**SEC. ___. ACCEPTANCE OF GIFTS; NAMING RIGHTS.**

Section 2601(e)(1) of title 10, United States Code is amended by striking "or the Coast Guard Academy" and inserting "the Coast Guard Academy, the National Defense University, the Defense Acquisition University, the Air University, the Army War College, the Army Command and General Staff College, the Naval War College, the Naval Postgraduate School**,** or the Marine Corps University".

**[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 expand the authority of the Defense and Service Secretaries to accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school even though the gift, devise or bequest, or a portion thereof, bear a specified name.

**Budget Implications:** No Budget Impact.

**Changes to Existing Law:** This proposal would make the following changes to section 2601 of title 10, United States Code:

**§ 2601. General gift funds**

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

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

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

* * * * *

(e) ACCEPTANCE OF REAL PROPERTY GIFTS; NAMING RIGHTS.—(1) The Secretary concerned may accept a gift under subsection (a) or (b) consisting of the provision, acquisition, enhancement, or construction of real property offered to the United States Military Academy, the Naval Academy, the Air Force Academy, ~~or~~ the Coast Guard Academy, the National Defense University, the Defense Acquisition University, the Air University, the Army War College, the Army Command and General Staff College, the Naval War College, the Naval Postgraduate School, or the Marine Corps University even though the gift will be subject to the condition that the real property, or a portion thereof, bear a specified name.

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

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

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

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

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

* * * * *

**SEC. ___. APPOINTMENT OF RETIRED MEMBERS OF THE ARMED FORCES TO POSITIONS IN THE DEPARTMENT OF DEFENSE.**

Section 3326 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by striking "or" at the end;

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

(3) by inserting after subsection (b)(2) the following new paragraph (3):

"(3) the proposed appointment is to a position in the Federal Wage Service or to a position under the General Schedule at grade 15 or below, or equivalent level under another wage system, in the competitive service that—

(i) is a position performing maintenance functions within a depot maintenance facility that provides direct support to defense activities for the defense industrial base installations and is a difficult to fill position within the meaning of section 5753 of this title; or

(ii) is a position covered by a Direct Hire Authority or Expedited Hiring Authority."; and

(4) by inserting after subsection (c) the following new subsection (d):

"(d) An oversight board shall be established at each installation which exercises the authority under subsection (b) to provide oversight and accountability for the exercise of that authority. The oversight board shall be chaired by the appointing authority and shall review:

(1) whether position descriptions have been written or used for the purpose of advantaging military members;

(2) whether positions have been held open or for extended periods of time to evade the 180-day waiting period; and

(3) whether any hiring timelines or other hiring activities reflect a lack of fair and open competition.".

**[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 expand the exceptions currently provided under 5 U.S.C. § 3326 for the appointment of retired members of the armed forces to positions in DoD. Currently the statute prohibits the appointment of retired members to civil service positions in DoD within 180 days of retirement unless (1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management; or (2) the minimum rate of basic pay for the position has been increased under Section 5305 of this title. This proposal would add two additional exceptions, allowing appointment within 180 days to a position in the Federal Wage Service or to a GS-15 equivalent or below position if: (1) the position is performing maintenance functions within a depot maintenance facility; or (2) the position is covered by a Direct Hire Authority or Expedited Hiring Authority.

The proposal addresses two issues. First, reinstitution of the 180-day requirement has caused significant hiring challenges at Air Force depots and support organizations that are competing with industry for talent. Providing an exception for such positions will aid in hiring, while limiting the provision to "difficult to fill positions" will ensure that the authority is only utilized to fill positions that lack candidates with the technical expertise to build a sufficient applicant pool. Secondly, providing an exception to fill positions where there is an existing Direct Hire Authority (DHA) or Expedited Hiring Authority (EHA) will provide consistency across civilian personnel hiring authorities. Many DHA/EHA positions are in areas where military personnel are the predominant applicant pool. The 180-day requirement negates the value of the DHA/EHA by forcing a long hiring process, resulting in the Air Force losing talented personnel.

A 2014 Merit Systems Protection Board (MSPB) report highlighted concerns with oversight and accountability about how the statute was being utilized at the time when there was an additional exception to the 180-day rule for when "a state of national emergency exists." The perception was that military members created their own positions and obtained job offers prior to retirement and then entered civil service one day after retirement. As a result, Congress removed that exception in the FY17 NDAA, Sec. 1111. This proposal addresses the concerns about oversight and accountability highlighted in the MSPB report by providing that each installation that exercises authority to hire members within 180 days following their retirement must

establish an oversight board, chaired by the appointing authority, to review: 1) whether position descriptions have been written or used for the purpose of advantaging military members; 2) whether positions have been held open or for extended periods of time to evade the 180-day waiting period; and 3) whether any hiring timelines or other hiring activities reflect a lack of fair and open competition.

**Budget Implications:** No budget impact.

**Changes to Existing Law:** This proposal would make the following changes to 5 U.S.C. § 3326:

§3326. Appointments of retired members of the armed forces to positions in the Department of Defense

(a) For the purpose of this section, "member" and "Secretary concerned" have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if-

(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management; ~~or~~

(2) the minimum rate of basic pay for the position has been increased under section 5305 of this title~~.~~; or

(3) the proposed appointment is to a position in the Federal Wage Service or to a position under the General Schedule at grade 15 or below, or equivalent level under another wage system, in the competitive service that—

(i) is a position performing maintenance functions within a depot maintenance facility that provides direct support to defense activities for the defense industrial base installations is a difficult to fill position within the meaning of section 5753 of this title; or

(ii) is a position covered by a Direct Hire Authority or Expedited Hiring Authority.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that-

(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;

(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;

(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and

(4) the position has not been held open pending the retirement of the retired member.

(d) An oversight board shall be established at each installation which exercises the authority under subsection (b) to provide oversight and accountability for the exercise of that authority. The oversight board shall be chaired by the appointing authority and shall review:

(1) whether position descriptions have been written or used for the purpose of advantaging military members;

(2) whether positions have been held open or for extended periods of time to evade the 180-day waiting period; and

(3) whether any hiring timelines or other hiring activities reflect a lack of fair and open competition.

**SEC. __. EXTENSION OF AUTHORIZATION FOR THE DEFENSE CIVILIAN ACQUISITION WORKFORCE PERSONNEL DEMONSTRATION PROJECT.**

Section 1762(g) of title 10, United States Code, is amended by striking "2023" and inserting "2028".

**[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 1762 of title 10, United States Code to extend the authority for the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) by amending the current statutory sunset from 2023 to 2028. AcqDemo is a major talent management tool for the acquisition workforce and those employees that provide direct support to the acquisition workforce. AcqDemo design, like the proven Laboratory Demonstration programs, links performance and compensation, rewarding contribution to the mission, not longevity. Since 1999, Congress has repeatedly extended AcqDemo's temporary authority and this proposal requests another five-year extension to authorize AcqDemo through December 2028.

This proposal will enable the Department of Defense to retain the highly successful personnel initiatives implemented through the AcqDemo, to have the ability to create new personnel programs expeditiously to meet emerging acquisition requirements, and to maintain dedicated personnel systems designed to enhance the agility, effectiveness, and professionalism of the Department's acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce.

Since the FY16 NDAA extension, AcqDemo participation has tripled to 45,000. Congress, through the FY17 NDAA, transferred full management authority for AcqDemo from OPM to DoD. The Department quickly used the new authority to responsibly deploy the first major set of new AcqDemo improvements since 1999. The changes included streamlining processes, adding flexibilities, improving management tools – changes that contribute to improving workforce motivation, performance, and contributions – all key elements of improving acquisition results. Components of this proposal address the Section 809 Panel main objective for AcqDemo as outlined in the June 2018 report to Congress titled "Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations".

