SEC. ___. MODIFICATION OF ANNUAL LOCALITY ADJUSTMENT OF DOLLAR THRESHOLDS APPLICABLE TO UNSPECIFIED MINOR MILITARY CONSTRUCTION AUTHORITIES.

Section 2805(f) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "inside the United States";

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2); and

(4) in paragraph (2), as so redesignated, by striking "2022" and inserting "2025".

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

Section-by-Section Analysis

Unspecified minor military construction (UMMC) is military construction below a project dollar cost threshold prescribed by title 10 U.S.C section 2805 that the Department of Defense (DoD) may undertake without individual project authorization from Congress required for larger projects. However, construction costs can vary widely by location due to variations in cost for labor, materials, equipment, and design requirements for factors such as climate and seismic activity. To account for this, Congress amended section 2805 via the NDAA for FY 2018 to require DoD to apply location adjustments to the UMMC thresholds for locations within the United States and specific U.S. territories, thereby normalizing the utility of UMMC authority for these locations up to a maximum dollar amount of $10,000,000 for any given project. This proposal extends these location-based adjustments to UMMC thresholds to locations outside the United States, and extends the current sunset date for this provision from 2022 to 2024.

To adjust project cost thresholds for location, the Department applies construction cost indices (called Area Cost Factors, or ACFs) which it develops and publishes annually for the purpose of adjusting national-average historical facility costs to specific locations. DoD develops and publishes ACFs for virtually all of its permanent locations worldwide, so this proposal would not require generation of additional ACFs. Rather, DoD would simply be able to apply all ACFs to UMMC projects in a consistent manner worldwide, and fully exercise the intended benefit of UMMC authorities in support of mission requirements to all locations around the globe—a benefit currently enjoyed only within the U.S. and some territories.

ACFs are developed through a process of collecting and comparing cost data on construction labor rates, materials, and equipment from various locations, as well as comparing other factors that impact construction costs such as climate, level of seismic activity, and labor

availability. A given ACF represents the relative cost of construction at a specific location compared to the national U.S. average. The DoD-published ACF values for Fiscal Year 2019 are represented in the tables below. Table 1 reflects locations for which location adjustments are currently required by title 10 U.S.C. section 2805(f) while Table 2 reflects all other locations which this proposal would additionally include. Both tables include the total number ("count") of DoD sites for which an ACF is generated within the given state, territory, or country, and the corresponding minimum and maximum ACF values. The tables are sorted by ACF maximum value, from highest to lowest.

Table 1: ACFs in the U.S. and specific territories currently required by 10 U.S.C. section 2805(f)

State or territory	count	MIN	MAX	State or territory	count	MIN	MAX
Alaska	205	1.90	4.63	Arizona	211	0.95	1.07
Hawaii	204	2.20	2.67	Kansas	203	0.92	1.07
Northern Marianas	7	2.64	2.64	Maine	132	1.02	1.07
Guam	81	2.54	2.54	Maryland	266	0.98	1.07
American Samoa	1	2.11	2.11	Missouri	360	0.96	1.07
California	1154	1.12	1.67	Indiana	316	0.94	1.06
Virgin Islands	17	1.50	1.50	Montana	389	1.04	1.06
New York	706	1.06	1.43	District of Columbia	34	1.05	1.05
Nevada	139	1.16	1.30	Kentucky	223	0.87	1.05
Illinois	387	1.01	1.27	Nebraska	295	0.90	1.05
New Jersey	221	1.19	1.24	South Carolina	275	0.81	1.05
Massachusetts	265	1.08	1.23	Vermont	76	1.03	1.05
West Virginia	190	1.00	1.23	New Hampshire	96	1.01	1.02
Colorado	326	0.97	1.21	Ohio	489	0.94	1.02
Connecticut	121	1.17	1.20	Virginia	529	0.86	1.02
Pennsylvania	590	0.97	1.19	Wyoming	158	0.97	1.02
Rhode Island	80	1.17	1.19	Florida	834	0.81	0.99
Washington	403	1.04	1.17	New Mexico	167	0.90	0.99
Minnesota	331	1.10	1.16	Mississippi	565	0.81	0.97
North Dakota	293	0.96	1.16	North Carolina	478	0.80	0.95
Oregon	255	1.10	1.15	Louisiana	276	0.80	0.94
Michigan	387	1.04	1.14	South Dakota	178	0.92	0.94
Idaho	180	1.03	1.13	Oklahoma	378	0.87	0.93
Iowa	290	1.03	1.13	Arkansas	230	0.85	0.92
Wisconsin	343	1.09	1.13	Texas	1020	0.75	0.92
Delaware	55	1.06	1.09	Tennessee	308	0.83	0.90
Utah	256	1.01	1.09	Alabama	437	0.79	0.89
Puerto Rico	98	1.08	1.08	Georgia	373	0.79	0.88

Table 2: ACFs outside the U.S. and specific territories currently excluded from title 10 U.S.C. section 2805(f)

Country	count	MIN	MAX	Country	count	MIN	MAX
Diego Garcia	1	3.07	3.07	Oman	4	1.24	1.24
Greenland	1	2.90	2.90	Kuwait	20	1.19	1.19
Johnston Atoll	1	2.63	2.63	Qatar	5	1.19	1.19
Kwajalein	11	2.63	2.63	United Arab Emirates	5	1.18	1.18
Wake Island	1	2.63	2.63	Egypt	2	1.15	1.15
Japan	125	1.81	1.93	Greece	9	1.09	1.13
Cuba	1	1.81	1.81	South Korea	95	1.08	1.13
Djibouti	1	1.78	1.78	Canada	3	1.03	1.12
Iceland	2	1.76	1.76	Germany	259	1.02	1.09
Iraq	3	1.67	1.67	Dominican Republic	1	1.08	1.08
China	1	1.54	1.54	Spain	5	1.01	1.06
Afghanistan	2	1.52	1.52	Ecuador	1	1.05	1.05
Denmark	2	1.52	1.52	Luxembourg	1	1.05	1.05
Norway	2	1.52	1.52	Singapore	4	1.04	1.04
Antigua and Barbuda	1	1.50	1.50	Turkey	19	1.03	1.04
Aruba	1	1.50	1.50	Costa Rica	1	1.03	1.03
Bahamas	6	1.50	1.50	Portugal	21	1.03	1.03
Netherlands	12	1.27	1.50	Romania	8	1.03	1.03
Saint Helena	1	1.50	1.50	Poland	3	0.99	0.99
Belgium	19	1.46	1.46	El Salvador	2	0.98	0.98
Australia	8	1.45	1.45	Bulgaria	2	0.92	0.92
United Kingdom	45	1.29	1.39	Honduras	5	0.88	0.88
Kenya	1	1.37	1.37	Thailand	1	0.86	0.86
Italy	73	1.27	1.35	Colombia	13	0.83	0.83
Bahrain	14	1.31	1.31	Peru	4	0.83	0.83
Cambodia	1	1.27	1.27	Paraguay	2	0.80	0.80
Israel	1	1.27	1.27				

Countries listed in the top rows of Table 2 have relatively high construction costs (represented by the ACF as a cost multiplier) and remain at a significant disadvantage in using UMMC authority for needed projects due to their exclusion from the provision of section 2805(f) that normalizes, or partially normalizes, the application of UMMC authority for high-cost locations. These countries include locations critical to missions directly supporting the National Defense Strategy.

Application of the ACF to the UMMC program outside the U.S. would normalize the usefulness of UMMC projects around the world, and enable the Department to more equitably and broadly realize the intended benefits of UMMC authority. This approach is wholly consistent with the longstanding flexibility Congress granted to the military family housing program in 10 U.S.C. section 2825, Improvements to Family Housing Units. Section 2825 essentially serves as the UMMC authority for the military family housing program, and establishes funding authority that varies based on the "area construction cost index as developed

by the Department of Defense for the location concerned". This proposal extends that concept to the entirety of the UMMC program, specifically to high-cost locations outside the U.S. that are vital to the Department's ongoing mission.

This proposal also extends the sunset date from FY 2022 to FY 2025 to provide sufficient time to exercise and demonstrate the benefit of the additional worldwide application of location adjustments to UMMC thresholds.

Budget Implications: There are no general budgetary impacts expected with the proposed amendment. Rather, projects at locations outside the U.S. that fall within the new project thresholds will be able to compete for existing UMMC funding. The UMMC funding in the Fiscal Year (FY) 2021 President's Budget is identified in the table below.

RESOURCE REQUIREMENTS ($ MILLIONS)								
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
Army	$72.2	$73.5	$74.9	$76.4	$77.9	Unspecified Minor Construction, Army	02	2050A
Army Reserve	$9.1	$9.3	$9.5	$9.7	$9.9	Unspecified Minor Construction, Army Reserve	02	2086A
Army National Guard	$15.3	$15.6	$15.9	$16.2	$16.6	Unspecified Minor Construction, Army National Guard	02	2085A
Navy	$38.93	$29.5	$45.79	$96.63	$90.3	Unspecified Minor Construction, Navy	02	1205N
Navy Reserve	$3.0	$3.0	$3.0	$6.0	$6.0	Unspecified Minor Construction, Navy Reserve	02	1235N
Air Force	$81.3	$82.9	$84.6	$86.2	$88.0	Unspecified Minor Construction, Air Force	02	3300F
Air Force Reserve	$12.4	$12.6	$12.9	$13.1	$13.4	Unspecified Minor Construction, Air Force Reserve	02	3730F

RESOURCE REQUIREMENTS ($ MILLIONS)								
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
Air National Guard	$32.1	$32.7	$33.4	$34.1	$34.7	Unspecified Minor Construction, Air National Guard	02	3830F
Defense-Wide	$101.1	$103.2	$105.2	$107.3	$109.5	Unspecified Minor Construction, Defense-Wide	02	0500
Total	$365.43	$362.3	$385.19	$445.63	$446.3	--	02	--

Changes to Existing Law: This proposal would make the following change to section 2805 of title 10, United States Code:

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—

(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $6,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—

(1) An unspecified minor military construction project costing more than $750,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable and which costs more that $2,000,000, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than $2,000,000.

(d) LABORATORY REVITALIZATION.—

(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than $6,000,000, notwithstanding subsection (c); or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 2363(a) of this title, amounts necessary to carry out an unspecified minor military construction project costing not more than $6,000,000.

(2) For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $6,000,000.

(3) If the Secretary concerned makes a decision to carry out an unspecified minor military construction project to which this subsection applies, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(4) In this subsection, the term "laboratory" includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2025.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(f) ADJUSTMENT OF DOLLAR LIMITATIONS FOR LOCATION.—

(1) ADJUSTMENT OF LIMITATIONS.—Each fiscal year, the Secretary concerned shall adjust the dollar limitations specified in this section applicable to an unspecified minor military construction project ~~inside the United States~~ to reflect the area construction cost index for military construction projects published by the Department of Defense during the prior fiscal year for the location of the project, except that no limitation specified in this section may exceed $10,000,000 as the result of any adjustment made under this paragraph.

~~(2) LOCATION OF PROJECTS.—For purposes of paragraph (1), a project shall be considered to be inside the United States if the project is carried out in any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.~~

~~(3)~~ (2) SUNSET.—The requirements of this subsection shall not apply with respect to any fiscal year after fiscal year ~~2022~~ 2025.

SEC. ___. PARTICIPATION IN PROGRAMS RELATING TO THE COORDINATION OR EXCHANGE OF AIR REFUELING AND AIR TRANSPORTATION SERVICES.

(a) IN GENERAL.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2350m. Participation in programs relating to the coordination or exchange of air refueling and air transportation services

"(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of the United States in programs relating to the coordination or exchange of air refueling and air transportation services.

"(b) WRITTEN ARRANGEMENTS AND AGREEMENTS.—The participation of the United States in a program referred to in subsection (a) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State.

"(c) SCOPE OF PARTICIPATION.—The programs referred to in subsection (a) may include—

"(1) the reciprocal exchange or transfer of air refueling and air transportation services on a reimbursable basis or by replacement-in-kind; or

"(2) the exchange of air refueling and air transportation services of equal value.

"(d) INCLUSION OF ATARES PROGRAM.—The programs referred to in subsection (a) include the arrangement known as the Air Transport, Air-to-Air Refueling and other Exchange of Services program.

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

"(1) from funds available for the operations of the Department of Defense, pay the equitable share of the United States for the recurring and non-recurring costs of the activities and operations of a program referred to in subsection (a); and

"(2) detail personnel of the Department of Defense to fulfill the obligations of the United States under a program referred to in subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2350m. Participation in programs relating to the coordination or exchange of air refueling and air transportation services.".

(c) REPEAL.—Section 1276 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239, 10 U.S.C. 2350c note) is repealed.

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

Section-by-Section Analysis

This proposal would authorize the Secretary of Defense to participate in programs relating to the coordination or the exchange of air refueling and air transportation services, specifically the Air Transport, Air-to-Air Refueling and other Exchanges of Services (ATARES). Those programs could include the reciprocal exchange or transfer of air refueling and air transportation services on a reimbursable basis or by replacement-in-kind or the exchange of air refueling and air transportation services of equal value.

The National Defense Authorization Act for FY 2013 authorized participation in ATARES for five years after the Secretary of Defense entered into the Arrangement, which occurred in early 2017. As we come to the sunset of this authorization, this proposal would provide an enduring authority for the Department of Defense (DoD) to continue to participate in ATARES.

As with the original legislation, this proposal would also authorize the United States to (1) pay its equitable share of the costs and activities of such programs, and (2) detail Department of Defense personnel to such programs to fulfill the United States' obligations as part of the program.

Finally, the proposal would provide that the authority provided would be enduring with no fixed termination date.

The proposal is necessary because participation in these ventures requires authorization for the equivalent exchange of transportation assets *among members of such programs* on a multilateral, multiyear basis. Generally, under current law, such transactions must occur through bilateral agreements such as Acquisition and Cross-Servicing Agreements (ACSAs). None of these methods fit the model used by ATARES (or similar programs) that use a multinational barter system to exchange air refueling and air transportation services.

The most important aspect of the proposal, however, is the authority to join with partners and allies to share and exchange transportation capacity. For example, during crisis, U.S. airlift might be limited or constrained in order to meet military objectives. Cultivating multinational relationships through the ATARES program can ensure immediate access to partner transportation resources to augment U.S. capacity as needed.

Since the DoD joined in 2017, participation in ATARES has enhanced relationships and built interoperability with partner nations, with the long-term advantage to DoD of being able to access airlift quickly and efficiently and even to access air refueling that has previously been largely inaccessible to DoD. At the same time, DoD has been able to assist allies quickly and efficiently, when necessary.

Additionally, U.S. participation in these exchange programs is an optimal way to gain efficiencies. For example, current members of the ATARES program have access to a pool of 376 aircraft and "pay" for use of an asset when it is convenient by providing an equivalent service to any member of the pool within a five-year cycle. This return-of-services agreement cost-effectively decreases the number of member aircraft that operate at inefficient levels below their capacity.

Active participation in these activities not only tangibly demonstrates that the United States supports its partners, but offers valued partners a viable opportunity to reciprocate and provide support to the United States. When a crisis occurs, the relationships, goodwill, and resource exchange systems will already be in place to provide additional transportation capacity quickly and efficiently to meet U.S. needs.

United States Balance of Equivalent Flying Hour (EFH) ATARES Credit			
FY	**EFH Balance**	**Spent Missions**	**Earned Missions**
2017	**-44.3088**	**3**	**2**
2018	**-40.0318**	**6**	**4**
2019	**+ 0.6398 (as of 01 April 2019)**	**0**	**1**
Current Balance	**-83.7008**	**9**	**7**

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 funding is from 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**
ATARES	.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.

This proposal would also repeal section 1276 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239, 10 U.S.C. 2350c). The section is shown below.

~~SEC. 1276. DEPARTMENT OF DEFENSE PARTICIPATION IN EUROPEAN PROGRAM ON MULTILATERAL EXCHANGE OF AIR TRANSPORTATION AND AIR REFUELING SERVICES.~~

~~(a) Participation Authorized.-~~

~~(1) In general. The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of the United States in the Air Transport, Air-to-Air Refueling and other Exchanges of Services program (in this section referred to as the 'ATARES program') of the Movement Coordination Centre Europe.~~

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

~~(3) Limitations.-The United States' balance of executed flight hours, whether as credits or debits, in participation in the ATARES program under paragraph (1) may not exceed 500 hours. The United States' balance of executed flight hours for air refueling in the ATARES program under paragraph (1) may not exceed 200 hours.~~

~~(b) Written Arrangement or Agreement.-~~

~~(1) Arrangement or agreement required.-The participation of the United States in the ATARES program under subsection (a) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the Movement Coordination Centre Europe.~~

~~(2) Funding arrangements. If Department of Defense facilities, equipment, or funds are used to support the ATARES program, the written arrangement or agreement 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 air transportation or air refueling services shall be liquidated, not less than once every five years, through the ATARES program.~~

~~(c) Implementation. In carrying out any written arrangement or agreement entered into under subsection (b), the Secretary of Defense may-~~

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

~~(2) assign members of the Armed Forces or Department of Defense civilian personnel, 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 United States' obligations under that arrangement or agreement.~~

~~(d) Crediting of Receipts.-Any amount received by the United States in carrying out a written arrangement or agreement entered into under subsection (b) shall be credited, as elected by the Secretary of Defense, to the following:~~

~~(1) The appropriation, fund, or account used in incurring the obligation for which such amount is received.~~

~~(2) An appropriation, fund, or account currently available for the purposes for which such obligation was made.~~

~~(e) Expiration. The authority provided by this section to participate in the ATARES program shall expire five years after the date on which the Secretary of Defense first enters into a written arrangement or agreement under subsection (b). The Secretary shall publish notice of such date on a public website of the Department of Defense.~~

SEC.___. FACILITATING AGREEMENTS WITH OTHER FEDERAL AGENCIES TO LIMIT ENCROACHMENTS.

Section 2684a(d)(5) of title 10, United States Code, is amended—

(1) in the second sentence of subparagraph (A), by inserting "or another Federal agency" after "to a State" both places it appears; and

(2) by striking subparagraph (B) and inserting the following:

"(B) Notwithstanding subparagraph (A), if all or a portion of the property or interest acquired under the agreement is initially or subsequently transferred to a State or another Federal agency, before that State or other Federal agency may declare the property or interest in excess to its needs or propose to exchange the property or interest, the State or other Federal agency shall give the Secretary concerned reasonable advance notice of its intent. If deemed necessary to preserve the purposes of this section, the Secretary concerned may request that administrative jurisdiction over the property be transferred to the Secretary concerned at no cost, and, upon such a request being made, the administrative jurisdiction over the property shall be transferred accordingly. If the Secretary concerned does not exercise this right within a reasonable time period, all such rights of the Secretary concerned to request transfer of the property or interest shall remain available to the Secretary concerned with respect to future transfers or exchanges of the property or interest and shall bind all subsequent transferees.".

[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 make certain changes to Section 2684a of title 10, United States Code, to facilitate agreements with States and other Federal agencies in order to limit encroachments and other constraints on military training, testing, and operations. Section 2684a was enacted as part of the FY 2003 National Defense Authorization Act (Pub. L. 107-314, §2811(a)). In the FY 2012 National Defense Authorization Act (Pub. L. 112-81, §2813), certain provisions were added to Section 2684a to facilitate interagency cooperation, including revisions to subsection (d)(5). One of the additional provisions made a memorandum of agreement and inclusion of the "demand right" within the memorandum of agreement mandatory between the Department and another Federal agency. The "demand right" allows the Department to demand transfer of the property or interest, subject to limitations outlined in subsection (d)(5)(A), which state that the Secretary shall limit such transfer request to the minimum property or interest necessary to ensure that the property concerned is developed/used in a manner appropriate for purposes of the statute. Since that time, our experience has demonstrated that requiring inclusion of the "demand right" in a memorandum of agreement whenever another Federal agency will assume administrative jurisdiction and responsibility for the management of a property or interest acquired pursuant to this section is generally unnecessary and has precluded the Department's ability to successfully partner with other Federal agencies. The "demand right" constitutes an encumbrance on the property, presenting an administrative jurisdiction conflict. This proposal would eliminate the express requirement for any such memorandum of agreement and make the execution of a memorandum of agreement discretionary, provided the Secretary of the military department concerned determines that the laws and regulations applicable to the future use of any such property or interest provide adequate assurance that the property will be managed and used in a manner appropriate for the purposes of this section. This proposal removes the requirement to include the "demand right" in a memorandum of agreement, but would still allow for the execution of a memorandum of agreement between the Department and another Federal agency if such an agreement is deemed advisable to clarify roles and responsibilities for management of the land. This would expedite the execution of transactions with the Department of Agriculture and Department of the Interior to facilitate interagency cooperation and avoid or reduce adverse impacts on military readiness activities.

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 2684a of title 10, United States Code:

§2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) Agreements Authorized.-The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity or entities described in subsection (b) to address the use or development of real property in the vicinity of, or ecologically related to, a military installation, as well as a State-owned National Guard installation, or military airspace for purposes of-

(1) limiting any development or use of the property that would be incompatible with the mission of the installation;
(2) preserving habitat on the property in a manner that-
(A) is compatible with environmental requirements; and
(B)(i) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation; or
(ii) maintains or improves military installation resilience; or
(3) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the installation.

(b) Eligible Entities.-An agreement under this section may be entered into with any of the following:
(1) A State or political subdivision of a State.
(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) Inapplicability of Certain Contract Requirements.-Notwithstanding chapter 63 of title 31, an agreement under this section that is a cooperative agreement or a grant may be used to acquire property or services for the direct benefit or use of the United States Government.

(d) Acquisition and Acceptance of Property and Interests.-(1) An agreement with an eligible entity or entities under this section shall provide for-
(A) the acquisition by the entity or entities of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and
(B) the sharing by the United States and the entity or entities of the acquisition costs in accordance with paragraph (3).
(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.
(3) An agreement with an eligible entity under this section may provide for the management of natural resources on, and the monitoring and enforcement of any right, title, real property in which the Secretary concerned acquires any right, title, or interest in accordance with this subsection and for the payment by the United States of all or a portion of the costs of such natural resource management and monitoring and enforcement if the Secretary concerned determines that there is a demonstrated need to preserve or restore habitat for the purpose described in subsection (a)(2). Any such payment by the United States-
(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and
(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.
(4)(A) The Secretary concerned shall determine the appropriate portion of the acquisition costs to be borne by the United States in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B).

(B) In lieu of or in addition to making a monetary contribution toward the cost of acquiring a parcel of real property, or an interest therein, pursuant to an agreement under this section, the Secretary concerned may convey, using the authority provided by section 2869 of this title, real property described in paragraph (2) of subsection (a) of such section, subject to the limitation in paragraph (3) of such subsection.
(C) The portion of acquisition costs borne by the United States under subparagraph (A), either through the contribution of funds or excess real property, or both, may not exceed an amount equal to, at the discretion of the Secretary concerned-
(i) the fair market value of any property or interest in property to be transferred to the United States upon the request of the Secretary concerned under paragraph (5); or
(ii) the cumulative fair market value of all properties or interests to be transferred to the United States under paragraph (5) pursuant to an agreement under subsection (a).
(D) The portion of acquisition costs borne by the United States under subparagraph (A) may exceed the amount determined under subparagraph (C), but only if-
(i) the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, a notice to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives containing-
(I) a certification by the Secretary that the military value to the United States of the property or interest to be acquired justifies a payment in excess of the fair market value of the property or interest; and
(II) a description of the military value to be obtained; and
(ii) the contribution toward the acquisition costs of the property or interest is not made until at least 10 days after the date on which the notice is submitted under clause (i).
(E) The contribution of an entity or entities to the acquisition costs of real property, or an interest in real property, under paragraph (1)(B) may include, with the approval of the Secretary concerned, the following or any combination of the following:
(i) The provision of funds, including funds received by such entity or entities from a Federal agency outside the Department of Defense or a State or local government in connection with a Federal, State, or local program.
(ii) The provision of in-kind services, including services related to the acquisition or maintenance of such real property or interest in real property.
(iii) The exchange or donation of real property or any interest in real property.
(5)(A) The agreement shall require the entity or entities to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. No such requirement need be included in the agreement if the property or interest is being transferred to a State or another Federal agency, or the agreement requires it to be subsequently transferred to a State or another Federal agency, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

~~(B) Notwithstanding subparagraph (A), if all or a portion of the property or interest acquired under the agreement is subsequently transferred to the United States and administrative jurisdiction over the property is under a Federal official other than a Secretary concerned, the Secretary concerned and that Federal official shall enter into a memorandum of agreement~~

~~providing, to the satisfaction of the Secretary concerned, for the management of the property or interest concerned in a manner appropriate for purposes of this section. Such memorandum of agreement shall also provide that, should it be proposed that the property or interest concerned be developed or used in a manner not appropriate for purposes of this section, including declaring the property to be excess to the agency's needs or proposing to exchange the property for other property, the Secretary concerned may request that administrative jurisdiction over the property be transferred to the Secretary concerned at no cost, and, upon such a request being made, the administrative jurisdiction over the property shall be transferred accordingly.~~

(B) Notwithstanding subparagraph (A), if all or a portion of the property or interest acquired under the agreement is initially or subsequently transferred to a State or another Federal agency, before that State or other Federal agency may declare the property or interest in excess to its needs or propose to exchange the property or interest, the State or other Federal agency shall give the Secretary concerned reasonable advance notice of its intent. If deemed necessary to preserve the purposes of this section, the Secretary concerned may request that administrative jurisdiction over the property be transferred to the Secretary concerned at no cost, and, upon such a request being made, the administrative jurisdiction over the property shall be transferred accordingly. If the Secretary concerned does not exercise this right within a reasonable time period, all such rights of the Secretary concerned to request transfer of the property or interest shall remain available to the Secretary concerned with respect to future transfers or exchanges of the property or interest and shall bind all subsequent transferees.

