

1 **SEC. ____. REENACTMENT OF AUTHORITY TO REDUCE YEARS OF ACTIVE**
2 **SERVICE REQUIRED AS A COMMISSIONED OFFICER TO RETIRE**
3 **AFTER COMPLETING MORE THAN 20 YEARS OF ACTIVE SERVICE.**

4 Title 10, United States Code, is amended—

5 (1) in section 7311(b)(2), by striking “September 30, 2018” and inserting
6 “September 30, 2025”;

7 (2) in section 8323(a)(2)(B), by striking “September 30, 2018” and inserting
8 “September 30, 2025”; and

9 (3) in section 9311(b)(2), by striking “September 30, 2018” and inserting
10 “September 30, 2025”.

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

Section-by-Section Analysis

This proposal would amend §§7311, 8323 and 9311 of title 10, United States Code, to reenact, until September 30, 2025, Secretary of Defense authority to permit the Secretary concerned to reduce the requirement of at least 10 years of active service as a commissioned officer, to a period of not less than eight years, for eligibility for retirement as a commissioned officer with at least 20 years of active service.

Reenactment of this authority, through September 30, 2025, will provide continued access to an invaluable force shaping tool. This authority provides the Secretary concerned with the flexibility to size and shape the force with the proper balance of skills while maintaining viable career paths in the officer corps.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. Navy currently anticipates use of this authority for approximately 10 officers in pay grade O-3. Estimated savings are FY21 \$(0.02M)/FYDP \$(0.13M). Army would like to project approximately 10 officers in pay grade O-3 as a contingency for possible future force shaping initiatives. This proposal would score zero for PAYGO purposes because it would affect very few personnel.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Military Personnel (Officer)	(.02)	(.03)	(.03)	(.03)	(.03)	Military Personnel, Navy	01	021000	NA
Military Personnel (Officer)	(.02)	(.03)	(.03)	(.03)	(.03)	Military Personnel, Army	01	N/A	NA
Total	(.04)	(.06)	(.06)	(.06)	(.06)				

PERSONNEL IMPACT (END STRENGTH/FTES)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Officer E/S	(10)	(10)	(10)	(10)	(10)	Military Personnel, Navy	01	021000	NA
Officer E/S	(10)	(10)	(10)	(10)	(10)	Military Personnel, Army	01	N/A	NA
Total	(20)	(20)	(20)	(20)	(20)				

Changes to Existing Law: This proposal would amend sections 7311, 8323, and 9311 of title 10, United States Code, as follows:

§ 7311. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 7326 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years.

(2) The period specified in this paragraph is the period beginning on January 7, 2011, and ending on ~~September 30, 2018~~ September 30, 2025.

* * * * *

§ 8323. Officers: 20 years

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(2)(A) The Secretary of Defense may authorize the Secretary of the Navy, during the period specified in subparagraph (B), to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than eight years.

(B) The period specified in this subparagraph is the period beginning on January 7, 2011, and ending on ~~September 30, 2018~~ September 30, 2025.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W-1.

(c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay computed under section 8333 of this title.

(f) Officers of the Navy Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), or are transferred to the Retired Reserve under section 8327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

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§ 9311. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 9326 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Air Force, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Air Force) of not less than eight years.

(2) The period specified in this paragraph is the period beginning on January 7, 2011, and ending on ~~September 30, 2018~~ September 30, 2025.

1 **SEC. ____ . AUTHORITY FOR DISCLOSURE OF CERTAIN SENSITIVE**
2 **INFORMATION TO DEPARTMENT OF DEFENSE CONTRACTORS**
3 **PERFORMING UNDER A DEPARTMENT OF DEFENSE CONTRACT.**

4 (a) **AUTHORITY.**—Chapter 3 of title 10, United States Code, is amended by inserting after
5 section 129d the following new section:

6 **“§ 129e. Disclosure of certain sensitive information to contractor personnel performing**
7 **under a Department of Defense contract**

8 **“(a) IN GENERAL.**—The Secretary of Defense may, notwithstanding any other provision
9 of law and subject to subsection (b), permit officers and employees of the Department of Defense
10 to disclose sensitive information to a covered Government support contractor performing under a
11 covered contract with the Department if—

12 **“(1)** the disclosure is necessary for the covered Government support contractor to
13 furnish independent or impartial advice or technical assistance directly to the
14 Government in support of the Government’s management and oversight of the program
15 or effort to which the sensitive information relates; and

16 **“(2)** the disclosure is under or within the scope of the contract with the
17 Department.

18 **“(b) CONDITIONS ON DISCLOSURE.**—Sensitive information may be disclosed to a covered
19 Government support contractor under subsection (a) with respect to a covered contract only if the
20 contractor agrees to and acknowledges in such contract—

21 **“(1)** that sensitive information furnished to its personnel under the authority of
22 this section will be accessed and used only for the purposes stated in the contract, and

1 shall not be retained longer than necessary for the purposes for which the sensitive
2 information was disclosed;

3 “(2) that the covered Government support contractor shall take all precautions
4 necessary to limit the number of its personnel with access to the sensitive information to
5 a minimum and prevent disclosure of the sensitive information to anyone not authorized
6 to have access to the information in order to perform such contract;

7 “(3) that such sensitive information furnished under the authority of this section
8 shall not be used by the covered Government support contractor or its personnel to
9 compete for Government or non-Government contracts;

10 “(4) that all contractor personnel to whom sensitive information may be furnished
11 will sign a legally binding non-disclosure agreement with the Government, as a condition
12 of performing under the covered contract, providing that the contractor personnel will not
13 disclose the sensitive information to anyone not authorized to have access to the
14 information; and

15 “(5) that any violation of paragraph (1), (2), (3) or (4) of this subsection is a basis
16 for the Government to terminate the contract for default or to pursue other such remedies
17 as permitted under the contract or by law, or both.

18 “(c) DEFINITION.—In this section:

19 “(1) The term ‘sensitive information’ means confidential commercial, financial,
20 or proprietary information, technical data, computer software, contract performance,
21 contract performance evaluation, management, and administration data, or other
22 privileged information owned by other Government contractors that is exempt from

1 public disclosure under section 552(b)(4) of title 5 or which would otherwise be
2 prohibited from disclosure under section 1832 or section 1905 of title 18;

3 “(2) The term ‘covered Government support contractor’ means a contractor—

4 “(A) under a contract the primary purpose of which is to furnish
5 independent and impartial advice or technical assistance directly to the
6 Government in support of the Government’s management and oversight of a
7 program or effort;

8 “(B) is not affiliated with the prime contractor or a first-tier subcontractor
9 on the program or effort, or with any direct competitor of such prime contractor or
10 any such first-tier subcontractor in furnishing end items or services of the type
11 developed or produced on the program of effort; and

12 “(C) has executed a contract with the Government agreeing to and
13 acknowledging the conditions of disclosure set forth in subsection (b) of this
14 section.

15 “(3) The term ‘covered contract’ mean a contract between the Department and a
16 private entity for the performance of technical analysis and research, project management
17 and measurement tools, information systems development, analytics, database
18 management, or information security services for the Department, and that serves to
19 advance or protect national security interests.”.

20 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
21 amended by inserting after the item relating to section 129d the following new item:

“129e. Disclosure of certain sensitive information to contractor personnel performing under a Department of
Defense contract.”.

Section-by-Section Analysis

The Department of Defense (DoD) relies upon private sector contractors' expertise to maintain a technology advantage in the information age. This includes utilizing contractor support to develop information systems and databases, conduct analyses and studies, manage databases, and provide information security services. To perform these contracted services, contractor personnel frequently require access to information collected by the DoD that the DoD is restricted from sharing outside of the Government. As contractor personnel are not Government employees, the DoD must undertake unduly burdensome measures so as not to violate the law by sharing such information with contractor personnel, notwithstanding that accessing this information is necessary for the contractor personnel to perform the services purchased under the contract. This proposal seeks to provide a relief path to these debilitating legal restrictions that are adversely impacting national security and would permit the DoD to provide covered Government support contractor personnel performing under a covered DoD contract with access to sensitive information necessary to carry out contracted functions. The proposal would add a new section 129e to title 10, United States Code, modeled on the pattern of section 129d of title 10, Disclosure To Litigation Support Contractors.

The purpose of this proposal is to necessarily enable the DoD to more efficiently and effectively share sensitive commercial, financial, or proprietary information, technical data, or other privileged information owned by other defense contractors, that is needed to perform mission critical work, with covered Government support contractor personnel performing efforts or research on behalf of the Department.

Covered Government support contractor personnel performing work under contracts awarded by the DoD who maintain active security clearances are highly valued and retained by contractors for their unique abilities to provide the Department with cutting edge, objective, and expert capabilities. Moreover, the adjudication of a background investigation that results in an eligibility determination is legal Federal recognition of public trust and confidence in a specific individual. Trusting an individual with information so sensitive as to be determined to be capable of causing grave harm to national security but not with sensitive information of a lesser degree, whereby both carry pre-conditions for violations of the law that can result in severe personal and professional criminal liabilities, is neither consistent nor logically congruent.

A contractor performing work under DoD contracts is required to conduct business with the Government sponsor consistent with this special relationship, to operate in the public interest with objectivity, and to be free from organizational conflicts of interest. The Federal Acquisition Regulation (FAR) makes clear that it is not the Government's intent for contractors performing work under contract to use their privileged status or access to information to compete with the private sector.

In particular, DoD research and technical analysis, project management and measurement tools, information systems development, analytics, database management, and information security services contracts provide the Government special data analytics research and development assistance that cannot be met by existing in-house or other contractor resources. Such contracts typically require contractor personnel performing within the contracted scope of work to have access to protected information.

For example, the Department is routinely required to access industrial base information (e.g. contract deliverables, production capacity, production critical node analysis) in order to assess Department-level options to increase production of critical munitions. This work, that is critical to national security, involves understanding the current constraints and interdependencies of the manufacturers and sub-tier suppliers. Since this information is considered proprietary, Government support contractors are not allowed to collect, store, or assess the information on behalf of the Department. A lack of proactive management of this information limits the Department's analysis, and how the manufacturers' capabilities can be utilized to meet steady-state and surge requirements. Allowing covered Government support contractors access to the information will enable them to support the Department's national security mission by building the tools and analytics required to assess the industrial base and inform budgetary and readiness decisions.

