property to be subject to the condition, or portion thereof, has been named by an act of Congress.

(4) The Secretaries concerned shall issue uniform regulations governing the circumstances under which gifts conditioned on naming rights may be accepted, appropriate naming conventions, and suitable display standards.

(f) Payment of Expenses.-The Secretary concerned may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest accepted under this section.

(g) Treatment of Gifts.-For the purposes of Federal income, estate, and gift taxes, any property, money, or services accepted under subsection (a) or (b) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(h) Management of Funds.-In the case of each gift fund referred to in subsection (c), the Secretary of the Treasury, upon the request of the Secretary concerned, may retain money, securities, and the proceeds of the sale of securities in the gift fund and may invest money and reinvest the proceeds of the sale of securities in the gift fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund and may be disbursed as provided in subsection (d).

(i) Comptroller General Review.-The Comptroller General shall make periodic audits of gifts, devises, and bequests accepted under subsection (a) or (b) at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) Definitions.-In this section:

(1) The term "Secretary concerned" includes the Secretary of Defense.

(2) The term "services" includes activities that benefit the education, morale, welfare, or recreation of members of the armed forces and their dependents or are related or incidental to the conveyance of a gift, devise, or bequest of real property or personal property under subsection (a) or (b).

1 **SEC. __. ADDITIONAL FLEXIBILITY IN MONTGOMERY GI BILL ELECTION.**

2 Section 3011 of title 38, United States Code, is amended—

3 (1) in subsection (b)—

4 (A) in paragraph (1), by striking “each of the first 12 months that such

5 individual is entitled to such pay” and inserting “12 months consecutive that such

6 individual is entitled to such pay beginning no earlier than the seventh month that

7 such individual is so entitled”; and

8 (B) in paragraph (2), by striking “one year” and inserting “one and a half

9 years”; and

10 (2) in subsection (c)(1), by striking “at the time” and inserting “not later than 180

11 days after the date on which”.

[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 give new members of the Armed Forces more time before they are required to make elections about the Montgomery GI Bill – Active Duty (MGIB-AD).

Under current law, new accessions are automatically enrolled in the MGIB-AD unless they opt out in writing, and the election to opt out is required to be made when initially entering active duty. Those who do not opt-out have $100 per month deducted from their pay check for 12 months, paying a total of $1,200 for MGIB-AD benefits.

Due to this requirement, new members have to make this decision during basic training, a period where the recruit is under intense physical and emotional stress. This is not the appropriate environment to demand recruits make decisions regarding their near-term future finances or on their long term educational aspirations.

This proposal would provide each new member a period of 180 days after initially entering active duty to determine whether to opt out of the MGIB-AD benefits and its corresponding deductions from pay

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 3011 of title 38, Untied States Code:

§ 3011. Basic educational assistance entitlement for service on active duty

(a) Except as provided in subsection (c) of this section, each individual—

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) who (I) in the case of an individual whose obligated period of active duty is three years or more, serves at least three years of continuous active duty in the Armed Forces, or (II) in the case of an individual whose obligated period of active duty is less than three years, serves at least two years of continuous active duty in the Armed Forces; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; (II) for the convenience of the Government, if, in the case of an individual with an obligated period of service of two years, the individual completes not less than 20 months of continuous active duty under that period of obligated service, or, in the case of an individual with an obligated period of service of at least three years, the individual completes not less than 30 months of continuous active duty under that period of obligated service; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(B) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—

(i) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces; or

(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph; (II) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; or

(C) as of December 31, 1989, was eligible for educational assistance benefits under chapter 34 of this title and—

(i) was not on active duty on October 19, 1984;

(ii) reenlists or reenters on a period of active duty after October 19, 1984; and

(iii) on or after July 1, 1985, either—

(I) serves at least three years of continuous active duty in the Armed Forces; or

(II) is discharged or released from active duty (aa) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph, (bb) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date, or (cc) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(2) who completes the requirements of a secondary school diploma (or equivalency certificate), or successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree, before applying for benefits under this section; and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) continues on active duty;

(B) is discharged from active duty with an honorable discharge;

(C) is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or

(D) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

(b)(1) Except as provided in paragraph (2), the basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (c)(1) of this section shall be reduced by $100 for ~~each of the first 12 months that such individual is entitled to such pay~~ 12 consecutive months that such individual is entitled to such pay beginning no earlier than the seventh month that such individual is so entitled.