(6) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(7) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) Acquisition of Water Rights.-The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) Additional Terms and Conditions.-The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) Annual Reports.-(1) Not later than March 1 each year, the Secretary of Defense shall, in coordination with the Secretaries of the military departments and the Director of the Department of Defense Test Resource Management Center, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the projects undertaken under agreements under this section.

(2) Each report under paragraph (1) shall include the following:

(A) A description of the status of the projects undertaken under agreements under this section.

(B) An assessment of the effectiveness of such projects, and other actions taken pursuant to this section, as part of a long-term strategy to ensure the sustainability of military test and training ranges, military installations, and associated airspace.
(C) An evaluation of the methodology and criteria used to select, and to establish priorities, for projects undertaken under agreements under this section.
(D) A description of any sharing of costs by the United States and eligible entities under subsection (d) during the preceding year, including a description of each agreement under this section providing for the sharing of such costs and a statement of the eligible entity or entities with which the United States is sharing such costs.
(E) Such recommendations as the Secretary of Defense considers appropriate for legislative or administrative action in order to improve the efficiency and effectiveness of actions taken pursuant to agreements under this section.

(h) Interagency Cooperation in Conservation Programs To Avoid or Reduce Adverse Impacts on Military Readiness Activities.-In order to facilitate interagency cooperation and enhance the effectiveness of actions that will protect both the environment and military readiness, the recipient of funds provided pursuant an agreement under this section or under the Sikes Act (16 U.S.C. 670 et seq.) may, with regard to the lands and waters within the scope of the agreement, use such funds to satisfy any matching funds or cost-sharing requirement of any conservation program of the Department of Agriculture or the Department of the Interior notwithstanding any limitation of such program on the source of matching or cost-sharing funds.

(i) Funding.-(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, or Defense-wide activities may be used to enter into agreements under this section.
(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(j) Definitions.-In this section:
(1) The term "Secretary concerned" means the Secretary of Defense or the Secretary of a military department.
(2) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.
(3) The term "Clear Zone Area" means an area immediately beyond the end of the runway of an airfield that is needed to ensure the safe and unrestricted passage of aircraft in and over the area.

SEC. ___. AIR SOVEREIGNTY OPERATIONS.

Section 333(a) of title 10, United States Code, is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph (7):

"(7) Air sovereignty operations.".

[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 10 U.S.C. § 333 to add "air sovereignty operations" in order to authorize the Secretary of Defense to conduct or support programs to provide training and equipment to the national security forces of a foreign country's air component in order to build their capacity to conduct air sovereignty operations.

The current statute inhibits U.S. Government air focused capacity building efforts to increase air domain awareness and counter ever-increasing air sovereignty threats in the form of ballistic missiles, Unmanned Aerial Systems (UAS), and long range aviation incursions from regional adversaries. Partners regularly request support for air sovereignty and air defense building partner capacity assistance in the following areas: Air Domain Awareness, Integrated Air and Missile Defense, Air Mobility Operations, and Counter-UAS. During planning for Indo-Pacific Air Chiefs Symposium, seven Air Chiefs identified Air Domain Awareness as the most important capability undergirding regional security. The current statutory language does not include air component priorities or capabilities, thus limiting U.S. ability to address threats that are identified by partner nations without tenuously linking those priorities to authorized areas such as maritime security or counter-illicit drug trafficking operations.

Adding "air sovereignty operations" to the current statute will provide a means for DoD to directly engage partners in building their capacity to counter the threats they have identified in a more meaningful way.

Budget Implications: No budget impact. The proposal does not change the funding available for security cooperation.

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. § 333.

§333. Foreign security forces: authority to build capacity

(a) Authority.-The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more

foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

(1) Counterterrorism operations.

(2) Counter-weapons of mass destruction operations.

(3) Counter-illicit drug trafficking operations.

(4) Counter-transnational organized crime operations.

(5) Maritime and border security operations.

(6) Military intelligence operations.

(7) Air sovereignty operations.

(~~7~~8) Operations or activities that contribute to an international coalition operation that is determined by the Secretary to be in the national interest of the United States.

(b) Concurrence and Coordination With Secretary of State.-

(1) Concurrence in conduct of programs.-The concurrence of the Secretary of State is required to conduct or support any program authorized by subsection (a).

(2) Joint development and planning of programs.-The Secretary of Defense and the Secretary of State shall jointly develop and plan any program carried out pursuant to subsection (a). In developing and planning a program to build the capacity of the national security forces of a foreign country under subsection (a), the Secretary of Defense and Secretary of State should jointly consider political, social, economic, diplomatic, and historical factors, if any, of the foreign country that may impact the effectiveness of the program.

(3) Implementation of programs.-The Secretary of Defense and the Secretary of State shall coordinate the implementation of any program under subsection (a). The Secretary of Defense and the Secretary of State shall each designate an individual responsible for program coordination under this paragraph at the lowest appropriate level in the Department concerned.

(4) Coordination in preparation of certain notices.-Any notice required by this section to be submitted to the appropriate committees of Congress shall be prepared in coordination with the Secretary of State.

(c) Types of Capacity Building.-

(1) Authorized elements.-A program under subsection (a) may include the provision and sustainment of defense articles, training, defense services, supplies (including consumables), and small-scale construction supporting security cooperation programs under this section.

(2) Required elements.-A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military.

(B) Institutional capacity building.

(3) Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military.-In order to meet the requirement in paragraph (2)(A) with respect to particular national security forces under a program under subsection (a), the Secretary of Defense shall certify, prior to the initiation of the program, that the Department of Defense or the Department of State is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, training that includes a comprehensive curriculum on the law of armed conflict, human rights

and fundamental freedoms, and the rule of law, and that enhances the capacity to exercise responsible civilian control of the military, as applicable, to such national security forces.

(4) Institutional capacity building.-In order to meet the requirement in paragraph (2)(B) with respect to a particular foreign country under a program under subsection (a), the Secretary shall certify, prior to the initiation of the program, that the Department of Defense or another department or agency is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, a program of institutional capacity building with appropriate institutions of such foreign country to enhance the capacity of such foreign country to organize, administer, employ, manage, maintain, sustain, or oversee the national security forces of such foreign country.

(d) Limitations.-

(1) Assistance otherwise prohibited by law.-The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (c) that is otherwise prohibited by any provision of law.

(2) Prohibition on assistance to units that have committed gross violations of human rights.-The provision of assistance pursuant to a program under subsection (a) shall be subject to the provisions of section 362 of this title.

(3) Duration of sustainment support.-Sustainment support may not be provided pursuant to a program under subsection (a), or for equipment previously provided by the Department of Defense under any authority available to the Secretary during fiscal year 2015 or 2016, for a period in excess of five years unless the notice on the program pursuant to subsection (e) includes the information specified in paragraph (7) of subsection (e).

(e) Notice and Wait on Activities Under Programs.-Not later than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a written and electronic notice of the following:

(1) The foreign country, and specific unit, whose capacity to engage in activities specified in subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided.

(2) A detailed evaluation of the capacity of the foreign country and unit to absorb the training or equipment to be provided under the program.

(3) The cost, implementation timeline, and delivery schedule for assistance under the program.

(4) A description of the arrangements, if any, for the sustainment of the program and the estimated cost and source of funds to support sustainment of the capabilities and performance outcomes achieved under the program beyond its completion date, if applicable.

(5) Information, including the amount, type, and purpose, on the security assistance provided the foreign country during the three preceding fiscal years pursuant to authorities under this title, the Foreign Assistance Act of 1961, and any other train and equip authorities of the Department of Defense.

(6) A description of the elements of the theater security cooperation plan of the geographic combatant command concerned, and of the interagency integrated country strategy, that will be advanced by the program.

(7) In the case of a program described in subsection (d)(3), each of the following:

(A) A written justification that the provision of sustainment support described in that subsection for a period in excess of five years will enhance the security interest of the United States.

(B) To the extent practicable, a plan to transition such sustainment support from funding through the Department to funding through another security sector assistance program of the United States Government or funding through partner nations.

(8) In the case of activities under a program that results in the provision of small-scale construction above $750,000, the location, project title, and cost of each small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location over the next 5 years.

(f) Quarterly Monitoring Reports.-The Director of the Defense Security Cooperation Agency shall, on a quarterly basis, submit to the appropriate committees of Congress a report setting forth, for the preceding calendar quarter, the following:

(1) Information, by recipient country, of the delivery and execution status of all defense articles, training, defense services, supplies (including consumables), and small-scale construction under programs under subsection (a).

(2) Information on the timeliness of delivery of defense articles, defense services, supplies (including consumables), and small-scale construction when compared with delivery schedules for such articles, services, supplies, and construction previously provided to Congress.

(3) Information, by recipient country, on the status of funds allocated for programs under subsection (a), including amounts of unobligated funds, unliquidated obligations, and disbursements.

(g) Funding.-

(1) Sole source of funds.-Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

(2) Availability of funds for programs across fiscal years.-

(A) In general.-Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.

(B) Achievement of full operational capacity.-If, in accordance with subparagraph (A), equipment or training is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.

SEC. ____. CONFORMING AMENDMENTS RELATING TO REESTABLISHMENT OF SPACE COMMAND.

(a) CERTIFICATIONS REGARDING INTEGRATED TACTICAL WARNING AND ATTACK ASSESSMENT MISSION OF THE AIR FORCE.—Section 1666(a) of National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 113 Stat. 2617) is amended by striking "Strategic Command" and inserting "Space Command".

(b) COUNCIL ON OVERSIGHT OF THE DEPARTMENT OF DEFENSE POSITIONING, NAVIGATION, AND TIMING ENTERPRISE.—Section 2279b of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (8), (9), (10), and (11), respectively; and

(B) by inserting after paragraph (6) the following new paragraph:

"(7) The Commander of the United States Space Command."; and

(2) in subsection (f), by striking "Strategic Command" and inserting "Space Command" both places it appears.

(c) JOINT INTERAGENCY COMBINED SPACE OPERATIONS CENTER.—Section 605(e) of the Intelligence Authorization Act for Fiscal Year 2017 (Public Law 115–31; 131 Stat. 832; 10 U.S.C. 2271 note) is amended—

(1) in the heading, by striking "JOINT INTERAGENCY COMBINED SPACE OPERATIONS CENTER" and inserting "NATIONAL SPACE DEFENSE CENTER"; and

(2) in each of paragraphs (1) and (2)—

(A) by striking "Strategic Command" and inserting "Space Command"; and

(B) by striking “Joint Interagency Combined Space Operations Center” and inserting “National Space Defense Center”.

(d) NATIONAL SECURITY SPACE SATELLITE REPORTING POLICY.—Section 2278(a) of title 10, United States Code, is amended by striking “Strategic Command” and inserting “Space Command”.

(e) SPACE-BASED INFRARED SYSTEM AND ADVANCED EXTREMELY HIGH FREQUENCY PROGRAM.—Section 1612(a)(1) of the National Defense Authorization Act for 2017 (Public Law 114–328; 130 Stat. 2590) is amended by striking “Strategic Command” and inserting “Space Command”.

[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

Subsection (a) of this proposal would realigns the reporting/certification requirement from United States Strategic Command (USSTRATCOM) to United States Space Command (USSPACECOM). With the re- establishment of USSPACECOM the knowledge base to draft this report is moving to USSPACECOM; they will be better postured to certify the Air Force is appropriately equipped and planning for sustaining and modernizing the integrated tactical warning and attack assessment (ITW/AA) system.

Subsection (b): USSPACECOM should be added to the Council on Oversight of the Department of Defense Positioning, Navigation and Timing (PNT) Enterprise. As the PNT enterprise will fall under USSPACECOM. USSTRATCOM) should remain on the PNT council for the nuclear command, control and communication (NC3) relationship, due to the Nuclear Enterprise Center falling under USSTRATCOM.

Additionally, instead of USSTRATCOM submitting an assessment to the Chairman of the Joint Chiefs of Staff of "whether such budget allows the Federal Government to meet the required capabilities of the DoD positioning, navigation, and timing enterprise during the fiscal year covered by the budget and the four subsequent fiscal years," USSPACECOM should submit the assessment. With the stand up of USSPACECOM, oversight of PNT will move from USSTRATCOM to USSPACECOM.

Subsection (c) of this proposal would align the briefing requirement for the Joint Interagency Combined Space Operations Center (JICSpOC), under USSPACECOM, which is the appropriate command to brief committees on its progress. However, JICSpOC has

been renamed the National Space Defense Center and the briefing requirement should be retitled under that name. The quarterly briefing requirement has been met and now only the yearly requirement exists. With the stand up of USSPACECOM, they will be the controlling entity of the Joint Interagency Combined Space Operations Center, now known as the National Space Defense Center, and best postured to brief congressional committees on its current operations/status.

Subsection (d): Once USSPACECOM is reestablished, they will monitor the United States' national security space capability and will be the correct command to notify appropriate congressional committees of any nefarious access to US space assets. USSPACECOM will have the most current and accurate infiltration information if a foreign actor accesses or attempts to access a US space capability.

Subsection (e) of this proposal would realign the contingent reporting requirement in section 1612 from USSTRATCOM to USSPACECOM. This administrative change is required due to the re-establishment of USSPACECOM, which will oversee all space issues, including space-based infrared systems (SBIRS) of record and the advanced extremely high frequency program (AEHF) to include, if necessary, an alternative to one of these systems. USSPACECOM is the correct command to brief the appropriate congressional committees on the assessments conducted if changes to the SBIRS or AEHF programs are needed to meet warfighter requirements.

Changes to Existing Law: This proposal would amend the following provisions of law as set forth below:

Section l666 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2017 (PL 114-328; 113 Stat. 2617):

SEC. 1666. CERTIFICATIONS REGARDING INTEGRATED TACTICAL WARNING AND ASSESSMENT MISSION OF THE AIR FORCE.

(a) ANNUAL CERTIFICATION.-Not later than March 31, 2017, and each year thereafter through 2020, the Commander of the United States ~~Strategic Command~~ Space Command shall certify to the Secretary of Defense and the congressional defense committees that-

(1) the Air Force is appropriately organized, staffed, trained, and equipped to carry out the portions of the integrated tactical warning and attack assessment mission assigned to the Air Force that are survivable and endurable; and

(2) the programs and plans of the Air Force for sustaining, modernizing, training, and exercising capabilities relating to such mission are sufficient to ensure the success of the mission.

(b) INABILITY TO CERTIFY.-If the Commander does not make a certification under subsection (a) by March 31 of any year in which a certification is required under such subsection, the Secretary of the Air Force shall take immediate

actions to consolidate all terrestrial and aerial components of the integrated tactical warning and attack assessment system of the Air Force that are survivable and endurable under the major command of the Air Force commanded by the single general officer that is responsible for all aspects of the Air Force nuclear mission, as described by Air Force Program Action Directive D16-01 dated August 2, 2016.

(c) RULE OF CONSTRUCTION.-Nothing in this section may be construed to affect any responsibilities and authorities relating to the integrated tactical warning and attack assessment system in effect on the date of the enactment of this Act pursuant to the Agreement Between the Government of the United States of America and the Government of Canada on the North American Aerospace Defense Command and the terms of reference for the North American Aerospace Defense Command.

Section 2279b of title 10, United States Code:

§2279b. Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise

(a) Establishment.-There is within the Department of Defense a council to be known as the "Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise" (in this section referred to as the "Council").

(b) Membership.-The members of the Council shall be as follows:
(1) The Under Secretary of Defense for Policy.
(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics.
(3) The Vice Chairman of the Joint Chiefs of Staff.
(4) The Commander of the United States Strategic Command.
(5) The Commander of the United States Northern Command.
(6) The Commander of United States Cyber Command.
(7) The Commander of United States Space Command.
(~~7~~ 8) The Director of the National Security Agency.
(~~8~~ 9) The Chief Information Officer of the Department of Defense.
(~~9~~ 10) The Secretaries of the military departments, who shall be ex officio members.
(~~10~~ 11) Such other officers of the Department of Defense as the Secretary may designate.

(c) Co-chair.-The Council shall be co-chaired by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Vice Chairman of the Joint Chiefs of Staff.

(d) Responsibilities.-(1) The Council shall be responsible for oversight of the Department of Defense positioning, navigation, and timing enterprise, including positioning, navigation, and timing services provided to civil, commercial, scientific, and international users.
(2) In carrying out the responsibility for oversight of the Department of Defense positioning, navigation, and timing enterprise as specified in paragraph (1), the Council shall be responsible for the following:
(A) Oversight of performance assessments (including interoperability).
(B) Vulnerability identification and mitigation.

(C) Architecture development.

(D) Resource prioritization.

(E) Such other responsibilities as the Secretary of Defense shall specify for purposes of this section.

(e) Annual Reports.-At the same time each year that the budget of the President is submitted to Congress under section 1105(a) of title 31, the Council shall submit to the congressional defense committees a report on the activities of the Council. Each report shall include the following:

(1) A description and assessment of the activities of the Council during the previous fiscal year.

(2) A description of the activities proposed to be undertaken by the Council during the period covered by the current future-years defense program under section 221 of this title.

(3) Any changes to the requirements of the Department of Defense positioning, navigation, and timing enterprise made during the previous year, along with an explanation for why the changes were made and a description of the effects of the changes to the capability of such enterprise.

(4) A breakdown of each program element in such budget that relates to the Department of Defense positioning, navigation, and timing enterprise, including how such program element relates to the operation and sustainment, research and development, procurement, or other activity of such enterprise.

(f) Budget and Funding Matters.-(1) Not later than 30 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, the Commander of the United States ~~Strategic Command~~ Space Command shall submit to the Chairman of the Joint Chiefs of Staff an assessment of-

(A) whether such budget allows the Federal Government to meet the required capabilities of the Department of Defense positioning, navigation, and timing enterprise during the fiscal year covered by the budget and the four subsequent fiscal years; and

(B) if the Commander determines that such budget does not allow the Federal Government to meet such required capabilities, a description of the steps being taken to meet such required capabilities.

(2) Not later than 30 days after the date on which the Chairman of the Joint Chiefs of Staff receives the assessment of the Commander of the United States ~~Strategic Command~~ Space Command under paragraph (1), the Chairman shall submit to the congressional defense committees-

(A) such assessment as it was submitted to the Chairman; and

(B) any comments of the Chairman.

(3) If a House of Congress adopts a bill authorizing or appropriating funds for the activities of the Department of Defense positioning, navigation, and timing enterprise that, as determined by the Council, provides insufficient funds for such activities for the period covered by such bill, the Council shall notify the congressional defense committees of the determination.

(g) Notification of Anomalies.-(1) The Secretary of Defense shall submit to the congressional defense committees written notification of an anomaly in the Department of Defense positioning, navigation, and timing enterprise that is reported to the Secretary or the Council by not later than 14 days after the date on which the Secretary or the Council learns of such anomaly, as the case may be.

(2) In this subsection, the term "anomaly" means any unplanned, irregular, or abnormal event, whether unexplained or caused intentionally or unintentionally by a person or a system.

(h) Termination.-The Council shall terminate on the date that is 10 years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.

Section 605 of the Intelligence Authorization Act for Fiscal Year 2017 (Public Law 115–31; 131 Stat. 832; 10 U.S.C. 2271 note):

SEC. 605. LEADERSHIP AND MANAGEMENT OF SPACE ACTIVITIES.

(a) Appropriate Committees of Congress Defined.— In this section, the term "appropriate committees of Congress" means the congressional intelligence committees, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives.

(b) Update to Strategy for Comprehensive Interagency Review of the United States National Security Overhead Satellite Architecture.— Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, shall issue a written update to the strategy required by section 312 of the Intelligence Authorization Act for Fiscal Year 2016 (division M of Public Law 114-113; 129 Stat. 2919).

(c) Unity of Effort in Space Operations Between the Intelligence Community and Department of Defense.—

(1) Requirement for plan.— Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a plan to functionally integrate the governance, operations, analysis, collection, policy, and acquisition activities related to space and counterspace carried out by the intelligence community. The plan shall include analysis of no fewer than 2 alternative constructs to implement this plan, and an assessment of statutory, policy, organizational, programmatic, and resources changes that may be required to implement each alternative construct.

(2) Appointment by the director of national intelligence.— Not later than 30 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Secretary of Defense, shall appoint a single official to oversee development of the plan required by paragraph (1).

(3) Scope of plan.— The plan required by paragraph (1) shall include methods to functionally integrate activities carried out by—

(A) the National Reconnaissance Office;

(B) the functional managers for signals intelligence and geospatial intelligence;

(C) the Office of the Director of National Intelligence;

(D) other Intelligence Community elements with space-related programs;

(E) joint interagency efforts; and

(F) other entities as identified by the Director of National Intelligence in coordination with the Secretary of Defense.

(d) Intelligence Community Space Workforce.— Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a workforce plan to recruit, develop, and retain personnel in the intelligence

community with skills and experience in space and counterspace operations, analysis, collection, policy, and acquisition.

(e) ~~Joint Interagency Combined Space Operations Center~~ NATIONAL SPACE DEFENSE CENTER.—

(1) Submission to congress.— The Director of the National Reconnaissance Office and the Commander of the United States ~~Strategic Command~~ Space Command, in consultation with the Director of National Intelligence, the Under Secretary of Defense for Intelligence, and the Chairman of the Joint Chiefs of Staff, shall submit to the appropriate committees of Congress concept of operations and requirements documents for the ~~Joint Interagency Combined Space Operations Center~~ National Space Defense Center by the date that is the earlier of—

(A) the completion of the experimental phase of such Center; or

(B) 30 days after the date of the enactment of this Act.

(2) Quarterly briefings.— The Director of the National Reconnaissance Office and the Commander of the United States ~~Strategic Command~~ Space Command, in coordination with the Director of National Intelligence and Under Secretary of Defense for Intelligence, shall provide to the appropriate committees of Congress briefings providing updates on activities and progress of the ~~Joint Interagency Combined Space Operations Center~~ National Space Defense Center to begin 30 days after the date of the enactment of this Act. Such briefings shall be quarterly for the first year following enactment, and annually thereafter.

Section 2278 of title 10, United States Code:

§2278. Notification of foreign interference of national security space

(a) Notice Required.-The Commander of the United States ~~Strategic Command~~ Space Command shall, with respect to each intentional attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability, provide to the appropriate congressional committees-

(1) not later than 48 hours after the Commander determines that there is reason to believe such attempt occurred, notice of such attempt; and

(2) not later than 10 days after the date on which the Commander determines that there is reason to believe such attempt occurred, a notification described in subsection (b) with respect to such attempt.

(b) Notification Description.-A notification described in this subsection is a written notification that includes-

(1) the name and a brief description of the national security space capability that was impacted by an attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability;

(2) a description of such attempt, including the foreign actor, the date and time of such attempt, and any related capability outage and the mission impact of such outage; and

(3) any other information the Commander considers relevant.

(c) Appropriate Congressional Committees Defined.-In this section, the term "appropriate congressional committees" means-

(1) the congressional defense committees; and

(2) with respect to a notice or notification related to an attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability that is intelligence-related, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

Section 1612 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2590):

SEC. 1612. SPACE-BASED INFRARED SYSTEM AND ADVANCED EXTREMELY HIGH FREQUENCY PROGRAM.

(a) Limitation on Development and Acquisition of Alternatives.—

(1) Limitation.— Except as provided by paragraph (4), the Secretary of Defense may not develop or acquire an alternative to the space-based infrared system program of record or develop or acquire an alternative to the advanced extremely high frequency program of record until the date on which the Commander of the United States ~~Strategic Command~~ Space Command and the Director of the Space Security and Defense Program, in consultation with the Defense Intelligence Officer for Science and Technology of the Defense Intelligence Agency, jointly submit to the appropriate congressional committees the assessments described in paragraph (2) for the respective program.

(2) Assessment.— The assessments described in this paragraph are—

(A) an assessment of the resilience and mission assurance of each alternative to the space-based infrared system being considered by the Secretary of the Air Force; and

(B) an assessment of the resilience and mission assurance of each alternative to the advanced extremely high frequency program being considered by the Secretary of the Air Force.

(3) Elements.— An assessment described in paragraph (2) shall include, with respect to each alternative to the space-based infrared system program of record and each alternative to the advanced extremely high frequency program of record being considered by the Secretary of the Air Force, the following:

(A) The requirements for resilience and mission assurance.

(B) The criteria to measure such resilience and mission assurance.

(C) How the alternative affects—

(i) deterrence and full spectrum warfighting;

(ii) warfighter requirements and relative costs to include ground station and user terminals;

(iii) the potential order of battle of adversaries; and

(iv) the required capabilities of the broader space security and defense enterprise.

(4) Exception.— The limitation in paragraph (1) shall not apply to efforts to examine and develop technology insertion opportunities for the space-based infrared system program of record or the satellite communications programs of record.

(b) Appropriate Congressional Committees Defined.— In this section, the term “appropriate congressional committees” means the following:

(1) With respect to the submission of the assessment described in subparagraph (A) of subsection (a)(2), the—

(A) the congressional defense committees; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) With respect to the submission of the assessment described in subparagraph (B) of subsection (a)(2), the congressional defense committees.

SEC. ___. EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE SUPPORT TO CERTAIN GOVERNMENTS FOR BORDER SECURITY OPERATIONS.