A June 2018 report published by the Government Accountability Office (GAO-18-435) recognizes the essential needs for utilizing sensitive data, existing contractor limitations and their critical national security linkage. Specifically, "...Each year, DOD spends billions of dollars acquiring and sustaining weapon systems to meet U.S. national security objectives. DOD relies on an extensive, multi-tiered network of suppliers that make up the defense industrial base to provide the components, subsystems, raw materials, and equipment to develop and sustain these weapon systems. Ensuring that these suppliers can provide products and services at the time, quantity, and quality DOD needs is essential to meeting national security objectives."

Another example of this debilitating condition can be illustrated by the Department's inability to fully execute the orders of the President. Executive Order (EO) 13806, "Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States," required the DoD to conduct an assessment of the health and resiliency of the entire defense industrial base, identify risks and issues, and recommend mitigations to reduce those risks and issues. This monumental 270-day effort involved representatives from multiple Departments and Agencies within the U.S. Government. However, the DoD had difficulty gathering the requisite data, doing the analysis, and writing the report due to its inability to use any of its support contractors due to the voluminous amount of sensitive/proprietary data involved. The implementation of the recommendations, ordered by the White House, remain hampered to this day because the DoD cannot use its support contractors to assist with this effort.

Section 129e, as proposed to be added by this proposal, would allow covered Government support contractors performing work under covered DoD contracts, upon agreement to protect such data, to access sensitive information necessary to carry out their functions of providing long-term acquisition and sustainment project management, engineering, research, development, or other analytical needs that cannot be met as effectively by internal government or other private sector sources to DoD organizations. Section 129e would also make clear that contractors performing work under DoD contracts are barred from using the information to gain potential competitive advantage over other contractors.

Budget Implications: This proposal has no budgetary effect; there are no resource requirements associated with this proposal. The Department's agreements with contractors are expected to be

executed with greater efficiency and success; however, the budgeted amounts for these contracts will not change.

Changes to Existing Law: This proposal would add a new section to title 10, United States Code, as shown in full in the legislative text above.

1 **SEC. __. ELECTRONIC NOTARIZATION FOR MEMBERS OF THE ARMED**
2 **FORCES.**

3 Section 1044a of title 10, United States Code, is amended by adding at the end the
4 following new subsection:

5 “(e)(1) A person named in subsection (b) may exercise the powers described in
6 subsection (a) through electronic means, including under circumstances where the individual
7 with respect to whom such person is performing the notarial act is not physically present in the
8 same location as such person.

9 “(2) A determination of the authenticity of a notarial act authorized in this section shall
10 be made without regard to whether the notarial act was performed through electronic means.

11 “(3) A log or journal of a notarial act authorized in this section shall be considered for
12 evidentiary purposes without regard to whether the log or journal is in electronic form.”.

[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 greatly enhance the accessibility of notarial services to members of the Armed Forces and other eligible legal assistance customers by amending section 1044a of Title 10 to permit electronic notarization. Currently, many Service members, especially those stationed overseas, must travel anywhere from 30 to 300 miles to their nearest legal assistance office in order to have a document notarized. Deployed Service members face even greater difficulty accessing legal services. Without an available notary, critical documents for legal readiness, such as powers of attorney, cannot be executed. Troops who are stressed or distracted by personal legal matters are less able to focus on the mission. Authorizing electronic notarization will have a tremendous impact on the ability of Service members to access notarial services and will provide DoD with greater manning flexibility.

Electronic notarizations will adhere to Services’ rules governing paper-based notarial acts, except for the requirement that the signer be physically present. Instead, the signer will be permitted to appear through a real-time audio and video conference or other Service-approved technological means.

Without this proposed legislation, states would not be required to accept electronic notarizations performed by 10 U.S.C. Section 1044a notaries. While some states have adopted legislation permitting electronic notarizations, there is no uniformly accepted electronic notarization process across these states. Although the Electronic Signatures in Global and National Commerce Act does authorize electronic signatures and records, it explicitly does not require states to accept the electronic records or signatures. The Uniform Electronic Transactions Act, moreover, only allows for electronic signatures when the notary is physically in the same room when the document is electronically signed. As such, section (e) above ensures that an electronically notarized document will not be rejected in any state solely because it was performed electronically and/or did not follow that state's unique procedural requirements.

Services will establish guidelines for use of electronic notary logs. Notaries will keep an electronic log which will enable access by a password or other secure means of authentication, be tamper-evident, provide for a duplicate record as backup, and/or be capable of capturing electronic signatures or biometric identifiers. For purposes of this Amendment, "electronic signature" should be defined in accordance with Section 2-9 of the Model Electronic Notary Act, "An electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record."

The proposed legislation does not mandate the purchase of specific technology or require additional manning.

Budget Implications: No budget implications.

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

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

- (1) Members of any of the armed forces.
- (2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.
- (3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

- (1) All judge advocates, including reserve judge advocates when not in a duty status.
- (2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

(6) All civilian paralegals serving at military legal assistance offices, supervised by a military legal assistance counsel (as defined in section 1044d(g) of this title).

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(e)(1) A person named in subsection (b) may exercise the powers described in subsection (a) through electronic means, including under circumstances where the individual with respect to whom such person is performing the notarial act is not physically present in the same location as such person.

(2) A determination of the authenticity of a notarial act authorized in this section shall be made without regard to whether the notarial act was performed through electronic means.

(3) A log or journal of a notarial act authorized in this section shall be considered for evidentiary purposes without regard to whether the log or journal is in electronic form.

1 **SEC. ____. EXTENSION OF PILOT PROGRAM ON ENHANCED PAY AUTHORITY**
2 **FOR CERTAIN ACQUISITION AND TECHNOLOGY POSITIONS IN**
3 **THE DEPARTMENT OF DEFENSE.**

4 Section 1111(f) of the National Defense Authorization Act for Fiscal Year 2016
5 (Public Law 114–92; 129 Stat. 1032; 10 U.S.C. 1701 note) is amended by striking “2020”
6 each place it appears and inserting “2025”.

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

Section-by-Section Analysis

Section 1111 of the FY 2016 NDAA provided an enhanced pay authority for certain acquisition and technology positions. To date, DoD has used the enhanced pay authority 12 times (OSD – 4; Army – 2; Navy – 4; Air Force – 2). The proposal would extend the authorization to use a higher-level pay authority to attract and retain high-quality acquisition and technology experts in positions responsible for management and developing complex, high-cost, technological acquisition efforts of the Department of Defense. This proposal bolsters the Department of Defense’s ability to competitively compensate the senior-level government program managers and engineers required for the government to oversee major defense acquisition programs.

Budget Implications: The resources reflected in the table below are included within the FY 2021 President’s budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
OSD	0.6	0.6	0.6	0.6	0.6	Operation & Maintenance, Defense-Wide	04	4G-4GTN	NA
Army	0.6	0.6	0.6	0.6	0.6	Operation & Maintenance, Army	04	43-434	NA
Navy	0.6	0.6	0.6	0.6	0.6	Operation & Maintenance, Navy	04	4A-4A3M	NA

Air Force	0.6	0.6	0.6	0.6	0.6	Operation & Maintenance, Air Force	03	33-033A	NA
Total	2.2	2.3	2.3	2.4	2.4				

PERSONNEL AFFECTED (FTEs)						
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation From
OSD	5	5	5	5	5	Operation & Maintenance, Defense-Wide
Army	5	5	5	5	5	Operation & Maintenance, Army
Navy	5	5	5	5	5	Operation & Maintenance, Navy
Air Force	5	5	5	5	5	Operation & Maintenance, Air Force
Total	20	20	20	20	20	

Changes to Existing Law: This proposal would make the following changes to section 1111 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 1701 note):

SEC. 1111. PILOT PROGRAM ON ENHANCED PAY AUTHORITY FOR CERTAIN ACQUISITION AND TECHNOLOGY POSITIONS IN THE DEPARTMENT OF DEFENSE.

(a) **PILOT PROGRAM AUTHORIZED.**—The Secretary of Defense may carry out a pilot program to assess the feasibility and advisability of using the pay authority specified in subsection (d) to fix the rate of basic pay for positions described in subsection (c) in order to assist the Office of the Secretary of Defense and the military departments in attracting and retaining high-quality acquisition and technology experts in positions responsible for managing and developing complex, high-cost, technological acquisition efforts of the Department of Defense.

(b) **APPROVAL REQUIRED.**—The pilot program may be carried out only with approval as follows:

(1) Approval of the Under Secretary of Defense for Acquisition and Sustainment, in the case of positions in the Office of the Secretary of Defense.

(2) Approval of the Service Acquisition Executive of the military department concerned, in the case of positions in a military department.

(c) **POSITIONS.**—The positions described in this subsection are positions that—

(1) require expertise of an extremely high level in a scientific, technical, professional, or acquisition management field; and

(2) are critical to the successful accomplishment of an important acquisition or technology development mission.

(d) RATE OF BASIC PAY.—The pay authority specified in this subsection is authority as follows:

(1) Authority to fix the rate of basic pay for a position at a rate not to exceed 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Under Secretary of Defense for Acquisition and Sustainment or the Service Acquisition Executive concerned, as applicable.

(2) Authority to fix the rate of basic pay for a position at a rate in excess of 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Secretary of Defense.

(e) LIMITATIONS.—

(1) IN GENERAL.—The authority in subsection (a) may be used only to the extent necessary to competitively recruit or retain individuals exceptionally well qualified for positions described in subsection (c).

(2) NUMBER OF POSITIONS.—The authority in subsection (a) may not be used with respect to more than five positions in the Office of the Secretary of Defense and more than five positions in each military department at any one time.

(3) TERM OF POSITIONS.—The authority in subsection (a) may be used only for positions having terms less than five years.

(f) TERMINATION.—

(1) IN GENERAL.—The authority to fix rates of basic pay for a position under this section shall terminate on October 1, ~~2020~~ 2025.

(2) CONTINUATION OF PAY.—Nothing in paragraph (1) shall be construed to prohibit the payment after October 1, ~~2020~~ 2025, of basic pay at rates fixed under this section before that date for positions whose terms continue after that date.