**Budget Implications:** This proposal is funded in the FY 2021 President's Budget request. Extending the temporary authority to December 31, 2028 will position AcqDemo for expanded participation by an estimated additional 50% bringing the total population to 65,000 by the end of FY2025. AcqDemo conversion costs from GS to AcqDemo include the within-grade increase payout due at time of conversion and employee training costs. To support the growth, additional

AcqDemo program office resources are required to support component conversion planning and assistance, workforce training delivery, help desk, and other program execution functions.

| $M | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 | Appropriation From |
|---|---|---|---|---|---|---|
| WIGI Buy-in | Navy does not intend to use this authority. | | | | | Operation & Maintenance, Navy |
| | $0.26 | $0.53 | $0.79 | $1.58 | $1.58 | Operation & Maintenance, Army |
| | $0.20 | $0.40 | $0.60 | $1.20 | $1.20 | Operation & Maintenance, Air Force |
| | $0.19 | $0.38 | $0.57 | $1.14 | $1.14 | Operation & Maintenance, Defense-Wide |
| Training | Navy does not intend to use this authority. | | | | | Operation & Maintenance, Navy |
| | $0.09 | $0.17 | $0.26 | $0.52 | $0.52 | Operation & Maintenance, Army |
| | $0.07 | $0.13 | $0.20 | $0.39 | $0.39 | Operation & Maintenance, Air Force |
| | $0.06 | $0.12 | $0.19 | $0.37 | $0.37 | Operation & Maintenance, Defense-Wide |
| Enhanced AcqDemo Program Office (DAWDF) | $0.25 | $0.50 | $0.76 | $1.51 | $1.51 | Defense Acquisition Workforce Development Fund |
| **Total** | **$1.12** | **$2.23** | **$3.37** | **$6.71** | **$6.71** | |

| PERSONNEL AFFECTED by Population Growth (FTEs) | | | | | | |
|---|---|---|---|---|---|---|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 | Appropriation From |
| Army | 350 | 850 | 1300 | 1,800 | 2,500 | Operation & Maintenance, Army |
| Air Force | 300 | 600 | 950 | 1,700 | 1,500 | Operation & Maintenance, Air Force |
| DoD | 350 | 550 | 750 | 2,500 | 2,000 | Operation & Maintenance, Defense-Wide |
| **Total** | **1,000** | **2,000** | **3,000** | **6,000** | **6,000** | |

**Changes to Existing Law:** This proposal would amend section 1762 of title 10, United States Code, as follows:

**§1762. Demonstration project relating to certain acquisition personnel management policies and procedures**

(a) Commencement.-The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) Terms and Conditions.-(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)-

(A) "180 days" in subsection (b)(4) of such section shall be deemed to read "120 days";

(B) "90 days" in subsection (b)(6) of such section shall be deemed to read "30 days"; and

(C) subsection (d)(1) of such section shall be disregarded.

(3) Paragraph (2) shall not apply with respect to a demonstration project unless-

(A) for each organization or team participating in the demonstration project-

(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

(B) the demonstration project commences before October 1, 2007.

(4) The Secretary of Defense shall exercise the authorities granted to the Office of Personnel Management under section 4703 of title 5 for purposes of the demonstration project authorized under this section.

(c) Limitation on Number of Participants.-The total number of persons who may participate in the demonstration project under this section may not exceed 120,000.

(d) Effect of Reorganizations.-The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

(e) Assessments.-(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).

(2) Each such assessment shall include the following:

(A) A description of the workforce included in the project.

(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.

(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

(E) How the project allows the organization to better meet mission needs.

(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

(G) Whether there is a process for-

(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

(ii) setting timetables for performance appraisals.

(H) The project's impact on career progression.

(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.

(f) Covered Congressional Committees.-In this section, the term "covered congressional committees" means-

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

(g) Termination of Authority.-The authority to conduct a demonstration project under this section shall terminate on December 31, ~~2023~~ 2028.

(h) Conversion.-Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

**SEC. ___. DEFENSE COMMISSARY AND EXCHANGE SYSTEMS.**

(a) EXISTENCE AND PURPOSE.—Section 2481(a) of title 10, United States Code, is amended to read as follows:

"(a) IN GENERAL.—The Secretary of Defense may operate, in the manner provided by this chapter and other provisions of law, a worldwide system of commissary and exchange stores. Commissary and exchange stores may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.".

(b) RELATIONSHIP BETWEEN SYSTEMS.—Section 2487 of title 10, United State Code, is amended—

(1) by striking subsections (a) and (b);

(2) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(3) in subsection (a), as so redesignated, by striking "Notwithstanding subsections (a) and (b), the" and inserting "The".

(c) COMBINED EXCHANGE AND COMMISSARY STORES.—

(1) REPEAL.—Section 2488 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of chapter 147 of such title is amended by repealing the item relating to section 2488.

**[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 is an initial Community Services Reform proposal that would amend sections 2481 and 2487, and repeal section 2488, of title 10, United States Code, which will set the stage to provide the Department of Defense the flexibility to consolidate management of commissaries and exchanges, and identify future reforms necessary to adjust operations as required to meet mission requirements, as well as enable the ability of the defense retail activities to respond with agility to demographic, generational, and industry trends. For example, it would enable standardization and automation of nonappropriated fund-based, back-office processes and management, which will be extended across morale, welfare, and recreation activities, the exchange systems, and the commissary system. It would also enable the expansion of the integrated Community Services model employed by the U. S. Marine Corps. Further legislative proposals to complete the Community Service Reform will be developed and submitted as transformation progresses.

The proposal amends sections 2481 and 2487 in order to authorize the Department to consolidate the commissary and exchange systems, if it so chooses. By deleting the requirement to operate separate systems, the Department expects to consolidate business functions that are duplicated across the Commissary and Exchange systems and implement standard commercial practices for maximizing buying power. Specifically, the Department expects to save money by improving inventory management, reducing back-office and administrative costs, reducing spending on outside contractors, consolidating logistical systems, and reducing management overhead. The Department will also streamline product categories and consolidate purchasing.

This proposal repeals section 2488 because it limits the combining of commissary and exchange stores. This section severely constrains the Department's ability to manage and operate the defense retail activities as both an entitlement and a business in a dynamic and competitive environment.

**Budget Implications:** The FY 2021 Budget request includes the incidental cost required to continue preparing for a future Exchange-Commissary merger. Implementation costs as well as any estimated savings will be accounted for in the appropriate future budget request.

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

**TITLE 10, UNITED STATES CODE**

*** * * * * * ***

**§2481. Defense commissary and exchange systems: existence and purpose**

~~(a) Separate Systems. The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title. Any reference in this chapter to "the exchange system" shall be treated as referring to each separate administrative entity within the~~

~~Department of Defense through which the Secretary has implemented the requirement under this subsection for a world-wide system of exchange stores.~~

(a) IN GENERAL.-The Secretary of Defense may operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and exchange stores. Commissary and exchange stores may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

*** * * * * * ***

**§2487. Relationship between defense commissary system and exchange stores system**

~~(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.~~
~~(2) Paragraph (1) does not apply to the following:~~
~~(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.~~
~~(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.~~

~~(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.~~
~~(2) In this subsection, the term "defense retail systems " means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.~~

(a~~e~~) COMMON BUSINESS PRACTICES.—(1) ~~Notwithstanding subsections (a) and (b), the~~ The Secretary of Defense may establish common business processes, practices, and systems—
(A) to exploit synergies between the defense commissary system and the exchange system; and
(B) to optimize the operations of the defense retail systems as a whole and the benefits provided by the commissaries and exchanges.
(2) The Secretary may authorize the defense commissary system and the exchange system to enter into contracts or other agreements—
(A) for products and services that are shared by the defense commissary system and the exchange system; and
(B) for the acquisition of supplies, resale goods, and services on behalf of both the defense commissary system and the exchange system.
(3) For the purpose of a contract or agreement authorized under paragraph (2), the Secretary may—

(A) use funds appropriated pursuant to section 2483 of this title to reimburse a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the nonappropriated fund entity or instrumentality that is attributable to the defense commissary system; and
(B) authorize the defense commissary system to accept reimbursement from a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the defense commissary system that is attributable to the nonappropriated fund entity or instrumentality.