(a) EXPANSION.—Section 1226 of the National Defense Authorization Act for Fiscal Year 2016 (22 U.S.C. 2151 note) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "on a reimbursement basis";

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following new paragraph:

"(2) TYPE OF SUPPORT.—In carrying out this section, the Secretary of Defense may—

"(A) procure equipment for the purpose of the loan or grant of such equipment; and

"(B) reimburse friendly foreign countries for the cost of operations.";

(2) in subsection (e)—

(A) in the heading, by striking "REIMBURSEMENT OF" and inserting "SUPPORT TO";

(B) in the matter preceding paragraph (1), by striking "reimbursement support under subsection (a)(1)(F) is authorized to be disbursed" and inserting "support under subsection (a) is authorized to be provided"; and

(C) in paragraph (1), by striking "reimbursement" and inserting "support"; and

(3) in subsection (f)—

(A) in the matter preceding paragraph (1), by striking "reimbursements" and inserting "support provided";

(B) in paragraph (1), by striking "reimbursed" and inserting "supported";

(C) in paragraph (2), by striking "each reimbursement" and inserting "support";

(D) in paragraph (3), by striking "reimbursement" and inserting "support";

(E) in paragraph (4), by striking "reimbursement" and inserting "support"; and

(F) in paragraph (5), by striking "reimbursement" and inserting "support".

(b) FUNDS AVAILABLE FOR SUPPORT.—Subsection (b) of such section is amended to read as follows:

"(b) FUNDS AVAILABLE FOR SUPPORT.—Amounts to provide support under the authority of subsection (a) may only be derived from amounts authorized to be appropriated and available for Operation and Maintenance, Defense-Wide, and the Counter-Islamic State of Iraq and Syria Train and Equip Fund Train and Equip Fund.".

(c) EXTENSION.—Subsection (h) of such section is amended by striking "December 31, 2021" and inserting "December 31, 2023".

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

Section-by-Section Analysis

This proposal would expand current border security authorities to provide non-reimbursable support to coalition partners using Operation and Maintenance, Defense-Wide and the Counter Islamic State of Iraq and Syria Train and Equip Fund. The existing requirements and limitations with respect to using this authority are unchanged.

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

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Border Security	$350					Operation and Maintenance, Defense-wide OCO	04	DSCA	
Total	$350								

Changes to Existing Law: This proposal would make the following changes to section 1226 of the National Defense Authorization Act for Fiscal Year 2016 (22 U.S.C. 2151 note):

SEC. 1226. SUPPORT TO CERTAIN GOVERNMENTS FOR BORDER SECURITY OPERATIONS.

(a) AUTHORITY TO PROVIDE SUPPORT.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to provide support ~~on a reimbursement basis~~ as follows:

(A) To the Government of Jordan for purposes of supporting and enhancing efforts of the armed forces of Jordan to increase security and sustain increased security along the border of Jordan with Syria and Iraq.

(B) To the Government of Lebanon for purposes of supporting and enhancing efforts of the armed forces of Lebanon to increase security and sustain increased security along the border of Lebanon with Syria.

(C) To the Government of Egypt for purposes of supporting and enhancing efforts of the armed forces of Egypt to increase security and sustain increased security along the border of Egypt with Libya.

(D) To the Government of Tunisia for purposes of supporting and enhancing efforts of the armed forces of Tunisia to increase security and sustain increased security along the border of Tunisia with Libya.

(E) To the Government of Oman for purposes of supporting and enhancing efforts of the armed forces of Oman to increase security and sustain increased security along the border of Oman with Yemen.

(F) To the Government of Pakistan for purposes of supporting and enhancing efforts of the armed forces of Pakistan to increase security and sustain increased security along the border of Pakistan with Afghanistan.

(2) TYPE OF SUPPORT.—In carrying out this section, the Secretary of Defense may—

(A) procure equipment for the purpose of the loan or grant of such equipment; and

(B) reimburse friendly foreign countries for the cost of operations.

(~~2~~3) FREQUENCY.—Support may be provided under this subsection on a quarterly basis.

~~(b) FUNDS AVAILABLE FOR SUPPORT.—The following amounts made be used to provide support under the authority of subsection (a):~~

~~(1) In fiscal year 2016, amounts authorized to be appropriated for fiscal year 2016 and available for reimbursement of certain coalition nations for support provided to United States military operations pursuant to section 1233 of the National Defense Authorization Act for fiscal year 2008 (Public Law 110-181; 122 Stat. 393).~~

~~(2) In fiscal year 2016, amounts authorized to be appropriated for fiscal year 2016 for the Counterterrorism Partnerships Fund pursuant to section 1534 of the Carl Levin and Howard P. ''Buck''McKeon National Defense Authorization Act for fiscal year 2015 (Public Law 113-291; 128 Stat. 3616).~~

~~(3) In any fiscal year after fiscal year 2016, amounts authorized to be appropriated and available for Operation and Maintenance, Defense-Wide, and the Counter Islamic State of Iraq and the Levant Fund.~~

(b) FUNDS AVAILABLE FOR SUPPORT.—Amounts to provide support under the authority of subsection (a) may only be derived from amounts authorized to be appropriated and available for Operation and Maintenance, Defense-Wide, and the Counter-Islamic State of Iraq and Syria Train and Equip Fund.

(c) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.—The total amount of support provided under the authority of subsection (a) may not exceed $150,000,000 for any country specified in subsection (a) in any fiscal year.

(2) SUPPORT TO THE GOVERNMENT OF LEBANON.—Support provided under the authority of subsection (a) to the Government of Lebanon may be used only for the armed forces of Lebanon, and may not be used for or to reimburse Hezbollah or any forces other than the armed forces of Lebanon.

(3) PROHIBITION ON CONTRACTUAL OBLIGATIONS.—The Secretary of Defense may not enter into any contractual obligation to provide support under the authority of subsection (a).

(4) DETERMINATION REQUIRED.—The Secretary of Defense may not provide support to a country specified in subsection (a) if the Secretary determines that the government of such country fails to increase security and sustain increased security along the border of the country as specified in subsection (a)(1).

(d) NOTICE AND CERTIFICATION BEFORE EXERCISE.—Not later than 15 days before providing support under the authority of subsection (a) to a country that has not previously received such support, the Secretary of Defense, in consultation with the Secretary of State, shall submit to the specified congressional committees a report that—

(1) sets forth a full description of the support to be provided, including—

(A) the purpose of such support;

(B) the amount of support to be provided; and

(C) the anticipated duration of the provision of such support; and

(2) includes a certification that—

(A) the recipient country has taken demonstrable steps to increase security along the border specified for such country in subsection (a); and

(B) the provision of such support is in the interest of United States national security.

(e) LIMITATION ON ~~REIMBURSEMENT OF~~ SUPPORT TO PAKISTAN PENDING CERTIFICATION.—No amount of ~~reimbursement~~ support under subsection (a)~~(1)(F)~~ is authorized to be ~~disbursed~~ provided to the Government of Pakistan unless the Secretary of Defense certifies to the congressional defense committees that the following conditions are met:

(1) The military and security operations of Pakistan pertaining to border security and ancillary activities for which ~~reimbursement~~ support is sought have been coordinated with United States military representatives in advance of the execution of such operations and activities.

(2) The goals and desired outcomes of each such operation or activity have been established and agreed upon in advance by the United States and Pakistan.

(3) A process exists to verify the achievement of the goals and desired outcomes established in accordance with paragraph (2).

(4) The Government of Pakistan is making an effort to actively coordinate with the Government of Afghanistan on issues relating to border security on the Afghanistan-Pakistan border.

(f) QUARTERLY REPORTS.—Not later than 30 days after the end of each fiscal quarter, the Secretary of Defense shall submit to the specified congressional committees a report on ~~reimbursements~~ support provided pursuant to subsection (a) during the preceding fiscal quarter that includes—

(1) an identification of each country ~~reimbursed~~ supported;

(2) the date of ~~each reimbursement~~ support;

(3) a description of any partner nation border security efforts for which ~~reimbursement~~ support was provided;

(4) an assessment of the value of partner nation border security efforts for which ~~reimbursement~~ support was provided;

(5) the total amounts of ~~reimbursement~~ support provided to each partner nation in the preceding four fiscal quarters; and

(6) such other matters as the Secretary considers appropriate.

(g) SPECIFIED CONGRESSIONAL COMMITTEES.—In the section, the term "specified congressional committees" means—

(1) the congressional defense committees; and

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

(h) EXPIRATION OF AUTHORITY.—No support may be provided under the authority of subsection (a) after ~~December 31, 2021~~ December 31, 2023.

SEC. ___. REVISION OF DEFINITION OF AMERICAN AIRCRAFT.

Paragraph (2) of section 44301 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(C) an aircraft temporarily designated as a state aircraft of the United States by a department, agency, or instrumentality of the United States Government.".

[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 44301(2) of title 49, United States Code, which defines "American aircraft" for purposes of chapter 443 of title 49, United States Code (relating to insurance), to include state as well as civil aircraft of the United States.

At present, the issuance of non-premium aviation insurance coverage for aircraft operating under contract to an agency of the United States Government is limited to operations involving an "American aircraft" or a "foreign flag" aircraft. "American aircraft" is defined, in part, as a "civil aircraft of the United States." As a result, a civil aircraft of the United States that has been temporarily designated as a state aircraft by the United States Government while operating in international or foreign airspace, or foreign territory, may not be eligible for non-premium insurance coverage. This proposal would revise the definition of "American aircraft" to make clear that such aircraft eligible for coverage.

The Federal Aviation Administration (FAA) administers the non-premium aviation insurance program under chapter 443 of title 49, United States Code, on behalf of the Department of Transportation. Insurance is issued at the request of another United States Government agency to cover the operation of aircraft under contract to that agency, when commercial insurance is not available, or not available on reasonable terms. Although the FAA pays any claims or judgments arising from such insurance coverage, the agency requesting the coverage is required by law to reimburse the FAA for the cost. In the Department of Defense's (DoD's) case, reimbursement is made from operation and maintenance funds available to DoD.

The DoD has been the exclusive user of non-premium insurance coverage under chapter 443 since 1991, and such coverage is currently in effect in several regions of the world where commercial insurance coverage is either not available or not available on reasonable terms. Aircraft under contract to the United States Government operating throughout the world are civil aircraft unless designated as state aircraft by the United States government, and it is the normal practice of the United States to not make such designations unless required to do so for operational reasons. When such designations are made, any non-premium insurance coverage in effect for that aircraft may cease for the duration of the aircraft's operation as a state aircraft. This may leave the operator without insurance. As a result, operators are often reluctant to agree to perform operations as state aircraft, which may, in turn, have a significant, adverse impact on DoD's ability to provide the Armed Forces with critical support when and where needed.

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.

Changes to Existing Law: This proposal would make the following changes to section 44301(2) of title 49, U.S.C:

§44301. Definitions.

In this chapter—

*****

(2) "American aircraft" means—

(A) a civil aircraft of the United States; ~~and~~

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory, or possession of the United States, or a political subdivision of the State, territory, or possession~~.~~; or

(C) an aircraft temporarily designated as a state aircraft of the United States by a department, agency, or instrumentality of the United States Government.

*****

SEC. __. EXTENSION OF DEPARTMENT OF DEFENSE SUPPORT FOR RECONCILIATION ACTIVITIES LED BY THE GOVERNMENT OF AFGHANISTAN.

Section 1218(j) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; XXX Stat. YYY) is amended by striking "December 31, 2020" and inserting "December 31, 2021".

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

Section-by-Section Analysis

This proposal would authorize the Department of Defense (DoD), with the concurrence of the Secretary of State, to support the Government of Afghanistan-led reconciliation activities in Afghanistan through Fiscal Year (FY) 2021. Reaching a durable political settlement with the Taliban is the primary objective of the South Asia Strategy. Since President Trump approved the South Asia Strategy in August 2017, DoD has worked closely with the Department of State, United States Agency for International Development (USAID), and the Government of Afghanistan to align military pressure with diplomatic efforts to support and facilitate reconciliation activities. For example, in June 2018, DoD and NATO coalition partners supported President Ghani's Eid-al-Fitr ceasefire initiative by limiting use of force against the Taliban for a designated period of time. This ceasefire led to a steep drop in violence and led to a number of opportunities for the Government of Afghanistan to pursue longer-term initiatives to de-escalate conflict and pursue local settlements throughout the country. The February 29, 2020 release of the U.S.-Afghanistan Joint Declaration and signing of the U.S.-Taliban agreement signifies and advancement in the peace process that the United States continues to support.

As the Government of Afghanistan continues efforts to pursue reconciliation in a way that supports the intent of both the U.S.-Afghanistan Joint Declaration and the U.S.-Taliban Agreement, DoD has the unique ability to help facilitate local efforts in Afghanistan through the provision of security, and logistic support, supplies, and services, but requires additional authority to provide such support in time to make an impact when time sensitive opportunities arise. Afghan civilian agencies, such as the Office of the National Security Council, the High Peace Council, and some provincial and district-level government bodies, have taken the lead in negotiating local peace agreements. In some cases, these negotiations are led by non-governmental intermediaries. Often, these negotiators cannot transit to remote parts of Afghanistan in a timely manner, nor can they provide security for such engagements. DoD has the unique capability to provide such movement and security for Afghan government agencies, local government personnel, non-government entities, and other civilians, as appropriate; the authority in this proposal would provide DoD with additional flexibility to do so. In all cases, DoD efforts to support

Afghan reconciliation would be coordinated with U.S. Embassy Kabul through the interagency Peace and Reconciliation Action Group.

The authority in this proposal would enable DoD to provide reimbursable support to other U.S. Government agencies. This would allow State and USAID employees to move around Afghanistan, with necessary security, in support of time-sensitive peace initiatives.

By definition, reconciliation requires the Government of Afghanistan to reconcile with actors in conflict with the Government of Afghanistan. Facilitating and supporting this reconciliation will likely require the U.S. to provide support under subsection (b) to individuals or organizations in a manner that may implicate provisions concerning material support to terrorists and terrorist organizations. This section specifically excepts support provided under this section from these prohibitions.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget. This proposal would be funded within the Overseas Contingency Operations (OCO) appropriations requested in the Administration's FY 2021 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)**
Support for Afghan Reconciliation	15					Operations & Maintenance, Army Overseas Contingency Operations	BA: 01	BLI: 135	
Total	15								

Changes to Existing Law: This proposal would make the following changes to section 1218 of the National Defense Authorization Act for Fiscal Year 2020:

SEC. 1218. SUPPORT FOR RECONCILIATION ACTIVITIES LED BY THE GOVERNMENT OF AFGHANISTAN.

(a) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, provide covered support for reconciliation activities to one or more designated persons or entities or Federal agencies.

* * * * *

(j) SUNSET.—The authority to carry out this section shall terminate on ~~December 31, 2020~~ December 31, 2021.

* * * * *

SEC. ___. AUTHORITY TO BUILD CAPACITY FOR ADDITIONAL OPERATIONS.

Section 333(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(8) Cyberspace operations.".

[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 amends section 333(a) of title 10, United States Code, to include authority for cyberspace operations. The proposed addition would provide valuable support to Department of Defense (DoD) efforts to clarify its authority to conduct cyber-related activities to build partnership capacity (BPC). The proposed addition will reduce confusion that currently exists when cyber-related proposals are couched within the span of other enumerated operations under section 333(a), thus better permitting Congress to conduct its oversight responsibilities.

Building off clear imperatives from the *2018 National Security Strategy* and *National Defense Strategy (NDS)*, particularly in response to the increasing pace and scope of malicious cyber activity by China and Russia, the United States began to revise fundamentally our national approach in cyberspace. In recognition of the full set of challenges we face in this emerging and dynamic warfighting domain, the White House published the *National Cyber Strategy*; at the same time, DoD released a new *Cyber Strategy*, which implemented the NDS in cyberspace. An associated *Cyber Posture Review* identified key gaps in the Department's posture, including that it needed to improve significantly its approach to, and ability to work more closely and more actively with all tiers of international allies and partners in cyberspace.

DoD, and by extension the United States, will be unable to fulfill the imperatives laid out in the these Strategies without improving not just our own capabilities to defend and to operate in cyberspace, but also those of our allies and partners, who present us with a strategic advantage over adversaries. But, leveraging the contributions of our friends requires us first to help them strengthen their ability to operate in today's cyber-contested environment, either alone or in concert with us. Cyberspace BPC is thus a high priority for the Department; however, current efforts are hindered by a number of factors, including lack of clarity about applicable authorities.

The proposed legislative change would clarify the Congress's intent that section 333 is applicable to DoD's BPC activities that are designed to build partners' ability to defend and to operate in cyberspace. Given our global, interconnected nature, it is essential that partners not only raise their cybersecurity foundations, but also develop and employ the most advanced capabilities to defend their networks, systems, and information, which if unprotected can provide pathways to U.S. weapons systems or other networks. The proposed change made to add "cyberspace operations" as an enumerated authority in section 333 will clarify and strengthen the

Department's ability to undertake such priority projects, and – with certain key partners – to better enable coalition operations across the full spectrum of cyberspace operations.

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

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Defense Security Cooperation Agency	$1,036	$1,068	$1,089	$1,120	$1,132	0100	04	4GTD	1002200 TN/A
Total	$1,036	$1,068	$1,089	$1,120	$1,132				

Changes to Existing Law: This proposal would make the following changes to section 333 of title 10, United States Code:

§ 333. Foreign security forces: authority to build capacity

(a) AUTHORITY.—The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

(1) Counterterrorism operations.

(2) Counter-weapons of mass destruction operations.

(3) Counter-illicit drug trafficking operations.

(4) Counter-transnational organized crime operations.

(5) Maritime and border security operations.

(6) Military intelligence operations.

(7) Operations or activities that contribute to an existing international coalition operation that is determined by the Secretary to be in the national interest of the United States.

(8) Cyberspace operations.

(b) CONCURRENCE AND COORDINATION WITH SECRETARY OF STATE.—

(1) CONCURRENCE IN CONDUCT OF PROGRAMS.—The concurrence of the Secretary of State is required to conduct or support any program authorized by subsection (a).

(2) JOINT DEVELOPMENT AND PLANNING OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall jointly develop and plan any program carried out pursuant to subsection (a). In developing and planning a program to build the capacity of the national security forces of a foreign country under subsection (a), the Secretary of

Defense and Secretary of State should jointly consider political, social, economic, diplomatic, and historical factors, if any, of the foreign country that may impact the effectiveness of the program.

(3) IMPLEMENTATION OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall coordinate the implementation of any program under subsection (a). The Secretary of Defense and the Secretary of State shall each designate an individual responsible for program coordination under this paragraph at the lowest appropriate level in the Department concerned.

(4) COORDINATION IN PREPARATION OF CERTAIN NOTICES.—Any notice required by this section to be submitted to the appropriate committees of Congress shall be prepared in coordination with the Secretary of State.

(c) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision and sustainment of defense articles, training, defense services, supplies (including consumables), and small-scale construction supporting security cooperation programs under this section.

(2) REQUIRED ELEMENTS.—A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military.

(B) Institutional capacity building.

(3) OBSERVANCE OF AND RESPECT FOR THE LAW OF ARMED CONFLICT, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, THE RULE OF LAW, AND CIVILIAN CONTROL OF THE MILITARY.—In order to meet the requirement in paragraph (2)(A) with respect to particular national security forces under a program under subsection (a), the Secretary of Defense shall certify, prior to the initiation of the program, that the Department of Defense or the Department of State is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, training that includes a comprehensive curriculum on the law of armed conflict, human rights and fundamental freedoms, and the rule of law, and that enhances the capacity to exercise responsible civilian control of the military, as applicable, to such national security forces.

(4) INSTITUTIONAL CAPACITY BUILDING.—In order to meet the requirement in paragraph (2)(B) with respect to a particular foreign country under a program under subsection (a), the Secretary shall certify, prior to the initiation of the program, that the Department of Defense or another department or agency is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, a program of institutional capacity building with appropriate institutions of such foreign country to enhance the capacity of such foreign country to organize, administer, employ, manage, maintain, sustain, or oversee the national security forces of such foreign country.

(d) LIMITATIONS.—

(1) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (c) that is otherwise prohibited by any provision of law.

(2) PROHIBITION ON ASSISTANCE TO UNITS THAT HAVE COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.—The provision of assistance pursuant to a program under subsection (a) shall be subject to the provisions of section 362 of this title.

(3) DURATION OF SUSTAINMENT SUPPORT.—Sustainment support may not be provided pursuant to a program under subsection (a), or for equipment previously provided by the Department of Defense under any authority available to the Secretary during fiscal year 2015 or 2016, for a period in excess of five years unless the notice on the program pursuant to subsection (e) includes the information specified in paragraph (7) of subsection (e).

(e) NOTICE AND WAIT ON ACTIVITIES UNDER PROGRAMS.—Not later than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a written and electronic notice of the following:

(1) The foreign country, and specific unit, whose capacity to engage in activities specified in subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided.

(2) A detailed evaluation of the capacity of the foreign country and unit to absorb the training or equipment to be provided under the program.

(3) The cost, implementation timeline, and delivery schedule for assistance under the program.

(4) A description of the arrangements, if any, for the sustainment of the program and the estimated cost and source of funds to support sustainment of the capabilities and performance outcomes achieved under the program beyond its completion date, if applicable.

(5) Information, including the amount, type, and purpose, on the security assistance provided the foreign country during the three preceding fiscal years pursuant to authorities under this title, the Foreign Assistance Act of 1961, and any other train and equip authorities of the Department of Defense.

(6) A description of the elements of the theater security cooperation plan of the geographic combatant command concerned, and of the interagency integrated country strategy, that will be advanced by the program.

(7) In the case of a program described in subsection (d)(3), each of the following:

(A) A written justification that the provision of sustainment support described in that subsection for a period in excess of five years will enhance the security interest of the United States.

(B) To the extent practicable, a plan to transition such sustainment support from funding through the Department to funding through another security sector assistance program of the United States Government or funding through partner nations.

(8) In the case of activities under a program that results in the provision of small-scale construction above $750,000, the location, project title, and cost of each small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location over the next 5 years.

(9) In the case of a program described in subsection (a), each of the following:

(A) A description of whether assistance under the program could be provided pursuant to other authorities under this title, the Foreign Assistance Act of 1961, or any other train and equip authorities of the Department of Defense.

(B) An identification of each such authority described in subparagraph (A).

(f) QUARTERLY MONITORING REPORTS.—The Director of the Defense Security Cooperation Agency shall, on a quarterly basis, submit to the appropriate committees of Congress a report setting forth, for the preceding calendar quarter, the following:

(1) Information, by recipient country, of the delivery and execution status of all defense articles, training, defense services, supplies (including consumables), and small-scale construction under programs under subsection (a).

(2) Information on the timeliness of delivery of defense articles, defense services, supplies (including consumables), and small-scale construction when compared with delivery schedules for such articles, services, supplies, and construction previously provided to Congress.

(3) Information, by recipient country, on the status of funds allocated for programs under subsection (a), including amounts of unobligated funds, unliquidated obligations, and disbursements.

(g) FUNDING.—

(1) SOLE SOURCE OF FUNDS.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—

(A) IN GENERAL.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPACITY.—If, in accordance with subparagraph (A), equipment or training is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.

SEC. ___. INCLUSION OF CHIEF OF THE NATIONAL GUARD BUREAU AS AN ADVISOR TO THE JOINT REQUIREMENTS OVERSIGHT COUNCIL.

Section 181(d)(3) of title 10, United States Code, is amended—

(1) in the heading, by inserting "AND CHIEF OF THE NATIONAL GUARD BUREAU" after "OF STAFF";

(2) by striking "of the Chiefs of Staff" and inserting "of—

"(A) the Chiefs of Staff";

(3) by striking the period at the end and inserting "; and"; and

(4) by inserting at the end the following new subparagraph:

"(B) the Chief of the National Guard Bureau when matters involving non-federalized National Guard capabilities in support of homeland defense or civil support missions are under consideration by the Council.".

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

Section-by-Section Analysis

This proposal would add the Chief of the National Guard Bureau to 10 U.S.C. 181(d)(3), which requires that the Joint Requirements Oversight Council (JROC) seek the views of certain members of the Joint Chiefs of Staff, in their roles as customers of the acquisition system, on certain matters pertaining to a capability proposed by an armed force, Defense Agency, or other entity of the Department.

The Chief of the National Guard Bureau (CNGB) is a member of the Joint Chiefs of Staff (JCS) with the specific responsibility of addressing matters involving non-federalized National Guard forces in support of homeland defense and civil support missions (10 U.S.C. 10502d). Per 10 U.S.C. 181, the JROC is composed of the Vice Chairman of the Joint Chiefs of Staff and general and flag officers from the Army, Navy, Air Force, and Marine Corps. Unlike the other members of the JCS, there is no National Guard Bureau (NGB) representation at the JROC. This proposal would ensure that the JROC would seek the views of CNGB in a manner similar to the manner in which it is currently required to seek the views of the Chiefs of Staff of the armed forces.

Section 181 of title 10, United States Code, establishes the JROC to directly support the Chairman's Joint Capability Development function per section 153(a)(5) of title 10, U.S.C. Specifically, the JROC assesses joint military capabilities; identifies and prioritizes gaps; reviews and validates proposed capabilities intended to fill gaps; develops recommendations for program cost and fielding targets; establishes and approves joint performance requirements; reviews capability requirements for any existing or proposed solution; and identifies new joint military capabilities based on advances in technology and concepts and alternatives to acquisition programs. Through these efforts, the JROC serves as the Chairman's global integration entity for Joint Capability Development.

The benefit of adding CNGB as an advisor to the JROC is the ability to fully participate in the DoD requirements process and address matters involving National Guard forces. In accordance with the National Defense Strategy, the homeland defense mission of the National Guard should be taken into account when making military contingency plans, when allocating scarce readiness resources, and when advising the President, the Secretary of Defense, the National Security Council, and the Homeland Security Council on strategies and contingency response options. Designation as a JROC Advisor will ensure that the responsibilities and capabilities of the National Guard are considered in a planned and deliberate manner, firmly rooted in the law and the national strategy rather than ad hoc arrangements or personal relationships. Further, the CNGB has a vital advisory role, as the National Guard is equipped by two Services, the Army and the Air Force. As such, the CNGB has a vital interest in requirements matters taken up by the JROC pertinent to the Army and the Air Force.