1 **SEC. ____. EXCLUSION OF DEPLOYABLE DEPARTMENT OF DEFENSE CIVILIAN**
2 **POSITIONS FROM COLLECTIVE BARGAINING.**

3 (a) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by adding at
4 the end the following new section:

5 **“§ 1599i. Exclusion of deployable Department of Defense civilian positions from collective**
6 **bargaining**

7 “Notwithstanding chapter 71 of title 5, positions of civilian employees whose duties
8 require deployment in support of military operations may not be included in bargaining units.”.

9 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
10 amended by inserting after the item relating to section 1599h the following new item:

“1599i. Exclusion of deployable Department of Defense civilian positions from collective bargaining.”.

**[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

Civilian employees in deployable positions serve alongside military members in locations across the world in support of national security objectives of the Department of Defense (DoD). Deployable civilian employees often deploy to locations such as Afghanistan in support of combat operations. This proposal would exclude these positions from coverage under the Federal Service Labor-Management Relations Statute, chapter 71 of title 5, United States Code (U.S.C.). Current and future employees occupying positions that require deployment in support of military operations would no longer be eligible for inclusion in bargaining units. However, these employees would retain their due process rights established by chapters 43 and 75 of title 5, U.S.C.

Currently, DoD estimates that approximately 8,000 civilian employees serve in deployable positions. Of these, approximately 1,575 of the employees are currently included in a bargaining unit.

When making changes in conditions of employment for bargaining unit employees, DoD has an obligation to make those changes in accordance with the requirements of chapter 71 of title 5, U.S.C., and procedures established under collective bargaining agreements (CBA). As such, pursuant to section 7113 of title 5, U.S.C., DoD is required to consult with its national unions prior to implementing any substantive change in conditions of employment that may

affect deployable civilians who are represented by a labor union. DoD components may also be required to negotiate with their local labor unions over such changes prior to implementation, and may also have separate contractual requirements established by CBAs that further impede timely implementation of changes to employment conditions for deployable civilian employees. As a result, DoD components face significant risk to the mission as negotiations and labor contracts place administrative burdens on them that could delay civilian deployments, placing the warfighter at greater risk.

Additionally, deployable civilian employees whose positions are covered by the Federal Service Labor-Management Statute may act for a labor organization that holds exclusive recognition or engage in collective bargaining on behalf of that labor organization, adding to DoD's use of taxpayer-funded union time.

Finally, deployable civilians represented by a labor union may participate in a grievance-arbitration process that subjects decisions of DoD components to the oversight of an arbitrator. Arbitrators are empowered to second guess the decisions of DoD components and the Secretary of Defense in matters impacting conditions of employment of employees. Thus, the national security mission and requirements of the deployable civilian workforce may be secondary to the vindication of procedural rights of labor unions and employees.

The effect of this proposal is the removal of current and future deployable civilian positions in DoD from coverage under chapter 71 of title 5, U.S.C. As such, changes to the conditions of employment for deployable civilians would no longer be subject to union consultations, negotiations, or the grievance-arbitration process. As a result, DoD anticipates faster implementation of changes to the deployable civilian workforce, empowering DoD components and commanders to manage their deployable civilian employees with reduced barriers to decision-making and implementation, and resulting in faster deployments and a more lethal civilian workforce.

Budget Implications: No budget impact. While this change would have no direct budget impact to DoD, there are possible indirect savings. This change could reduce DoD's use of taxpayer-funded union time. Using a union time rate of one hour per bargaining unit employee as a baseline, there would be a corresponding reduction of the use of taxpayer-funded union time of 1,575 hours. In a report released in May 2018 by the Office of Personnel Management on official time usage in the Federal Government for fiscal year 2016, the average bargaining unit employee hourly wage in DoD was reported as \$31.03. Using this rate of pay, exclusion of deployable civilian positions could save DoD \$48,872.25 per year in taxpayer-funded union time.

In addition to savings in use of taxpayer-funded union time, DoD will also save critical management and human resources time that will not be needed to engage in negotiations, resolving grievances submitted through the negotiated grievance process, and litigation. These resources can be applied to other areas, to include recruitment and retention of the civilian workforce.

Changes to Existing Law: This proposal would add a new section to chapter 81 of title 10, United States Code. The new section is shown in full in the legislative text above.

1 **SEC. ___. HIGHER GRADE FOR SERVICE AS AIR FORCE ACADEMY DIRECTOR**
2 **OF ADMISSIONS.**

3 Section 9342 of title 10, United States Code, is amended—

4 (1) by striking “any permanent professor” and inserting “a permanent professor or
5 director of admissions”; and

6 (2) by inserting “or director” after “such a professor”.

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

Section-by-Section Analysis

The current law exists to provide long-term continuity and stability for Presidentially appointed permanent faculty at the USAFA. While section 9433 of title 10, United States Code, stipulates that the director of admissions position is appointed by the President and confirmed by the Senate, it does not provide the Presidentially appointed director of admissions position with equivalent level of stability or equivalency with permanent professors at USAFA, who retire as O-7s.

The director of admissions provides senior officer leadership/mentorship and develops junior officers for the Air Force and USAFA, and is critical to institutional continuity and stability. Since 1982 there have been nine different directors of admissions; an average of only 4.1 years in the position. This lack of longevity hinders the ability for the institution to maintain continuity in its college admissions processes and insight into higher education. This legislative change will enable continuity, stability, and long term senior leadership, much like the USAFA permanent professors.

This proposal provides parity with permanent professor positions. It will increase continuity in this mission-critical position at USAFA.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would amend section 9342 of title 10, United States Code, as follows:

§9342. Higher grade for service in special positions

Upon retirement, ~~any permanent professor~~ a permanent professor or director of admissions of the United States Air Force Academy whose grade is below brigadier general, and whose service as such a professor or director has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

1 **SEC. ____. INCENTIVE PAY FOR PERFORMING HAZARDOUS DUTIES.**

2 Section 351(g) of title 37, United States Code, is amended by striking “this section” and
3 inserting “paragraph (1) or (3) of subsection (a)”.

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

Section-by-Section Analysis

This proposal will allow the Department of Defense to vary the incentive pay rates offered to officers and enlisted members to encourage sufficient numbers of members to volunteer to perform specific occupational duties designated by the Secretary concerned as hazardous based on the inherent dangers of the duty and risks of physical injury. This proposal does not affect the rates of pay for imminent danger pay or hostile fire pay, both of which are paid at the same rates for officers and enlisted members and are tied to physical presence in a specific location or exposure to hostile fire.

As of January 2018, the Department completed the transition of special and incentive pay authorities from subchapter I to subchapter II of chapter 5, title 37, United States Code (U.S.C.). Prior to the transition, sections 301 and 304 of title 37, U.S.C., prescribed differing incentive pay rates for officers and enlisted members involved in frequent and regular flight participation in aerial flight as a crew member or air weapons controller, as well as the performance of diving duty.

For decades, the Services have paid varying amounts of hazardous duty incentive pay (HDIP) to officers and enlisted members. An unintended consequence of consolidating the HDIP authority, together with the authorities for hostile fire pay and imminent danger pay, under section 351 of title 37, U.S.C., is that the Services have lost their flexibility to offer different rates of HDIP to officers and enlisted members to encourage members to volunteer for specific occupational duties. Section 351(g) of title 37, U.S.C., prohibits the Services from varying the criteria or rates for payment of hazardous duty for officers and enlisted members. While mandating the same payment rates for hostile fire pay and imminent danger pay for all Service members exposed to a hostile fire event or serving in an imminent danger area clearly makes sense and meets the military compensation principal of equity, providing the Services the ability to vary the HDIP rates to motivate sufficient numbers of officers and enlisted members to volunteer for perform specific occupational duties embodies the principles of flexibility and efficiency.

HDIP is a valuable incentive tool the Services use to attract members to accept hazardous duty assignments and to continue performing these special duties. Earlier studies explored the effects of varying pays for hazardous duty and considered varying rates using a percentage of a member’s basic pay. These studies concluded that varied rates were both appropriate and justified. Varying rates encouraged members to undertake and continue to perform special duties at differing levels of responsibility. As a result, the Department is requesting Congress to restore

the authority the Department previously relied upon and allow the Department to continue to vary the rates of HDIP between officers and enlisted members.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. Restoring the statutory authority to allow the Services to vary the rates of HDIP will result in a more efficient administration of this pay.

RESOURCE IMPACTS (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army*	\$16.9	\$16.9	\$16.9	\$16.9	\$16.9	Military Personnel, Army	01, 02	35, 40, 85, 90	
Navy*	\$11.8	\$11.8	\$11.8	\$11.8	\$11.8	Military Personnel, Navy	01, 02	35, 40, 85, 90	
Marine Corps*	\$5.8	\$5.8	\$5.8	\$5.8	\$5.8	Military Personnel, Marine Corps	01, 02	35, 40, 85, 90	
Air Force*	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6	Military Personnel, Air Force	01, 02	35, 40, 85, 90	
Total*	\$36.1	\$36.1	\$36.1	\$36.1	\$36.1				

PERSONNEL IMPACT (END STRENGTH OR FTES)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Army*	7,386	7,386	7,386	7,386	7,386	Military Personnel, Army	01, 02	35, 40, 85, 90	
Navy*	4,398	4,398	4,398	4,398	4,398	Military Personnel, Navy	01, 02	35, 40, 85, 90	
Marine Corps*	2,383	2,383	2,383	2,383	2,383	Military Personnel, Marine Corps	01, 02	35, 40, 85, 90	
Air Force*	676	676	676	676	676	Military Personnel, Air Force	01, 02	35, 40, 85, 90	
Total*	14,843	14,843	14,843	14,843	14,843				

*Values reflect FY 2021 estimate in the Services FY2021 Budget Estimate.

Changes to Existing Law: This section would make the following changes to section 351 of title 37, United States Code:

§ 351. Hazardous duty pay

(a) Hazardous Duty Pay.-The Secretary concerned may pay hazardous duty pay under this section to a member of a regular or reserve component of the uniformed services entitled to basic pay under section 204 of this title or compensation under section 206 of this title who-

(1) performs duty in a hostile fire area designated by the Secretary concerned, is exposed to a hostile fire event, explosion of a hostile explosive device, or any other hostile action, or is on duty during a month in an area in which a hostile event occurred which placed the member in grave danger of physical injury;

(2) performs duty designated by the Secretary concerned as hazardous duty based upon the inherent dangers of that duty and risks of physical injury; or

(3) performs duty in a foreign area designated by the Secretary concerned as an area in which the member is subject to imminent danger of physical injury due to threat conditions.