(b~~d~~) ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).

~~**§2488. Combined exchange and commissary stores**~~

~~(a) AUTHORITY.—The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.~~

~~(b) LIMITATIONS.—(1) Not more than ten combined exchange and commissary stores may be operated pursuant to this section.~~
~~(2) The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—~~
~~(A) the installation is to be closed, or has been or is to be realigned, under a base closure law; or~~
~~(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.~~

~~(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2736).~~

~~(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.~~

~~(e) USE OF APPROPRIATED FUNDS.—(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of~~

~~funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.~~

~~(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.~~

~~(f) NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term "nonappropriated fund instrumentality" means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.~~

**SEC. ___. MODIFICATION OF DIRECT-HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR POST-SECONDARY STUDENTS AND RECENT GRADUATES.**

Section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1580 note prec.) is amended—

(1) in subsection (a), by inserting "at the GS–11 level and below (or equivalent)" after "positions";

(2) in subsection (c)—

(A) by striking paragraph (2); and

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

(3) by striking subsection (d); and

(4) by redesignating subsection (e) as subsection (d).

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

**Section-by-Section Analysis**

This proposal would amend section 1106 of the National Defense Authorization Act for Fiscal Year 2017 to remove the sunset date for the authority, thereby making it permanent. The proposal also clarifies that appointments of post-secondary students and recent graduates under section 1106 may be made for positions at the GS-11 level or below (or equivalent).

This proposal would make the authority permanent. The Department needs a viable authority to hire post-secondary students and recent graduates and to ensure that an effective pipeline is available to replenish the DoD workforce. Building such a pipeline is critical to the Department's ability to meet current and future mission needs and ensure an adequate transfer of knowledge. Permanent authority of this nature would allow for development of an enduring strategy to adequately address workforce renewal needs.

**Budget Implications:** This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request. In using the authority, the DoD and any DoD Component would be hiring individuals within its pre-existing budget authority for civilian personnel salaries.

**Changes to Existing Law:** This proposal would amend section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1580 note prec.) as follows:

**SEC. 1106. DIRECT-HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR POST- SECONDARY STUDENTS AND RECENT GRADUATES**.

(a) HIRING AUTHORITY.—Without regard to sections 3309 through 3318, 3327, and 3330 of title 5, United States Code, the Secretary of Defense may recruit and appoint qualified recent graduates and current post-secondary students to competitive service positions at the GS–11 level and below (or equivalent) in professional and administrative occupations within the Department of Defense.

(b) LIMITATION ON APPOINTMENTS. Subject to subsection (c)(2), the total number of employees appointed by the Secretary under subsection (a) during a fiscal year may not exceed the number equal to 25 percent of the number of hires made into professional and administrative occupations of the Department at the GS 11 level and below (or equivalent) under competitive examining procedures during the previous fiscal year.

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall administer this section in accordance with regulations prescribed by the Secretary for purposes of this section.

~~(2) LOWER LIMIT ON APPOINTMENTS.—The regulations may establish a lower limit on the number of individuals appointable under subsection (a) during a fiscal year than is otherwise provided for under subsection (b), based on such factors as the Secretary considers appropriate.~~

(2~~3~~) PUBLIC NOTICE AND ADVERTISING.—To the extent practical, as determined by the Secretary, the Secretary shall publicly advertise positions available under this section. In carrying out the preceding sentence, the Secretary shall—

(A) take into account merit system principles, mission requirements, costs, and organizational benefits of any advertising of positions; and

(B) advertise such positions in the manner the Secretary determines is most likely to provide diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available.

~~(d) SUNSET.—The authority provided under this section shall terminate on September 30, 2025.~~

(~~e~~d) DEFINITIONS.—In this section:

(1) The term ‘current post-secondary student’ means a person who—

(A) is currently enrolled in, and in good academic standing at, a full-time program at an institution of higher education;

(B) is making satisfactory progress toward receipt of a baccalaureate or graduate degree; and

(C) has completed at least one year of the program.

(2) The term ‘institution of higher education’ has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ‘recent graduate’, with respect to appointment of a person under this section, means a person who was awarded a degree by an institution of higher education not more than two years before the date of the appointment of such person, except that in the case of a person who has completed a period of obligated service in a uniformed service of more than four years, such term means a person who was awarded a degree by an institution of higher education not more than four years before the date of the appointment of such person.

**SEC. ___. EXTENSION AND REVISIONS TO NEVER CONTRACT WITH THE ENEMY.**

(a) PERMANENT EXTENSION.—Section 841 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 2302 note) is amended by striking subsection (n).

(b) EXPANSION OF PROGRAM.—Section 841(a) of such Act is amended—

(1) in the heading, by striking "IDENTIFICATION OF PERSONS AND ENTITIES" and inserting "PROGRAM";

(2) in the matter preceding paragraph (1), by striking "establish in" and all that follows and inserting "establish a program to mitigate threats posed by vendors supporting operations. The program shall use available intelligence to identify persons and entities that—";

(3) in paragraph (1), by striking "; or" and inserting a semicolon;

(4) in paragraph (2), by striking the period and inserting a semicolon; and

(5) by adding at the end the following new paragraphs:

"(3) directly or indirectly support a covered person or entity or otherwise pose a force protection risk to personnel of the United States or coalition forces; or

"(4) pose an unacceptable national security risk.".

(c) INCLUSION OF ALL CONTRACTS.—Sections 841 and 842 of such Act are further amended by striking "covered contract" each place it appears and inserting "contract".

(d) INCLUSION OF ALL COMBATANT COMMANDS.—Sections 841 and 842 of such Act are further amended by striking "covered combatant command" each place it appears and inserting "combatant command".

(e) COVERED PERSON OR ENTITY.—Section 843(6) of such Act is amended to read as follows:

"(6) COVERED PERSON OR ENTITY.—The term 'covered person or entity' means a person that is—

"(A) engaging in acts of violence against personnel of the United States or coalition forces;

"(B) providing financing, logistics, training, or intelligence to a person described in subparagraph (A);

"(C) engaging in foreign intelligence activities against the United States or against coalition forces;

"(D) engaging in transnational organized crime or criminal activities; or

"(E) engaging in other activities that present a direct or indirect risk to the national security of the United States or coalition forces.".

(f) DELEGATION AUTHORITY OF COMBATANT COMMANDER.—

(1) USE OF DESIGNEES.—Sections 841 and 842 of such Act are further amended by striking "specified deputies" each place it appears and inserting "designee."

(2) REMOVAL OF LIMITATIONS ON DELEGATIONS.—Section 841 of such Act is further amended by striking subsection (g).

(g) AUTHORITIES TO TERMINATE, VOID, AND RESTRICT.—Section 841(c) of such Act is further amended—

(1) in paragraph (1)—

(A) by inserting "to a person or entity" after "concerned"; and

(B) by striking "the contract" and all that follows and inserting "the person or entity has been identified under the program established under subsection (a).";

(2) in paragraph (2), by striking "has failed" and all that follows and inserting "has been identified under the program established under subsection (a).";

(3) in paragraph (3), by striking "the contract" and all that follows and inserting "the contractor, or the recipient of the grant or cooperative agreement, has been identified under the program established under subsection (a).".

(h) CONTRACT CLAUSE.— Section 841(d)(2)(B) of such Act is amended by inserting "and restrict future award to any contractor, or recipient of a grant or cooperative agreement, that has been identified under the program established under subsection (a)" after "subsection (c)".

(i) DISCLOSURE OF INFORMATION EXCEPTION.— Section 841(e) of such Act is amended by inserting after paragraph (2) the following new paragraph:

"(3) To provide that full disclosure of information to the contractor or recipient of a grant or cooperative agreement justifying an action taken under subsection (c) need not be provided when such disclosure would compromise national security or would pose an unacceptable threat to the personnel of the United States or coalition forces."