(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than ~~one year~~ one and a half years after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.

(3) Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.

(c)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made ~~at the time~~ not later than 180 days after the date on which the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy is not eligible for educational assistance under this section.

(3) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section if the individual enters on active duty—

(A) before October 1, 1996; or

(B) after September 30, 1996, and while participating in such program received more than $3,400 for each year of such participation.

(d)(1) For purposes of this chapter, any period of service described in paragraphs (2) and (3) of this subsection shall not be considered a part of an obligated period of active duty on which an individual's entitlement to assistance under this section is based.

(2) The period of service referred to in paragraph (1) is any period terminated because of a defective enlistment and induction based on—

(A) the individual's being a minor for purposes of service in the Armed Forces;

(B) an erroneous enlistment or induction; or

(C) a defective enlistment agreement.

(3) The period of service referred to in paragraph (1) is also any period of service on active duty which an individual in the Selected Reserve was ordered to perform under section 12301, 12302, 12304, 12306, or 12307 of title 10 for a period of less than 2 years.

(e)(1) Any individual eligible for educational assistance under this section who does not make an election under subsection (c)(1) may contribute amounts for purposes of receiving an increased amount of basic educational assistance as provided for under section 3015(g) of this title. Such contributions shall be in addition to any reductions in the basic pay of such individual under subsection (b).

(2) An individual covered by paragraph (1) may make the contributions authorized by that paragraph at any time while on active duty, but not more frequently than monthly.

(3) The total amount of the contributions made by an individual under paragraph (1) may not exceed $600. Such contributions shall be made in multiples of $20.

(4) Contributions under this subsection shall be made to the Secretary of the military department concerned. That Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(f)(1) For the purposes of this chapter, a member referred to in paragraph (2) or (3) of this subsection who serves the periods of active duty referred to in that paragraph shall be deemed to have served a continuous period of active duty the length of which is the aggregate length of the periods of active duty referred to in that paragraph.

(2) This subsection applies to a member who—

(A) after a period of continuous active duty of not more than 12 months, is discharged or released from active duty under subclause (I) or (III) of subsection (a)(1)(A)(ii) of this section; and

(B) after such discharge or release, reenlists or re-enters on a period of active duty.

(3) This subsection applies to a member who after a period of continuous active duty as an enlisted member or warrant officer, and following successful completion of officer training school, is discharged in order to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.

(g) Notwithstanding section 3002(6)(A) of this title, a period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education as described in such section 3002(6)(A) shall not be considered a break in service or a break in a continuous period of active duty of the individual for the purposes of this chapter.

(h)(1) Notwithstanding section 3002(6)(B) of this title, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in subparagraphs (A) and (C) of that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in such subparagraphs.

(2) This subsection applies to a member who—

(A) during the obligated period of active duty on which entitlement to assistance under this section is based, commences pursuit of a course of education—

(i) at a service academy; or

(ii) at a post-secondary school for the purpose of preparation for enrollment at a service academy;

(B) fails to complete the course of education; and

(C) re-enters on a period of active duty.