* * * * *

(g) Prohibition on Variable Rates.-The regulations prescribed to administer ~~this section~~ paragraph (1) or (3) of subsection (a) may not include varied criteria or rates for payment of hazardous duty for officers and enlisted members.

* * * * *

1 **SEC. ____ . LAND EXCHANGE, NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT,**
2 **SUNNYVALE, CALIFORNIA.**

3 Section 2841 of the National Defense Authorization Act for Fiscal Year 2018 (Public
4 Law 115–91; 131 Stat. 1860) is amended—

5 (1) in subsection (a), by amending paragraph (2) to read as follows:

6 “(2) costs of relocation of contractor and Government personnel and equipment
7 from the NIROP to replacement facilities, to the extent specified in the land exchange
8 agreement described in subsection (b).”;

9 (2) in subsection (b)(1), by inserting “the costs of relocation to be reimbursed by
10 the Exchange Entity and” after “identifies”;

11 (3) in subsection (c)—

12 (A) by amending the heading to read as follows: “(c) CONSIDERATION.—”;

13 (B) in paragraph (1), by striking “determined” and all that follows and
14 inserting “an amount that is not less than fair market value, as determined by the
15 Secretary.”; and

16 (C) by amending paragraph (2) to read as follows:

17 “(2) COMPENSATION.—

18 “(A) IN GENERAL.—The Exchange Entity shall provide compensation
19 under the land exchange agreement described in subsection (b) that is equal to or
20 exceeds the value of the NIROP, as determined in accordance with paragraph (1).

21 “(B) IN-KIND CONSIDERATION.—The Secretary and the Exchange Entity
22 may agree under the land exchange agreement described in subsection (b) for the
23 Exchange Entity to provide as part of the compensation under the agreement the

1 following in-kind contributions at any property or facility under the Control of the
2 Secretary:

3 “(i) Alteration, repair, improvement, or restoration (including
4 environmental restoration) of property.

5 “(ii) Use of facilities by the Secretary.

6 “(iii) Provision of real property maintenance services.

7 “(iv) Provision of or payment of utility services.

8 “(v) Provision of such other services relating to activities that will
9 occur on the property as the Secretary considers appropriate.

10 “(C) DEPOSIT.—The Secretary shall deposit any cash payments received
11 other than those accepted under section 2695 of title 10, United States Code, in
12 the account in the Treasury established pursuant to section 572(b) of title 40,
13 United States Code.

14 “(D) USE OF PROCEEDS.—Proceeds in the account referred to in
15 subparagraph (C) shall be available to the Secretary in such amounts as provided
16 in appropriations Acts for the following:

17 “(i) Maintenance, protection, alternation, repair, improvement, or
18 restoration (including environmental restoration) of property or facilities.

19 “(ii) Payment of utilities services.

20 “(iii) Real property maintenance services.”;

21 (4) in subsection (e), by striking “(a), (c)(2), and (d)” and inserting “(a) and (d)”;

22 and

1 (5) in subsection (i), by striking “October 1, 2023” and inserting “October 1,
2 2026, if the Secretary and the Exchange Entity have not entered into a land exchange
3 agreement described in subsection (b) before that date.”.

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

Section-by-Section Analysis

This proposal would amend section 2841 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Public Law 115–91) (“section 2841”) to provide the Navy with a revised framework and timeframe for executing a land exchange of the Naval Industrial Reserve Ordnance Plant in Sunnyvale, California (NIROP Sunnyvale) for a replacement NIROP. The replacement NIROP is needed to meet the Department of the Navy (DON), Strategic Systems Programs (SSP) requirement for replacement design, development, and production facilities to support TRIDENT II D5 Life Extension-2 (LE-2) missile production activities beginning in 2026. The purpose of this proposal is to address key issues that could not be resolved under the existing legislation.

Section 2841 authorizes the Secretary of the Navy to enter into an agreement to exchange the real property and facilities thereon, comprising NIROP Sunnyvale, for real property and facilities that would replace the NIROP and meet the readiness requirements of the DON, as determined by the Secretary. In addition to replacement facilities, section 2841 requires the Exchange Entity to pay for relocation expenses, administrative costs, and a cash equalization payment should the market value of replacement facilities and relocation costs be lower than the market value of the NIROP Sunnyvale property.

Following enactment of the NDAA for FY 2018, the DON entered into exclusive negotiations with a potential Exchange Entity. The negotiations with the potential Exchange Entity were not successful. The potential Exchange Entity cited as key factors in its decision to end negotiations the difference in perceived value of the NIROP Sunnyvale Property, uncertainty regarding the valuation of replacement facilities, and unbounded relocation expenses. Discussions with other potentially viable exchange partners, including the DON SSP prime Fleet Ballistic Missile (FBM) contractor and current operator of the NIROP Sunnyvale, Lockheed Martin, failed to progress for similar reasons. While other potential third party exchange partners have been identified, none have expressed interest in executing a land exchange for the NIROP Sunnyvale property at its current appraised fair market value.

Meanwhile, Lockheed Martin leadership has advised SSP that its support of the FBM program will transition out of Sunnyvale, whether an exchange agreement is signed or not. Approximately three hundred Lockheed Martin and Government FBM employees have already relocated to Lockheed Martin owned facilities in Titusville, Florida and Denver, Colorado. If the transition were to conclude without a land exchange, NIROP Sunnyvale would likely be excessed by the General Services Administration (GSA) and SSP would be forced to use shared

enterprise space in Lockheed Martin facilities. A similar course of action was evaluated by the DON prior to the enactment of section 2841 and deemed non-viable. In addition to limiting SSP's ability to own and control mission-critical FBM production operations, the DON's economic analysis demonstrated that this course of action would cost the DON nearly \$200M more than a land exchange over the next 55 years (i.e., the estimated useful life of replacement facilities). In addition, SSP would have needed to program for Military Construction (MILCON) funding for upcoming expansion needs that might have partially been provided by the exchange.

The proposed revisions in this legislative proposal are modeled after other provisions of law that provided for the exchange of DON real property, including Navy Outlying Landing Field, Naval Air Station, Whiting Field, Florida (section 2833 of the NDAA for FY 2019 (Public Law 114-92)) and Naval Air Station Corpus Christi, Texas (section 2845 of the NDAA for FY 2018 (Public Law 115-91)), and the deposit and use of proceeds from the transaction similar to 10 U.S.C. 2667.

Paragraph (1) of the proposal revises subsection (a)(2) of section 2841 to require the Exchange Entity to reimburse costs of relocation to the extent specified in the land exchange agreement described in subsection (b). The intent of this revision is discussed below.

Paragraph (2) of the proposal specifies that the land exchange will identify the costs of relocation that the Exchange Entity is responsible for reimbursing, providing the DON with express authority to limit the scope and amount of reimbursable relocation expenses. Together, paragraphs (1) and (2) of the proposal define the scope of relocation in the land exchange agreement to allow the DON to provide certainty regarding the scope and amount of relocation expenses. Under the current legislation, the Exchange Entity was responsible for all costs of relocation. Although SSP expects relocation expenses to remain constant at approximately \$40M, the Navy's negotiators could not adequately assure potential exchange partners that this ostensibly unbounded number would remain constant. Absent a land exchange agreement, the cost of relocating the FBM program from Sunnyvale represents a sunk cost.

Paragraph (3) of the proposal modifies subsection (c)(1) to provide the Secretary discretion for valuing the property to be exchanged similar to the discretion the Secretary currently possesses for determining the value of property to be leased to third parties under 10 U.S.C. 2667, and modifies subsection (c)(2) to allow the Secretary to accept in-kind consideration or cash payment pursuant to a land use exchange agreement and directs deposit of the proceeds in the account labeled Disposal of Department of Defense Real Property for Navy which is established pursuant to 40 U.S.C. 572(b).

Paragraph (4) of the proposal modifies subsection (e) to differentiate how proceeds that are not administrative expenses will be received.

Paragraph (5) of the proposal extends the expiration date of the Secretary of the Navy's authority to execute a land exchange pursuant to the sunset provision in subsection (i) of section 2841. In addition to extending the expiration date to October 1, 2026, this provision eliminates the expiration date altogether if the Secretary and the Exchange Entity have signed a land exchange agreement prior to October 1, 2026. Due to construction timelines and program

execution requirements, the Naval Facilities Engineering Command (NAVFAC) advises that execution of a land exchange prior to October 1, 2023, is no longer feasible. Additionally, in April, 2019, Lockheed Martin advised Director, SSP, of its need to maintain certain FBM functions on NIROP Sunnyvale until 2025. Director, SSP concurrence was required to ensure continuity of FBM operations during the transition from Sunnyvale.

The current NIROP Sunnyvale appraised FMV, based on an appraisal conducted in accordance with subsection (c)(1) of section 2841, is approximately \$288M. The dominant buyer in the Sunnyvale commercial real estate market offered to pay up to \$220M, but ended negotiations with the Navy after asserting that the DON's estimated FMV doesn't represent the price that a buyer would be willing to pay on the open market, given the unique risks and complexities associated with the land exchange framework contemplated under the current legislation. Amongst other concerns, potential exchange partners have asserted that if the replacement facilities do not appraise well, or if environmental remediation delays impact the redevelopment schedule for the NIROP property, they could be forced to take a significant loss.

The DON evaluated several alternatives for meeting SSP's LE-2 missile production requirements and determined that this legislative proposal provides the most viable and cost-effective solution.

Budget Implications: This proposal is expected to be budget neutral.

Changes to Existing Law: This proposal would make the following changes to section 2841 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91):

SEC. 2841. LAND EXCHANGE, NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT, SUNNYVALE, CALIFORNIA.

(a) LAND EXCHANGE AUTHORIZED.—The Secretary of the Navy may convey to an entity (in this section referred to as the “Exchange Entity”) all right, title, and interest of the United States in and to the parcel of real property, including improvements thereon, comprising the Naval Industrial Reserve Ordnance Plant (NIROP) located in Sunnyvale, California in exchange for--

(1) real property, including improvements thereon, that will replace the NIROP and meet the readiness requirements of the Department of the Navy, as determined by the Secretary; and

(2) costs of relocation of contractor and Government personnel and equipment from the NIROP to the replacement facilities, to the extent specified in the land exchange agreement contemplated in subsection (b).