(j) PARTICIPATION OF SECRETARY OF STATE.—Section 841 of such Act is further amended—

(1) in subsection (a) in the matter preceding paragraph (1), by striking "in consultation with"; and

(2) in subsection (f)(1), by striking "in consultation with".

(k) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—Section 841(h)(1) of such Act is further amended by striking "may be providing" and all that follows through "or entity" and inserting "have been identified under the program established under subsection (a)".

(l) REPEAL OF ANNUAL REPORTING REQUIREMENTS.—Sections 841 and 842 of such Act are further amended—

(1) by striking subsection 841(i); and

(2) by striking subsection 842(b).

(m) ADDITION OF WAIVER.—Section 841 of such Act is further amended by inserting after subsection (h) the following new subsection (i):

"(i) WAIVER.—The Secretary of Defense or the Secretary of State, with the concurrence of the other Secretary, in consultation with the Director of National Intelligence, may waive any requirement of this section upon determining that to do so is in the national interest of the United States.".

(n) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—Section 841 of such Act is amended by striking subsection (j).

(o) CONSTRUCTION WITH OTHER AUTHORITIES.—Section 841 of such Act is further amended—

(1) in subsection (l), by striking "Except as provided in subsection (m), the" and inserting "The"; and

(2) by striking subsection (m).

(p) ADDITIONAL ACCESS TO RECORDS.—Section 842 of such Act is further amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ", except as provided under subsection (c)(1),";

(B) in paragraph (2), by striking "ensure that funds" and all that follows and inserting "support the program established under section 841(a).";

(C) in paragraph (3), by striking "that funds" and all that follows and inserting "that the examination of such records will support the program established under section 841(a)."; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

(q) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 841 of such Act is amended by striking "**PROHIBITION ON PROVIDING FUNDS TO THE ENEMY**" and inserting "**THREAT MITIGATION IN COMMERCIAL SUPPORT TO OPERATIONS**".

(2) REDESIGNATIONS.—Section 841 of such Act is further amended by redesignating subsections (h) through (l) (as amended or added by subsections (a) through (o) of this section) as subsections (g) through (j), respectively.

(3) DEFINITIONS.—Section 843 of such Act is amended—

(A) by striking paragraphs (2) through (5); and

(B) redesignating paragraphs (6) through (9) as paragraphs (2) through (5), respectively.

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

**Section-by-Section Analysis**

This proposal expands the overarching "Never Contract with the Enemy" program and the applicability of the statutory authorities initially authorized under Sections 841, 842, and 843 of the National Defense Authorization Act (NDAA) for Fiscal Year 2015 (Public Law 113-291). The changes will enable the Department to exercise the full intent of the legislative authorities across all combatant commands, types of operations, and integration with the whole of Government in support of National Military Strategy (NMS), POTUS & SECDEF anti-corruption objectives and address the Government Accountability Office's (GAO-17-317) High-Risk Series report of February 2017, under Contract Management "Challenges Related to Operational Contract Support." The proposal specifically addresses shortcomings of which the statutory authorities in sections 841 and 842 play a critical role both in force protection and reducing the operational risk of providing funding to the enemy. This proposal significantly enables the protection of globally positioned U.S. Forces and interagency partners and strengthens combatant command programs to prohibit U.S. taxpayer funds received under a contract, grant, or cooperative agreement from contributing to persons or entities that provide support to those who pose a risk to U.S. national security. The provisions of this section are not intended to circumvent the rights of U.S. persons. Nothing in this section shall be construed to contradict applicable intelligence oversight statutes,

regulations, or policies. Any USPERS information discovered incident to vetting foreign entities will be handled strictly in accordance with applicable intelligence oversight statutes, regulations, or policies.

Specifically, this proposal improves the program requirement in section 841 to identify and mitigate vendor threats, expands the authorities outlined in sections 841 and 842 to all combatant commands and expands the applicability to all contracts, regardless of type of operation or the dollar value of the contract, grant, or cooperative agreement. These proposed amendments cannot be accomplished in regulations or policy without a statutory change due to the requirement in the Competition in Contracting Act of 1984 (CICA) that contracting agencies obtain full and open competition through the use of competitive procedures when conducting a procurement for property or services.

The Department of Defense's (DoD) implementing guidance will be revised as necessary to ensure that exercise of these authorities, as augmented, is not re-delegated below the general or flag officer level and appropriate protocols are included to ensure proper oversight by the CCDR and documented compliance with the requirements of the statute. In particular, in cases when a subordinate joint force command is formed, the CCDR will retain oversight responsibility, but may further delegate responsibility for implementation within the joint operations area to the joint force commander.

The 2018 NDS requires the Joint Force to strengthen alliances, expand partnerships, and mitigate threats in all domains, including the commercial space. This is often influenced through contract awards for locally provided goods and services. Combatant commands (CCMDs) operating in non-contingency, non-hostile locations rely heavily on contracted support to demonstrate strategic partnerships in countries worldwide. The enemy continues to expand areas of influence and find safe havens in areas other than those designated as contingency environments in order to advance transnational objectives. The 2016 "Worldwide Threat Assessment of the U.S. Intelligence Community" stated that terrorist and insurgent groups are increasingly capable of conducting effective insurgent campaigns, given their membership growth and accumulation of large financial and materiel caches. In order to "never contract with the enemy" and to combat such enemy activities in order to protect U.S. and coalition national security and prevent taxpayer dollars from flowing to individuals and entities hostile to the United States, it is imperative to have a whole-of-Government vendor threat mitigation program in place for all CCMDs and respective Federal agencies to have the requisite statutory authorities in place, regardless of the type of operation, to identify threats posed by vendors that provide Federal funds, goods and services to the "enemy" and enable immediate action to be taken to terminate, void, or restrict contract(s), grant(s) and cooperative agreement(s) with such individuals or entities. The proposal therefore removes the "contingency operation" and dollar threshold parameters to ensure Congress' intent of prohibiting funds from reaching the enemy is met in full.

The U.S. Africa Command (USAFRICOM) is a prime example of a geographic combatant command that has identified "the enemy" operating throughout the AOR and negatively impacting their mission, but lacks the requisite authorities to take appropriate action to terminate, void, and restrict contracts. For example, The USAFRICOM 2016 Theater Posture Plan highlights the perpetual risk of instability and conflict due to economic challenges, further complicated by the threat of violent extremist organizations. To protect and advance U.S. national security interests in

Africa, USAFRICOM focuses on countries that serve as critical enduring hubs in support of U.S. operations focusing its efforts to achieve both short- and long-term counter-terrorism objectives by strengthening an enduring strategic partnership with multiple African Partner nations. In recent years, al-Qa'ida and Daesh activities in northern and western Africa, compounded by other extremist groups such as Boko Haram in Nigeria and al-Shabaab in Somalia, have gained traction and collaboration in these African regions. These activities make countering violent extremist groups a growing challenge for USAFRICOM on the continent.

Between FY2015 –FY2019, over 6,400 contract actions valued at $778M were awarded to foreign vendors, in support of USAFRICOM operations, exercises, security cooperation activities, and engagements on the continent. Less than 1% of those actions qualify for action under the current statutory authority of section 841. The United States must maintain assured access and freedom of movement throughout the USAFRICOM area of responsibility but must mitigate the risk of providing funds to groups actively opposing U.S. interests. This authority is crucial in providing contracting activities the ability to continue purchasing products and services from host nations without funding violent extremist organizations.

In August 2015, USAFRICOM established their Foreign Vendor Vetting Program (FVVP) and identified US Army Africa as the Lead Service for Intelligence Support to USAFRICOM's FVVP. The 207th Military Intelligence Brigade, tasked to perform these functions, was FOC and began conducting assessments in Nov 2015. Since then, 239 vendors have been screened and 21 vendors have been assessed as High or Critical. In three instances, High or Critical vendors were the successful offerors. The contracts, however, did not meet the definition of a "covered contract" pursuant to section 843, paragraph (4), of the 2015 NDAA, as they were not in support of a "contingency operation in which members of the Armed Forces are actively engaged in hostilities." As a result, the contract actions were ineligible for section 841(a) authority to restrict award to those companies. In each instance, the Operational Commanders had to rely on their title 10, section 164 authority to make determinations whether or not to restrict the award. This practice lacks standardization and is unsustainable over a long period of time.