(i) The Secretary concerned shall inform any member of the Armed Forces who has not completed that member's obligated period of active duty (as described in subsection (a)(1)(A)) and who indicates the intent to be discharged or released from such duty for the convenience of the Government of the minimum active duty requirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

1 **SEC. ___. ELIGIBILITY REQUIREMENTS TO RECEIVE UNEMPLOYMENT**

2 **COMPENSATION FOR EX-SERVICEMEMBERS.**

3 (a) IN GENERAL.—Section 8521(a)(1) of title 5, United States Code, is amended—

4 (1) in the matter preceding subparagraph (A)—

5 (A) by striking "(not including active duty in a reserve status unless for a

6 continuous period 180 days or more)"; and

7 (B) by striking "with respect to that service"; and

8 (2) by amending subparagraphs (A) and (B) to read as follows:

9 "(A) the service was continuous for 180 days or more, or was terminated

10 earlier because of an actual service-incurred injury or disability; and

11 "(B) with respect to that service, the individual—

12 "(i) was discharged or released under honorable conditions;

13 "(ii) did not resign or voluntarily leave the service, including

14 declining to reenlist; and

15 "(iii) was not released or discharged for cause in accordance with

16 regulations prescribed by the Secretary of Defense;".

17 (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the

18 date of the enactment of this Act, and shall apply with respect to periods of Federal service

19 commencing on or after that date.

[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 eligibility requirements for receipt of unemployment compensation following separation from military service. Currently, members who have

completed their first term of service are eligible to receive unemployment compensation, even if the member chooses not to re-enlist. This proposal would restrict eligibility for unemployment compensation to members who have completed 180 continuous days of active service and are involuntarily discharged or released under honorable conditions.

The proposal's definition of qualifying Federal service encompasses full-time National Guard duty as well as active duty and makes no distinction between members of the Regular and Reserve components. The proposal also provides that service members who do not have 180 days of qualifying service due to service incurred injuries and disabilities are eligible for unemployment compensation provided the other requirements are met.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. There are significant savings and no costs associated with this proposal. This proposal would reduce the amount each military department would spend on unemployment compensation. Based on current separations, the military departments would save approximately 60 percent of the amount they currently spend each year. In addition, the total amount of Federal service will be reduced for non-military claims where the claimant is reporting both military and civilian wages.

RESOURCE IMPACT ($MILLIONS)							
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**
Unemployment Benefits	-$41.856	-$68.534	-$68.740	-$69.059	-$69.443	Military Personnel, Army, 2010A (Base)	6
Unemployment Benefits	-$21.549	$0.000	$0.000	$0.000	$0.000	Military Personnel, Army, 2010A (OCO)	6
Unemployment Benefits	-$24.301	-$22.639	-$23.549	-$24.837	-$25.403	Military Personnel, Navy, 1453N (Base)	6
Unemployment Benefits	-$0.657					Military Personnel, Navy, 1453N (OCO)	6
Unemployment Benefits	-$12.487	-$12.736	-$12.991	-$13.252	-$13.516	Military Personnel, Marine Corps, 1105N (Base)	6
Unemployment Benefits	-$10.449	-$17.878	-$18.426	-$18.151	-$18.515	Military Personnel, Air Force, 3500F (Base)	6
Unemployment Benefits	-$9.378	$0.000	$0.000	$0.000	$0.000	Military Personnel, Air Force, 3500F (OCO)	6
Total Base Savings	**-$89.093**	**-$121.787**	**-$123.706**	**-$125.299**	**-$126.877**		
Total OCO Savings	**-$31.584**	$0.000	$0.000	$0.000	$0.000		
Total Savings	**-$120.677**	**-$121.787**	**-$123.706**	**-$125.299**	**-$126.877**		

Changes to Existing Law: This proposal would make the following changes to section 8521 of title 5, United States Code:

§ 8521. Definitions; application

(a) For the purpose of this subchapter—

(1) "Federal service" means active service ~~(not including active duty in a reserve status unless for a continuous period 180 days or more)~~ in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if ~~with respect to that service—~~

~~(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and~~

~~(B)~~

~~(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or~~

~~(ii) the individual was discharged or released before completing such term of active service—~~

~~(I) for the convenience of the Government under an early release program,~~

~~(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,~~

~~(III) because of hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10), or~~

~~(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;~~

(A) the service was continuous for 180 days or more, or was terminated earlier because of an actual service-incurred injury or disability; and