Budget Implications: No budget impact**.**

Changes to Existing Law: This proposal would amend section 181 of title 10, United States Code, as follows:

§181. Joint Requirements Oversight Council

(a) In General.-There is a Joint Requirements Oversight Council in the Department of Defense.

(b) Mission.-In addition to other matters assigned to it by the President or Secretary of Defense, the Joint Requirements Oversight Council shall assist the Chairman of the Joint Chiefs of Staff in—

(1) assessing joint military capabilities, and identifying, approving, and prioritizing gaps in such capabilities, to meet applicable requirements in the national defense strategy under section 113(g) of this title;

(2) reviewing and validating whether a capability proposed by an armed force, Defense Agency, or other entity of the Department of Defense fulfills a gap in joint military capabilities;

(3) establishing and approving joint performance requirements that—

(A) ensure interoperability, where appropriate, between and among joint military capabilities; and

(B) are necessary, as designated by the Chairman of the Joint Chiefs of Staff, to fulfill capability gaps of more than one armed force, Defense Agency, or other entity of the Department;

(4) reviewing performance requirements for any existing or proposed capability that the Chairman of the Joint Chiefs of Staff determines should be reviewed by the Council;

(5) identifying new joint military capabilities based on advances in technology and concepts of operation; and

(6) identifying alternatives to any acquisition program that meets approved joint military capability requirements for the purposes of sections 2366a(b), 2366b(a)(4), and 2433(e)(2) of this title.

(c) Composition.—

(1) In general.-The Joint Requirements Oversight Council is composed of the following:

(A) The Vice Chairman of the Joint Chiefs of Staff, who is the Chair of the Council and is the principal adviser to the Chairman of the Joint Chiefs of Staff for making recommendations about joint military capabilities or joint performance requirements.

(B) An Army officer in the grade of general.

(C) A Navy officer in the grade of admiral.

(D) An Air Force officer in the grade of general.

(E) A Marine Corps officer in the grade of general.

(2) Selection of members.-Members of the Council under subparagraphs (B), (C), (D), and (E) of paragraph (1) shall be selected by the Chairman of the Joint Chiefs of Staff, after consultation with the Secretary of Defense, from officers in the grade of general or admiral, as the case may be, who are recommended for selection by the Secretary of the military department concerned.

(3) Recommendations.-In making any recommendation to the Chairman of the Joint Chiefs of Staff as described in paragraph (1)(A), the Vice Chairman of the Joint Chiefs of Staff shall provide the Chairman any dissenting view of members of the Council under paragraph (1) with respect to such recommendation.

(d) Advisors.—

(1) In general.-The following officials of the Department of Defense shall serve as advisors to the Joint Requirements Oversight Council on matters within their authority and expertise:

(A) The Under Secretary of Defense for Policy.

(B) The Under Secretary of Defense for Intelligence.

(C) The Under Secretary of Defense for Acquisition and Sustainment.

(D) the Under Secretary of Defense for Research and Engineering.

(E) The Under Secretary of Defense (Comptroller).

(F) The Director of Cost Assessment and Program Evaluation.

(G) The Director of Operational Test and Evaluation.

(H) The commander of a combatant command when matters related to the area of responsibility or functions of that command are under consideration by the Council.

(2) Input from combatant commands.-The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b).

(3) Input from chiefs of staff and chief of the national guard bureau.-The Council shall seek, and strongly consider, the views of—

(A) the Chiefs of Staff of the armed forces in their roles as customers of the acquisition system, on matters pertaining to a capability proposed by an armed force, Defense Agency, or other entity of the Department of Defense under subsection (b)(2) and joint performance requirements pursuant to subsection (b)(3).; and

(B) the Chief of the National Guard Bureau when matters involving non-federalized National Guard capabilities in support of homeland defense or civil support missions are under consideration by the Council.

(e) Performance Requirements as Responsibility of Armed Forces.-The Chief of Staff of an armed force is responsible for all performance requirements for that armed force and, except for performance requirements specified in subsections (b)(4) and (b)(5), such performance requirements do not need to be validated by the Joint Requirements Oversight Council.

(f) Analytic Support.-The Secretary of Defense shall ensure that analytical organizations within the Department of Defense, such as the Office of Cost Assessment and Program Evaluation, provide resources and expertise in operations research, systems analysis, and cost estimation to the Joint Requirements Oversight Council to assist the Council in performing the mission in subsection (b).

(g) Availability of Oversight Information to Congressional Defense Committees.-The Secretary of Defense shall ensure that, in the case of a recommendation by the Chairman of the Joint Chiefs of Staff to the Secretary that is approved by the Secretary, oversight information with respect to such recommendation that is produced as a result of the activities of the Joint Requirements Oversight Council is made available in a timely fashion to the congressional defense committees.

(h) Definitions.—In this section:

(1) The term “joint military capabilities” means the collective capabilities across the joint force, including both joint and force-specific capabilities, that are available to conduct military operations.

(2) The term “performance requirement” means a performance attribute of a particular system considered critical or essential to the development of an effective military capability.

(3) The term “joint performance requirement” means a performance requirement that is critical or essential to ensure interoperability or fulfill a capability gap of more

than one armed force, Defense Agency, or other entity of the Department of Defense, or impacts the joint force in other ways such as logistics.

(4) The term “oversight information” means information and materials comprising analysis and justification that are prepared to support a recommendation that is made to, and approved by, the Secretary of Defense.

SEC. ___. LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS.

(a) AUTHORITY.—The Secretary of Defense may make available logistics support and logistics services to a contractor, including contractors of F-35 participant nations, in support of the performance by the contractor of a contract for the construction, modification, or maintenance or repair of the F-35 Lightning II weapon system.

(b) SUPPORT CONTRACTS.—

(1) IN GENERAL.–Any logistics support and logistics services to be provided under this section to a contractor in support of the performance of a contract described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to the contract between the Director of the Defense Logistics Agency and the contractor.

(2) LIMITATION.—The number of contracts described in subsection (a) for which the Secretary of Defense makes logistics support and logistics services available under the authority of this section may not exceed 10 contracts. No contract entered into by the Director of the Defense Logistics Agency under subsection (b) may be for a period in excess of five years, including periods for which the contract is extended under options to extend the contract.

(c) SCOPE OF SUPPORT AND SERVICES.—The logistics support and logistics services that may be provided under this section in support of the performance of a contract described in subsection (a) are the cataloging, storage and distribution, disposal, and supply chain management, including supply and provisioning, of materiel and parts necessary for the performance of that contract.

(d) REGULATIONS.—The Secretary shall prescribe regulations implementing this section. The regulations shall include the following:

(1) A requirement that the solicitation of offers for a contract described in subsection (a) that will be awarded by a military department or the Department of Defense, for which logistics support and logistics services are to be made available under this section, shall include—

(A) a statement that the logistics support and logistics services are to be made available under the authority of this section to any contractor awarded the contract, but only on a basis that does not require acceptance of the support and services; and

(B) a description of the range of the logistics support and logistics services that are to be made available to the contractor.

(2) A requirement for the rates charged a contractor for logistics support and logistics services provided to a contractor under the authority of this section to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

(3) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of logistics support and logistics services provided to the contractor under this section.

(4) A requirement that logistics support and logistics services provided under the authority of this section may not interfere with the mission of the Defense Logistics Agency or of any military department involved with the program.

(e) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary of State shall ensure, after being consulted by the Secretary of Defense, that the exercise of authority under the authority of this section does not conflict with any obligation of the United States under any treaty or other international agreement.

(f) REPORTS.—

(1) SECRETARY OF DEFENSE.—Not later than the end of the fourth year of operation of the authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing—

(A) the cost effectiveness for both the Government and industry of operation of the authority; and

(B) the effects, if any, on the performance of prime contracts being supported by support contracts awarded under the authority of this section.

(2) COMPTROLLER GENERAL.—Not later than the end of the fifth year of operation of the authority under this section, the Comptroller General of the United States shall review the report of the Secretary under paragraph (1) for sufficiency and provide such recommendations in a report to the Committees on Armed Services of the Senate and House of Representatives as the Comptroller General considers appropriate.

(g) SUNSET.—The authority to enter into contracts under the authority of this section shall expire six years after the date of the enactment of this Act. Any contracts entered into before such date shall continue in effect according to their terms.

(h) F-35 PARTICIPANT NATIONS DEFINED.—In this section, the term "F-35 participant nations" means each of the following:

(1) The United States.

(2) The United Kingdom.

(3) Italy.

(4) The Netherlands.

(5) Canada.

(6) Australia.

(7) Denmark.

(8) Norway

Section by Section Analysis

This proposal would establish policy allowing the F-35 Program's Participant Nations' support contractors to integrate Defense Logistics Agency logistics support and logistics services capabilities into their supply chain in support of the F-35 Lightning II. F-35 Lightning II participant nations, and supporting contractors should consider utilization of existing DoD logistics capabilities when developing requirements for Performance Based Logistics programs. In addition, the proposal broadens the scope of logistics services that the Defense Logistics Agency would be authorized to provide to DoD weapon systems contractors, which is presently limited to storage and distribution services authorized pursuant to section 883 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328). This proposal is needed because the Defense Logistics Agency, which primarily operates under the authority of section 2208 of title 10, United States Code, cannot provide services to entities such as F-35 Lightning II support contractors without a separate statutory authorization. This proposal provides that authorization.

Budgetary Implications: The resources reflected in the table below are funded within the FY 2021 President's Budget. Any proposed partnership is 100 percent reimbursable to DLA and the Defense Working Capital Fund. For this test program, DLA and JPO will enter a Service Level Agreement detailing business rules on inventory valuation/ownership, billing processes, ordering, and funds transfer.

RESOURCE IMPACT ($MILLIONS)								
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
DLA Aviation Weapon Systems Support	23.2	35.9	49.6	64.2	78.3	Working Capital Fund, Defense-wide	08	ES08
Total	**23.2**	**35.9**	**49.6**	**64.2**	**78.3**			

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

SEC. ___. PARTICIPATION IN MULTINATIONAL CENTERS OF EXCELLENCE.

(a) IN GENERAL.—Section 344 of title 10, United States Code, is amended—

(1) in the section heading, by striking "**military**";

(2) by striking "military" each place it appears, except—

(A) the first place it appears in subsection (a)(1); and

(B) in subsection (a)(2);

(3) in subsection (b)(1), by inserting "or entered into by the Secretary of State," after "with the concurrence of the Secretary of State,"; and

(4) in subsection (e)—

(A) in the subsection heading, by striking "MILITARY";

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

(i) by inserting ", or is certified in writing by the Secretary of Defense with the concurrence of the Secretary of State," after "(NATO)"; and

(ii) by inserting "the United States or" after "for the benefit of"; and

(C) in paragraph (3), by striking "and" at the end and inserting "or".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of chapter 16 of such title is amended by striking the item relating to section 344 and inserting the following new item:

"344. Participation in multinational centers of excellence.".

[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 344 of title 10, United States Code, to permit the Department of Defense (DoD) to participate in additional centers of excellence (COEs), including COEs that are not specifically accredited by the North Atlantic Treaty Organization (NATO) or that are not exclusively military. Amending the language in section 344, by deleting the term "military" and by adding an alternative to NATO accreditation for participation, would allow DoD to participate in valuable COEs that are now excluded.

A current example is the International Special Training Center (ISTC) in Pfullendorf, Germany. The ISTC is important for special operations forces (SOF) capabilities and readiness in Europe at this time when deterring Russia and countering its malign influence, both for the security of NATO Allies and for non-NATO partner nations like Finland and Ukraine, requires strong cooperation by the United States and its allies and partners.

In the future, another example may be the Center of Excellence for Hybrid Warfare (Hybrid CEO) in Helsinki, Finland. The Hybrid COE has an important role in countering Russia's malign influence and its full range of hybrid warfare tactics, including by enhancing NATO-EU and civil-military coordination regarding hybrid threats.

Budget Implications: No budget impact. If and when DoD were to participate in any COE under this revised authority, the costs (as is the case now, with the existing authority) would be covered within funds made available via established processes, subject to separate case-by-case decision and allocation. In the case of the ISTC, the resources required, which are reflected in the table below, are already included within the existing O&M, Army budget. For the Hybrid COE or any other proposal in the future, participation would be subject to subsequent separate decisions. (Unlike a year ago, funds for the Hybrid COE are not now needed, as an officer is covering the U.S. position under a multi-year State Department appointment in the absence of a SOFA.)

RESOURCE IMPACT ($MILLIONS)								
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**
ISTC	.76	.76	.76	.76	.76	Operation and Maintenance, Army	01	2020
Total	.76	.76	.76	.76	.76			

Changes to Existing Law: This proposal would amend section 344 of title 10, United States Code, as follows:

§ 344. Participation in multinational ~~military~~ centers of excellence

(a) PARTICIPATION AUTHORIZED.-The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the armed forces and Department of Defense civilian personnel in any multinational ~~military~~ center of excellence for purposes of-

(1) enhancing the ability of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international ~~military~~ operations; or

(2) improving interoperability between the armed forces and the military forces of friendly foreign nations.

(b) MEMORANDUM OF UNDERSTANDING.-

(1) The participation of members of the armed forces or Department of Defense civilian personnel in a multinational ~~military~~ center of excellence under subsection (a) shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, or entered into by the Secretary of State, and the foreign nation or nations concerned.

(2) If Department of Defense facilities, equipment, or funds are used to support a multinational ~~military~~ center of excellence under subsection (a), the memoranda of understanding under paragraph (1) with respect to that center shall provide details of any cost-sharing arrangement or other funding arrangement.

(c) AVAILABILITY OF APPROPRIATED FUNDS.-

(1) Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

(A) To pay the United States share of the operating expenses of any multinational ~~military~~ center of excellence in which the United States participates under this section.

(B) To pay the costs of the participation of members of the armed forces and Department of Defense civilian personnel in multinational ~~military~~ centers of excellence under this section, including the costs of expenses of such participants.

(2) No funds may be used under this section to fund the pay or salaries of members of the armed forces and Department of Defense civilian personnel who participate in multinational ~~military~~ centers of excellence under this section.

(d) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.-Facilities and equipment of the Department of Defense may be used for purposes of the support of multinational ~~military~~ centers of excellence under this section that are hosted by the Department.

(e) MULTINATIONAL ~~MILITARY~~ CENTER OF EXCELLENCE DEFINED.-In this section, the term "multinational ~~military~~ center of excellence" means an entity sponsored by one or more nations that is accredited and approved by the Military Committee of the North Atlantic Treaty Organization (NATO), or is certified in writing by the Secretary of Defense with the concurrence of the Secretary of State, as offering recognized expertise and experience to personnel participating in the activities of such entity for the benefit of the United States or NATO by providing such personnel opportunities to-

(1) enhance education and training;

(2) improve interoperability and capabilities;

(3) assist in the development of doctrine; ~~and~~ or
(4) validate concepts through experimentation.

SEC. ____. NON-MEDICAL COUNSELING SERVICES FOR MILITARY FAMILIES.

Section 1781 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) NON-MEDICAL COUNSELING SERVICES.—(1) In carrying out its duties under subsection (b), the Office may coordinate programs and activities for the provision of non-medical counseling services to military families through the Department of Defense Family Readiness System.

"(2) Notwithstanding any other provision of law, a mental health care provider described in paragraph (3) may provide non-medical counseling services at any location in a State, the District of Columbia, or a territory or possession of the United States, without regard to where the provider or recipient of such services is located, if the provision of such services is within the scope of the authorized Federal duties of the provider.

"(3) A mental health care provider described in this paragraph is a person who is—

"(A) a currently licensed mental health care provider who holds a license that is—

"(i) issued by a State, the District of Columbia, or a territory or possession of the United States; and

"(ii) recognized by the Secretary of Defense;

"(B) a member of the armed forces, a civilian employee of the Department of Defense, or a contractor designated by the Secretary; and

"(C) performing authorized duties for the Department of Defense under a program or activity referred to in paragraph (1).

"(4) In this subsection, the term 'non-medical counseling services' means mental health care services that are non-clinical, short-term and solution focused, and address topics related to personal growth, development, and positive functioning.".

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 1781 to permit mental health care providers contracted or employed by the Department of Defense to provide non-medical counseling services under a license issued by any State, just as certain health care professionals operating within the scope of authorized Federal duties are able to provide health care services under 10 U.S.C. 1094(d).

Licensed mental health care providers, such as those serving as Military and Family Life Counselors, are currently unable to provide non-medical counseling services in States in which they are not specifically licensed. This reduces the flexibility and responsiveness of the providers, and limits the ability of the Department to responsively resource the military community with non-medical counseling services. This issue was solved for health care professionals identified in 10 U.S.C. 1094 (certified physicians, dentists, clinical psychologists, and marriage and family therapists), but the statute does not apply to contracted support personnel, such as mental health care providers providing non-medical counseling services. (Please note: Military and Family Life Counselors work on a non-personal services contract.) Rather than include mental health care providers providing non-medical counseling services in the health care provision, an amendment to 10 U.S.C. 1781 would allow the Department to match the license flexibility of health care professionals for these mental health care providers, and would provide more flexibility in staffing assignments. It would also support military spouse employment by easing the burden of individual State licensure requirements during permanent change of station moves.

Budget Implications: This proposal has no significant budget 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 1781 of title 10, United States Code, as follows:

§1781. Office of Military Family Readiness Policy

(a) Establishment.-There is in the Office of the Secretary of Defense an Office of Military Family Readiness Policy (in this section referred to as the "Office"). The Office shall be headed by the Director of Military Family Readiness Policy, who shall serve within the Office of the Under Secretary of Defense for Personnel and Readiness.

(b) Duties.-The Office-

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

(c) Staff.-The Office shall have not less than five professional staff members.

(d) Non-Medical Counseling Services.—(1) In carrying out its duties under subsection (b), the Office may coordinate programs and activities for the provision of non-medical counseling services to military families through the Department of Defense Family Readiness System.

(2) Notwithstanding any other provision of law, a mental health care provider described in paragraph (3) may provide non-medical counseling services at any location in a State, the District of Columbia, or a territory or possession of the United States, without regard to where the provider or recipient of such services is located, if the provision of such services is within the scope of the authorized Federal duties of the provider.

(3) A mental health care provider described in this subsection is a person who is—

(A) a currently licensed mental health care provider who holds a license that is—

(i) issued by a State, the District of Columbia, or a territory or possession of the United States; and

(ii) recognized by the Secretary of Defense;

(B) a member of the armed forces, a civilian employee of the Department of Defense, or a contractor designated by the Secretary; and

(C) performing authorized duties for the Department of Defense under a program or activity referred to in paragraph (1).

(4) In this subsection, the term ‘non-medical counseling services’ means mental health care services that are non-clinical, short-term and solution focused, and address topics related to personal growth, development, and positive functioning.

SEC. ___. REALIGNMENT OF NAVY SPOT PROMOTION QUOTAS.

(a) IN GENERAL.—Section 605 of title 10, United States Code, is amended—

(1) in the heading, by striking "**lieutenant commander, lieutenant**" and inserting "**lieutenant commander**";

(2) in subsection (a)—

(A) by striking "lieutenant (junior grade),"; and

(B) by striking "Marine Corps, or lieutenant, lieutenant commander" and inserting "Marine Corps, or lieutenant commander";

(3) in subsection (b)(2)(A), by striking "lieutenant,";

(4) in subsection (f)—

(A) in paragraph (1), by striking "lieutenant,";

(B) in paragraph (2), by striking "lieutenant,";

(5) in subsection (g)(4)—

(A) by striking subparagraph (A);

(B) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively; and

(C) in subparagraph (A), as redesignated by subparagraph (B) of this paragraph, by striking "325" and inserting "425".

[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 605 of title 10, United States Code, to better align Navy spot-promotion authorizations with projected requirements, by striking authorization for spot-promotion of 100 lieutenants, and allotting those 100 spot-promotions to the grade of lieutenant commander, for a total of 425.

Under section 605, officers may be temporarily (or spot-) promoted to the next higher pay grade if serving in a position for which there is a critical shortage as determined by the Secretary of the military department concerned, and which is designated to be filled by an officer at a specific grade who possesses the requisite skills. Within Navy officer promotion planning, spot-promoted officers are accounted for in the same inventory as those promoted through the normal process. There is a two-year time-in-grade requirement to be eligible for spot-promotion. The majority of spot-promoted officers are selected to the next higher pay grade through the normal promotion process while still occupying the spot-promote billet.

Section 605 limits the number of Navy billets that may be designated by the Secretary of the Navy for spot-promotion to 100 for lieutenant and 325 for lieutenant commander. Navy has determined that there is not currently, and likely never would be, a need for spot promotion to lieutenant. The majority of Navy lieutenant-coded billets do not require a critical skill carried by a limited inventory of officers within the pay grade. Navy does, however, anticipate a requirement for additional lieutenant commander spot-promote billets to support planned force structure growth. The latest 30-year ship building plan provides for submarine force growth from 69 submarines in 2018, to 80 submarines in 2048. In the conventional fleet, Chief Engineers on older Flight I Arleigh Burke Class DDGs are spot-promote billets. As the DDG fleet ages, the Surface Community anticipates applying spot-promote authority to Flight II and older Flight IIa (hulls 72-80). Accordingly, overall demand for lieutenant commander spot-promote billets is expected to steadily increase over the next decade.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request. This proposal would realign Navy spot-promotions for 100 LTs and allotting those 100 spot-promotions to the grade of LCDRs to account for future force of record growth, bringing the total of LCDR spot promote positions to 425.

Changes to Existing Law: This proposal would make the following changes to section 605 of title 10, United States Code:

§605. Promotion to certain grades for officers with critical skills: colonel, lieutenant colonel, major, captain; captain, commander, lieutenant commander~~, lieutenant~~

(a) IN GENERAL.—An officer in the grade of first lieutenant, captain, major, or lieutenant colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant (junior grade),~~ lieutenant, lieutenant commander, or commander in the Navy, who is described in subsection (b) may be temporarily promoted to the grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant,~~ lieutenant commander, commander, or captain in the Navy, as applicable, under regulations prescribed by the Secretary of the military department concerned. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) COVERED OFFICERS.—An officer described in this subsection is any officer in a grade specified in subsection (a) who—

(1) has a skill in which the armed force concerned has a critical shortage of personnel (as determined by the Secretary of the military department concerned); and

(2) is serving in a position (as determined by the Secretary of the military department concerned) that—

(A) is designated to be held by a captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant,~~ lieutenant commander, commander, or captain in the Navy, as applicable; and

(B) requires that an officer serving in such position have the skill possessed by such officer.

(c) PRESERVATION OF POSITION AND STATUS OF OFFICERS APPOINTED.—An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(d) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the military department concerned for the purpose of recommending officers for such promotions.

(e) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of the temporary promotion under this section from the date the appointment is made.

(f) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant,~~ lieutenant commander, commander, or captain in the Navy; or

(2) on the date the officer is detached from a position described in subsection (b)(2), unless the officer is on a promotion list to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant,~~ lieutenant commander, commander, or captain in the Navy, in which case the appointment terminates on the date the officer is promoted to that grade.

(g) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—An appointment under this section may only be made for service in a position designated by the Secretary of the military department concerned for the purposes of this section. The number of positions so designated may not exceed the following:

(1) In the case of the Army—

(A) as captain, 120;

(B) as major, 350;

(C) as lieutenant colonel, 200; and

(D) as colonel, 100.

(2) In the case of the Air Force—

(A) as captain, 100;

(B) as major, 325;

(C) as lieutenant colonel, 175; and

(D) as colonel, 80.

(3) In the case of the Marine Corps—

(A) as captain, 50;

(B) as major, 175;

(C) as lieutenant colonel, 100; and

(D) as colonel, 50.

(4) In the case of the Navy—

~~(A) as lieutenant, 100;~~

~~(B)~~ (A) as lieutenant commander, ~~325~~ 425;

~~(C)~~ (B) as commander, 175; and

~~(D)~~ (C) as captain, 80.

SEC. ___. SELECTIVE EARLY RETIREMENT AUTHORITY.

Section 638 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(B), by striking "four years" and inserting "three years";

(2) in subsection (c), by striking "five-year period" and inserting "three-year period"; and

(3) in subsection (e)(2)—

(A) in subparagraph (A)—

(i) by striking "subparagraph (B)" and inserting "subparagraph (C)";

(ii) by inserting "eligible" after "shall include each";

(iii) by striking "in the same grade and competitive category"; and

(iv) by striking "in that grade and competitive category" each place it appears;

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) In the case of an action under subsection (a)(1)(A) or (a)(1)(B), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

"(i) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

"(ii) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or

retirement categories, or any combination thereof, within that competitive category.";

and

(D) in subparagraph (D), as redesignated by subparagraph (B) of this paragraph, by striking "subparagraph (B)" and inserting "subparagraph (C)".

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

Section-by-Section Analysis

Currently, the Secretaries of the Military Departments are authorized to conduct selective early retirement boards, but they are limited to considering for retirement all officers on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category and that of the most senior officer in that grade and competitive category. This authority, while useful in conducting a major drawdown in officer strength can be overly blunt in making reductions. This proposal would amend section 638 of title 10, United States Code, and authorize the Secretaries of the Military Departments to be more discerning when conducting selective early retirement boards by allowing the Secretary concerned to direct selective early retirement boards to target specific competitive categories, year groups, specialties, or retirement categories, or any combination thereof, within those competitive categories.