Additionally, the United States Transportation Command (USTRANSCOM), with its global mission, lacks the requisite authorities to take contract action against “the enemy” under current law. Within the last year, USTRANSCOM's Foreign Entity Vetting capability vetted 150 foreign vendors primarily operating as first-tier subcontractors. Through cooperation with industry, foreign vendors that meet criteria for a High or Critical threat has been reduced to under 20 percent of those submitted for review. USTRANSCOM's risk-based process, incorporating operations, intelligence, and acquisitions, has further limited the necessity for extraordinary measures to preclude use of these vendors. The Commander has deemed 51 foreign vendors unsuitable for use on USTRANSCOM contracts since 2010, when the Command first established its vetting program. Nearly all cases were presented to the Departments of Treasury and Commerce to pursue through their debarment and sanctions enforcement authorities, but only six of these entities were ultimately listed, often months later. Only one case met the definition of a "covered person or contract" pursuant to section 843, paragraph (6), of the 2015 NDAA. Without access to expanded authority and the ability to propagate determinations in accordance with section 841, subsection (h), USTRANSCOM has been unable to timely prevent other DoD components and government agencies' use of foreign entities found to support transnational organized crime, sanctions violations, and foreign intelligence collection.

Given the current global threat environment, the United States must have the requisite authorities to meet its National Security Strategies and defeat the enemy across the spectrum of irregular warfare. The sections 841 and 842 authorities are critical to the achievement of the specified military strategies, joint force security operations (e.g. force protection on forward operating bases) and prohibiting funds from reaching the enemy.

For the FY 2020 cycle, the Department submitted this proposal in the seventh tranche to Congress on May 6, 2019. The Senate passed bill, S 1790, NDAA for FY 2020, included the proposal as section 834 "Extension and Revisions to Never Contract with the Enemy." This proposal is being submitted as a carryover with these additional requirements pending the outcome of the Conference Report for the NDAA for FY 2020. However, if section 834 is enacted in the FY NDAA for FY 2020 without these requirements, A&S intends to resubmit this proposal.

**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 subtitle E of title VIII of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 2302 note) as follows:

**SEC 841. ~~PROHIBITION ON PROVIDING FUNDS TO THE ENEMY~~ THREAT MITIGATION IN COMMERCIAL SUPPORT TO OPERATIONS.**

(a) ~~IDENTIFICATION OF PERSONS AND ENTITIES~~ PROGRAM.—The Secretary of Defense shall, in conjunction with the Director of National Intelligence and ~~in consultation with~~ the Secretary of State, ~~establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that~~ establish a program to mitigate threats posed by vendors supporting operations ~~outside the United States~~. The program shall use available intelligence to identify persons and entities that—

(1) provide funds, including goods and services, received under a ~~covered~~ contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; ~~or~~

(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a ~~covered~~ contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity~~.~~;

(3) directly or indirectly support a covered person or entity or otherwise pose a force protection risk to personnel of the United States or coalition forces; or

(4) pose an unacceptable national security risk.

(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or the ~~specified~~

~~deputies~~ designee of the commander) shall be notified, in writing, of such identification of the person or entity.

(2) RESPONSIVE ACTIONS.—Upon receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or the ~~specified deputies~~ designee of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a ~~covered~~ combatant command (or the ~~specified deputies~~ designee of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned to a person or entity upon a written determination by the head of contracting activity or other appropriate official that ~~the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.~~ the person or entity has been identified under the program established under subsection (a).

(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, ~~has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.~~ has been identified under the program established under subsection (a).

(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that ~~the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.~~ the contractor, or the recipient of the grant or cooperative agreement, has been identified under the program established under subsection (a).

(d) CLAUSE.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to require that—

(A) the clause described in paragraph (2) shall be included in each ~~covered~~ contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

(B) to the maximum extent practicable, each ~~covered~~ contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c) and restrict future award to any contractor, or recipient of a grant or cooperative agreement, that has been identified under the program established under subsection (a).

(3) TREATMENT AS VOID.—For purposes of this section:

(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

(3) To provide that full disclosure of information to the contractor or recipient of a grant or cooperative agreement justifying an action taken under subsection (c) need not be provided when such disclosure would compromise national security or would pose an unacceptable threat to personnel of the United States or coalition forces.

(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the Director of National Intelligence and ~~in consultation with~~ the Secretary of State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or the ~~specified deputies~~ designee of the commander) in writing of such determination.

(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

~~(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—~~

~~(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander designee specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.~~

~~(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.~~

(~~h~~g) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the ~~covered~~ combatant commands (or the ~~specified deputies~~ designee of the commanders) relating to persons or entities who ~~may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity~~ have been identified under the program established under subsection (a). The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the ~~covered~~ combatant commands.

(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal

Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.

(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or ~~specified deputies~~ designee) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or cooperative agreement as otherwise authorized by subsection (c).

~~(i) REPORTS.—~~

~~(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:~~

~~(A) For each instance in which an executive agency exercised the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:~~

~~(i) The executive agency taking such action.~~

~~(ii) An explanation of the basis for the action taken.~~

~~(iii) The value of the contract, grant, or cooperative agreement voided or terminated.~~

~~(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.~~

~~(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:~~

~~(i) The executive agency concerned.~~

~~(ii) An explanation of the basis for not taking the action.~~

~~(2) FORM.—Any report under this subsection may, at the election of the Director—~~

~~(A) be submitted in unclassified form, but with a classified annex; or~~

~~(B) be submitted in classified form.~~

(~~i~~h) WAIVER.—The Secretary of Defense or the Secretary of State, with the concurrence of the other Secretary, in consultation with the Director of National Intelligence, may waive any requirement of this section upon determining that to do so is in the national interest of the United States.

~~(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States. a contract, grant, or cooperative agreement that is performed entirely inside the United States unless the recipient of such contract, grant, or cooperative agreement is a foreign entity.~~

(~~k~~i) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

(~~l~~j) CONSTRUCTION WITH OTHER AUTHORITIES.—~~Except as provided in subsection (m), the~~ The authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

~~(m) COORDINATION WITH CURRENT AUTHORITIES.—~~

~~(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—Effective 270 days after the date of the enactment of this Act, section 841 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1510; 10 U.S.C. 2302 note) is repealed.~~

~~(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—Effective 270 days after the date of the enactment of this Act, section 831 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 810; 10 U.S.C. 2302 note) is repealed.~~

~~(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 and section 831 of the National Defense Authorization Act for Fiscal Year 2014.~~

~~(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2023.~~

**SEC. 842. ADDITIONAL ACCESS TO RECORDS**

(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, applicable regulations shall be revised to provide that~~, except as provided under subsection (c)(1),~~ the clause described in paragraph (2) may, as appropriate, be included in each ~~covered~~ contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.

(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ~~ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity.~~ support the program established under section 841(a).

(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or

cooperative agreement, upon a finding by the commander of a ~~covered~~ combatant command (or the ~~specified deputies~~ designee of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe ~~that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity.~~ that the examination of such records will support the program established under section 841(a).