(B) with respect to that service, the individual—

(i) was discharged or released under honorable conditions;

(ii) did not resign or voluntarily leave the service, including declining to reenlist; and

(iii) was not released or discharged for cause in accordance with regulations prescribed by the Secretary of Defense;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

1 **SEC. ___. EXTENSION OF TEMPORARY, LIMITED AUTHORITY TO USE**
2 **OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION**
3 **PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.**

4 Section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B
5 of Public Law 108-136; 117 Stat. 1723), as most recently amended by section 2807 of the John
6 S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132
7 Stat. 2264), is further amended—

8 (1) in subsection (c)—

9 (A) by redesignating the second paragraph (1) and the first paragraph (2)
10 as subparagraphs (A) and (B), respectively, and conforming the margins
11 accordingly; and

12 (B) in paragraph (1)—

13 (i) in the matter preceding subparagraph (A) (as so redesignated),
14 by striking "either" and inserting "each"; and

15 (ii) by adding at the end the following new subparagraph:

16 "(C) The period beginning October 1, 2020, and ending on the earlier of
17 December 31, 2021, or the date of the enactment of an Act authorizing funds for military
18 activities of the Department of Defense for fiscal year 2022."; and

19 (2) in subsection (h)—

20 (A) in paragraph (1), by striking "December 31, 2020" and inserting
21 "December 31, 2021"; and

22 (B) in paragraph (2), by striking "fiscal year 2021" and inserting "fiscal
23 year 2022".

[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 provide continued authority for the Secretary of Defense to use funds appropriated for operations and maintenance for military construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operations, including long-term strategic competition supporting seamless integration of elements of national power through the end of Fiscal Year 2021.

Extension of this authority would enable the Department of Defense to provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. It also would provide continuous, needed support to our commanders and forces during ongoing and future contingency operations.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated from operation and maintenance under the conditions set forth in subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004. In addition, the Department of Defense still would not be able to proceed with execution of these projects until after a waiting period following the delivery of the notification to Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is 7 days.)

This proposal would continue to allow the Secretary to waive the long-term base restriction in Afghanistan, as Contingency Construction Authority is not authorized at installations where the United States is reasonably expected to have a long-term presence. However, from an operational standpoint, whether the United States intends to have a long-term presence at key locations does not preclude the emergence of critical, urgent operational capability requirements at these locations; thus, the Department needs the proposed waiver authority.

Budget Implications: There are no budgetary implications associated with this legislative proposal. The Department does not specifically request appropriation to support the authorization granted for the use of 2808 authority granted in the FY 2004 NDAA, as amended, [contingency construction authority (CCA)] but divert Operation and Maintenance funding to support the higher priority CCA.

Changes to Existing Law: This proposal would make the following changes to section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723):

SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.

(a) TEMPORARY AUTHORITY.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out, inside the area of responsibility of the United States Central Command or certain countries in the area of responsibility of the United States Africa Command, a construction project that the Secretary determines meets each of the following conditions:

(1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence, unless the military installation is located in Afghanistan, for which projects using this authority may be carried out at installations deemed as supporting a long-term presence.

(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in subsection (f) a notice regarding the construction project. The project may be carried out only after the end of the 10-day period beginning on the date the notice is received by the committees or, if earlier, the end of the 7-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

(3) All relevant documentation detailing the construction project.

(4) An estimate of the total amount obligated for the construction.

(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed $50,000,000 during ~~either~~ each of the following periods:

(~~1~~ A) The period beginning October 1, 2018, and ending on the earlier of December 31, 2019, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2020.

(~~2~~ B) The period beginning October 1, 2019, and ending on the earlier of December 31, 2020, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2021.

(C) The period beginning October 1, 2020, and ending on the earlier of December 31, 2021, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2022.

(2) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional $10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts.

[(d) REPEALED.]