(b) LAND EXCHANGE AGREEMENT.—

(1) IN GENERAL.—The exchange authorized under subsection (a) shall be governed by a land exchange agreement that identifies the costs of relocation to be reimbursed by the Exchange Entity and the property to be exchanged (including improvements thereon), the time period in which the exchange will

occur, and the roles and responsibilities of the Secretary and the Exchange Entity in carrying out the exchange.

(2) COMPLIANCE WITH ENVIRONMENTAL LAWS.—Nothing in this section shall be construed to affect or limit the application of, or any obligation to comply with, any environmental law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

~~(c) VALUATION; CASH EQUALIZATION PAYMENT IF NIROP VALUE EXCEEDS VALUE OF EXCHANGED PROPERTY CONSIDERATION.—~~

~~(1) VALUATION.—The values of the properties to be exchanged by the Secretary and the Exchange Entity under subsection (a) (including improvements thereon) shall be an amount that is not less than fair market value, as determined by the Secretary, determined by an independent appraiser selected by the Secretary, and in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.~~

~~(2) CASH EQUALIZATION PAYMENT.—If, as determined in accordance with paragraph (1), the value of the NIROP is greater than the combination of the value of the property to be conveyed by the Exchange Entity under subsection (a) and the relocation costs covered by the Exchange Entity under such subsection, the Exchange Entity shall make a cash equalization payment to the Secretary to equalize the values. Nothing in this paragraph may be construed to require the Secretary to make a cash equalization payment to the Exchange Entity if the value of the property to be conveyed by the Exchange Entity and the relocation costs covered by the Exchange Entity are greater than the value of the NIROP.~~

~~(2) COMPENSATION.—~~

~~(A) IN GENERAL.—The Exchange Entity shall provide compensation under the land exchange agreement described in subsection (b) that is equal to or exceeds the value of the NIROP, as determined in accordance with paragraph (1).~~

~~(B) IN-KIND CONSIDERATION.—The Secretary and the Exchange Entity may agree under the land exchange agreement described in subsection (b) for the Exchange Entity to provide as part of the compensation under the agreement the following in-kind contributions at any property or facility under the Control of the Secretary:~~

- ~~(i) Alteration, repair, improvement, or restoration (including environmental restoration) of property.~~
- ~~(ii) Use of facilities by the Secretary.~~
- ~~(iii) Provision of real property maintenance services.~~
- ~~(iv) Provision of or payment of utility services.~~
- ~~(v) Provision of such other services relating to activities that will occur on the property as the Secretary considers appropriate.~~

~~(C) DEPOSIT.—The Secretary shall deposit any cash payments received other than those accepted under section 2695 of title 10, United~~

States Code, in the account in the Treasury established pursuant to section 572(b) of title 40, United States Code.

(D) USE OF PROCEEDS.—Proceeds in the account referred to in subparagraph (C) shall be available to the Secretary in such amounts as provided in appropriations Acts for the following:

(i) Maintenance, protection, alternation, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Payment of utilities services.

(iii) Real property maintenance services.

(d) PAYMENT OF COSTS OF CONVEYANCE.—The Secretary shall require the Exchange Entity to pay costs incurred by the Department of the Navy to carry out the exchange authorized under subsection (a), including costs incurred for land surveys, environmental documentation, the review of replacement facilities design, real estate due diligence (including appraisals), preparing and executing the agreement described in subsection (b), and any other administrative costs related to the exchange. If amounts are collected from the Exchange Entity in advance of the Secretary incurring the actual costs and the amount collected exceeds the costs actually incurred by the Secretary to carry out the exchange under subsection (a), the Secretary shall refund the excess amount to the Exchange Entity.

(e) TREATMENT OF AMOUNTS RECEIVED.—Amounts received under subsections (a); ~~(e)(2)~~; and (d) shall be used in accordance with section 2695(c) of title 10, United States Code.

(f) DESCRIPTION OF PROPERTY.—The exact legal description of the property, including acreage, to be exchanged under subsection (a) shall be determined by surveys satisfactory to the Secretary.

(g) RELATION TO OTHER MILITARY CONSTRUCTION REQUIREMENTS.—

(1) EXCLUSION FROM TREATMENT AS MILITARY CONSTRUCTION PROJECT.—The acquisition or disposition of any property pursuant to the exchange authorized under subsection (a) shall not be treated as a military construction project for which an authorization is required by section 2802 of title 10, United States Code, or for which reporting is required by section 2662 of such title.

(2) EXCLUSION OF REQUIREMENT FOR PRIOR SCREENING BY GENERAL SERVICES ADMINISTRATION FOR ADDITIONAL FEDERAL USE.—Section 2696(b) of title 10, United States Code, does not apply to the conveyance of any real property pursuant to the exchange authorized under subsection (a).

(h) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the exchange authorized under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(i) SUNSET.—The authority provided to the Secretary to carry out the exchange under subsection (a) shall expire on ~~October 1, 2023~~ October 1, 2026, if the Secretary and the

Exchange Entity have not entered into a land exchange agreement described in subsection (b) before that date.

1 **SEC. __. LUMP SUM SEVERANCE PAY.**

2 Section 5595(i) of title 5, United States Code, is amended—

3 (1) in paragraph (1)—

4 (A) by striking “In the case of an employee of the Department of
5 Defense who is entitled to severance pay under this section, the Secretary of
6 Defense” and inserting “The head of an agency”; and

7 (B) by striking “the employee” and inserting “an employee who is
8 entitled to severance pay under this section”;

9 (2) in paragraph (2)(A), by striking “Department of Defense (for” and
10 inserting “agency that formerly employed the employee (or”;

11 (3) by striking paragraph (4).

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

Section-by-Section Analysis

This proposal would amend section 5595 of title 5, United States Code, to extend the authority to pay severance in lump sum payment to all Federal agencies and remove the expiration date with respect to the authority. The current authority has expired, which prohibits the Department of Defense from leveraging the flexibility previously provided by this statute. This proposal would renew the authority thereby providing another severance payment option that may benefit employees who are involuntarily separated without cause.

Severance pay is authorized for full-time and part-time employees who are involuntarily separated from the Federal service and who meet conditions of eligibility. In instances where an organization is undergoing a reduction in force (RIF) due to a reorganization, lack of work, or a shortage of funds, severance pay may be granted to eligible employees. To be eligible for severance pay, an employee must be serving under a qualifying appointment, have a regularly scheduled tour of duty, have completed at least 12 months of continuous service, and be removed from Federal service by involuntary separation for reasons other than inefficiency (i.e., unacceptable performance or conduct). Existing authority allows for severance to be paid on a bi-weekly basis. A lump sum severance payment is a one-time payment in full of the amount of severance pay provided to an employee who has been involuntarily separated.

Severance pay may provide an employee with a supplement to unemployment compensation, financial assistance while job searching, and a degree of financial security. The flexibility to allow an employee facing involuntary separation to elect a lump sum severance payment would provide an additional option for separated employees to meet their individual financial needs. Although the number of employees impacted by involuntary separation is limited, those separated by RIF or other involuntary action potentially face a tremendous financial hardship.

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 5595 of title 5, United States Code:

5595. Severance pay

* * * * *

(i)(1) ~~In the case of an employee of the Department of Defense who is entitled to severance pay under this section, the Secretary of Defense~~ The head of an agency or the Secretary of the military department concerned may, upon application by the an employee who is entitled to severance pay under this section, pay the total amount of the severance pay to the employee in one lump sum.

(2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the ~~Department of Defense~~ agency that formerly employed the employee (~~for~~ or the military department that formerly employed the employee, if applicable) an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.

(B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.

(C) Amounts repaid to an agency under this paragraph shall be credited to the appropriation available for the pay of employees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

(3) If an employee fails to repay to an agency an amount required to be repaid under paragraph (2)(A), that amount is recoverable from the employee as a debt due the United States.

~~(4) This subsection applies with respect to severance pay payable under this section for separations taking effect on or after February 10, 1996, and before October 1, 2018.~~

* * * * *

1 **SEC. __. INCREASE IN THE MAXIMUM INCENTIVE AMOUNT UNDER THE**
2 **STUDENT LOAN REPAYMENT PROGRAM.**

3 Section 5379 of title 5, United States Code, is amended—

4 (1) in subsection (b)(2)—

5 (A) in the matter preceding subparagraph (A), by striking “by an agency”;

6 (B) in subparagraph (A), by striking “\$10,000” and inserting “\$20,000”;

7 and

8 (C) in subparagraph (B), by striking “\$60,000” and inserting

9 “\$120,000”; and

10 (2) in subsection (c)(1)—

11 (A) in subparagraph (A), by striking “3 years” and inserting “1 year”; and

12 (B) in subparagraph (B), by striking “the amount of any benefits received”

13 and inserting “a prorated amount of any benefit received (derived by multiplying

14 the benefit by the percentage representing the remaining uncompleted portion of

15 the period of service required under the service agreement”).

Section-by-Section Analysis

This proposal would amend section 5379 of title 5, United States Code, by increasing the maximum incentive Federal agencies are authorized to repay under the Federal student loan repayment program (SLRP) by increasing the amount an employee may receive in one calendar year from \$10,000 to \$20,000 and increasing the aggregate amount any one employee may receive from \$60,000 to \$120,000. The amended section would also clarify that the limitations in (b)(2) apply on an employee basis, modify the current three-year service requirement to one year, and remove the requirement to pay back the benefit in full if the employee fails to complete the entire service period.

The SLRP is used as a recruitment and retention incentive to attract and retain qualified talent with student loan debt to take Federal jobs, for a minimum of one year of service, in return for student loan repayment assistance. This program has become a valuable recruitment tool as more graduates are burdened with higher levels of student loan debt, which has risen from \$260

billion in 2003 to \$1.46 trillion in 2018¹. However, the SLRP statutory limitations were last increased in 2003 (Public Law 108-123) and must be raised again to maintain the effectiveness and value of this incentive, especially when competing with the agility of the private sector to offer higher student loan repayments as the cost of education increases.