~~(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $50,000.~~

~~(b) REPORTS.—~~

~~(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this section in the preceding calendar year.~~

~~(2) ELEMENTS.—Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.~~

~~(3) FORM.—Any report under this subsection may be submitted in classified form.~~

~~(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—~~

~~(1) APPLICABILITY.—This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C. 2313 note).~~

~~(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.—Section 842(d)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1514; 10 U.S.C. 2313 note) is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015".~~

**SEC. 843. EFINITIONS.**

In this subtitle:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term "appropriate committees of Congress" means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

~~(2) CONTINGENCY OPERATION.—The term "contingency operation" has the meaning given that term in section 101(a)(13) of title 10, United States Code.~~

~~(3) CONTRACT.—The term "contract" includes a contract for commercial items but is not limited to a contract for commercial items.~~

~~(4) COVERED COMBATANT COMMAND.—The term "covered combatant command" means the following:~~

~~(A) The United States Africa Command.~~

~~(B) The United States Central Command.~~

~~(C) The United States European Command.~~

~~(D) The United States Indo-Pacific Command.~~

~~(E) The United States Southern Command.~~

~~(F) The United States Transportation Command.~~

~~(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT DEFINED.—The term "covered contract, grant, or cooperative agreement" means a contract, grant, or cooperative agreement with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.~~

~~(6) COVERED PERSON OR ENTITY.—The term "covered person or entity" means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.~~

(~~6~~2) COVERED PERSON OR ENTITY.—The term 'covered person or entity' means a person that is—

(A) engaging in acts of violence against personnel of the United States or coalition forces;

(B) providing financing, logistics, training, or intelligence to a person described in subparagraph (A);

(C) engaging in foreign intelligence activities against the United States or against coalition forces;

(D) engaging in transnational organized crime or criminal activities; or

(E) engaging in other activities that present a direct or indirect risk to the national security of the United States or coalition forces.

(~~7~~3) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given that term in section 133 of title 41, United States Code.

(~~8~~4) HEAD OF CONTRACTING ACTIVITY.—The term "head of contracting activity" has the meaning described in section 1.601 of the Federal Acquisition Regulation.

(~~9~~5) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.

**SEC. ___. MODIFICATION OF ORGANIZATIONS WITH WHICH THE PRESIDENT MAY ENTER INTO COOPERATIVE PROJECTS.**

(a) AMENDMENTS TO ARMS EXPORT CONTROL ACT.—Section 27 of the Arms Export Control Act (22 U.S.C. 2767) is amended—

(1) in subsection (a)—

(A) by striking "Organization or with" and inserting "Organization,"; and

(B) by striking "Organization." and inserting "Organization, or the European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations";

(2) in subsection (b)(1)—

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

(i) by striking "Organization or with" and inserting "Organization,";

(ii) by striking "that Organization," and inserting "that Organization, or the European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations,"; and

(ii) by inserting "and European Union" before "member countries"; and

(B) in subparagraph (C)—

(i) by striking "Organization or a" and inserting "Organization, a"; and

(ii) by inserting ", or the European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations" after "subsidiary of such organization"; and

(3) in subsection (g), by inserting "country or a European Union country" before ", section".

(b) AMENDMENT TO TITLE 10, UNITED STATES CODE.—Section 2350a(a)(2) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

"(F) The European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations."

**[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 legislation is necessary to authorize the President to pursue cooperative projects with the European Union (EU) and organizations that will be responsible for defense research and development under section 27 of the Arms Export Control Act (22 U.S.C. 2767) and 10 U.S.C. 2350a (relating to cooperative research and development agreements with other countries).

There is no current authority to pursue armaments cooperation with the EU. Key organizations in the EU that are managing and directing defense activities are the European Defence Agency (EDA), the European Commission, and the European Council. The EDA is emerging as a North Atlantic Treaty Organization (NATO) counterpart for technology areas that cross the defense-civilian domain, including cyber security, airspace and aviation authority, unmanned aerial systems, and others. The European Commission is the authority for the European Defence Fund and European Defence Industrial Development Programme (EDIDP). The European Council directs the structure and provides authority over the Permanent Structured Cooperation (PESCO) initiative. Further, the growth of the European defense industry under these and future initiatives will continue through EU initiatives as well as through the individual nations.

The United States is not a member of the EU and does not have a voice in the defense requirements discussions within the EU. As more development shifts to EU-managed efforts, the United States must be able to pursue information sharing and potential cooperative projects in line with EU efforts in order to support development of new technologies to maintain a strong transatlantic relationship both at the government and industry levels to meet common threats, and maintain consonance with NATO activities and interoperability of systems. As the paradigm

shifts to include EU defense initiatives as a key force for European defense, the Secretary of Defense must have the authority to enter into cooperative projects with the European Union in order to ensure continued interoperability and ability to cooperate on new R&D projects.

**Budget Implications:** No budgetary implications.

**Changes to Existing Law:** This proposal would make the following changes to section 27 of the Arms Export Control Act (22 U.S.C. 2767) and section 2350a of title 10, United States Code:

**SEC. 27.** AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—

(a) The President may enter into a cooperative project agreement with the North Atlantic Treaty ~~Organization or with~~ Organization, one or more member countries of ~~that Organization.~~ that Organization, or the European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations.

(b) As used in this section—

(1) the term "cooperative project" in the case of an agreement with the North Atlantic Treaty ~~Organization or with~~ Organization, one or more member countries of ~~that Organization,~~ that Organization, or the European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization and European Union member countries which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in another member country of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another member country or for procurement by the United States of munitions from the North Atlantic Treaty ~~Organization or a~~ Organization, a subsidiary of such organization, or the European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations;

(2) the term "cooperative project", in the case of an agreement entered into under subsection (j), a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to enhance the ongoing multinational effort of

the participants to improve the conventional defense capabilities of the participants and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in the country of another participant of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another participant to the agreement; and

(3) the term "other participant" means a participant in a cooperative project other than the United States.

(c) Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims. The United States and the other participants may contribute their equitable shares of the full cost of such cooperative project in funds or in defense articles or defense services needed for such cooperative project. Military assistance and financing received from the United States Government may not be used by any other participant to provide its share of the cost of such cooperative project. Such agreements shall provide that no requirement shall be imposed by a participant for worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

(d) The President may enter into contracts or incur other obligations for a cooperative project on behalf of the other participants, without charge to any appropriation or contract authorization, if each of the other participants in the cooperative project agrees (1) to pay its equitable share of the contract or other obligation, and (2) to make such funds available in such amounts and at such times as may be required by the contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the contract or other obligation in advance of the time such payments, damages, or costs are due.

(e)

(1) For those cooperative projects entered into on or after the effective date of the International Security and Development Cooperation Act of 1985, the President may reduce or waive the charge or charges which would otherwise be considered appropriate under section 21(e) of this Act in connection with sales under sections 21 and 22 of this Act when such sales are made as part of such cooperative project, if the other participants agree to reduce or waive corresponding charges.

(2) Notwithstanding provisions of section 21(e)(1)(A) and section 43(b) of this Act, administrative surcharges shall not be increased on other sales made under this Act in order to compensate for reductions or waivers of such surcharges under this section. Funds received pursuant to such other sales shall not be available to reimburse the costs incurred by the United States Government for which reduction or waiver is approved by the President under this section.

(f) Not less than 30 days before a cooperative project agreement is signed on behalf of the United States, the President shall transmit to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate, a numbered certification with respect to such proposed agreement, setting forth—

(1) a detailed description of the cooperative project with respect to which the certification is made;

(2) an estimate of the quantity of the defense articles expected to be produced in furtherance of such cooperative project;

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section 21(e)(1)(A) and 43(b) of this Act, for its participation in such cooperative project and an estimate of that part of the full costs to be incurred by the other participants;

(4) an estimate of the dollar value of the funds to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(5) a description of the defense articles and defense services expected to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(6) a statement of the foreign policy and national security benefits anticipated to be derived from such cooperative project; and

(7) to the extent known, whether it is likely that prime contracts will be awarded to particular prime contractors or that subcontracts will be awarded to particular subcontractors to comply with the proposed agreement.

(g) In the case of a cooperative project with a North Atlantic Treaty Organization country <u>or a European Union country</u>, section 36(b) of this Act shall not apply to sales made under section 21 or 22 of this Act and to production and exports made pursuant to cooperative projects under this section, and section 36(c) of this Act shall not apply to the issuance of licenses or other approvals under section 38 of this Act, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.