(e) RELATION TO OTHER AUTHORITIES.—The temporary authority provided by this section, and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(g) EFFECT OF FAILURE TO SUBMIT PROJECT NOTIFICATIONS.—If the advance notice of the proposed obligation of the funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in subsection (f)) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the notice is finally submitted.

(h) EXPIRATION OF AUTHORITY.—The authority to obligate funds under this section expires on the later of—

(1) December 31, ~~2020~~ 2021; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year ~~2021~~ 2022.

(i) CERTAIN COUNTRIES IN THE AREA OF RESPONSIBILITY OF UNITED STATES AFRICA COMMAND DEFINED.—In this section, the term "certain countries in the area of responsibility of the United States Africa Command" means Kenya, Somalia, Ethiopia, Djibouti, Seychelles, Burundi, and Uganda.

1 **SEC. ___. USE OF COMMISSARY STORES AND MWR FACILITIES: CERTAIN**

2 **VETERANS AND CAREGIVERS FOR VETERANS.**

3 Section 1065 of title 10, United States Code, is amended—

4 (1) in subsection (e)—

5 (A) in the subsection heading, by inserting "FAMILY" before

6 "CAREGIVERS"; and

7 (B) by striking "A caregiver or family caregiver" and inserting "A family

8 caregiver";

9 (2) in subsection (g), by striking "or MWR retail facility"; and

10 (3) in subsection (h)—

11 (A) in paragraph (1), by striking "includes" and inserting "means"; and

12 (B) by amending paragraph (4) to read as follows:

13 "(4) The term 'family caregiver' means an individual who is currently approved

14 as a provider of personal care services under section 1720G(a)(6) of title 38.".

[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 corrects and clarifies the intent regarding application of the user fee and use of morale, welfare, and recreation (MWR) facilities by removing all language referencing MWR retail facilities in the paragraph requiring a user fee.

This proposal modifies subsection (g) of section 1065 to eliminate confusion concerning whether the required user fee to offset commissary credit and debit card costs should also be applied to purchases in exchanges and other MWR facilities. The Department of Defense (DoD) understands that the intent of the user fee in subsection (g) was to apply only to commissary purchases; however, it could be misinterpreted to apply also to purchases using a commercial credit card or debit card to make purchases in the exchanges and other MWR facilities by individuals who are eligible solely under this section The current language in subsection (g)(1) is misleading, since it should only be describing the applicability of the user fee to the new patron groups for expenses to the Treasury related to credit and debit card usage at the

commissary, but becomes confusing when stating “commissary or MWR retail facility.” Subsections (g)(2), (g)(3), and (g)(4) are more clear and specific to the user fee only being applicable to the commissary. Removing “or MWR retail facility” from subsection (g)(1) will clarify that the user fee applies only to purchases in a commissary.

This proposal modifies subsection (h)(1) of section 1065 to clarify the MWR facilities that are required to allow access under this section. The Department understands that the intent of the section 1065 was to apply only to Category C revenue generating MWR facilities. However, because the word “includes,” as it applies to this section, means “includes but is not limited to,” the Department may be required to allow access to all MWR facilities to include child development programs, fitness centers, and other MWR activities that receive significant appropriated fund support. This requirement, in many cases, would overwhelm these programs and/or drive additional appropriated funding requirements. Replacing the term “includes” with “means” in subsection (h)(1) eliminates this broad requirement and avoids the potential increase in appropriated fund costs and negative program impact. If this proposal is enacted prior to extending access to all MWR activities, the Department can avoid this additional cost.