This proposal would provide the Secretaries of the Military Departments the ability to more effectively shape the officer corps to meet the operational needs of their departments. They could target overages in skills that inhibit proper application of the officer inventories to meet their manning requirements and avoid unintentional reductions of officers in low-density, high-demand skillsets and in short fields. The proposed changes would not impact general or flag officers, only retirement eligible officers in the grade of colonel or lieutenant colonel or, in the case of an officer of the Navy, captain or commander. The proposal reduces the early retirement eligibility from at least four years to at least three years' time-in-grade. Lastly, it modifies the frequency an officer may be considered for early retirement from once in five years to once in three.

Similar authority exists in section 638a of title 10; however, section 638a is a temporary authority designed for a drawing down or conducting a reduction-in-force. As such, that authority belongs to the Secretary of Defense, who must authorize its use by the Secretaries of the Military Departments. This proposal would provide Secretaries of the Military Departments greater flexibility in managing talent within their Services.

Budget Implications: This proposal has insignificant budget impact. All incidental costs or savings will be accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 638 of title 10, United States Code:

*** * * * * ***

§638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who has served at least ~~four years~~ three years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a selection board convened under section 611(b) of this title may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall--

(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved

by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(3) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section or section 638a of this title 638a in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any ~~five-year period~~ three-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in ~~subparagraph (B)~~ subparagraph (C)) shall include each eligible officer on the active-duty list ~~in the same grade and competitive category~~ whose position on the active-duty list is between that of the most junior officer ~~in that grade and competitive category~~ whose name is submitted to the board and that of the most senior officer ~~in that grade and competitive category~~ whose name is submitted to the board.

(B) In the case of an action under subsection (a)(1)(A) or (a)(1)(B), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection--

(i) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(ii) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

~~(B)~~ (C) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 3911, 6323, or 8911 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

~~(C)~~ (D) An officer not considered by a selection board convened under section 611(b) of this title by reason of ~~subparagraph (B)~~ subparagraph (C) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

* * * * * *

SEC. ___. REPRESENTATION BY SPECIAL VICTIMS' COUNSEL.

Section 1044e of title 10, United States Code, is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i), respectively;

(2) in subsection (b)(10), by striking "subsection (h)" and inserting "subsection (i)";

(3) by inserting after subsection (c) the following new subsection:

"(d) TERMINATION OF REPRESENTATION.—The Secretary concerned shall direct the Judge Advocate General, or in the case of the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, to prescribe regulations establishing the circumstances under which the provision of legal assistance by a Special Victims' Counsel to a victim will be terminated. Such regulations shall—

"(1) require a Special Victims' Counsel to provide written notice to the victim of the termination of the provision of legal assistance by such Counsel;

"(2) allow a victim to voluntarily terminate the provision of legal assistance by a Special Victims' Counsel at any time;

"(3) subject to applicable rules of professional conduct, automatically terminate the provision of legal assistance by a Special Victims' Counsel upon the release from active duty of such Counsel or assignment of such Counsel to a position that is incompatible with the continued provision of legal assistance to the victim by such Counsel;

"(4) automatically make available a substitute Special Victims' Counsel to a victim following an automatic termination described in paragraph (3) if the victim

remains eligible for legal assistance under this section and desires continued representation by a Special Victims' Counsel;

"(5) establish written guidelines on the limits of representation as described in subsection (a)(2) and the process for termination of representation; and

"(6) include rules governing how a victim may request continuation of the provision of legal assistance under this section in cases where such provision of legal assistance would otherwise be terminated.";

(4) in subsection (e)(1), by striking "subsection (h)" and inserting "subsection (i)"; and

(5) in subsection (i), as redesignated by paragraph (2) of this section, by striking "The Secretary" and inserting "Except as provided in subsection (d), the Secretary".

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

Section-by-Section Analysis

This proposal would require the promulgation of regulations governing the termination of representation by Special Victims' Counsel. To provide clarity, promote a common understanding between Special Victims' Counsels and their clients, and ensure the availability of Special Victims' Counsel to all eligible persons, regulations should provide express guidance regarding how representation can be terminated and when representation must be terminated.

Budget Implications: No budget impact.

Changes to Existing Law: This proposal would make the following changes to section 1044e of title 10, United States Code:

§ 1044e. Special Victims' Counsel for victims of sex-related offenses

(a) DESIGNATION; PURPOSES.—(1) The Secretary concerned shall designate legal counsel (to be known as "Special Victims' Counsel") for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title.

(B) An individual who is—

(i) not covered under subparagraph (A);

(ii) a member of a reserve component of the armed forces; and

(iii) a victim of an alleged sex-related offense as described in paragraph (1)—

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.

(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims' Counsel services to the employee.

(b) TYPES OF LEGAL ASSISTANCE AUTHORIZED.—The types of legal assistance authorized by subsection (a) include the following:

(1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(2) Legal consultation regarding the Victim Witness Assistance Program, including—

(A) the rights and benefits afforded the victim;

(B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and

(C) the nature of communication made to the liaison in comparison to communication made to a Special Victims' Counsel or a legal assistance attorney under section 1044 of this title.

(3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).

(5) Legal consultation regarding the military justice system, including (but not limited to)—

(A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;

(B) any proceedings of the military justice process in which the victim may observe;

(C) the Government's authority to compel cooperation and testimony; and

(D) the victim's responsibility to testify, and other duties to the court.

(6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.

(7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;

(8) Legal consultation and assistance—

(A) in personal civil legal matters in accordance with section 1044 of this title;

(B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;

(C) in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and

(D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title and other State and Federal victims' compensation programs.

(9) Legal consultation and assistance in connection with—

(A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;

(B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a "Freedom of Information Act request"); and

(C) any correspondence or other communications with Congress.

(10) Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection ~~(h)~~ (i).

(c) NATURE OF RELATIONSHIP.—The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(d) TERMINATION OF REPRESENTATION.—The Secretary concerned shall direct the Judge Advocate General, or in the case of the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, to prescribe regulations establishing the circumstances under which the provision of legal assistance by a Special Victims' Counsel to a victim will be terminated. Such regulations shall—

(1) require a Special Victims' Counsel to provide written notice to the victim of the termination of the provision of legal assistance by such Counsel;

(2) allow a victim to voluntarily terminate the provision of legal assistance by a Special Victims' Counsel at any time;

(3) subject to applicable rules of professional conduct, automatically terminate the provision of legal assistance by a Special Victims' Counsel upon the release from active duty of such Counsel or assignment of such Counsel to a position that is incompatible with the continued provision of legal assistance to the victim by such Counsel;

(4) automatically make available a substitute Special Victims' Counsel to a victim following an automatic termination described in paragraph (3) if the victim remains eligible for legal assistance under this section and desires continued representation by a Special Victims' Counsel;

(5) establish written guidelines on the limits of representation as described in subsection (a)(2) and the process for termination of representation; and

(6) include rules governing how a victim may request continuation of the provision of legal assistance under this section in cases where such provision of legal assistance would otherwise be terminated.

(~~d~~e) QUALIFICATIONS.—(1) An individual may not be designated as a Special Victims' Counsel under this section unless the individual—

(A) meets the qualifications specified in section 1044(d)(2) of this title; and

(B) is certified as competent to be designated as a Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) The Secretary of Defense shall—

(A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and

(B) establish the baseline training requirements for a Special Victims' Counsel.

(~~e~~f) ADMINISTRATIVE RESPONSIBILITY.—(1) Consistent with the regulations prescribed under subsection ~~(h)~~ (i), the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary concerned, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of individuals designated as Special Victims' Counsel.

(2) The Secretary of Defense (and, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) shall conduct a periodic evaluation of the Special Victims' Counsel programs operated under this section.

(3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish—

(A) guiding principles for the Special Victims' Counsel program, to include ensuring that—

(i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and

(ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;

(B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and

(C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.

(~~f~~g) AVAILABILITY OF SPECIAL VICTIMS' COUNSEL.—(1) An individual described in subsection (a)(2) who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims' Counsel upon report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel shall be provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

(3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

(~~g~~h) ALLEGED SEX-RELATED OFFENSE DEFINED.—In this section, the term "alleged sex-related offense" means any allegation of—

(1) a violation of section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

(~~h~~i) REGULATIONS.—The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

SEC. ___. REALIGNING AUTHORITY TO REIMBURSE MEMBERS FOR SPOUSE RELICENSING COSTS PURSUANT TO A PERMANENT CHANGE OF STATION.

(a) TRANSFER AND CLARIFICATION OF AUTHORITY TO REIMBURSE MEMBERS FOR SPOUSE RELICENSING COSTS.—Section 453 of title 37, United States Code, is amended by adding at the end the following new subsection (g):

"(g) REIMBURSEMENT OF QUALIFYING SPOUSE RELICENSING COSTS INCIDENT TO A MEMBER'S PERMANENT CHANGE OF STATION OR ASSIGNMENT.—

"(1) From amounts otherwise made available for a fiscal year to provide travel and transportation allowances under this chapter, the Secretary concerned may reimburse a member of the armed forces for qualified relicensing costs of the spouse of the member when—

"(A) the member is reassigned, either as a permanent change of station or permanent change of assignment, between duty stations located in separate jurisdictions with unique licensing requirements and authorities; and

"(B) the movement of the member's dependents is authorized at the expense of the United States under this section as part of the reassignment.

"(2) Reimbursement provided to a member under this subsection may not exceed $500 in connection with each reassignment described in paragraph (1).

"(3) No reimbursement may be provided under this subsection for qualified relicensing costs paid or incurred after December 31, 2026.

"(4) In this subsection, the term 'qualified relicensing costs' means costs, including exam and registration fees, incurred by the spouse of the member if—

"(A) the spouse of the member was previously licensed and engaged in a profession during a member's previous duty assignment and requires a new license to continue engaging in that same profession in a new jurisdiction because of the member's change in duty location; and

"(B) the costs were incurred or paid to secure the license or certification from a new jurisdiction pursuant to authenticated orders directing the reassignment described in paragraph (1).".

(b) REPEAL OF SUPERSEDED AUTHORITY.—Section 476 of such title is amended by striking subsection (p).

[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

The primary purpose of this proposal is administrative. Specifically, to transfer the existing reimbursement authority found in the soon to expire subchapter III of title 37 (37 U.S.C. §476(p)) to the new set of authorities found in subchapter I (37 U.S.C. §453). The second purpose is to clarify the language of the provision to better reflect Congressional intent and the Department's interpretation and implementation of the program.

First, the 2012 NDAA consolidated and reformed the travel and transportation allowances in Title 37. This was done to "provide the Secretary of Defense and the other administering Secretaries with the authority to prescribe and implement travel and transportation policy that is simple, clear, efficient, and flexible, and that meets mission and service member needs, while realizing cost savings that should come with a more efficient and less cumbersome system for travel and transportation." (Public Law 112–81, §631 Dec. 31, 2011). The new authorities were enacted in Subchapter I and the old were retained in subchapter III. The Department is required to transition solely to the use of the new authorities within 10 years of the provision's enactment. As such, the subchapter III provisions, including the current §476 language regarding spouse relicensing, will no longer be used by the Department beginning 2022. Unfortunately, the current authority for reimbursement of spouse relicensing costs was placed in the "old" subchapter III. As such, it is appropriate that this recently enacted provision (passed in the 2017 NDAA) be placed within the new, permanent subchapter of title 37, to allow its use by the Department after 2022.

Next, we have amended the provision to clarify that compensation is not based upon geography, but simply requires the spouse to have (1) held a license and engaged in his or her

licensed profession during the period of time their military spouse was assigned to a prior duty location and (2) as a result of a PCS/PCA, the member's spouse must now practice in a different jurisdiction, with different licensing authority and requirements.

Congress originally passed the provision, amending 37 U.S.C. §476, in the FY 2018 National Defense Authorization Act. The stated purpose was "to permit the Secretaries of a military department… to reimburse a member of the Armed Forces up to $500 for a spouse's expenses related to obtaining licensing or certification in another state incident to a permanent change of station." (Conference Report to Accompany H.R. 2810). Due to the fact that the various states regulate professional licensing, when defining qualified relicensing costs the current provision authorizes the payment of costs as follows:

> …including exam and registration fees, that—
> (A) are imposed by the State of the new duty station to secure a license or certification to engage in the same profession that the spouse of the member engaged in while in the State of the original duty station….

This language creates potential confusion as it could be read to require the spouse to have worked in the same geographic location (State) as the member's duty assignment in order for the member to qualify for compensation. This is inconsistent with the stated congressional intent to compensate PCS costs. The department views this provision as simply requiring a spouse to have engaged in his or her licensed profession during the period of time their military spouse was assigned to his or her prior duty location in a different state (with different licensing authority) than that the PCS assignment. It does not necessarily require the spouse to have worked in the same specific state as the member's assignment.

Clarifying that this language does not create a geographic or state specific litmus test, is important to avoid inequitable application based upon the variety of familiar, geographic, personal, health, professional and economic variables in play. As an example, consider an assignment at the Pentagon. A member assigned to the Pentagon is assigned to a duty location in Virginia. However, given the geography, it is equally likely that the family may live and the spouse may be employed in one of three jurisdictions (Maryland, D.C., or Virginia). There are many military installations and assignments where job and housing opportunities arise in various states. Moreover, there are numerous other reasons one may find employment in a different state than the state in which their spouses' duty station is located. These range from professional requirements and job availability, health concerns and the care of dependents, to deployments and personal preferences.

Additionally, the proposed provision removes language that would prohibit reimbursement when there is an intervening assignment or an overseas assignment during which the spouse was not engaged in the profession. As long as they were engaged in the profession in a previous assignment and are required to obtain a licenses at a location of the new assignment, they may qualify for the reimbursement.

Given the above we have amended the provision to avoid any geographic requirements, by simplifying the language and avoiding use of the term "state." It provides a clear statement of

qualifying costs: that the spouse (1) held a license and engaged in his or her licensed profession during the period of time their military spouse was assigned to a prior duty location and (2) as a result of a PCS, the member's spouse must now practice in a different jurisdiction, with different licensing authority and requirements.

Finally, we have removed the temporal limitation on when the spouse may pay licensing costs for the member to be eligible for reimbursement. Current law requires such costs to be incurred "after the date on which orders…are issued." This language does not account for the reality that members typically receive informal notice of a PCS/PCA often well in advance of receiving official orders that they use to begin planning their PCS, including making decisions related to housing, schools, and spouse employment. Therefore, we have amended the language to be that costs were incurred "pursuant to orders" to eliminate the inflexible temporal limitation.

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 sections 453 and 476 of title 37, United States Code, as follows:

37 U.S.C. §453

§453. Allowable travel and transportation: specific authorities

(a) In General.-In addition to any other authority for the provision of travel and transportation allowances, the administering Secretaries may provide travel and transportation allowances under this subchapter in accordance with this section.

(b) Authorized Absence From Temporary Duty Location.-An authorized traveler may be paid travel and transportation allowances, or reimbursed for actual and necessary expenses of travel, incurred at a temporary duty location during an authorized absence from that location.

(c) Movement of Personal Property.-(1) A member of a uniformed service may be allowed moving expenses and transportation allowances for self and dependents associated with the movement of personal property and household goods, including such expenses when associated with a self-move.

(2) The authority in paragraph (1) includes the movement and temporary and non-temporary storage of personal property, household goods, and privately owned vehicles (but not to exceed one privately owned vehicle per member household) in connection with the temporary or permanent move between authorized locations.

(3) For movement of household goods, the administering Secretaries shall prescribe weight allowances in regulations under section 464 of this title. The prescribed weight allowances may not exceed 18,000 pounds (including household goods in temporary storage, but excluding packing and crating), except that the administering Secretary may, on a case-by-case basis, authorize additional weight allowances as necessary.

(4) The administering Secretary may prescribe the terms, rates, and conditions that authorize a member of the uniformed services to ship or store a privately owned vehicle.

(5) No carrier, port agent, warehouseman, freight forwarder, or other person involved in the transportation of property may have any lien on, or hold, impound, or otherwise interfere with, the movement of baggage and household goods being transported under this section.

(d) Unusual or Emergency Circumstances.-An authorized traveler may be provided travel and transportation allowances under this section for unusual, extraordinary, hardship, or emergency circumstances, including circumstances warranting evacuation from a permanent duty assignment location.

(e) Particular Separation Provisions.-The administering Secretary may provide travel-in-kind and transportation-in-kind for the following persons in accordance with regulations prescribed under section 464 of this title:

(1) A member who is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10.

(2) A member who is retired with pay under any other law or who, immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with separation pay or is involuntarily released from active duty with separation pay or readjustment pay.

(3) A member who is discharged under section 1173 of title 10.

(f) Attendance at Memorial Ceremonies and Services.-A family member or member of the uniformed services who attends a deceased member's repatriation, burial, or memorial ceremony or service may be provided travel and transportation allowances to the extent provided in regulations prescribed under section 464 of this title.

(g) REIMBURSEMENT OF QUALIFYING SPOUSE RELICENSING COSTS INCIDENT TO A MEMBER'S PERMANENT CHANGE OF STATION OR ASSIGNMENT.

(1) From amounts otherwise made available for a fiscal year to provide travel and transportation allowances under this chapter, the Secretary concerned may reimburse a member of the armed forces for qualified relicensing costs of the spouse of the member when—

(A) the member is reassigned, either as a permanent change of station or permanent change of assignment, between duty stations located in separate jurisdictions with unique licensing requirements and authorities; and

(B) the movement of the member's dependents is authorized at the expense of the United States under this section as part of the reassignment.

(2) Reimbursement provided to a member under this subsection may not exceed $500 in connection with each reassignment described in paragraph (1).

(3) No reimbursement may be provided under this subsection for qualified relicensing costs paid or incurred after December 31, 2026.

(4) In this subsection, the term "qualified relicensing costs" means costs, including exam and registration fees, incurred by the spouse of the member if—

(A) the spouse of the member was previously licensed and engaged in a profession during a member's previous duty assignment and requires a new license to continue engaging in that same profession in a new jurisdiction because of the member's change in duty location; and

(B) the costs were incurred or paid to secure the license or certification from a new jurisdiction pursuant to authenticated orders directing the reassignment described in paragraph (1).

§ 476. Travel and transportation allowances; dependents; baggage and household effects ***

~~**(p)**~~

~~(1) From amounts otherwise made available for a fiscal year to provide travel and transportation allowances under this chapter, the Secretary concerned may reimburse a member of the armed forces for qualified relicensing costs of the spouse of the member when—~~

~~(A) the member is reassigned, either as a permanent change of station or permanent change of assignment, from a duty station in one State to a duty station in another State; and~~

~~(B) the movement of the member's dependents is authorized at the expense of the United States under this section as part of the reassignment.~~

~~(2) Reimbursement provided to a member under this subsection may not exceed $500 in connection with each reassignment described in paragraph (1).~~

~~(3) Not later than December 31, 2021, the Secretary of Defense, in consultation with the Secretary of Homeland Security with respect to the Coast Guard, shall submit to the congressional defense committees, the Committee on Homeland Security and Government Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a report—~~

~~(A) describing the extent to which the reimbursement authority provided by this subsection has been used; and~~

~~(B) containing a recommendation by the Secretaries regarding whether the authority should be extended beyond the date specified in paragraph (4).~~

~~(4) No reimbursement may be provided under this subsection for qualified relicensing costs paid or incurred after December 31, 2022.~~

~~(5) In this subsection, the term "qualified relicensing costs" means costs, including exam and registration fees, that—~~

~~(A) are imposed by the State of the new duty station to secure a license or certification to engage in the same profession that the spouse of the member engaged in while in the State of the original duty station; and~~

~~(B) are paid or incurred by the member or spouse to secure the license or certification from the State of the new duty station after the date on which the orders directing the reassignment described in paragraph (1) are issued.~~

SEC. ___. SUNSET AND TRANSFER OF FUNCTIONS OF THE PHYSICAL DISABILITY BOARD OF REVIEW.

Section 1554a of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g) SUNSET.—(1) On or after October 1, 2020, the Secretary of Defense may sunset the Physical Disability Board of Review under this section.

"(2) If the Secretary sunsets the Physical Disability Board of Review under paragraph (1)—

"(A) the Secretary shall transfer any remaining requests for review pending at that time, and shall assign any new requests for review under this section, to the Board for Correction of Military Records operated by the Secretary concerned; and

"(B) the Secretary and the Secretary of Homeland Security shall each issue standards and procedures for conducting reviews required under this section for members of the armed forces under their respective jurisdiction.

"(3) Subsection (c)(4) shall not apply with respect to any review conducted by a Board for Correction of Military Records under paragraph (2)(A).".

[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 1554a of title 10, United States Code (U.S.C.), to achieve the Physical Disability Board of Review (PDBR) Executive Oversight Committee's goal to transfer PDBR's core statutory mission to Boards for Correction of Military and Naval Records (BCMR/BCNR), at the Secretary of Defense's discretion. By Fiscal Year (FY) 2021, the PDBR anticipates full phase-out of core functions.

Congress directed the establishment of the PDBR in section 1643 of the National Defense Authorization Act (NDAA) for FY 2008 (P.L. 110-181), codified in section 1554a of title 10, U.S.C. The law requires the Secretary of Defense to establish the PDBR. The PDBR reviews

and ensures the accuracy and fairness of combined disability ratings of 20 percent or less assigned to Service members who were discharged between September 11, 2001, and December 31, 2009. The PDBR utilizes medical information provided by the Department of Veterans Affairs (VA) and the Military Departments. Once a review is complete, the PDBR forwards a recommendation to the Secretary of the Military Department concerned, and the Military Department makes the final determination on whether to change the original determination. The statute did not establish a sunset date nor a filing deadline for eligible Service member cases.

Since its establishment, the PDBR embarked on an aggressive outreach mailing campaign to notify all potentially eligible applicants of the ability to have their cases reviewed. At present, the PDBR has approximately 1,800 core cases pending adjudication. Notwithstanding the 10-15 applications the PDBR receives monthly, DoD projects that by early summer of 2020 the PDBR core workload will be complete, allowing redistribution of manpower to the BCMR/BCNRs. DoD does not anticipate any further increases in PDBR caseload, thereby necessitating sunset of PDBR operations. Current law does not authorize the Secretary of Defense to modify or eliminate the PDBR.

This proposal would authorize the Secretary of Defense to sunset the PDBR when its mission is essentially completed. At that time, the small number of new or remaining PDBR cases will be transferred to the BCMR/BCNRs while ensuring that applicants are still granted the same rights and process they would have received if their cases were reviewed by the PDBR. It is anticipated that current PDBR staff and resources will be absorbed by the Boards for Correction, which will enable faster adjudication of BCMR/BCNR reviews, a congressional special interest item.

Currently, the PDBR reviews all United States Coast Guard applications for eligibility and adjudication. This proposal would require Coast Guard BCMR to receive any future applications pursuant to section 1554a, and it authorizes the Secretary of Homeland Security to issue the standards and procedures that would be required for the Coast Guard BCMR to review the applications; however, the Secretary of Defense will only sunset the PDBR upon adjudication of all received Coast Guard cases, the last of which was received in 2017.

Independent of section 1554a, the Department has assigned other tasks to the PDBR, such as the Disability Evaluation System (DES) Quality Assurance Program (QAP). Should the Secretary of Defense exercise the sunset authority under this proposal, DoD intends to retain the Air Force Review Boards Agency, through the Secretary of the Air Force, as the lead agent for the operation and management of certain DES QAP responsibilities previously afforded to the PDBR.

Budget Implications: Re-purposing the PDBR's core mission is a reflection in the precipitous drop in applications despite substantial outreach efforts to potentially eligible Service members. Because of this decline, contractor support of approximately $2.0M per year is expected to close out by the end of FY 2020. Re-purposing the PDBR's core mission will result in a reduction of contractor support of $2.1M (2.0% inflation, base year FY 2019) in FY 2021 and FY 2022. Additionally, DoD developed a transition plan for civilian personnel to transition to the other Military Departments; however, DoD will not transition civilian personnel until sunset

authorization is afforded. Currently, the exact number of personnel and budget impacts is not available. Military manpower will be reduced by attrition as those Service members' tours end. Replacements are not expected unless deemed absolutely necessary. The resources saved are reflected in the table below and are included within the FY 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Re-purpose PDBR Core Mission	(2.1)	(2.1)	0	0	0	Operation and Maintenance, Air Force	04	042A	-
Total	($2.1)	($2.1)	0	0	0	--			

Changes to Existing Law: This proposal would make the following changes to section 1554a of title 10, United States Code:

§ 1554a. Review of separation with disability rating of 20 percent disabled or less

(a) IN GENERAL.

(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense a board of review to review the disability determinations of covered individuals by Physical Evaluation Boards. The board shall be known as the "Physical Disability Board of Review".

(2) The Physical Disability Board of Review shall consist of not less than three members appointed by the Secretary.

(b) COVERED INDIVIDUALS. For purposes of this section, covered individuals are members and former members of the armed forces who, during the period beginning on September 11, 2001, and ending on December 31, 2009--

(1) are separated from the armed forces due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and

(2) are found to be not eligible for retirement.

(c) REVIEW.

(1) Upon the request of a covered individual, or a surviving spouse, next of kin, or legal representative of a covered individual, the Physical Disability Board of Review shall review the findings and decisions of the Physical Evaluation Board with respect to such covered individual. Subject to paragraph (3), upon its own motion, the Physical Disability Board of Review may review the findings and decisions of the Physical Evaluation Board with respect to a covered individual.

(2) The review by the Physical Disability Board of Review under paragraph (1) shall be based on the records of the armed force concerned and such other evidence as may be presented to the Physical Disability Board of Review. A witness may present evidence to the Board by affidavit or by any other means considered acceptable by the Secretary of Defense.