Federal agencies use student loan repayments to recruit and retain employees in mission-critical occupations in the science, technology, engineering, and mathematics (STEM) fields, according to the Office of Personnel Management’s calendar year 2017 report to Congress². Many STEM positions require advanced degrees for which prospective employees graduate with high levels of debt that render the SLRP underequipped to provide an effective incentive.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. Adoption of the proposal would increase the maximum repayment amount from \$10,000 to \$20,000 per year and \$60,000 to \$120,000 for any one employee under the SLRP. The Department anticipates use of the SLRP to increase as a result of this proposal. The resource requirements reflect an approximate 15 percent increase in the current dollar amount paid in the first year and a seven percent escalation each year after and an approximate ten percent increase in the number of personnel receiving a student loan payment in the first year and a five percent escalation thereafter.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Air Force	\$8.37	8.96	9.59	10.26	10.98	Operation and Maintenance, Air Force	Multiple	Multiple	
Army	8.42	9.01	9.64	10.31	11.03	Operation and Maintenance, Army	Multiple	Multiple	
DLA	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, DLA	Multiple	Multiple	
DCMA	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, DCMA	Multiple	Multiple	
DISA	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, DISA	Multiple	Multiple	

¹ New York Fed Consumer Credit Panel, Equifax, <https://www.nbcnews.com/news/us-news/student-loan-statistics-2019-n997836>

² <https://www.opm.gov/policy-data-oversight/pay-leave/student-loan-repayment/reports/2017.pdf>

DCAA	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, DCAA	Multiple	Multiple	
OSD	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, OSD	Multiple	Multiple	
DFAS	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, DFAS	Multiple	Multiple	
WHS	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, WHS	Multiple	Multiple	
Joint Staff	0.16	0.17	0.19	0.20	0.21	Operation and Maintenance, Joint Staff	Multiple	Multiple	
National Guard	0.11	0.12	0.13	0.14	0.15	Operation and Maintenance, National Guard	Multiple	Multiple	
Navy	7.13	7.63	8.16	8.73	9.34	Operation and Maintenance, Navy	Multiple	Multiple	
USMC	0.86	0.92	0.98	1.05	1.12	Operation and Maintenance, Marine Corps	Various	Various	N/A
Total	26.17	28	30.02	32.09	34.3				

NUMBER OF PERSONNEL AFFECTED

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Air Force	900	945	992	1,042	1,094	Operation and Maintenance, Air Force	Multiple	Multiple	
Army	923	969	1,017	1,068	1,121	Operation and Maintenance, Army	Multiple	Multiple	
DLA	19	20	21	22	23	Operation and Maintenance, DLA	Multiple	Multiple	
DCMA	19	20	21	22	23	Operation and Maintenance, DCMA	Multiple	Multiple	

DISA	19	20	21	22	23	Operation and Maintenance, DISA	Multiple	Multiple	
DCAA	19	20	21	22	23	Operation and Maintenance, DCAA	Multiple	Multiple	
OSD	19	20	21	22	23	Operation and Maintenance, OSD	Multiple	Multiple	
DFAS	19	20	21	22	23	Operation and Maintenance, DFAS	Multiple	Multiple	
WHS	19	20	21	22	23	Operation and Maintenance, WHS	Multiple	Multiple	
Joint Staff	19	20	21	22	23	Operation and Maintenance, Joint Staff	Multiple	Multiple	
National Guard	11	12	13	14	15	Operation and Maintenance, National Guard	Multiple	Multiple	
Navy	1,068	1,121	1,177	1,236	1,298	Operation and Maintenance, Navy	Multiple	Multiple	
Total	3,054	3,207	3,367	3,536	3,712				

Changes to Existing Law: This proposal would make the following changes to section 5379(b)(2) of title 5, United States Code:

§ 5379. Student Loan Repayments

* * * * *

(a)(1) For the purpose of this section –

(A) the term “agency” means an agency under subparagraph (A), (B), (C), (D), or (E) of section 4101(1) of this title, the Architect of the Capitol, the Botanic Garden, and the Office of Congressional Accessibility Services; and

(B) the term “student loan” means—

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

(ii) a loan made under part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq., 1087aa et seq.); and

(iii) a health education assistance loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part E of title VIII of such Act (42 U.S.C. 297a et seq.).

(2) An employee shall be ineligible for benefits under this section if the employee occupies a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

(b)(1) The head of an agency may, in order to recruit or retain highly qualified personnel, establish a program under which the agency may agree to repay (by direct payments on behalf of the employee) any student loan previously taken out by such employee.

(2) Payments under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned, except that the amount paid ~~by an agency~~ under this section may not exceed-

(A) ~~\$10,000~~ \$20,000 for any employee in any calendar year; or

(B) a total of ~~\$60,000~~ \$120,000 in the case of any employee.

(3) Nothing in this section shall be considered to authorize an agency to pay any amount to reimburse an employee for any repayments made by such employee prior to the agency's entering into an agreement under this section with such employee.

(c)(1) An employee selected to receive benefits under this section must agree in writing, before receiving any such benefit, that the employee will—

(A) remain in the service of the agency for a period specified in the agreement (not less than ~~3 years~~ 1 year), unless involuntarily separated; and

(B) if separated involuntarily on account of misconduct, or voluntarily, before the end of the period specified in the agreement, repay to the Government ~~the amount of any benefits received~~ a prorated amount of any benefit received (derived by multiplying the benefit by the percentage representing the remaining uncompleted portion of the period of service required under the service agreement) by such employee from that agency under this section.

(2) The payment agreed to under paragraph (1)(B) of this subsection may not be required of an employee who leaves the service of such employee's agency voluntarily to enter into the service of any other agency unless the head of the agency that authorized the benefits notifies the employee before the effective date of such employee's entrance into the service of the other agency that payment will be required under this subsection.

(3) If an employee who is involuntarily separated on account of misconduct or who (excluding any employee relieved of liability under paragraph (2) of this subsection) is voluntarily separated before completing the required period of service fails to repay the amount agreed to under paragraph (1)(B) of this subsection, a sum equal to the amount outstanding is recoverable by the Government from the employee (or such employee's estate, if applicable) by—

(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest.

(4) Any amount repaid by, or recovered from, an individual (or an estate) under this subsection shall be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

(d) An employee receiving benefits under this section from an agency shall be ineligible for continued benefits under this section from such agency if the employee—

(1) separates from such agency; or

(2) does not maintain an acceptable level of performance, as determined under standards and procedures which the agency head shall by regulation prescribe.

(e) In selecting employees to receive benefits under this section, an agency shall, consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of this title, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(f) Any benefit under this section shall be in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(g) The Director of the Office of Personnel Management, after consultation with heads of a representative number and variety of agencies and any other consultation which the Director considers appropriate, shall prescribe regulations containing such standards and requirements as the Director considers necessary to provide for reasonable uniformity among programs under this section.

(h)(1) Each head of an agency shall maintain, and annually submit to the Director of the Office of Personnel Management, information with respect to the agency on—

(A) the number of Federal employees selected to receive benefits under this section;

(B) the job classifications for the recipients; and

(C) the cost to the Federal Government of providing the benefits.

(2) The Director of the Office of Personnel Management shall prepare, and annually submit to Congress, a report containing the information submitted under paragraph (1), and information identifying the agencies that have provided benefits under this section.

* * * * *

1 **SEC. ____. MODIFICATION OF AUTHORITY TO REPLACE DAMAGED OR**
2 **DESTROYED FACILITIES.**

3 Section 2854 of title 10, United States Code, is amended in subsection (c)(3) by
4 striking “\$100,000,000” and inserting “\$300,000,000”.

Section-by-Section Analysis

This proposal would increase the maximum aggregate amount that the Secretary concerned could obligate from appropriations available for operation and maintenance in any fiscal year under this authority from \$100,000,000 to \$300,000,000.

Public Law 115-91 amended section 2854 by adding subsection (c) to explicitly permit use of operation and maintenance appropriations when responding to natural disasters or acts of terrorism, up to a maximum aggregate amount of \$50,000,000 per year for each Secretary concerned. Subsequently, the Department’s experience in 2018 with hurricane damage at Tyndall Air Force Base, Florida, and Marine Corps Base Camp Lejeune, North Carolina, revealed the need for much greater capacity to quickly fund replacement facilities for the most critical damaged or destroyed facilities. Public Law 116-92 amended section 2854(c) by increasing the amount to \$100,000,000.

The expanded use of operations and maintenance funding in responding to natural disasters carries two distinct advantages compared with reliance on reprogrammed military construction funding. First, operation and maintenance funding is readily available in sufficient amounts within the Military Department concerned, without need for external authorization as military construction funding would require. Second, operation and maintenance funding provides much greater flexibility to the Secretary concerned in sourcing billpayers for the replacement facilities projects, and thereby improving management of financial and operational risk. Rather than being forced to sacrifice funding from other facility projects, funding could be shifted from training, base operations, facilities sustainment, equipment maintenance, fuels, and other related accounts based on overall mission need and risks. This would allow installation-level O&M funding across many functions to be best re-distributed according to need—including that for replacing facilities otherwise dependent upon military construction appropriations.

The increased capacity for use of O&M funding to replace critical facilities damaged or destroyed would greatly enhance the agility and flexibility of the Department to recover from natural disasters and improve its resilience.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. In the event of a natural disaster, O&M appropriations used under this expanded authority could be transferred from other O&M accounts (such as fuel, training, or facilities sustainment) where no longer needed at the impacted installation. Funding used under this authority could also be reimbursed through supplemental appropriation requests.

RESOURCE REQUIREMENTS (\$ MILLIONS)								
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG
Army	300	300	300	300	300	Operation & Maintenance, Army	Various	Various
Navy	Navy does not intend to use this authority.							
Air Force	300	300	300	300	300	Operation & Maintenance, Air Force	Various	Various
Defense-wide	300	300	300	300	300	Operation & Maintenance, Defense-wide	Various	Various
Total	900	900	900	900	900	--		

Changes to Existing Law: This proposal would revise section 2854 of title 10, United States Code, as follows:

§ 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facility under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under this section and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under subsection (a). The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(c)(1) In using the authority described in subsection (a) to carry out a military construction project to replace a facility, including a family housing facility, that has been damaged or destroyed, the Secretary concerned may use appropriations available for operation and maintenance if—

(A) the damage or destruction to the facility was the result of a natural disaster or a terrorism incident; and

(B) the Secretary submits a notification to the appropriate committees of Congress of the decision to carry out the replacement project, and includes in the notification—

(i) the current estimate of the cost of the replacement project;

(ii) the source of funds for the replacement project;

(iii) in the case of damage to a facility rather than destruction, a certification that the replacement project is more cost-effective than repair or restoration; and

(iv) a certification that deferral of the replacement project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) A replacement project under this subsection may be carried out only after the end of the 7-day period beginning on the date on which a copy of the notification described in paragraph (1) is provided in an electronic medium pursuant to section 480 of this title.