This proposal clarifies and limits the caregivers to only those who are currently approved as a provider of personal care services in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

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 1065 of title 10, United States Code:

§1065. Use of commissary stores and MWR facilities: certain veterans and caregivers for veterans

(a) Eligibility of Veterans Awarded the Purple Heart.-A veteran who was awarded the Purple Heart shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(b) Eligibility of Veterans Who Are Medal of Honor Recipients.-A veteran who is a Medal of Honor recipient shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(c) Eligibility of Veterans Who Are Former Prisoners of War.-A veteran who is a former prisoner of war shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(d) Eligibility of Veterans With Service-Connected Disabilities.-A veteran with a service-connected disability shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(e) Eligibility of Family Caregivers for Veterans.-~~A caregiver or family caregiver~~ A family caregiver shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(f) Eligibility of Foreign Service Officers on Mandatory Home Leave.—A Foreign Service officer on mandatory home leave may be permitted to use military lodging referred to in subsection (h).

(g) User Fee Authority.-(1) The Secretary of Defense shall prescribe regulations that impose a user fee on individuals who are eligible solely under this section to purchase merchandise at a commissary store~~ or MWR retail facility~~.

(2) The Secretary shall set the user fee under this subsection at a rate that the Secretary determines will offset any increase in expenses arising from this section borne by the Department of the Treasury on behalf of commissary stores associated with the use of credit or debit cards for customer purchases, including expenses related to card network use and related transaction processing fees.

(3) The Secretary shall deposit funds collected pursuant to a user fee under this subsection in the General Fund of the Treasury.

(4) Any fee under this subsection is in addition to the uniform surcharge under section 2484(d) of this title.

(h) Definitions.-In this section:

(1) The term "MWR facilities" ~~includes~~ means—

(A) MWR retail facilities, as that term is defined in section 1063(e) of this title; and

(B) military lodging operated by the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(2) The term "Medal of Honor recipient" has the meaning given that term in section 1074h(c) of this title.

(3) The terms "veteran", "former prisoner of war", and "service-connected" have the meanings given those terms in section 101 of title 38.

~~(4) The terms "caregiver" and "family caregiver" have the meanings given those terms in section in section 1720G(d) of title 38.~~

(4) The term "family caregiver" means an individual who is currently approved as a provider of personal care services under section 1720G(a)(6) of title 38.

(5) The term “Foreign Service officer” has the meaning given that term in section 103 of the Foreign Service Act of 1980 (22 U.S.C. 3903).

(6) The term “mandatory home leave” means leave under section 903 of the Foreign Service Act of 1980 (22 U.S.C. 4083).

1 **SEC. ___. USE OF CONTRIBUTIONS TO CARRY OUT DEPARTMENT OF DEFENSE**

2 **COOPERATIVE THREAT REDUCTION PROGRAM.**

3 Section 1325 of the Carl Levin and Howard P. "Buck" McKeon National Defense

4 Authorization Act for Fiscal Year 2015 (50 U.S.C. 3715) is amended—

5 (1) in subsection (b), by striking the period at the end and inserting ", including

6 funds contributed prior to October 1, 2020.";

7 (2) by striking subsection (c); and

8 (3) by redesignating subsections (d) through (f) as subsections (c) through (e),

9 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 proposal would amend section 1325 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (50 U.S.C. 3715) to allow the Department of Defense (DoD) to obligate and expend funds contributed three or more years ago to DoD's Cooperative Threat Reduction (CTR) Program that the contributor cannot accept or does not want returned. Under the current statute, DoD must return funds contributed to DoD's CTR Program that have not been obligated or expended three years after such funds have been received, and for a variety of reasons, contributors have not wanted to accept funds back.

This authority is critical because it would enable DoD to resolve a standing issue concerning funds remaining from expired contributions that cannot be returned to the contributor. Just as the Department expects DoD's CTR Program funds to reflect a return on investment, capable donor partners that contribute funds to DoD's CTR Program expect the same. To help ensure foreign funds contributed to DoD's CTR Program are used for critical threat reduction activities, the Department requests this change to allow DoD to obligate and expend funds beyond the current three year limitation in the DoD CTR Act. Generally, the funds remaining from contributions made three or more years prior are low-dollar figures and are generally left over from contracts that required a smaller amount of money to execute than originally anticipated. Being able to use these funds toward other WMD threat reduction activities will help DoD maintain the trust and relationships developed with like-minded, capable donor partners over the years and use potential resources as efficiently as possible.