(3) If the Physical Disability Board of Review proposes to review, upon its own motion, the findings and decisions of the Physical Evaluation Board with respect to a covered individual, the Physical Disability Board of Review shall notify the covered individual, or a surviving spouse, next of kin, or legal representative of the covered individual, of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

(4) With respect to any review by the Physical Disability Board of Review of the findings and decisions of the Physical Evaluation Board with respect to a covered individual, whether initiated at the request of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual or initiated by the Physical Disability Board of Review, the Physical Disability Board of Review shall notify the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual that, as a result of the request or consent, the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary concerned.

(d) AUTHORIZED RECOMMENDATIONS. The Physical Disability Board of Review may, as a result of its findings under a review under subsection (c), recommend to the Secretary concerned the following (as applicable) with respect to a covered individual:

(1) No recharacterization of the separation

of such individual or modification of the disability rating previously assigned such individual.

(2) The recharacterization of the separation of such individual to retirement for disability.

(3) The modification of the disability rating previously assigned such individual by the Physical Evaluation Board concerned, which modified disability rating may not be a reduction of the disability rating previously assigned such individual by that Physical Evaluation Board.

(4) The issuance of a new disability rating for such individual.

(e) CORRECTION OF MILITARY RECORDS.

(1) The Secretary concerned may correct the military records of a covered individual in accordance with a recommendation made by the Physical Disability Board of Review under subsection (d). Any such correction may be made effective as of the effective date of the action taken on the report of the Physical Evaluation Board to which such recommendation relates.

(2) In the case of a member previously separated pursuant to the findings and decision of a Physical Evaluation Board together with a lump-sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which such member would be entitled based on the member's military record as corrected shall be reduced to take into account receipt of such lump-sum or other payment in such manner as the Secretary of Defense considers appropriate.

(3) If the Physical Disability Board of Review makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Physical Evaluation Board to which such recommendation relates shall be treated as final as of the date of such action.

(f) REGULATIONS.

(1) This section shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(2) The regulations under paragraph (1) shall specify reasonable deadlines for the performance of reviews required by this section.

(3) The regulations under paragraph (1) shall specify the effect of a determination or pending determination of a Physical Evaluation Board on considerations by boards for correction of military records under section 1552 of this title.

(g) SUNSET.—(1) On or after October 1, 2020, the Secretary of Defense may sunset the Physical Disability Board of Review under this section.

(2) If the Secretary sunsets the Physical Disability Board of Review under paragraph (1)—

(A) the Secretary shall transfer any remaining requests for review pending at that time, and shall assign any new requests for review under this section, to the Board for Correction of Military Records operated by the Secretary concerned; and

(B) the Secretary and the Secretary of Homeland Security shall each issue standards and procedures for conducting reviews required under this section for members of the armed forces under their respective jurisdiction.

(3) Subsection (c)(4) shall not apply with respect to any review conducted by a Board for Correction of Military Records under paragraph (2)(A).

SEC. ___. TECHNICAL CORRECTIONS RELATING TO CONSOLIDATION OF SPECIAL PAY AUTHORITIES.

(a) REPEAL.—

(1) IN GENERAL.—Section 310 of title 37, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 5 of title 37, United States Code, is amended by striking the item relating to section 310.

(b) CONFORMING AMENDMENTS.—

(1) FAMILY CARE PLANS.—Section 586 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 991 note) is amended by striking "section 310 or 351" and inserting "section 351(a)(3)".

(2) ENTITLEMENT AND ACCUMULATION.—Section 701(f)(1)(B)(i) of title 10, United States Code, is amended by striking "section 310(a)" and inserting "paragraph (1) or (3) of section 351(a)".

(3) DEPENDENTS' MEDICAL CARE.—Section 1079(g)(1) of title 10, United States Code, is amended by striking "section 310 or 351" and inserting "section 351(a)(1)".

(4) RETENTION ON ACTIVE DUTY DURING DISABILITY EVALUATION PROCESS.—Section 1218(d)(1) of title 10, United States Code, is amended by striking "section 310 or 351" and inserting "section 351(a)(3)".

(5) STORAGE SPACE.—Section 362(1) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2825 note) is amended by striking "section 310, or paragraph (1) or (3) of section 351(a)," and inserting "paragraph (1) or (3) of section 351(a)".

(6) STUDENT ASSISTANCE PROGRAMS.—Sections 455(o)(3)(B) and 465(a)(2)(D) of the Higher Education Act of 1965 (20 U.S.C. 1087e(o)(3)(B); 1087ee(a)(2)(D)) are amended by striking "section 310, or paragraph (1) or (3) of section 351(a)," and inserting "paragraph (1) or (3) of section 351(a)".

(7) ARMED FORCES RETIREMENT HOME.—Section 1512(a)(3) of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 412(a)(3)) is amended by striking "section 310 or 351" and inserting "section 351(a)(1)".

(8) VETERANS OF FOREIGN WARS MEMBERSHIP.—Section 230103(3) of title 36, United States Code, is amended by striking "section 310 or 351" and inserting "paragraph (1) or (3) of section 351(a)".

(9) MILITARY PAY AND ALLOWANCES.—Title 37, United States Code, is amended—

(A) in section 212(a), by striking "section 310, or paragraph (1) or (3) of section 351(a)," and inserting "paragraph (1) or (3) of section 351(a)";

(B) in section 402a(b)(3)(B), by striking "section 310 or 351" and inserting "paragraph (1) or (3) of section 351(a)";

(C) in section 481a(a), by striking "section 310 or 351" and inserting "section 351(a)(1)";

(D) in section 907(d)(1)(H), by striking "section 310 or 351" and inserting "paragraph (1) or (3) of section 351(a)"; and

(E) in section 910(b)(2)(B), by striking "section 310, or paragraph (1) or (3) of section 351(a)," and inserting "paragraph (1) or (3) of section 351(a)".

(10) EXCLUSIONS FROM INCOME FOR PURPOSE OF SUPPLEMENTAL SECURITY INCOME.—Section 1612(b)(20) of the Social Security Act (42 U.S.C. 1382a(b)(20)) is amended by striking "section 310, or paragraph (1) or (3) of section 351(a)," and inserting "paragraph (1) or (3) of section 351(a)".

(11) EXCLUSIONS FROM INCOME FOR PURPOSE OF HEAD START PROGRAM.—Section 645(a)(3)(B)(i) of the Head Start Act (42 U.S.C. 9840(a)(3)(B)(i)) is amended by striking "section 310 or 351" and inserting "paragraph (1) or (3) of section 351(a)".

(12) EXCLUSIONS FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.—Section 112(c)(5)(B) of the Internal Revenue Code of 1986 is amended by striking "section 310, or paragraph (1) or (3) of section 351(a)," and inserting "paragraph (1) or (3) of section 351(a)".

[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 make technical and clerical corrections to titles 10, 14, 20, 24, 36, 37, and 42, United States Code, as part of the transition of the Department of Defense to the "consolidated authorities" described in section 661 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, which provided eight consolidated statutory special and incentive pay authorities for future use to replace those currently in use.

As part of the transition, section 618 of the NDAA for FY 2017 added references to section 351 of title 37, United States Code, in sections that already referred to section 310. Section 310 is no longer in use. This proposal now removes those obsolete references to section 310.

This proposal is consistent in format and intent with technical corrections included each year in the annual NDAA. The proposal would make no substantive change in existing law, but would correct referring citations to reflect recent developments.

Budget Implications: This proposal has no budgetary implications.

Changes to Existing Law: This proposal would make the following changes to existing laws:

1. Title 37, United States Code

~~§ 310. Special pay: duty subject to hostile fire or imminent danger~~

~~(a) Eligibility. Under regulations prescribed by the Secretary of Defense, a member of a uniformed service may be paid special pay under subsection (b) for any day or portion of a day in which-~~

~~(1) the member was entitled to basic pay or compensation under section 204 or 206 of this title; and~~

~~(2) the member-~~

~~(A) was subject to hostile fire or explosion of hostile mines;~~

~~(B) was on duty in an area in which the member was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period the member was on duty in the area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines;~~

~~(C) was killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action; or~~

~~(D) was on duty in a foreign area in which the member was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.~~

~~(b) Special Pay Amount.-(1) Except as provided in paragraph (2), the amount of special pay authorized by subsection (a) for qualifying service during a day or portion of a day shall be the amount equal to 1/30th of the maximum monthly amount of special pay payable to a member as specified in paragraph (3).~~

~~(2) In the case of a member who is exposed to hostile fire or a hostile mine explosion event in or for a day or portion of a day, the Secretary concerned may, at the election of the Secretary, pay the member special pay under subsection (a) for such service in an amount not to exceed the maximum monthly amount of special pay payable to a member as specified in paragraph (3).~~

~~(3) The maximum monthly amount of special pay payable to a member under this subsection for any month is $225.~~

~~(c) Continuation During Hospitalization. (1) A member described in paragraph (2) may be paid special pay under this section for any day (or portion of a day) of not more than three additional months during which the member is hospitalized as described in such paragraph.~~

~~(2) Paragraph (1) applies with respect to a member who-~~

~~(A) is injured or wounded under the circumstances described in subsection (a)(2)(C) and is hospitalized for the treatment of the injury or wound; or~~

~~(B) while in the line of duty, incurs a wound, injury, or illness in a combat operation or combat zone designated by the Secretary of Defense and is hospitalized outside of the theater of the combat operation or the combat zone for the treatment of the wound, injury, or illness.~~

~~(d) Limitations and Administration.-(1) In the case of an area described in subparagraph (B) or (D) of subsection (a)(2), the Secretary of Defense shall be responsible for designating the period during which duty in the area will qualify members for special pay under this section. The~~

~~effective date designated for the commencement of such a period may be a date occurring before, on, or after the actual date on which the Secretary makes the designation. If the commencement date for such a period is a date occurring before the date on which the Secretary makes the designation, the payment of special pay under this section for the period between the commencement date and the date on which the Secretary makes the designation shall be subject to the availability of appropriated funds for that purpose.~~

~~(2) A member may not be paid more than one special pay under this section for any day. A member may be paid special pay under this section in addition to any other pay and allowances to which he may be entitled.~~

~~(e) Determinations of Fact. Any determination of fact that is made in administering this section is conclusive. Such a determination may not be reviewed by any other officer or agency of the United States unless there has been fraud or gross negligence. However, the determination may be changed on the basis of new evidence or for other good cause.~~

* * * * * * *

2. SECTION 586 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008 (Public Law 110-181)

SEC. 586. [10 U.S.C. 991 note] FAMILY CARE PLANS AND DEFERMENT OF DEPLOYMENT OF SINGLE PARENT OR DUAL MILITARY COUPLES WITH MINOR DEPENDENTS.

The Secretary of Defense shall establish appropriate procedures to ensure that an adequate family care plan is in place for a member of the Armed Forces with minor dependents who is a single parent or whose spouse is also a member of the Armed Forces when the member may be deployed in an area for which imminent danger pay is authorized under ~~section 310 or 351~~ section 351(a)(3) of title 37, United States Code. Such procedures should allow the member to request a deferment of deployment due to unforeseen circumstances, and the request for such a deferment should be considered and responded to promptly.

* * * * * * *

3. TITLE 10, UNITED STATES CODE

§ 701. Entitlement and accumulation

(a) ***

* * * * *

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose at the end of the fiscal year any accumulated leave in excess of the

number of days of leave authorized to be accumulated under subsection (b) or (d), to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who-

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under ~~section 310(a)~~ paragraph (1) or (3) of section 351(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or fourth fiscal year, if accumulated while subsection (d) is in effect) after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

* * * * *

§ 1079. Contracts for medical care for spouses and children

(a) ***

* * * * *

(g)(1) When a member dies while he is eligible for receipt of hostile fire pay under ~~section 310 or 351~~ section 351(a)(1) of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

* * * * *

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) ***

* * * * *

(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary who is determined, after a mobilization and deployment to an area in which imminent danger pay is authorized under ~~section 310 or 351~~ section 351(a)(3) of title 37, to require evaluation for a physical or mental disability which could

result in separation or retirement for disability under this chapter or placement on the temporary disability retired list or inactive status list under this chapter is retained on active duty during the disability evaluation process until such time as such member is—

(A) cleared by appropriate authorities for continuation on active duty; or

(B) separated, retired, or placed on the temporary disability retired list or inactive status list.

* * * * * * *

4. SECTION 362 OF NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007 (Public Law 109-364)

SEC. 362. [10 U.S.C. 2825 note] PROVISION OF ADEQUATE STORAGE SPACE TO SECURE PERSONAL PROPERTY OUTSIDE OF ASSIGNED MILITARY FAMILY HOUSING UNIT.

The Secretary of a military department shall ensure that a member of the Armed Forces under the jurisdiction of the Secretary who occupies a unit of military family housing is provided with adequate storage space to secure personal property that the member is unable to secure within the unit whenever—

(1) the member is assigned to duty in an area for which special pay under ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of title 37, United States Code, is available and the assignment is pursuant to orders specifying an assignment of 180 days or more; and

(2) the dependents of the member who otherwise occupy the unit of military family housing are absent from the unit for more than 30 consecutive days during the period of the assignment of the member.

* * * * * * *

5. HIGHER EDUCATION ACT OF 1965

SEC. 455 [20 U.S.C. 1087e] TERMS AND CONDITIONS OF LOANS.

(a) ***

* * * * *

(o) NO ACCRUAL OF INTEREST FOR ACTIVE DUTY SERVICE MEMBERS.—

(1) ***

* * * * *

(3) ELIGIBLE MILITARY BORROWER.—In this subsection, the term ‘‘eligible military borrower’’ means an individual who—

(A)(i) is serving on active duty during a war or other military operation or national emergency; or (ii) is performing qualifying National Guard duty during a

war or other military operation or national emergency; and

(B) is serving in an area of hostilities in which service qualifies for special pay under ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of title 37, United States Code.

* * * * *

SEC. 465. [20 U.S.C. 1087ee] CANCELLATION OF LOANS FOR CERTAIN PUBLIC SERVICE.

(a) CANCELLATION OF PERCENTAGE OF DEBT BASED ON YEARS OF QUALIFYING SERVICE.—(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

(2) Loans shall be canceled under paragraph (1) for service—

(A) as a full-time teacher for service in an academic year (including such a teacher employed by an educational service agency)—

(i) in a public or other nonprofit private elementary school or secondary school, which, for the purpose of this paragraph and for that year—

(I) has been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the school is located) to be a school in which the number of children meeting a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children enrolled in such school; and

(II) is in the school district of a local educational agency which is eligible in such year for assistance pursuant to part A of title I of the Elementary and Secondary Education Act of 1965; or (ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children taught at such school or location; or

(ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children taught at such school or location;

(B) as a full-time staff member in a preschool program carried on under the Head Start Act, or in a prekindergarten or child care program that is licensed or regulated by the State, that is operated for a period which is comparable to a full school year in the locality if the salary of such staff member is not more than the salary of a comparable employee of the local educational agency;

(C) as a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, including a system administered by an educational service agency, or as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 635(a)(10) of the Individuals with Disabilities Education Act;

(D) as a member of the Armed Forces of the United States, for service that qualifies for special pay under ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of title 37, United States Code, as an area of hostilities;

(E) ***

* * * * * * *

6. ARMED FORCES RETIREMENT HOME ACT OF 1991

SEC. 1512. [24 U.S.C. 412] RESIDENTS OF RETIREMENT HOME.

(a) PERSONS ELIGIBLE TO BE RESIDENTS.—Except as provided in subsection (b), the following persons who served as members of the Armed Forces, at least one-half of whose service was not active commissioned service (other than as a warrant officer or limited-duty officer), are eligible to become residents of the Retirement Home:

(1) Persons who are 60 years of age or over and were discharged or released from service in the Armed Forces after 20 or more years of active service.

(2) Persons who are determined under rules prescribed by the Chief Operating Officer to be suffering from a service-connected disability incurred in the line of duty in the Armed Forces.

(3) Persons who served in a war theater during a time of war declared by Congress or were eligible for hostile fire special pay under ~~section 310 or 351~~ section 351(a)(1) of title 37 and who are determined under rules prescribed by the Chief Operating Officer to be suffering from injuries, disease, or disability.

(4) Persons who served in a women's component of the Armed Forces before June 12, 1948, and are determined under rules prescribed by the Chief Operating Officer to be eligible for admission because of compelling personal circumstances.

* * * * * * *

7. TITLE 36, UNITED STATES CODE

§ 230103. Membership

An individual is eligible for membership in the corporation only if the individual served honorably as a member of the Armed Forces of the United States—

(1) in a foreign war, insurrection, or expedition in service that—

(A) has been recognized as campaign-medal service; and

(B) is governed by the authorization of the award of a campaign badge by the United States Government;

(2) on the Korean peninsula or in its territorial waters for at least 30 consecutive days, or a total of 60 days, after June 30, 1949; or

(3) in an area which entitled the individual to receive special pay for duty subject to hostile fire or imminent danger under ~~section 310 or 351~~ paragraph (1) or (3) of section 351(a) of title 37.

* * * * * * *

8. TITLE 37, UNITED STATES CODE

§ 212. Advancement of basic pay: members deployed in combat zone for more than one year

(a) ELIGIBILITY; AMOUNT ADVANCED.—If a member of the armed forces is assigned to duty in an area for which special pay under ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of this title is available and the assignment is pursuant to orders specifying an assignment of one year or more (or the assignment is extended beyond one year), the member may request, during the period of the assignment, the advanced payment of not more than three months of the basic pay of the member.

* * * * *

§ 402a. Supplemental subsistence allowance for low-income members with dependents

(a)***

* * * * *

(b) MEMBERS ENTITLED TO ALLOWANCE.— (1) Subject to subsection (d), a member of the armed forces with dependents is entitled to receive the supplemental subsistence allowance if the Secretary concerned determines that the member's income, together with the income of the rest of the member's household (if any), is within the highest income standard of eligibility, as then in effect under section 5(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(c)) and without regard to paragraph (1) of such section, for participation in the supplemental nutrition assistance program.

(2) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(3) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall not take into consideration—

(A) the amount of the supplemental subsistence allowance that is payable under this section;

(B) the amount of any special pay that is payable to the member under ~~section 310 or 351~~ paragraph (1) or (3) of section 351(a) of this title, relating to duty subject to hostile fire or imminent danger; or

(C) the amount of any family separation allowance that is payable to the member under section 427 of this title.

* * * * *

§ 481a. Travel and transportation allowances: travel performed in connection with convalescent leave

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel from his place of medical treatment in the continental United States to a place selected by him and approved by the Secretary concerned, and return, when the Secretary concerned determines that the member is traveling in connection with authorized leave for convalescence from illness or injury incurred while the member was eligible for the receipt of hostile fire pay under ~~section 310 or 351~~ section 351(a)(1) of this title.

* * * * *

§ 907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized

(a) ***

* * * * *

(d)(1) In determining the amount of the pay and allowances of a grade formerly held by an officer, the following special and incentive pays may be considered only so long as the officer continues to perform the duty that creates the entitlement to, or eligibility for, that pay and would otherwise be eligible to receive that pay in the former grade:

(A) Incentive pay for hazardous duty under section 301 or 351 of this title.

(B) Submarine duty incentive pay under section 301c or 352 of this title.

(C) Special pay for diving duty under section 304 or 353(a) of this title.

(D) Hardship duty pay under section 305 or 352 of this title.

(E) Career sea pay under section 305a or 352 of this title.

(F) Special pay for service as a member of a Weapons of Mass Destruction Civil Support Team under section 305b or 352 of this title.

(G) Assignment incentive pay under section 307a or 352 of this title.

(H) Special pay for duty subject to hostile fire or imminent danger under ~~section 310 or 351~~ paragraph (1) or (3) of section 351(a) of this title.

(I) Special pay or bonus for an extension of duty at a designated overseas location

under section 314 or 352 of this title.

(J) Foreign language proficiency pay under section 353(b) of this title.

(K) Critical skill retention bonus under section 355 of this title.

* * * * *

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

(a) ***

* * * * *

(b) ELIGIBILITY.—(1) A member of a reserve component is entitled to a payment under this section for any full month of active duty of the member, when the total monthly military compensation of the member is less than the average monthly civilian income of the member, while the member is on active duty under an involuntary mobilization order, following the date on which the member—

(A) completes 547 continuous days of service on active duty under an involuntary mobilization order;

(B) completes 730 cumulative days on active duty under an involuntary mobilization order during the previous 1,826 days; or

(C) is involuntarily mobilized for service on active duty for a period of 180 days or more within 180 days after the date of the member's separation from a previous period of active duty for a period of 180 days or more.

(2) The entitlement of a member of a reserve component to a payment under this section also shall commence or, if previously commenced under paragraph (1), shall continue if the member—

(A) satisfies the required number of days on active duty specified in subparagraph (A) or (B) of paragraph (1) or was involuntarily mobilized as provided in subparagraph (C) of such paragraph; and

(B) is retained on active duty under subparagraph (A) or (B) of section 12301(h)(1) of title 10 because of an injury or illness incurred or aggravated while the member was assigned to duty in an area for which special pay under ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of this title.

* * * * * * *

9. SOCIAL SECURITY ACT

(42 U.S.C. 1382a(b)(20))

EXCLUSIONS FROM INCOME FOR PURPOSE OF SUPPLEMENTAL SECURITY INCOME

SEC. 1612. [42 U.S.C. 1382a] (a) ***

* * * * *

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is under the age of 22 and is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2) ***

* * * * *

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(20) special pay received pursuant to ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of title 37;

* * * * * * *

10. HEAD START ACT

SEC. 645. [42 U.S.C. 9840] PARTICIPATION IN HEAD START PROGRAM.

(a) CRITERIA FOR ELIGIBILITY.—(1)(A) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter.

(B) Except as provided in paragraph (2), such regulation shall provide—

(i) that children from low-income families shall be eligible for participation in programs assisted under this subchapter [42 USCS §§ 9831 et seq.] if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance;

(ii) that homeless children shall be deemed to be eligible for such participation;

(iii) that programs assisted under this subchapter [42 USCS §§ 9831 et seq.] may include--

(I) to a reasonable extent (but not to exceed 10 percent of participants), participation of children in the area served who would benefit from such programs but who are not eligible under clause (i) or (ii); and

(II) from the area served, an additional 35 percent of participants who are not eligible under clause (i) or (ii) and whose families have incomes below 130 percent of the poverty line, if--

(aa) the Head Start agency involved establishes and implements outreach and enrollment policies and procedures that ensure such agency is meeting the needs of children eligible under clause (i) or (ii) (or subclause (I) if the child involved has a disability) prior to meeting the needs of children eligible under this subclause; and

(bb) in prioritizing the selection of children to be served, the Head Start agency

establishes criteria that provide that the agency will serve children eligible under clause (i) or (ii) prior to serving the children eligible under this subclause;

(iv) that any Head Start agency serving children eligible under clause (iii)(II) shall report annually to the Secretary information on--

(I) how such agency is meeting the needs of children eligible under clause (i) or (ii), in the area served, including local demographic data on families of children eligible under clause (i) or (ii);

(II) the outreach and enrollment policies and procedures established by the agency that ensure the agency is meeting the needs of children eligible under clause (i) or (ii) (or clause (iii)(I) if the child involved has a disability) prior to meeting the needs of children eligible under clause (iii)(II);

(III) the efforts, including outreach efforts (that are appropriate to the community involved), of such agency to be fully enrolled with children eligible under clause (i) or (ii);

(IV) the policies, procedures, and selection criteria such agency is implementing to serve eligible children, consistent with clause (iii)(II);

(V) the agency's enrollment level, and enrollment level over the fiscal year prior to the fiscal year in which the report is submitted;

(VI) the number of children served by the agency, disaggregated by whether such children are eligible under clause (i), clause (ii), clause (iii)(I), or clause (iii)(II); and

(VII) the eligibility criteria category of the children on the agency's waiting list;

(v) that a child who has been determined to meet the eligibility criteria described in this subparagraph and who is participating in a Head Start program in a program year shall be considered to continue to meet the eligibility criteria through the end of the succeeding program year.

(C) In determining, for purposes of this paragraph, whether a child who has applied for enrollment in a Head Start program meets the eligibility criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and--

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to and is located in a health professional shortage area, as designated by the Secretary pursuant to section 332(a)(1) of such Act [42 USCS § 254e(a)(1)];

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on the date of the enactment of the Human Services Reauthorization Act [enacted Oct. 30, 1984] and

ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after such date of enactment, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter [42 USCS §§ 9831 et seq.] if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(3) (A) In this paragraph:

(i) The term "dependent" has the meaning given the term in paragraphs (2)(A) and (4)(A)(i) of section 401(a) of title 37, United States Code.

(ii) The terms "member" and "uniformed services" have the meanings given the terms in paragraphs (23) and (3), respectively, of section 101 of title 37, United States Code.

(B) The following amounts of pay and allowance of a member of the uniformed services shall not be considered to be income for purposes of determining the eligibility of a dependent of such member for programs funded under this subchapter:

(i) The amount of any special pay payable under ~~section 310 or 351~~ paragraph (1) or (3) of section 351(a) of title 37, United States Code, relating to duty subject to hostile fire or imminent danger.

* * * * * * *

11. Internal Revenue Code of 1986

SEC. 112. CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.

(a) ***

* * * * *

(c) DEFINITIONS.—For purposes of this section—

(1) The term “commissioned officer” does not include a commissioned warrant officer.

(2) The term “combat zone” means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term “compensation” does not include pensions and retirement pay.