(3) The maximum aggregate amount that the Secretary concerned may obligate from appropriations available for operation and maintenance in any fiscal year for replacement projects under the authority of this subsection is ~~\$100,000,000~~ \$300,000,000.

1 **SEC. ____ . MODIFICATION OF GLOBAL POSITIONING SYSTEM FEDERAL**
2 **RADIONAVIGATION REQUIREMENTS.**

3 (a) MODIFICATIONS.—Section 2281 of title 10, United States Code, is amended—

4 (1) in subsection (a)—

5 (A) in the matter preceding paragraph (1), by striking “GPS services” and
6 inserting “GPS components”; and

7 (B) in paragraph (1), by striking “so as to make it unnecessary for the
8 Secretary to use the selective availability feature of the system continuously”;

9 (2) in subsection (b)—

10 (A) in paragraph (1), by striking “in order to meet the performance
11 requirements of the Federal Radionavigation Plan prepared jointly by the
12 Secretary of Defense and the Secretary of Transportation pursuant to subsection
13 (c)” and inserting “to meet performance standards reported in the GPS Standard
14 Positioning Service performance standard”; and

15 (B) in paragraph (5), by striking “Global Positioning System” and
16 inserting “GPS”;

17 (3) by striking subsection (c); and

18 (4) by redesignating subsection (d) as subsection (c), and in that subsection by
19 striking “GPS services” and inserting “GPS components”.

20 (b) REPORT ON FEDERAL POSITIONING, NAVIGATION, AND TIMING SERVICES.—

21 (1) IN GENERAL.—Chapter 3 of title 49, United States Code, is amended by
22 adding at the end of subchapter I the following new section:

23 **“§313. Report on Federal positioning, navigation, and timing services**

24 “The Secretary of Transportation, the Secretary of Defense, the Secretary of Homeland
25 Security, and the Secretary of Commerce (or their designees) shall jointly prepare a report on
26 Federal positioning, navigation, and timing services (in this section referred to as ‘PNT
27 services’). The report shall serve as a Federal repository and summary of information relevant to
28 existing and planned PNT services that are, or will be, provisioned by the Federal Government.
29 The report shall be revised and updated, as necessary, not less often than every two years. The
30 report, and any amendment to the report, shall be published in the Federal Register.”.

31 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such
32 title is amended by adding after the item relating to section 312 the following new item:

“313. Report on Federal positioning, navigation, and timing services.”.

[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 eliminate the requirement for the Department of Defense to be the lead provider of the Federal Radionavigation Plan (FRP); update the scope of the FRP to reflect the evolving and broadening use of positioning, navigation, and timing (PNT) services across the public and private sectors; and broaden the executive departments that are responsible for producing the re-scoped document to reflect modern use and provisioning of PNT services. The FRP originated in the INMARSAT Act of 1978, which sought to prevent redundancy in Federally funded and provided Radionavigation systems that were available to the public. GPS did not exist at the time. Most radionavigation systems were tailored for specific communities, i.e., VOR for civil aviation and TACAN for military aviation. GPS was in its earliest stages of development and it is possible that Congress conceived of economies and efficiencies from its future dual use, but at the time Radionavigation planning and implementation were very modest.

With the operational realization of GPS in 1995, the situation changed. The DoD ended its use of the LORAN system, transferred to USCG/DOT. The DoD also published CJCSI 6130.01, the DoD Master Navigation and Timing Plan, which described DoD PNT planning and use in the Joint Force. The CJCSI document was an internal DoD companion to the FRP and served DoD needs. In accordance with Presidential Policy and public law, the DoD also published interface specifications and a GPS Standard Positioning Service Performance Standard for public use of GPS. Synopses of these documents and declarations of DoD public service commitments became standard features of the FRP. However, all other civil elements of the FRP remained the province

of civil departments and agencies. Nonetheless, the visibility of the FRP grew because of the expanded civil/commercial use of GPS and its commercial viability and popularity.

Consequently, DoD contributions to the FRP were essentially a summary of other, more technical documents that were more important to the user community in availing of the GPS SPS. The FRP committed DoD to publicly state that which it was legally obliged to provide, and nothing more. The document had no utility for the DoD. Past efforts to eliminate the document revealed that DOT, NASA, and other civil Departments/Agencies still valued it, and they insisted that DoD maintain its obligation to provide the document, including their inputs. At that time, it was suggested that responsibility be transferred to DOT, with DoD merely providing a descriptive chapter on GPS service commitments. DOT and the other Departments balked at that suggestion and insisted that the burden of publication remain in U.S. Code.

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

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Support to Networks and Information Integration	-0.12	-0.13	-0.13	-0.13	-0.13	Research, Development, Test & Evaluation, Defense Wide	BA 6	170	0605170D8Z
Total	-0.12	-0.13	-0.13	-0.13	-0.13				

Changes to Existing Law: This proposal would add a new section 313 to title 49, United States Code, as set forth above, and also make the following changes to section 2281 of title 10, United States Code:

§2281. Global Positioning System

- (a) Sustainment and Operation for Military Purposes.-The Secretary of Defense shall provide for the sustainment of the capabilities of the Global Positioning System (hereinafter in this section referred to as the “GPS”), and the operation of basic GPS ~~services~~components, that are beneficial for the national security interests of the United States. In doing so, the Secretary shall-
 - (1) develop appropriate measures for preventing hostile use of the GPS ~~so as to make it unnecessary for the Secretary to use the selective availability feature of the system continuously~~ while not hindering the use of the GPS by the United States and its allies for military purposes; and
 - (2) ensure that United States armed forces have the capability to use the GPS effectively despite hostile attempts to prevent the use of the system by such forces.

(b) Sustainment and Operation for Civilian Purposes.-The Secretary of Defense shall provide for the sustainment and operation of the GPS Standard Positioning Service for peaceful civil, commercial, and scientific uses on a continuous worldwide basis free of direct user fees. In doing so, the Secretary-

- (1) shall provide for the sustainment and operation of the GPS Standard Positioning Service ~~in order to meet the performance requirements of the Federal Radionavigation Plan prepared jointly by the Secretary of Defense and the Secretary of Transportation pursuant to subsection (e) to meet performance standards reported in the GPS Standard Positioning Service performance standard;~~
- (2) shall coordinate with the Secretary of Transportation regarding the development and implementation by the Government of augmentations to the basic GPS that achieve or enhance uses of the system in support of transportation;
- (3) shall coordinate with the Secretary of Commerce, the United States Trade Representative, and other appropriate officials to facilitate the development of new and expanded civil and commercial uses for the GPS;
- (4) shall develop measures for preventing hostile use of the GPS in a particular area without hindering peaceful civil use of the system elsewhere; and
- (5) may not agree to any restriction on the ~~Global Positioning System~~ GPS proposed by the head of a department or agency of the United States outside the Department of Defense in the exercise of that official's regulatory authority that would adversely affect the military potential of the Global Positioning System.

~~(c) Federal Radionavigation Plan.-The Secretary of Defense and the Secretary of Transportation shall jointly prepare the Federal Radionavigation Plan. The plan shall be revised and updated not less often than every two years. The plan shall be prepared in accordance with the requirements applicable to such plan as first prepared pursuant to section 507 of the International Maritime Satellite Telecommunications Act 1 (47 U.S.C. 756). The plan, and any amendment to the plan, shall be published in the Federal Register.~~

~~(d)~~ Definitions.-In this section:

- (1) The term "basic GPS ~~services~~ components" means the following components of the Global Positioning System that are operated and maintained by the Department of Defense:
 - (A) The constellation of satellites.
 - (B) The navigation payloads that produce the Global Positioning System signals.
 - (C) The ground stations, data links, and associated command and control facilities.
- (2) The term "GPS Standard Positioning Service" means the civil and commercial service provided by the basic Global Positioning System as defined in the 1996 Federal Radionavigation Plan (published jointly by the Secretary of Defense and the Secretary of Transportation in July 1997).

1 **SEC. __. MODIFICATION OF AMOUNT THAT MAY BE PAID TO MEMBERS OF**
2 **THE SELECTED RESERVE IN THE EDUCATION LOAN REPAYMENT**
3 **PROGRAM.**

4 Section 16301(b) of title 10, United States Code, is amended by striking “15 percent or
5 \$500” and inserting “20 percent or \$1,000”.

[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 enhance existing authority for Reserve Components to repay education loan amounts allowing Service members to realize the intended benefit of this program. Section 16301, in subsection (b), presently limits the annual amount of student loan repayment to 15% or \$500, whichever is greater, which is not repayable until after the period of service is performed. This proposal would increase the annual amount that may be repaid to 20 percent or \$1,000, whichever is greater. Presently, a Reserve Component member essentially has to serve 7 years in the Selected Reserve in order to fully receive full student loans repayment benefit. Under the current recruiting environment, the vast majority of applicants contract for six years. As a result, Soldiers will not fully realize full repayment of their student loan(s). This limitation reduces the effectiveness of the incentive and creates a sense of distrust amongst Soldiers who are unable to fully realize the stated benefit of this incentive. 59% of ARNG Soldiers with SLRP contracts have student loan debt between \$32,000 and \$50,000. 29% of those with SLRP have student loans in excess of \$50,000, with multiple Soldiers having loans in excess of \$90,000. The median loan debt balance is currently at \$52,172.11. With 88% of ARNG Soldiers possessing loans in excess of \$32,000, increasing the percentage by which the ARNG may repay a student loan will enhance flexibility in offering this as an incentive in today’s challenging recruiting environment.

Budget Implications: The resources impacted are reflected in the table below and do not require resource funding for the FY 2021 Program/Budget submission.