Budget Implications: This proposal has no budget implications.

Changes to Existing Law: This proposal would make the following changes to section 1325 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (50 U.S.C. 3715):

SEC. 1325. USE OF CONTRIBUTIONS TO DEPARTMENT OF DEFENSE COOPERATIVE THREAT REDUCTION PROGRAM.

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—

(1) AUTHORITY.—Subject to paragraph (2), the Secretary of Defense may enter into one or more agreements with any person (including a foreign government, international organization, multinational entity, or any other entity) that the Secretary considers appropriate under which the person contributes funds for activities conducted under the Program.

(2) CONCURRENCE BY SECRETARY OF STATE.—The Secretary may enter into an agreement under paragraph (1) only with the concurrence of the Secretary of State.

(b) RETENTION AND USE OF FUNDS.—Notwithstanding section 3302 of title 31, United States Code, and subject to subsections (c) and (d), the Secretary of Defense may retain and obligate or expend funds contributed pursuant to subsection (a) for purposes of the Program. Funds so contributed shall be retained in a separate fund established in the Treasury for such purposes and shall be available to be obligated or expended without further appropriation~~.~~, including funds contributed prior to October 1, 2020.

~~(c) RETURN OF FUNDS NOT OBLIGATED OR EXPENDED WITHIN THREE YEARS.—If the Secretary does not obligate or expend funds contributed pursuant to subsection (a) by the date that is three years after the date on which the contribution was made, the Secretary shall return the amount to the person who made the contribution.~~

(~~d~~c) NOTICE.—

(1) IN GENERAL.—Not later than 30 days after receiving funds contributed pursuant to subsection (a), the Secretary shall submit to the appropriate congressional committees a notice—

(A) specifying the value of the contribution and the purpose for which the contribution was made; and

(B) identifying the person who made the contribution.

(2) LIMITATION ON USE OF AMOUNTS.—The Secretary may not obligate funds contributed pursuant to subsection (a) until a period of 15 days elapses following the date on which the Secretary submits the notice under paragraph (1).

(~~e~~d) IMPLEMENTATION PLAN.—The Secretary shall submit to the congressional defense committees—

(1) an implementation plan for the authority provided under this section prior to obligating or expending any funds contributed pursuant to subsection (a); and

(2) any updates to such plan that the Secretary considers appropriate.

(~~f~~e) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means the following:

(1) The congressional defense committees.

(2) The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

1 **SEC. ___. LIMITATION ON APPLICATION OF VETERANS' PREFERENCE FOR**

2 **PERMANENT EMPLOYEES IN COMPETITIVE EXAMINING.**

3 (a) OPM REGULATIONS.—Section 1302 of title 5, United States Code, is amended by

4 adding at the end the following new subsection:

5 "(e) Preference may not be given pursuant to subsection (b) or (c) in certification for

6 appointment, or in appointment, through a competitive examination in the case of a preference

7 eligible who has a current permanent appointment in the competitive service.".

8 (b) ADDITIONAL POINTS ON EXAMINATIONS FOR PREFERENCE ELIGIBLES.—Section 3309

9 of such title is amended—

10 (1) by inserting "(a)" before "A preference eligible"; and

11 (2) by adding at the end the following new subsection:

12 "(b) Preference may not be given through competitive examination to a preference

13 eligible who has a current permanent appointment in the competitive service.".

14 (c) ALTERNATIVE RANKING AND SELECTION PROCEDURES.—Section 3319 of such title is

15 amended—

16 (1) in subsection (b), by inserting before the period at the end of the first sentence

17 the following: ", except preference-eligibles who have current permanent appointments in

18 the competitive service";

19 (2) by striking subsection (d); and

20 (3) by redesignating subsection (e) as subsection (d).

[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 sections 1302, 3309, and 3319 of title 5, United States Code (U.S.C), to provide veterans' preference under competitive examining only to those preference eligibles who are not currently appointed permanently in the competitive service.