(5) The term “maximum enlisted amount” means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade

applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under ~~section 310, or paragraph (1) or (3) of section 351(a),~~ paragraph (1) or (3) of section 351(a) of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

SEC. __. TECHNICAL CORRECTIONS FOR CONSISTENCY IN THE DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) CONSISTENCY BETWEEN DERP STATUTE AND BRAC STATUTE.—Section 2703 of such title is amended—

(1) in subsection (e)(2), by striking "environmental";

(2) in subsection (g)—

(A) in the heading, by striking "OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES" and inserting "RESPONSES";

(B) in paragraph (1)—

(i) by striking "(1) Except" and inserting "Except"; and

(ii) by striking "an environmental remedy" and inserting "a response"; and

(C) by striking paragraph (2); and

(3) in subsection (h)—

(A) in the heading, by striking "ENVIRONMENTAL REMEDIATION" and inserting "RESPONSES"; and

(B) by striking "services procured under section 2701(d)(1) of this title" and inserting "a response".

(b) TECHNICAL CONSISTENCY FOR MUNITIONS RESPONSE.—

(1) PROGRAM GOALS.—Section 2701(b)(2) of title 10, United States Code, is amended by striking "of unexploded ordnance" and inserting "of unexploded ordnance, discarded military munitions, and munitions constituents in a manner consistent with section 2710 of this title".

(2) RESTORATION ACCOUNTS.—Section 2703(b) of such title is amended by striking the second sentence and inserting the following new sentence: "Such remediation shall be conducted in a manner consistent with section 2710 of this title.".

(3) TRANSFER OF DEFINITIONS.—

(A) TRANSFER.—Paragraphs (2) and (3) of section 2710(e) of such title—

(i) are transferred so as to appear at the end of section 2700 of such title; and

(ii) are redesignated as paragraphs (4) and (5), respectively.

(B) REDESIGNATION OF EXISTING DEFINITIONS.—Section 2710(e) of such title is amended by redesignating paragraphs (4) through (7) as paragraphs (2) through (5), respectively.

(4) CONFORMING AMENDMENTS.—Section 313(d) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2710 note) is amended—

(A) in paragraph (2)—

(i) by striking "'discarded military munitions', 'munitions constituents', and 'defense sites'" and inserting "'discarded military munitions' and 'munitions constituents'"; and

(ii) by striking "section 2710(e)" and inserting "section 2700"; and

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

"(3) The term 'defense site' has the meaning given such term in section 2710(e) of such title.".

(c) TECHNICAL CORRECTION .—Section 2703(f) of title 10, United States Code, is amended by striking "to the Environmental Restoration Account, Defense, or to any

environmental restoration account of a military department," and inserting "or transferred to an account established by subsection (a)".

(d) PRECISE SPECIFICATION FOR TRANSFER AUTHORITY.—Section 2704(c) of title 10, United States Code, is amended by striking "or (2) for other health related activities under section 104(i) of CERCLA (42 U.S.C. 9604(i))" and inserting "in accordance with section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)), (2) for other health related activities under section 104(i)(6) of CERCLA (42 U.S.C. 9604(i)(6)), or (3) for specific health education assistance requested by the Secretary of Defense in conducting its response actions in accordance with section 104(i)(11) of CERCLA (42 U.S.C. 9604(i)(11)".

(e) EXTENSION OF CONTRACT AUTHORITY.—Section 2708(b)(1) of title 10, United States Code, is amended by striking "during fiscal years 1992 through 1996".

(f) SAVINGS CLAUSE.—Nothing in this section, or the amendments made by this section, shall affect any requirement or authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

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

Section-by-Section Analysis

This proposal would make the Defense Environmental Restoration Program (DERP)) in Chapter 160 of title 10 more internally coherent, more consistent with CERCLA terminology, and correct several technical and drafting errors.

Subsection (a) of this proposal would ensure the interplay between the DERP and the Defense Base Closure and Realignment Act of 1990 conforms to congressional intent. The proposal would help align the precise language of the statutes with the longstanding interpretation of the DoD and CERCLA. It would also correct some definitional terminology deficiencies in Chapter 160. It makes changes to 10 U.S.C. 2703 to make it clear that it applies to responses at all non-Base Realignment and Closure (BRAC) sites, and makes changes to make it clear that it applies to all responses at BRAC sites, including BRAC sites that have been transferred to new owners.

While the clear intent of Congress is that the Defense Base Closure Account (DBCA) will pay for environmental restoration costs at BRAC sites and the Defense Environmental Restoration Account (DERA) will pay for all other locations, the actual provisions in the two statutes do not have that result, nor are they entirely consistent with one another. Technically, the current DERP language only excludes from DERA those BRAC costs associated with services provided under CERCLA covenants and obtained by an agreement under 10 U.S.C. 2701(d)(1). This is actually a very limited, and frequently non-existent, part of a cleanup conducted at a transferred BRAC site. Contrary to the intent of Congress, the current language may be read literally as any cleanup at a transferred BRAC site that was not conducted under an agreement under 10 U.S.C. 2701(d)(1) would be paid by DERA, vice the DBCA.

Subsection (b) of this proposal would correct certain technical references in the DERP to achieve uniformity and consistency among statutory references relating to the munitions response program. Sections 2701, 2703, and 2710 of title 10 all contain references to the munitions response program, but do not necessarily use the same terms. This causes some confusion as to how the statutes relate to one another.

The proposal would amend 10 U.S.C. 2701(b) to make it clear that the reference is not just to unexploded ordnance but also to discarded military munitions and munitions constituents. All three are covered by the provisions of 10 U.S.C. 2710, which is the basis of the munitions response program. The amendment would also clearly tie section 2701 to section 2710 (and vice-versa). The proposal would also amend 10 U.S.C. 2703 to clearly tie its provisions to section 2710. The proposal would relocate the definitions of "munitions constituents" and "discarded military munitions" currently in section 2710 to the beginning of Chapter 160, so as to apply consistently throughout the chapter, not just to section 2710. The proposal would make corresponding changes to section 313(d) of the John Warner National Defense Authorization Act for Fiscal Year 2007 to ensure consistency with the provisions of title 10. This proposal is essentially a technical correction to tie together various provisions of the DERP statute to ensure uniformity and consistency in their implementation with regard to munitions response.

Subsection (c) of this proposal would provide for uniform treatment relating to payment of fines and penalties under the DERP. The current language technically only applies to four of the five DERAs. When the Environmental Restoration Account, Formerly Used Defense Sites, was added to the DERAs, subsection (f) was not updated to include that account as well. This change would correct that oversight. The proposal would also clarify that, since the DERA can include funds transferred to it from, e.g., litigation recoveries, the limitation also applies to those funds.

Subsection (d) of this proposal would make technical corrections to the DERP statute to clarify current practice under a memorandum of understanding between DoD and the Agency for Toxic Substances and Disease Registry (ATSDR), including the circumstances for transferring funds. The proposal clarifies that funding can be transferred for toxicological profiles in accordance with section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)). The current reference to "section 104(i) of CERCLA" is overbroad in that subsection (i) contains far more ATSDR actions than is relevant to DoD's remediation program in section 2704(c) of the DERP. Only

the statutory material in paragraph (6) of section 104(i) is relevant to this cross-reference. Additionally, a reference was added to section 104(i)(11) of CERCLA, to reflect DoD's request for public health communications at DERP sites. This amendment would clarify the cross-reference between DERP and CERCLA 104(i) to avoid confusion and to reflect the actual practice between the DoD and the Agency for Toxic Substances and Disease Registry.

Subsection (e) of this proposal would eliminate a time limitation on the application of requirements relating to DoD contracts for handling hazardous waste. Section 2708 of title 10, United States Code, currently has a year limitation that expired in 1996. Technically, the section has not been in effect since that time. This proposal would remove the time limitation and make the statute effective again. Since the section provides contractual protections to the DoD, it is desirable to have it apply to contracts for handling hazardous waste.

Subsection (f) of this proposal was added to clarify that these technical corrections to the DERP statute do not change any liability or other requirement under CERCLA.

Budget Implications: No budgetary impact to correct inconsistencies and technical drafting errors and to make the entire statute internally consistent.

Changes to Existing Law: This proposal would make changes to the following sections of title 10 and to section 313 of Public Law 109–364:

*** * * * ***

§2700. Definitions

In this chapter:

(1) The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) The terms "environment", "facility", "hazardous substance", "person", "pollutant or contaminant", "release", "removal", "response", "disposal", and "hazardous waste" have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "discarded military munitions" means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.

(5) The term "munitions constituents" means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

*** * * * ***

§ 2701. Environmental restoration program

* * * * *

(b) PROGRAM GOALS.—Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from a hazardous substance or pollutant or contaminant.

(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance, discarded military munitions, and munitions constituents in a manner consistent with section 2710 of this title) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

* * * * *

§2703. Environmental restoration accounts

(a) ESTABLISHMENT OF ACCOUNTS.—There are hereby established in the Department of Defense the following accounts:

(1) An account to be known as the "Environmental Restoration Account, Defense".

(2) An account to be known as the "Environmental Restoration Account, Army".

(3) An account to be known as the "Environmental Restoration Account, Navy".

(4) An account to be known as the "Environmental Restoration Account, Air Force".

(5) An account to be known as the "Environmental Restoration Account, Formerly Used Defense Sites".

(b) PROGRAM ELEMENTS FOR ORDNANCE REMEDIATION.—The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). Such remediation shall be conducted in a manner consistent with section 2710 of this title. ~~In this subsection, the terms "discarded military munitions" and "munitions constituents" have the meanings given such terms in section 2710 of this title.~~

* * * * *

(e) CREDIT OF AMOUNTS RECOVERED.—The following amounts shall be credited to the appropriate environmental restoration account:

(1) Amounts recovered under CERCLA for response actions.

(2) Any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the Department of Defense or a military department for any expenditure for ~~environmental~~ response activities.

(f) PAYMENTS OF FINES AND PENALTIES.—None of the funds appropriated ~~to the Environmental Restoration Account, Defense, or to any environmental restoration account of a military department,~~ or transferred to an account established by subsection (a) may be used for the payment of a fine or penalty (including any supplemental environmental project carried out as part of such penalty) imposed against the Department of Defense or a military department

unless the act or omission for which the fine or penalty is imposed arises out of an activity funded by the environmental restoration account concerned and the payment of the fine or penalty has been specifically authorized by law.

(g) SOLE SOURCE OF FUNDS FOR ~~OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES~~ RESPONSES.—

~~(1)~~ Except as provided in subsection (h), the sole source of funds for all phases of ~~an environmental remedy~~ a response, at a site under the jurisdiction of the Department of Defense or a formerly used defense site shall be the applicable environmental restoration account established under subsection (a).

~~(2) In this subsection, the term "environmental remedy" has the meaning given the term "remedy" in section 101 of CERCLA (42 U.S.C. 9601).~~

(h) SOLE SOURCE OF FUNDS FOR ~~ENVIRONMENTAL REMEDIATION~~ RESPONSES AT CERTAIN BASE REALIGNMENT AND CLOSURE SITES.—In the case of property disposed of pursuant to a base closure law and subject to a covenant that was required to be provided by paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), the sole source of funds for ~~services procured under section 2701(d)(1) of this title~~ a response shall be the Department of Defense base closure account established under section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note). The limitation in this subsection shall expire upon the closure of such base closure account.

* * * * *

§2704. Commonly found unregulated hazardous substances

* * * * *

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) in accordance with section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)), ~~or~~ (2) for other health related activities under section 104(i)(6) of CERCLA (42 U.S.C. 9604(i)(6)), or (3) for specific health education assistance requested by the Secretary of Defense in conducting its response actions in accordance with section 104(i)(11) of CERCLA (42 U.S.C. 9604(i)(11). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

* * * * *

§2708. Contracts for handling hazardous waste from defense facilities

(a) REIMBURSEMENT REQUIREMENT.-(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by-

(A) the contractor's or subcontractor's breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility ~~during fiscal years 1992 through 1996~~ for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

*** * * * ***

§ 2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges)

*** * * * ***

(e) DEFINITIONS.—In this section:

(1) The term "defense site" applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

~~(2) The term "discarded military munitions" means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.~~

~~(3) The term "munitions constituents" means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.~~

(~~4~~2) The term "possessions" includes Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, and Wake Island.

(~~5~~3) The term "Secretary" means the Secretary of Defense.

(~~6~~4) The term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions.

(~~7~~5) The term "United States", in a geographic sense, means the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

*** * * * ***

Section 313(d) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2710 note):

SEC. 313. RESPONSE PLAN FOR REMEDIATION OF UNEXPLODED ORDNANCE, DISCARDED MILITARY MUNITIONS, AND MUNITIONS CONSTITUENTS.

*** * * * ***

(d) DEFINITIONS.—In this section:

(1) The terms "unexploded ordnance" and "operational range" have the meanings given such terms in section 101(e) of title 10, United States Code.

(2) The terms "discarded military munitions"~~,~~ and "munitions constituents"~~, and "defense site"~~ have the meanings given such terms in section ~~2710(e)~~ 2700 of such title.

(3) The term "defense site" has the meaning given such term in section 2710(e) of such title.

SEC. ____. DEFENSE COMMISSARY SYSTEM NONAPPROPRIATED FUND INSTRUMENTALITY USE OF UNIFORM FUNDING MANAGEMENT AUTHORITY.

(a) IN GENERAL.—Section 2491 of title 10, United States Code, is amended—

(1) in the section heading, by inserting "**defense commissary system operations and"** before "**morale, welfare, and recreation programs**";

(2) in subsection (a)—

(A) in the first sentence, by inserting "funds available for operation of the defense commissary system and" after "Secretary of Defense,"; and

(B) in the second sentence—

(i) by inserting "for operation of the defense commissary system or" after "When made available"; and

(ii) by striking "appropriated funds" and inserting "such funds"; and

(3) in subsection (c)(1), by inserting "in the defense commissary system or" after "employees".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking the item relating to section 2491 and inserting the following new item:

"2491. Uniform funding and management of defense commissary system operations and morale, welfare, and recreation programs.".

[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 allow a Defense commissary system nonappropriated fund instrumentality (NAFI) to use uniform funding and management (UFM) without having to be designated a morale, welfare, and recreation (MWR) program.

Section 2484 of title 10, United States Code, allows the Defense commissary system to use the UFM authority in section 2491 of that title, if it converts all or part of the Defense commissary system to a NAFI. However, section 2491 only allows MWR programs to utilize UFM.

Adding the proposed language to section 2491 would permit the Defense commissary system NAFI to use UFM without designating the Defense commissary system as an MWR program. The commissary system is a non-pay subsistence benefit. Designating the Defense commissary system as an MWR program would alter its fundamental purpose and introduce potential conflicts with other MWR-related regulations, such as making the commissary system eligible to receive exchange dividends distributed to MWR programs in order to support quality of life programming on installations.

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

Changes to Existing Law: This proposal would make the following changes to section 2491 of title 10, United States Code:

* * * * *

§2491. Uniform funding and management of <u>defense commissary system operations and</u> morale, welfare, and recreation programs

(a) Authority for Uniform Funding and Management.-Under regulations prescribed by the Secretary of Defense, <u>funds available for operation of the defense commissary system and</u> funds appropriated to the Department of Defense and available for morale, welfare, and recreation programs may be treated as nonappropriated funds and expended in accordance with laws applicable to the expenditures of nonappropriated funds. When made available <u>for operation of the defense commissary system or</u> for morale, welfare, and recreation programs under such regulations, <u>such</u> ~~appropriated~~ funds shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

(b) Conditions on Availability.-Funds appropriated to the Department of Defense may be made available to support a morale, welfare, or recreation program only if the program is authorized to receive appropriated fund support and only in the amounts the program is authorized to receive.

(c) Conversion of Employment Positions.-(1) The Secretary of Defense may identify positions of employees <u>in the defense commissary system or</u> in morale, welfare, and recreation programs within the Department of Defense who are paid with appropriated funds whose status may be converted from the status of an employee paid with appropriated funds to the status of an employee of a nonappropriated fund instrumentality.

(2) The status of an employee in a position identified by the Secretary under paragraph (1) may, with the consent of the employee, be converted to the status of an employee of a nonappropriated fund instrumentality. An employee who does not consent to the conversion may not be removed from the position because of the failure to provide such consent.

(3) The conversion of an employee from the status of an employee paid by appropriated funds to the status of an employee of a nonappropriated fund instrumentality shall be without a break in service for the concerned employee. The conversion shall not entitle an employee to severance pay, back pay or separation pay under subchapter IX of chapter 55 of title 5, or be considered an involuntary separation or other adverse personnel action entitling an employee to any right or benefit under such title or any other provision of law or regulation.

(4) In this subsection, the term "an employee of a nonappropriated fund instrumentality" means an employee described in section 2105(c) of title 5.

SEC. ___. EXTENSION OF UKRAINE SECURITY ASSISTANCE INITIATIVE.

Section 1250 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1068), as most recently amended by section 1246(4) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 2050), is further amended—

(1) in subsection (c), by adding at the end the following new paragraph:

"(6) USE OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.";

(2) in subsection (f), by adding at the end the following new paragraphs:

"(5) For fiscal year 2020, $250,000,000.

"(6) For fiscal year 2021, $250,000,000."; and

(3) in subsection (h), by striking "December 31, 2021" and inserting "December 31, 2023".

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

Section-by-Section Analysis

Description: This proposal would authorize the Department of Defense (DoD) to obligate Ukraine Security Assistance Initiative (USAI) funds across fiscal years, consistent with the authority provided under section 333(g)(2)(A) of title 10, United States Code. Cross fiscal year authority would better enable USAI funds to be used to facilitate the provision of air defense and costal defense radars to the armed forces of Ukraine. The current authority does not allow sufficient time to complete policy approval, technology security and foreign disclosure release, and contracting before the end of the authority's fiscal year**.** This proposal would also extend the authorization for the USAI through 2023.

History: USAI provides Ukraine with high technology systems that have previously not been available to the Ukrainian armed forces. Additional technology security and contracting requirements are inherent to providing these high-tech systems. The timeline associated with

these additional requirements has prevented USAI's use for long lead-time systems, such as air defense radars. If USAI funding was used for these security assistance programs, DoD would be able to maintain additional leverage over the Ukrainian armed forces to implement fully the institutional reforms they have agreed to undertake. DoD would have additional ability to regulate the provision of assistance based on our determination of Ukraine's positive movement towards lasting reforms.

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**
USAI	250					Operation and Maintenance, Defense-wide OCO	01	0100
Total	250							

Changes to Existing Law: This proposal would amend section 1250 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1068) as follows:

SEC. 1250. UKRAINE SECURITY ASSISTANCE INITIATIVE.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—Amounts available for a fiscal year under subsection (f) shall be available to the Secretary of Defense, in coordination with the Secretary of State, to provide appropriate security assistance and intelligence support, including training, equipment, and logistics support, supplies and services, to military and other security forces of the Government of Ukraine for the purposes as follows:

(1) To enhance the capabilities of the military and other security forces of the Government of Ukraine to defend against further aggression.

(2) To assist Ukraine in developing the combat capability to defend its sovereignty and territorial integrity.

(3) To support the Government of Ukraine in defending itself against actions by Russia and Russian-backed separatists that violate the ceasefire agreements of September 4, 2014, and February 11, 2015.

(b) APPROPRIATE SECURITY ASSISTANCE AND INTELLIGENCE SUPPORT.—For purposes of subsection (a), appropriate security assistance and intelligence support includes the following:

(1) Real time or near real time actionable intelligence, including by lease of such capabilities from United States commercial entities.

(2) Lethal assistance such as anti-armor weapon systems, mortars, crew-served weapons and ammunition, grenade launchers and ammunition, and small arms and ammunition.

(3) Counter-artillery radars, including medium-range and long-range counter-artillery radars that can detect and locate long-range artillery.

(4) Unmanned aerial tactical surveillance systems.

(5) Cyber capabilities.

(6) Counter-electronic warfare capabilities such as secure communications equipment and other electronic protection systems.

(7) Other electronic warfare capabilities.

(8) Training for critical combat operations such as planning,

command and control, small unit tactics, counter-artillery tactics, logistics, countering improvised explosive devices, battle-field first aid, post-combat treatment, and medical evacuation.

(9) Equipment and technical assistance to the State Border Guard Service of Ukraine for the purpose of developing a comprehensive border surveillance network for Ukraine.

(10) Training for staff officers and senior leadership of the military.

(11) Air defense and coastal defense radars.

(12) Naval mine and counter-mine capabilities.

(13) Littoral-zone and coastal defense vessels.

(14) Training required to maintain and employ systems and capabilities described in paragraphs (1) through (13).

(15) Treatment of wounded Ukrainian soldiers in the United States in medical treatment facilities through the Secretarial Designee Program, including transportation, lodging, meals, and other appropriate non-medical support in connection with such treatment, and education and training for Ukrainian healthcare specialists such that they can provide continuing care and rehabilitation services for wounded Ukrainian soldiers.

(c) AVAILABILITY OF FUNDS.—

(1) ASSISTANCE FOR UKRAINE.—Not more than 50 percent of the funds available for fiscal year 2019 pursuant to subsection (f)(4) may be used for purposes of subsection (a) until the certification described in paragraph (2) is made.

(2) CERTIFICATION.—

(A) IN GENERAL.—The certification described in this paragraph is a certification by the Secretary of Defense, in coordination with the Secretary of State, that the Government of Ukraine has taken substantial actions to make defense institutional reforms, in such areas as described in subparagraph (B), for purposes of decreasing corruption, increasing accountability, and sustaining improvements of combat capability enabled by assistance under subsection (a).

(B) AREAS DESCRIBED.—The areas described in this subparagraph are—

(i) strengthening civilian control of the military;

(ii) enhanced cooperation and coordination with Verkhovna Rada efforts to exercise oversight of the Ministry of Defense and military forces;

(iii) increased transparency and accountability in defense procurement;

(iv) improvement in transparency, accountability, sustainment, and inventory management in the defense industrial sector; and

(v) protection of proprietary or sensitive technologies as such technologies relate to foreign military

sales or transfers.

(C) ASSESSMENT.—The certification shall include an assessment of the substantial actions taken to make such defense institutional reforms and the areas in which additional

action is needed and a description of the methodology used to evaluate whether Ukraine has made progress in defense institutional reforms relative to previously established goals and objectives.

(3) OTHER PURPOSES.—If in fiscal year 2019 funds are not available for purposes of subsection (a) by reason of the lack of a certification described in paragraph (2), such funds may be used in that fiscal year for the purposes as follows:

(A) Assistance or support to national-level security forces of other Partnership for Peace nations that the Secretary of Defense determines to be appropriate to assist in preserving their sovereignty and territorial integrity against Russian aggression.

(B) Exercises and training support of national-level security forces of Partnership for Peace nations or the Government of Ukraine that the Secretary of Defense determines to be appropriate to assist in preserving their sovereignty and territorial integrity against Russian aggression.

(4) NOTICE TO CONGRESS.—Not later than 15 days before providing assistance or support under paragraph (3), the Secretary of Defense shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification containing the following:

(A) The recipient foreign country.

(B) A detailed description of the assistance or support to be provided, including—

(i) the objectives of such assistance or support;

(ii) the budget for such assistance or support; and

(iii) the expected or estimated timeline for delivery of such assistance or support.

(C) Such other matters as the Secretary considers appropriate.

(5) LETHAL ASSISTANCE.—Of the funds available for fiscal year 2019 pursuant to subsection (f)(4), $50,000,000 shall be available only for lethal assistance described in paragraphs (2) and (3) of subsection (b).

(6) USE OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.

(d) UNITED STATES INVENTORY AND OTHER SOURCES.—

(1) IN GENERAL.—In addition to any assistance provided pursuant to subsection (a), the Secretary of Defense is authorized, with the concurrence of the Secretary of State, to make available to the Government of Ukraine weapons and other defense articles, from the United States inventory and other sources, and defense services, in such quantity as the Secretary of Defense determines to be appropriate to achieve the purposes specified in subsection (a).

(2) REPLACEMENT.—Amounts for the replacement of any items provided to the Government of Ukraine pursuant to paragraph (1) shall be derived from the amount available pursuant to subsection (a) or amounts authorized to be appropriated for the Department of Defense for overseas contingency operations for weapons procurement.

(e) CONSTRUCTION OF AUTHORIZATION.—Nothing in this section shall be construed to constitute a specific statutory authorization for the introduction of United States Armed Forces into hostilities or into situations wherein hostilities are clearly indicated by the circumstances.

(f) FUNDING.—From amounts authorized to be appropriated for the fiscal year concerned for the Department of Defense for overseas contingency operations, up to the following shall be available for purposes of subsection (a):

(1) For fiscal year 2016, $300,000,000.

(2) For fiscal year 2017, $350,000,000.

(3) For fiscal year 2018, $350,000,000.

(4) For fiscal year 2019, $250,000,000.

(5) For fiscal year 2020, $250,000,000.

(6) For fiscal year 2021, $250,000,000.

(g) CONSTRUCTION WITH OTHER AUTHORITY.—The authority to provide assistance and support pursuant to subsection (a), and the authority to provide assistance and support under subsection (c), is in addition to authority to provide assistance and support under title 10, United States Code, the Foreign Assistance Act of 1961, the Arms Export Control Act, or any other provision of law.

(h) TERMINATION OF AUTHORITY.—Assistance may not be provided under the authority in this section after ~~December 31, 2021~~ December 31, 2023.

* * * * *

SEC. ___. USE OF PROCUREMENT, SPACE FORCE APPROPRIATION TO PAY SATELLITE ON-ORBIT INCENTIVES.

Section 8127 of the Department of Defense Appropriations Act, 1996 (Public Law 104-61; 190 Stat. 679), is amended by striking "Missile Procurement, Air Force" and inserting "Procurement, Space Force".