(h) The authority under this section is in addition to the authority under sections 21 and 22 of this Act and under any other provision of law.

(i)

(1) With the approval of the Secretary of State and the Secretary of Defense, a cooperative agreement which was entered into by the United States before the effective date of the amendment to this section made by the International Security and Development Cooperation Act of 1985 and which meets the requirements of this section as so amended may be treated on and after such date as having been made under this section as so amended.

(2) Notwithstanding the amendment made to this section made by the International Security and Development Cooperation Act of 1985, projects entered into under the authority of this section before the effective date of that amendment may be carried through to conclusion in accordance with the terms of this section as in effect immediately before the effective date of that amendment.

(j)

(1) The President may enter into a cooperative project agreement with any friendly foreign country not a member of the North Atlantic Treaty Organization under the same general terms and conditions as the President is authorized to enter into such an agreement with one or more member countries of the North Atlantic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.

(2) Not later than January 1 of each year, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report specifying (A) the countries eligible for participation in such a cooperative project agreement under this subsection, and (B) the criteria used to determine the eligibility of such countries.

---

**10 U.S. Code § 2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries**

(a) Authority To Engage in Cooperative R&D Projects.—

(1) The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more countries or organizations referred to in paragraph (2) for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(2) The countries and organizations with which the Secretary may enter into a memorandum of agreement (or other formal agreement) under paragraph (1) are as follows:

(A) The North Atlantic Treaty Organization.

(B) A NATO organization.

(C) A member nation of the North Atlantic Treaty Organization.

(D) A major non-NATO ally.

(E) Any other friendly foreign country.

(F) The European Union, including the European Defence Agency, the European Commission, and the European Council and their suborganizations.

(2) If such a memorandum of understanding (or other formal agreement) is with a country referred to in subparagraph (E) of paragraph (2), such memorandum (or agreement) may go into effect only after the Secretary submits to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report with respect to the proposed memorandum (or agreement) and a period of 30 days has passed after the report has been submitted.

(b) Requirement That Projects Improve Conventional Defense Capabilities.—

(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization or the common conventional defense capabilities of the United States and a country or organization referred to in subsection (a)(2).

(3) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering.

(c) Cost Sharing.— Each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.

(d) Restrictions on Procurement of Equipment and Services.—

(1) In order to assure substantial participation on the part of countries and organizations referred to in subsection (a)(2) in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or

services from any foreign government, foreign research organization, or other foreign entity.

(2) A country or organization referred to in subsection (a)(2) may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making the contribution of that country or organization to a cooperative research and development program entered into with the United States under this section.

(e) Cooperative Opportunities.—

(1) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, opportunities for such cooperative research and development shall be addressed in the acquisition strategy for the project.

(2) A cooperative opportunities discussion referred to in paragraph (1) shall consider the following:

(A) Whether or not a project similar to the one under consideration by the Department of Defense is in development or production by any country or organization referred to in subsection (a)(2) or NATO organizations.

(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more countries and organizations referred to in subsection (a)(2), an assessment as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project.

(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

(D) A recommendation to the milestone decision authority as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

**SEC. ____. PERMANENT PERSONNEL MANAGEMENT AUTHORITY FOR SPACE DEVELOPMENT AGENCY FOR EXPERTS IN SCIENCE AND ENGINEERING.**

(a) PROGRAM AUTHORIZED FOR SPACE DEVELOPMENT AGENCY. —Section 1599h(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(6) SDA.—The Director of the Space Development Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency.".

(b) PERSONNEL MANAGEMENT AUTHORITY.—Section 1599h(b)(1) of such title is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by inserting "and" after the semicolon at the end of subparagraph (E); and

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

''(F) in the case of the Space Development Agency, appoint individuals to a total of not more than 50 positions in the Agency, of which not more than 5 such positions may be positions of administration or management of the Agency;".

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

**Section-by-Section Analysis**

This proposal would provide the Space Development Agency (SDA) with permanent personnel management authority for experts in science and engineering

The SDA was established in March 2019, with a mandate to unify and integrate the development of space capabilities across the Department's space acquisition enterprise. To

achieve this mission, SDA will coordinate enterprise activities to address redundancy, reduce bureaucracy, and shorten development timelines. To be successful, SDA can only operate if staffed with highly qualified personnel with expertise in specific areas of technology research, development, and integration.

As a new Defense Agency, SDA was initially staffed with 3 government detailees from other DoD organizations. To rapidly address capability gaps and threats, the SDA was tasked to operate on much faster timelines than other legacy acquisition organizations. Without government personnel, the SDA cannot achieve this mission. The standard civil service hiring timeline (as documented) takes over six months from posting a job opening to the first day a new hire is onboard with resources. This six months is extended if no qualified candidates are identified from the resumes received. It is critical that SDA be granted mechanisms to rapidly identify and onboard personnel.

In the current highly competitive market for scientists and engineers with specific professional qualifications and /or experience, many of the most sought-after candidates are not willing or able (due to financial or other pressures) to wait for the Department's standard civilian hiring process. This authority provides SDA with an agile, streamlined hiring process; it enables SDA to identify highly qualified candidates and, following approval of a hiring decision by the SDA Director, make immediate offers of employment. While the Department cannot compete with industry on total compensation level, the accelerated timeline increases the SDA's ability to attract talent.

A rapid growth in the commercial space market requires industry gain competitive advantage and mitigate risk by hiring highly talented scientists and engineers who are well compensated. Both the established defense space base and new space companies are aggressively hiring personnel to support this expansion of capabilities and systems. While the SDA intends to leverage this activity, it can only be successful with the same caliber of personnel to assess the offerings and associated risks to the Department. In addition, these individuals must be able to work and communicate with their counterparts in industry and build new relationships with technology companies where the Department has experienced challenges.

**Budget Implications**: There are no budget implications. The authority would not increase the SDA allotment of full-time personnel.

**Changes to Existing Law:** This proposal would amend section 1599h of title 10, United States Code, as follows:

§1599h. Personnel management authority to attract experts in science and engineering

(a) Programs Authorized.—

(1) Laboratories of the military departments.—The Secretary of Defense may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for such laboratories of the military departments as the Secretary shall designate for purposes of the program for research and development projects of such laboratories.

(2) DARPA.—The Director of the Defense Advanced Research Projects Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency.

(3) DOTE.—The Director of the Office of Operational Test and Evaluation may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering to support operational test and evaluation missions of the Office.

(4) Strategic capabilities office.—The Director of the Strategic Capabilities Office may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Office.

(5) Diux.—The Director of the Defense Innovation Unit Experimental may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Unit.

(6) SDA.—The Director of the Space Development Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency.

(b) Personnel Management Authority.—Under a program under subsection (a), the official responsible for administration of the program may—

(1) without regard to any provision of title 5 governing the appointment of employees in the civil service—

(A) in the case of the laboratories of the military departments designated pursuant to subsection (a)(1), appoint scientists and engineers to a total of not more than 40 scientific and engineering positions in such laboratories;

(B) in the case of the Defense Advanced Research Projects Agency, appoint individuals to a total of not more than 100 positions in the Agency, of which not more than 5 such positions may be positions of administration or management of the Agency;

(C) in the case of the Office of Operational Test and Evaluation, appoint scientists and engineers to a total of not more than 10 scientific and engineering positions in the Office;

(D) in the case of the Strategic Capabilities Office, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Office; ~~and~~

(E) in the case of the Defense Innovation Unit Experimental, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Unit; and

(F) in the case of the Space Development Agency, appoint individuals to a total of not more than 50 positions in the Agency, of which not more than 5 such positions may be positions of administration or management of the Agency;

(2) notwithstanding any provision of title 5 governing the rates of pay or classification of employees in the executive branch, prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1)—

(A) in the case of employees appointed pursuant to paragraph (1)(B) to any of 5 positions designated by the Director of the Defense Advanced Research Projects Agency for purposes of

this subparagraph, at rates not in excess of a rate equal to 150 percent of the maximum rate of basic pay authorized for positions at Level I of the Executive Schedule under section 5312 of title 5; and

(B) in the case of any other employee appointed pursuant to paragraph (1), at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5; and

(3) pay any employee appointed under paragraph (1), other than an employee appointed to a position designated as described in paragraph (2)(A), payments in addition to basic pay within the limit applicable to the employee under subsection (d).