The National Defense Authorization Act for Fiscal Year (FY) 2010 required the Department of Defense (DoD) to develop a new performance appraisal system and to redesign procedures for use within DoD to make appointments to positions within the competitive service, and authorized the Secretary of Defense, at his discretion, to establish a Civilian Workforce Incentive Fund. In accordance with Executive Order (E.O.) 13522, DoD involved bargaining unit employees through their union representatives in the design and implementation of the new personnel authorities. The Hiring Flexibilities Design Team, with union representation, recommended limiting the use of veterans' preference to preference eligibles not currently employed on a full-time permanent appointment in the Federal Government.

Employment in the Federal service is subject to merit system principles and veterans' preference. Merit system principles are found under section 2301 of title 5, U.S.C., and state, "Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition that assures that all receive equal opportunity."

Veterans' preference provides special consideration to qualified veterans seeking Federal service who apply to vacancies open to all applicants, such as open competitive announcements or direct hire authorities. Preference eligibles are awarded points (5 or 10) or placed at the top of the quality category for which they are ranked and cannot be passed over to select a non-preference candidate. Under current regulations, veterans' preference does not apply to internal merit promotion actions such as promotion, reassignment, change-to-lower grade, or reinstatement. However, when veterans who are on a permanent appointment in the Federal service apply for positions to be filled under competitive examining, they receive veterans' preference and consideration for employment in the same manner as if they were not employed. This has the effect of limiting consideration of other candidates who do not receive preference, including those who may be more qualified and other veterans seeking their first Federal job. This limits the ability to attract new candidates from external competition open to the general public, inhibiting the agency's ability to acquire new talent.

DoD leads the Federal Government in the hiring of veterans. Over 48 percent of DoD's civilian workforce has prior military service. Given the large veteran population in DoD, the balance between merit system principles and veterans' preference has shifted to disproportionally favor veterans' preference. The increased hiring of veterans affects the quality and diversity of the DoD workforce and appears inconsistent with the intent of merit system principles. For example, in 2008, 15 percent of military members were females. The smaller female population in the military results in diminished gender diversity among the veteran population subsequently exercising veterans' preference.

Amending the law to provide veterans' preference under competitive examining to those preference eligibles who are not currently appointed permanently in the competitive service complies better with the intent of merit systems principles.

This proposal also strikes section 3319(d) of title 5, U.S.C., which requires each agency that establishes a category rating system under section 3319 of title 5, U.S.C., to submit to Congress, in each of the 3 years following the establishment, a report containing certain information. The Office of Personnel Management has advised that the reports were required only during the initial 3 years of implementing category rating procedures. Some agencies began to use category rating in 2003. Other agencies began to use category rating in 2010, when a presidential memorandum required its use. At this time, agencies are no longer required to adhere to the reporting requirements of section 3319(d) of title 5 U.S.C., so the proposal would remove this outdated section along with the other changes.

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 title 5, United States Code:

§1302. Regulations

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title.

(e) Preference may not be given pursuant to subsection (b) or (c) in certification for appointment, or in appointment, through a competitive examination in the case of a preference eligible who has a current permanent appointment in the competitive service.

§3309. Preference eligibles; examinations; additional points for

(a) A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

(1) a preference eligible under section 2108 (3)(C)–(G) of this title—10 points; and

(2) a preference eligible under section 2108 (3)(A)–(B) of this title—5 points.

(b) Preference may not be given through competitive examination to a preference eligible who has a current permanent appointment in the competitive service.

§3319. Alternative ranking and selection procedures

(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104 (a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles, except preference-eligibles who have current permanent appointments in the competitive service. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317 (b) or 3318 (b), as applicable, are satisfied.

~~(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—~~

~~(1) the number of employees hired under that system;~~

~~(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and~~

~~(3) the way in which managers were trained in the administration of that system.~~

~~(c)~~ (d) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.