[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

The Procurement, Space Force Appropriation will be created from the Space Procurement Appropriation, which was created from Missile Procurement and Other Procurement Appropriations in FY16. However, the authority to pay on-orbit incentives in the fiscal year in which incentives are earned is still authorized as a Missile Procurement expense pursuant to section 8127 of the FY1996 Defense Appropriations Act. This proposal represents a conforming amendment that was not accomplished during the standup of the Space Procurement Appropriation to authorize the payment of on-orbit incentives in the fiscal year in which an incentive is earned out of the "Procurement, Space Force" appropriation.

Budget Implications: This legislative proposal does not require any additional funds, nor any movement of funds. All funding for on-orbit incentive fees have been budgeted in the appropriate Procurement, Space Force budget line items in the appropriate fiscal year.

Changes to Existing Law: This proposal would amend section 8127 of the Department of Defense Appropriations Act, 1996 (Public Law 104-61; 109 Stat. 679) as follows:

SEC. 8127. Funds appropriated by this and future Acts under the heading ''~~Missile Procurement, Air Force~~ Procurement, Space Force'' may be obligated for payment of satellite on-orbit incentives in the fiscal year in which an incentive payment is earned: *Provided*, That any obligation made pursuant to this section may not be entered into until 30 calendar days in session after the congressional defense committees have been notified that an on-orbit incentive payment has been earned.

SEC. __. WITHDRAWAL AND RESERVATION OF PUBLIC LANDS IN NEVADA TO SUPPORT MILITARY READINESS AND SECURITY.

(a) NEVADA TEST AND TRAINING RANGE.—

(1) IN GENERAL—Title XXIX of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 1025), titled the "Military Land Withdrawals Act of 2013", is amended by adding at the end the following:

"Subtitle H—Nevada Test and Training Range, Nevada

"**SEC. 2991. WITHDRAWAL AND RESERVATION OF PUBLIC LAND.**

"(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this subtitle, the public land (including interests in land) described in subsection (b), and all other areas within the boundary of the land depicted on the map described in that subsection that may become subject to the operation of the public land laws, is withdrawn from—

"(1) all forms of entry, appropriation, and disposal under the public land laws;

"(2) location, entry, and patent under the mining laws; and

"(3) disposition under all laws relating to mineral materials and to mineral and geothermal leasing.

"(b) DESCRIPTION OF LAND.—The public land (including interests in land) referred to in subsection (a) is the Federal land comprising approximately 3,256,722 acres of land in Clark, Lincoln, and Nye Counties, Nevada, as generally depicted on the map titled "Nevada Test and Training Range, Proposed Withdrawal Extension," dated August 21, 2019, and filed in accordance with section 2912.

"(c) RESERVATION.—The land described in subsection (b) is reserved for use by the Secretary of the Air Force for the following purposes:

"(1) Use as a research, development, test, and evaluation laboratory.

"(2) Use as a range for air warfare weapons and weapon systems.

"(3) Use as a high-hazard testing and training area for aerial gunnery, rocketry, electronic warfare and countermeasures, tactical maneuvering and air support, and directed energy and unmanned aerial systems.

"(4) Other defense-related purposes that are—

"(A) consistent with the purposes described in the preceding paragraphs; and

"(B) authorized under section 2914.

"SEC. 2992. MANAGEMENT OF WITHDRAWN AND RESERVED LAND OTHER THAN THE DESERT NATIONAL WILDLIFE REFUGE.

"(a) APPLICABLE LAWS.—The Secretary of the Interior shall manage the land withdrawn and reserved by section 2991, other than land located within the Desert National Wildlife Refuge (hereinafter 'Refuge'), in accordance with—

"(1) subtitle A and this subtitle;

"(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

"(3) any other applicable law.

"(b) AUTHORIZED ACTIVITIES.—To the extent consistent with section 2991(c), applicable law, and Executive orders, the land withdrawn and reserved by section 2991, other than land located within the Refuge, may be managed in a manner that permits the following activities:

"(1) Grazing.

"(2) Conservation of wildlife and wildlife habitat.

"(3) Preservation of cultural properties.

"(4) Control of predatory and other animals.

"(5) Recreation and education.

"(6) Prevention and appropriate suppression of brush and range fires resulting from non-military activities.

"(7) Prevention of groundwater depletion that might adversely affect water levels at Devils Hole.

"(8) Preservation of Timber Mountain Caldera as a National Natural Landmark.

"(c) NONDEFENSE USES.—Subject to subsection (d), all nondefense-related uses of the land withdrawn and reserved by section 2991, other than land located within the Refuge (including the uses described in subsection (b)), shall be subject to any conditions and restrictions that the Secretary of the Interior and the Secretary of the Air Force jointly determine to be necessary to permit the defense-related use of the land for the purposes described in this section.

"(d) ISSUANCE OF LEASES AND OTHER INSTRUMENTS.—

"(1) IN GENERAL.—The Secretary of the Interior shall be responsible for the issuance of any lease, easement, right-of-way, permit, license, or other instrument authorized by law with respect to any activity that involves both—

"(A) the public land withdrawn and reserved by section 2991; and

"(B) any other land in the vicinity of the land withdrawn and reserved by section 2991 that is not under the administrative jurisdiction of the Secretary of the Air Force.

"(2) CONSENT REQUIRED.—Any lease, easement, right-of-way, permit, license, or other instrument issued under paragraph (1) shall—

"(A) only be issued with the consent of the Secretary of the Air Force; and

"(B) be subject to such conditions as the Secretary of the Air Force may require with respect to the land withdrawn and reserved by section 2991.

"(e) AUTHORITY TO ASSUME MANAGEMENT RESPONSIBILITY.—

"(1) AUTHORITY.—With the consent of the Secretary of the Interior, the Secretary of the Air Force may assume management responsibility, in whole or in part, for the land referred to in subsection (a), other than land located within the Refuge.

"(2) APPLICABLE LAW.—Upon assumption of the management responsibility under paragraph (1), the Secretary of the Air Force shall manage the land in accordance with—

"(A) subtitle A and this subtitle;

"(B) title I of the Sikes Act (16 U.S.C. 670a et seq.); and

"(C) any other applicable law.

"(3) WITHDRAWAL OF CONSENT.—The Secretary of the Interior may withdraw consent to assumption of management responsibility by the Secretary of the Air Force upon reasonable notice to the latter.

"SEC. 2993. MANAGEMENT OF THE DESERT NATIONAL WILDLIFE REFUGE.

"(a) MANAGEMENT.—The Secretary of the Air Force shall manage, in coordination with the Secretary of the Interior, the land withdrawn and reserved by section 2991 that is located within the Refuge primarily for the purposes specified in subsection 2991(c) and secondarily for the purposes for which the Refuge was established, in accordance with—

"(1) subtitle A and this subtitle;

"(2) except as provided in subsection (b), the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and section 1 of the Refuge Recreation Act (16 U.S.C. 460k);

"(3) title I of the Sikes Act (16 U.S.C. 670a et seq.); and

"(4) any other law applicable to the Secretary of the Air Force.

"(b) APPLICATION OF NATIONAL WILDLIFE REFUGE SYSTEM LAWS. —

"(1) ASSUMPTION OF AUTHORITY BY SECRETARY OF THE AIR FORCE.—For purposes of applying the National Wildlife Refuge System Administration Act of 1966 and section 1 of the Refuge Recreation Act to management of the land referred to in subsection (a), the Secretary of the Air Force shall assume, exclusively and without any obligation to promulgate regulations, the authorities and responsibilities of the Secretary of the Interior, except that the Secretary of the Interior shall retain those enforcement authorities set forth in subsection 668dd(g) of title 16, United States Code (section 4 of Public Law 89-669, 80 Stat. 929, as amended). The Secretary of the Air Force may reimburse any costs for the exercise of such enforcement authorities by the Secretary of the Interior with respect to the Refuge lands withdrawn and reserved by section 2991.

"(2) COMPATIBILITY DETERMINATIONS.—Use of the land referred to in subsection (a) for the purposes specified in subsection 2991(c), including without limitation ground-disturbing activities, shall not be subject to compatibility determinations under the National Wildlife Refuge System Administration Act of 1966, as amended, and other laws, regulations, and orders applicable to the management of the Refuge.

"(c) PROPOSED WILDERNESS AREAS.—The Secretary of the Interior and the Secretary of the Air Force shall manage the land referred to in subsection (a) in accordance with the provisions of subtitle A and this subtitle notwithstanding any pending proposal submitted to Congress pursuant to the Wilderness Act of 1964 (16 U.S.C. 1131 et seq.) to designate such areas of the Desert National Wildlife Refuge as wilderness.

"(d) HUNTING, FISHING, AND TRAPPING.—Hunting, fishing, and trapping within the land referred to in subsection (a) shall be conducted in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Refuge Recreation Act (16 U.S.C. 460k et seq.), and other laws applicable to the National Wildlife Refuge System. Section 2918 shall not apply to the land referred to in subsection (a).

"(e) MANAGEMENT PLANNING. —

"(1) CONSOLIDATED MANAGEMENT PLAN.—Not later than two years after the date of enactment of this subtitle, the Secretary of the Air Force, in coordination with the Secretary of the Interior, shall prepare a consolidated management plan (in this subsection 'plan') for the land referred to in subsection (a). Such plan shall consolidate the management plans required by the Sikes Act and the National Wildlife Refuge System Administration Act of 1966. Such plan may incorporate any existing management plans pertaining to such lands to the extent the Secretary of the Air Force, in coordination with the Secretary of the Interior, determines to be appropriate.

"(A) ELEMENTS OF PLAN.—In addition to the elements required by applicable laws, the plan shall specifically address and apply to sustainable management and protection of natural resources, including—

"(i) use of wildland fire as a management tool;

"(ii) prevention of groundwater depletion that might adversely affect water levels at Devils Hole;

"(iii) preservation of stream and spring flow; and

"(iv) development and maintenance of water catchment (guzzler) projects.

"(B) PERIODIC REVIEWS.—The Secretary of the Air Force shall ensure that periodic reviews of the plan are carried out in coordination with the Secretary of the Interior. Such reviews shall be no less frequent than once every five years.

"(2) USE OF AGREEMENTS.—

"(A) The Secretary of the Air Force may enter into agreements with the Secretary of the Interior or appropriate Federal agencies, and into cooperative agreements with State or local agencies, Indian tribal governments, or other public or private organizations or institutions for purposes of implementing the plan.

"(B) Any agreement or cooperative agreement under subparagraph (A) may be combined, where appropriate, with any other agreement or cooperative agreement entered into under this subtitle, and shall not be subject to the provisions of chapter 63 of title 31, United States Code; parts 21 and 22 of title 32, Code of Federal Regulations; and title 2, Code of Federal Regulations.

"(3) PUBLIC REPORTS.—

"(A)(i) No less often than every five years after enactment of this Act, the Secretary of the Air Force, in coordination with the Secretary of the Interior, shall prepare and issue a report describing changes in the condition of the land referred

to in subsection (a) from the date of any previous report under this paragraph (or, in the case of the first report, the date of enactment of this Act).

"(ii) A report under this paragraph shall include a summary of current military use of the lands referred to in subsection (a), any changes in military use of the lands since the previous report, and efforts related to the management of natural and cultural resources and environmental remediation of the lands during the previous five years.

"(iii) A report under this paragraph may be combined with, or incorporate by reference, any contemporary report required by any other provision of law regarding the lands withdrawn and reserved under this subtitle.

"(iv) Before the finalization of a report under this paragraph, the Secretary of the Interior and the Secretary of the Air Force shall invite interested members of the public to review and comment on the report, and shall jointly hold at least one public meeting concerning the report in a location or locations reasonably accessible to persons who may be affected by management of the lands referred to in subsection (a).

"(v) Each public meeting under clause (iv) shall be announced not less than 15 days before the date of the meeting by advertisements in local newspapers of general circulation, notices on the internet, and any other means considered necessary or desirable by the Secretaries.

"(vi) The final version of a report under this paragraph shall be made available to the public and submitted to the Committees on Armed Services and

Energy and Natural Resources of the Senate and the Committees on Armed Services and Natural Resources of the House of Representatives.

"(4) DETERMINATION OF CONTINUING MILITARY NEED.—With each report prepared pursuant to paragraph (3), the Secretary of the Air Force shall attach the Secretary's determination regarding whether there will be a continuing military need during the following five years for any or all of the land referred to in subsection (a). Should the Secretary of the Air Force determine that any or all of such land is no longer needed for the purposes for which it is reserved in paragraph (c) of section 2991, the Secretary of the Air Force shall relinquish the applicable land in accordance with section 2922.

"(5) FUNDING.— Except as otherwise set forth in an agreement or cooperative agreement under paragraph (2), the Secretary of the Air Force shall assume all costs for implementation of the plan during the period when the lands referred to in subsection (a) are under the management responsibility of the Secretary of the Air Force.

"(f) TRANSFER OF MANAGEMENT RESPONSIBILITY.—

"(1) NOTICE OF FAILURE IN LAND MANAGEMENT BY AIR FORCE.—If the Secretary of the Interior determines that the Secretary of the Air Force has failed to manage the land referred to in subsection (a) in accordance with the consolidated management plan required by subsection (e), and that failure to do so is resulting in significant and verifiable degradation of the natural or cultural resources of such land, the Secretary of the Interior shall give the Secretary of the Air Force written notice of such determination, a description of the deficiencies in management practices by the Secretary of the Air Force, and an explanation of the methodology employed in reaching the determination.

Only the Secretary of the Interior may make the determination and provide the notice required by this paragraph.

"(2) AIR FORCE RESPONSE AND PLAN OF ACTION.—No later than 60 days after the date a notification under paragraph (1) is received, the Secretary of the Air Force shall submit a response to the Secretary of the Interior, which response may include a plan of action for addressing any deficiencies identified in the notice in the conduct of management responsibility and for preventing further significant degradation of the natural or cultural resources of the lands concerned.

"(3) RESUMPTION OF MANAGEMENT BY SECRETARY OF THE INTERIOR AND NOTICE TO CONGRESS.—The Secretary of the Interior may, no earlier than 90 days after the date a notification under paragraph (1) is received by the Secretary of the Air Force, determine that deficiencies identified in the notice are not being corrected or are not likely to be corrected and that significant and verifiable degradation of the natural or cultural resources of the lands concerned is continuing. The Secretary of the Interior may, no earlier than 90 days after the date on which the Secretary of the Interior submits a notice and a report on such determination to the Committees on Armed Services and Energy and Natural Resources of the Senate and the Committees on Armed Services and Natural Resources of the House of Representatives, transfer management responsibility for the natural and cultural resources of such lands from the Secretary of the Air Force to the Secretary of the Interior in accordance with a schedule for such transfer established by the Secretary of the Interior.

"(4) FURTHER REVIEW BY SECRETARY OF THE INTERIOR.—After a transfer of management responsibility pursuant to paragraph (3), the Secretary of the Interior may

transfer management responsibility back to the Secretary of the Air Force if the Secretary of the Interior determines that adequate procedures and plans have been established to ensure that the lands concerned will be adequately managed by Secretary of the Air Force in accordance with the current consolidated management plan prepared under subsection (e).

"(5) CONSENSUAL TRANSFER OF MANAGEMENT RESPONSIBILITY.—With the consent of the Secretary of the Air Force, the Secretary of the Interior may assume management responsibility, in whole or in part, for the land referred to in subsection (a).

"(6) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—Upon a transfer or assumption of management responsibility under this subsection, the Secretary of the Interior, in coordination with the Secretary of the Air Force, shall manage the land concerned primarily for the purposes specified in subsection 2991(c) and secondarily for the purposes for which the Refuge was established, in accordance with, in order of precedence—

"(A) subtitle A and this subtitle, excluding subsections (a), (b)(1) and (e) of this section;

"(B) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and other laws applicable to the management of the National Wildlife Refuge System; and

"(C) any other applicable law.

"(7) TEMPORARY RETENTION OF CONSOLIDATED MANAGEMENT PLAN.—For any period during which the Secretary of the Interior has management responsibility under this subsection, the current consolidated management plan prepared under subsection (e)

shall remain in effect pending the development of a comprehensive conservation plan by the Secretary of the Interior pursuant to the National Wildlife Refuge System Administration Act of 1966.

"(8) EXCLUSION OF IMPACT AREAS.—This subsection shall not apply to the impact areas depicted on the map referred to in section 2991(b) and transferred to the primary jurisdiction of the Secretary of the Air Force in accordance with subsection 3011(b)(3) of the Military Lands Withdrawal Act of 1999 (Title XXX of Public Law 106-65; 113 Stat. 512).

"SEC. 2994. INTERGOVERNMENTAL EXECUTIVE COMMITTEE.

"(a) ESTABLISHMENT AND PURPOSE.—The Secretary of the Air Force and the Secretary of the Interior shall establish, by memorandum of understanding, an intergovernmental executive committee for the purpose of exchanging views, information, and advice relating to the management of the natural and cultural resources of the lands withdrawn and reserved by section 2991 and identifying specific methods for improved interagency management of such lands. The committee shall also discuss the schedules to be established under section 2995.

"(b) COMPOSITION.—

"(1) REPRESENTATIVES OF OTHER FEDERAL AGENCIES.—The Secretary of the Air Force and the Secretary of the Interior shall include representatives from interested Federal agencies as members of the intergovernmental executive committee.

"(2) REPRESENTATIVES OF STATE AND LOCAL GOVERNMENTS.—The Secretary of the Air Force and the Secretary of the Interior shall invite to serve as members of the intergovernmental executive committee—

"(A) at least one elected officer (or other authorized representative) from the government of the State of Nevada; and

"(B) at least one elected officer (or other authorized representative) from each local government and Indian tribal government in the vicinity of the withdrawn and reserved lands, as determined by the Secretaries.

"(c) OPERATION.—The intergovernmental executive committee shall operate in accordance with the terms set forth in the memorandum of understanding provided for under subsection (a). Such memorandum shall constitute the charter of the committee.

"(d) PROCEDURES.—The memorandum of understanding provided for under subsection (a) shall establish procedures for creating a forum for exchanging views, information, and advice relating to the management of natural and cultural resources on the lands withdrawn and reserved by section 2991, including procedures for rotating the chair of the intergovernmental executive committee, and procedures for scheduling regular meetings, which shall occur no less frequently than twice a year.

"(e) COORDINATOR.—The Secretary having management responsibility under section 2993(a) or (f), in consultation with the Secretary having coordination responsibility, shall appoint an individual to serve as coordinator of the intergovernmental executive committee. The duties of the coordinator shall be included in the memorandum of understanding provided for under subsection (a). The coordinator shall not be a member of the committee.

"SEC. 2995. ESTABLISHMENT OF SCHEDULES.

"(a) IN GENERAL.—The Secretary of the Interior and the Secretary of the Air Force shall jointly prepare schedules to ensure non-military personnel have access to land withdrawn and reserved by section 2991 that is located within the Refuge, to the greatest extent feasible without

adversely affecting military testing and training activities, in support of scientific research, natural and cultural resources management programs, and public affairs programs.

"(b) SPECIFIC EVENTS TO BE INCLUDED IN SCHEDULES.—Such schedules shall cover timing and frequency of—

"(1) desert bighorn sheep surveys;

"(2) water catchment (guzzler) project maintenance;

"(3) annual desert bighorn sheep hunts;

"(4) biological surveys:

"(5) surveys and treatment of invasive plants;

"(6) research on desert bighorn sheep and other wildlife species;

"(7) access for members of affected Indian tribes to visit culturally important sites;

"(8) cultural resource monitoring and surveys;

"(9) vegetation, soil, springs, and groundwater contaminant surveys;

"(10) groundwater well monitoring; and

"(11) such other actions as the Secretaries may determine desirable.

"SEC. 2996. USE OF MINERAL MATERIALS.

"Notwithstanding any other provision of this subtitle or of the Act of July 31, 1947 (commonly known as the Materials Act of 1947; 30 U.S.C. 601 et seq.), the Secretary of the Air Force may use sand, gravel, or similar mineral materials resources of the type subject to disposition under that Act from lands withdrawn and reserved by section 2991, if the use of such resources is required for construction and maintenance needs on such lands. Such use is not a disposal under the Materials Act and does not require any permit or decision from the Secretary

of the Interior. The Secretary of the Air Force shall record and report to the Secretary of the Interior the quantity of mineral materials removed on an annual basis under this section.

"SEC. 2997. DURATION OF WITHDRAWAL AND RESERVATION.

"The withdrawal and reservation of public land made by section 2991 shall terminate 25 years after the date of the enactment of this Act.".

(2) CLERICAL AMENDMENT.—The table of contents at the beginning of title XXIX of such Act is amended by inserting after the item relating to section 2979 the following new items:

"Subtitle H—Nevada Test and Training Range, Nevada

"Sec. 2991. Withdrawal and reservation of public land.
"Sec. 2992. Management of withdrawn and reserved land other than the Desert National Wildlife Refuge.
"Sec. 2993. Management of the Desert National Wildlife Refuge.
"Sec. 2994. Intergovernmental executive committee.
"Sec. 2995. Establishment of schedules.
"Sec. 2996. Use of mineral materials.
"Sec. 2997. Duration of withdrawal and reservation.".

(b) TERMINATION OF CERTAIN LANDS WITHDRAWAL AND RESERVATION.—

(1) TERMINATION.—Subject to paragraph (2), the withdrawal and reservation under subsection 3011(b)(1) of the Military Lands Withdrawal Act of 1999 (Title XXX of Public Law 106-65; 113 Stat. 885) is terminated.

(2) LIMITATION.—Notwithstanding the termination under paragraph (1), all rules, regulations, orders, permits, and other privileges issued or granted by the Secretary of the Interior or the Secretary of the Air Force with respect to the land withdrawn and reserved under section 3011(b)(1) of such Act, unless inconsistent with the provisions of this subtitle, shall remain in force until modified, suspended, overruled, or otherwise changed by—

(A) the Secretary of the Interior or the Secretary of the Air Force (as applicable);

(B) a court of competent jurisdiction; or

(C) operation of law.

(c) WITHDRAWAL OF IMPACT AREAS .—Subject to valid existing rights, the land (including interests in land) transferred pursuant to section 3011(b)(3) of the Military Lands Withdrawal Act of 1999 (Title XXX of Public Law 106-65; 113 Stat. 885) that may become subject to the operation of the public land laws, is withdrawn from—

"(1) all forms of entry, appropriation, and disposal under the public land laws;

"(2) location, entry, and patent under the mining laws; and

"(3) disposition under all laws relating to mineral materials and to mineral and geothermal leasing.

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

Section-by-Section Analysis

The land withdrawal that makes up the Nevada Test and Training Range (NTTR) expires in 2021. The NTTR is the Air Force's most vital test and training asset and must be continued. Management changes included in the proposal are essential to meet current defined requirements. Maintaining the status quo by simply extending the current withdrawal will not be sufficient to meet 5th generation requirements.

This proposal would expand the current withdrawal, enacted in the FY2000 NDAA and set to expire in 2021, and make that withdrawal for a period of 25 years. The proposal includes management changes to ~300,000 acres of U.S. Fish and Wildlife Service and Bureau of Land Management managed lands to restrict public access and conduct extremely low disturbance military activity. The Air Force anticipates that a maximum of 30 acres (.01% of the requested acreage) would have any surface disturbance in the new withdrawal areas.

Section 2991 of this proposal would withdraw approximately 3,256,722 acres of public land in Clark, Lincoln, and Nye Counties, Nevada, from all forms of entry, appropriation or disposal under the public land laws; location, entry and patent under the mining laws; and disposition under all laws relating to mineral materials and to mineral and geothermal leasing. It would reserve such land for use by the Secretary of the Air Force for certain military purposes.

Section 2992 of this proposal governs management of that part of the withdrawn and reserved land not located within the Desert National Wildlife Refuge. The Secretary of the

Interior is responsible for managing such land in accordance with the general provisions in Subtitle A of the Military Land Withdrawal Act of 2013, the Federal Land Policy and Management Act of 1976, and other applicable law.Section 2993 of this proposal governs management of that part of the withdrawn and reserved land located within the Desert National Wildlife Refuge. The Secretary of the Air Force is responsible for managing such land in coordination with the Secretary of the Interior. The land is to be managed primarily for military purposes and secondarily for the purposes for which the Refuge was established. This section requires the Secretary of the Air Force and the Secretary of the Interior to develop and implement a consolidated management plan for the land that meets Sikes Act and National Wildlife Refuge System Administration Act requirements. It provides a mechanism for transfer of management responsibility to the Secretary of the Interior if the Secretary of the Air Force fails to manage the land in accordance with the management plan, and such failure is resulting in significant and verifiable degradation of the natural or cultural resources of such lands.

Section 2994 of this proposal requires the Secretary of the Air Force and the Secretary of the Interior to establish an intergovernmental executive committee for the purpose of exchanging views, information, and advice relating to the management of the natural and cultural resources of the lands withdrawn and reserved by this subtitle and identifying specific methods for improved interagency management of such lands.

Section 2996 of this proposal provides that the Secretary of the Air Force, notwithstanding certain other provisions of law, may use sand, gravel, or similar mineral materials on the land withdrawn and reserved by this subtitle if use of such resources is required for construction needs on such land.

Subsection (b) terminates, subject to certain conditions, the withdrawal and reservation under subsection 3011(b) of the Military Lands Withdrawal Act of 1999 (Title XXX of Public Law 105-65).

Budget Implications: A lapse in the NTTR land withdrawal would have far-reaching, incredible costs to include the movement of equipment and clean-up costs. The renewal of the NTTR is accounted for within the Air Force's FY 2021 President's Budget in various appropriations and levels of classification and cannot be isolated. The resource impact of the acreage expansion is insignificant due to the very small added disturbance area involved.
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Changes to Existing Law: This proposal makes changes to title XXIX of the National Defense Authorization Act for Fiscal Year 2104 (Public Law 113-66; 127 Stat. 1025) by adding a new subtitle G, as set forth above.