(c) Limitation on Term of Appointment.—

(1) In general.—Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed four years.

(2) Extension.—The official responsible for the administration of a program under subsection (a) may, in the case of a particular employee under the program, extend the period to which service is limited under paragraph (1) by up to two years if the official determines that such action is necessary to promote the efficiency of a laboratory of a military department, the Defense Advanced Research Projects Agency, the Office of Operational Test and Evaluation, the Strategic Capabilities Office, or the Defense Innovation Unit Experimental, as applicable.

(d) Maximum Amount of Additional Payments Payable.—Notwithstanding any other provision of this section or section 5307 of title 5, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

**SEC. ___. LIMITED EXCEPTION FOR ATTENDANCE OF ENLISTED PERSONNEL AT SENIOR LEVEL AND INTERMEDIATE LEVEL OFFICER PROFESSIONAL MILITARY EDUCATION COURSES.**

Section 559 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1775) is amended—

(1) in subsection (a), by striking "None of the funds" and inserting "Except as provided in subsection (b), none of the funds";

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

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

"(b) EXCEPTION.—Funds authorized to be appropriated or otherwise made available for the Department of Defense may be obligated or expended for the purpose of the attendance of enlisted personnel at senior level and intermediate level officer professional military education courses if—

"(1) the enlisted personnel attending such courses have completed professional military education at the appropriate grade prior to attendance;

"(2) the Secretary concerned (as defined in section 101(a)(9) of title 10, United States Code) establishes a screening and selection process to choose enlisted personnel to attend such courses;

"(3) with respect to attendees of resident programs—

"(A) the Secretary concerned establishes a utilization policy for enlisted graduates of such programs; and

"(B) attendees of such programs agree to a 3-year service obligation after completion of such programs;

"(4) the Secretary concerned authorizes enlisted personnel to attend only after the Secretary determines all requirements for attendance of officers at such courses have been met; and

"(5) an officer is not denied attendance at such courses for the primary purpose of allowing enlisted personnel to attend.".

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

**Section-by-Section Analysis**

This proposal would give the Secretaries of the military departments the authority to allow senior enlisted personnel to attend senior level and intermediate level officer professional military education courses if specific requirements are met. It otherwise maintains the prohibition contained in section 559 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232).

Senior enlisted personnel attendance at these schools aligns with tenets of the National Defense Strategy, which emphasizes the cultivation of workforce talent through professional military education. Providing this officer professional military education opportunity better prepares select senior enlisted personnel for service at higher levels of command and for roles in enlisted professional military education.

Senior enlisted personnel attendance at the Naval War College and Marine Corps Command and Staff College is key to the Secretary of the Navy's implementation of the Education for Seapower initiative.

The Marine Corps in particular does not have sufficient capacity to accommodate senior enlisted Marine attendance at the Marine Corps War College. Attendance at the Air War College and Air Command and Staff College is of similar importance to the Secretary of the Air Force. Guidance and tasking of the Commandant of the Marine Corps, call for the modernization and enhancement of programs and pathways for enhancing the professional education of the enlisted force. Allowing highly qualified senior enlisted personnel to attend Marine Corps Command and Staff College and then serve a tour in the Marine Corps College of Enlisted Military Education is a key initiative in meeting those requirements.

The United States Army runs the 10-month resident Sergeants Major Course that educates senior enlisted leaders from the Army, sister services, and allied militaries to be agile

and adaptive senior noncommissioned officers through the study of leadership, the conduct of Unified Land Operations, and the application of Joint, Interagency, and Multi-National organizations in an era of persistent conflict. The Sergeants Major Course prepares them to execute at all command levels throughout the Department of Defense. The Department of the Navy does not have an equivalent course for senior enlisted personnel. The Navy Senior Enlisted Academy is a blended program with a nine-week distance learning phase followed by a three-week resident phase. The Marine Corps Senior Enlisted Professional Military Education is a six week resident course with the Senior Enlisted Joint Professional Military Education II as a prerequisite. Senior enlisted personnel attendance at the Naval War College and Marine Corps Command and Staff College is the most cost effective method to close the officer-enlisted educational gap.

In addition to their own individual professional development, senior enlisted personnel attending these intermediate and senior level courses make significant contributions to the educational experience of all students by offering unique experiences and perspectives that would not otherwise be available.

Marine Corps Command and Staff College resident and non-resident programs have run a pilot program for senior enlisted Marine attendance from 2010 to 2018. Once authorized, resident program attendance would vary, but not exceed eight students per year.

Senior enlisted Sailors have attended the Naval War College in the past. Once authorized, resident program attendance would vary, but not exceed eight students per year.

Senior enlisted Airmen have attended Air War College in the past. If the Department of the Air Force decided to re-establish this program, once authorized, the resident program attendance would vary, but likely mirror the same numbers authorized in 2016.

Senior enlisted personnel seeking acceptance to these schools must be professional military education complete for grade prior to enrollment. Additionally, senior enlisted personnel seeking acceptance in the resident programs are screened and selected via a highly competitive board process. Enlisted personnel will incur a 36-month service obligation after completion of the resident program. Graduates will be assigned to positions to best capitalize on their education and commensurate with their seniority.

Resident and non-resident enlisted seat opportunities are offered only after all officer seat requirements are met. No officers shall be denied access to these programs to allow enlisted personnel attendance.

**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 559 of the National Defense Authorization Act for Fiscal Year 2019:

SEC. 559. PROHIBITION ON USE OF FUNDS FOR ATTENDANCE OF ENLISTED PERSONNEL AT SENIOR LEVEL AND INTERMEDIATE LEVEL OFFICER PROFESSIONAL MILITARY EDUCATION COURSES.

(a) PROHIBITION.—Except as provided in subsection (b), none ~~None~~ of the funds authorized to be appropriated or otherwise made available for the Department of Defense may be obligated or expended for the purpose of the attendance of enlisted personnel at senior level and intermediate level officer professional military education courses.

(b) EXCEPTION.—Funds authorized to be appropriated or otherwise made available for the Department of Defense may be obligated or expended for the purpose of the attendance of enlisted personnel at senior level and intermediate level officer professional military education courses if—

(1) the enlisted personnel attending such courses have completed professional military education at the appropriate grade prior to attendance;

(2) the Secretary concerned (as defined in section 101(a)(9) of title 10, United States Code) establishes a screening and selection process to choose enlisted personnel to attend such courses;

(3) with respect to attendees of resident programs—

(A) the Secretary concerned establishes a utilization policy for enlisted graduates of such programs; and

(B) attendees of such programs agree to a 3-year service obligation after completion of such programs;

(4) the Secretary concerned authorizes enlisted personnel to attend only after the Secretary determines all requirements for attendance of officers at such courses have been met; and

(5) an officer is not denied attendance at such courses for the primary purpose of allowing enlisted personnel to attend.

(~~b~~c) SENIOR LEVEL AND INTERMEDIATE LEVEL OFFICER PROFESSIONAL MILITARY EDUCATION COURSES DEFINED.—In this section, the term ‘‘senior level and intermediate level officer professional military education courses’’ means any course for officers offered by a school specified in paragraph (1) or (2) of section 2151(b) of title 10, United States Code.

(~~c~~d) REPEAL OF SUPERSEDED LIMITATION.—

(1) IN GENERAL.—Section 547 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) is repealed.

(2) PRESERVATION OF CERTAIN REPORTING REQUIREMENT.— The repeal in paragraph (1) shall not be interpreted to terminate the requirement of the Comptroller General of the United States to submit the report required by subsection (c) of section 547 of the National Defense Authorization Act for Fiscal Year 2018.