LRP PERSONNEL USAGE					
Program	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
ARNG	6,726	3,312	4,497	5,586	7,333
USAR	2,474	2,936	4,036	5,737	7,291
USAF Reserve		38	0	0	1,756
USN Reserve	0	0	0	0	0
Total	9,200	6,286	8,533	11,323	16,380

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
ARNG	\$0	+\$9.6 M	+\$10.3 M	+10.3 M	+\$10.3 M	NPGA	1R	1R33A2	
USAR	\$0	+\$1M	+\$1M	+\$1M	+\$1M	2070	1R	1R3	
USAF Reserve	\$0	\$0	\$0	\$0	\$0				
USN Reserve	\$0	\$0	\$0	\$0	\$0				
Total	\$0	+\$10.6 M	+\$11.3 M	+\$11.3 M	+\$11.3 M				

Changes to Existing Law: This proposal would amend section 16301 of title 10, United States Code, as follows:

§16301. Education loan repayment program: members of the selected reserve

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

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

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.);

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.); or

(D) any loan incurred for educational purposes made by a lender that is—

(i) an agency or instrumentality of a State;

(ii) a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;

(iii) a pension fund approved by the Secretary for purposes of this section;

or

(iv) a nonprofit private entity designated by a State, regulated by that State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary of Defense may repay loans described in paragraph (1) in the case of any person for service performed as a member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and in an officer program or military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is ~~15 percent or \$500~~ 20 percent or \$1,000, whichever is greater, for each year of service, plus the amount of any interest that may accrue during the current year.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required. For the purposes of this section, any interest that has accrued on the loan for periods before the current year shall be considered as within the total loan amount that shall be repaid.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(g) The Secretary of Homeland Security may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(h) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 2171 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(i) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.

1 **SEC. ____ . REPEAL OF PROVISION RELATING TO OFFICERS DESIGNATED FOR**
2 **ENGINEERING DUTY, AERONAUTICAL ENGINEERING DUTY, AND**
3 **SPECIAL DUTY.**

- 4 (a) REPEAL.—Section 8137 of title 10, United States Code, is hereby repealed.
- 5 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter
6 815 of title 10, United States Code, is amended by striking the item related to section 8137.

[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 repeal section 8137 of title 10, United States Code. Section 8137 has not been substantively amended in 40 years, and does not properly characterize the categories or nature of types of duty associated with appointment or designation in the respective category. Current statutory language concerning the nature of the types of duty associated with designation as engineering duty, aeronautical engineering duty and special duty is dated and should be removed to provide the Secretary maximum flexibility, without the burden of having to pursue statutory amendments, to prescribe duties in a rapidly evolving and transformational Navy.

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 repeal section 8137 of title 10, United States Code:

~~**§ 8137. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty**~~

- ~~(a) Persons may be originally appointed in the line of the Navy as regular officers designated for engineering duty, aeronautical engineering duty, or special duty.~~
- ~~(b) With the approval of the Secretary, a regular officer in the line of the Navy may, upon his application, be designated for engineering duty, aeronautical engineering duty, or special duty.~~
- ~~(c) The types of engineering duty for which officers may be designated include ship engineering and ordnance engineering. The types of aeronautical engineering duty for which officers may be designated include aeronautical engineering and aviation maintenance. The types~~

~~of special duty for which officers may be designated include communications, law, naval intelligence, photography, public affairs, psychology, geophysics, cryptography, and hydrography.~~

~~(d) Officers designated for engineering duty, aeronautical engineering duty, or special duty shall perform sea or shore duty appropriate to their special qualifications but may not succeed to command except on shore and then only as authorized by the Secretary.~~

1 **SEC. ____. MODIFICATION OF OFFICE OF PERSONNEL MANAGEMENT ROLE IN**
2 **DEPARTMENT OF DEFENSE POLICY AND INSTRUCTIONS**
3 **REGARDING CIVILIAN PERSONNEL IN THE CYBER WORKFORCE.**

4 Subsection (g) of section 1599f of title 10, United States Code, is amended by striking “in
5 coordination with” and inserting “in consultation with”.

[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 subsection (g) of section 1599f of title 10, United States Code (U.S.C.), to modify the Office of Personnel Management’s (OPM’s) role in the development of Department of Defense (DoD) Cyber Excepted Service personnel regulations.

Section 1599f of title 10, U.S.C., titled “United States Cyber Command recruitment and retention”, authorizes the Secretary of Defense to establish and appoint qualified individuals to excepted service positions at the United States Cyber Command, Joint Task Force-Department of Defense Information Networks, and elements of the Defense Information Systems Agency, Department of Defense Chief Information Officer, and Military Departments supporting United States Cyber Command. Subsection (g) of section 1599f requires DoD to coordinate all associated Cyber Excepted Service personnel regulations with OPM. This coordination requirement has the effect of impeding the Department’s ability to quickly and effectively adapt its personnel policies and instructions in response to the cyber mission. Given the authority granted to the Secretary of Defense to establish and manage the Cyber Excepted Service workforce, and the critical demand for qualified individuals to work on emergent national security requirements related to cyber, the Department must have autonomy and flexibility to design and implement the new Cyber Excepted Service personnel system across the Department in as timely a manner as possible. By amending section 1599f to direct the Secretary of Defense to work “in consultation with” rather than “in coordination with” OPM, the necessary autonomy and flexibility can be achieved.

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

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

§ 1599f. United States Cyber Command recruitment and retention

(a) General Authority.-(1) The Secretary of Defense may-

(A) establish, as positions in the excepted service, such qualified positions in the Department of Defense as the Secretary determines necessary to carry out the responsibilities of the United States Cyber Command, including-

(i) positions held by staff of the headquarters of the United States Cyber Command;

(ii) positions held by elements of the United States Cyber Command enterprise relating to cyberspace operations, including elements assigned to the Joint Task Force-Department of Defense Information Networks; and

(iii) positions held by elements of the military departments supporting the United States Cyber Command;

(B) appoint an individual to a qualified position (after taking into consideration the availability of preference eligibles for appointment to the position); and

(C) subject to the requirements of subsections (b) and (c), fix the compensation of an individual for service in a qualified position.

(2) The authority of the Secretary under this subsection applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(b) Basic Pay.-(1) In accordance with this section, the Secretary shall fix the rates of basic pay for any qualified position established under subsection (a)-

(A) in relation to the rates of pay provided for employees in comparable positions in the Department, in which the employee occupying the comparable position performs, manages, or supervises functions that execute the cyber mission of the Department; and

(B) subject to the same limitations on maximum rates of pay established for such employees by law or regulation.

(2) The Secretary may-

(A) consistent with section 5341 of title 5, adopt such provisions of that title to provide for prevailing rate systems of basic pay; and

(B) apply those provisions to qualified positions for employees in or under which the Department may employ individuals described by section 5342(a)(2)(A) of such title.

(c) Additional Compensation, Incentives, and Allowances.-(1) The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(2) An employee in a qualified position whose rate of basic pay is fixed under subsection (b)(1) shall be eligible for an allowance under section 5941 of title 5 on the same basis and to the same extent as if the employee was an employee covered by such section, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

(d) Implementation Plan Required.-The authority granted in subsection (a) shall become effective 30 days after the date on which the Secretary of Defense provides to the congressional defense committees a plan for implementation of such authority. The plan shall include the following:

(1) An assessment of the current scope of the positions covered by the authority.

(2) A plan for the use of the authority.

(3) An assessment of the anticipated workforce needs of the United States Cyber Command across the future-years defense plan.

(4) Other matters as appropriate.

(e) Collective Bargaining Agreements.-Nothing in subsection (a) may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an office, component, subcomponent, or equivalent of the Department that is a successor to an office, component, subcomponent, or equivalent of the Department covered by the agreement before the succession.

(f) Training.-(1) The Secretary shall provide training to covered personnel on hiring and pay matters relating to authorities under this section.

(2) For purposes of this subsection, covered personnel are employees of the Department who-

(A) carry out functions relating to-

(i) the management of human resources and the civilian workforce of the Department; or

(ii) the writing of guidance for the implementation of authorities regarding hiring and pay under this section; or

(B) are employed in supervisory positions or have responsibilities relating to the hiring of individuals for positions in the Department and to whom the Secretary intends to delegate authority under this section.

(g) Required Regulations.-The Secretary, ~~in coordination with~~ in consultation with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

1 **SEC. ____ . EXPANSION OF PROBATIONARY PERIOD TO TWO YEARS FOR**
2 **PREFERENCE ELIGIBLE EMPLOYEES IN THE EXCEPTED SERVICE.**

3 Section 1599e of title 10, United States Code, is amended—

4 (1) in subsection (b)(1)—

5 (A) by striking “or” at the end of subparagraph (A);

6 (B) by redesignating subparagraph (B) as subparagraph (C); and

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

8 (B):

9 “(B) appointed to a permanent position within the excepted service at the
10 Department of Defense; or”; and

11 (2) by amending subsection (d) to read as follows:

12 “(d) APPLICATION OF CHAPTER 75 OF TITLE 5 FOR EMPLOYEES IN THE
13 COMPETITIVE OR EXCEPTED SERVICE.—With respect to any individual described in
14 subsection (b)(1)(A) or (b)(1)(B) and to whom this section applies, section 7501(1),
15 section 7511(a)(1)(A)(ii), and section 7511(a)(1)(B) of title 5 shall be applied to such
16 individual by substituting ‘completed 2 years’ for ‘completed 1 year’ in each instance it
17 appears.”.

**[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 1599e of title 10 by expanding the two year probationary period to all Department of Defense excepted service employees (as that term is used in sections 7511(a)(1)(B) and 7511(a)(1)(C) of title 5). The revised language will require preference eligible excepted service employees two years of current continuous service to meet the requirement of probationary period instead of one.

10 U.S.C. 1599e expanded the probationary period to 2 years for competitive service employees. Excepted service employees who are not preference eligible already have a two year trial period under 5 U.S.C. 7511(a)(1)(C)(ii)). However, under current law preference eligible employees in the excepted service only have a 1 year trial period (5 U.S.C. 7511(a)(1)(B)).

Probationary/trial periods are a highly effective tool and the final step in the hiring process. They provide limited appeal rights and thus allow for expedited removal processes for employees who do not meet the performance or fitness standards for continued employment. The current definition of employee under 5 USC 7511 creates an unintended inequity in the Department of Defense regarding when an individual becomes a tenured employee and afforded due process and appeal entitlements. For non-DoD agencies, preference eligible employees hired under the excepted service are afforded the same timeframe for meeting the definition of employee as competitive service employees.

The FY 2016 NDAA changed the definition of employee under competitive service to require two years of current continuous service. The current definition of employee for non-preference eligible excepted service is two years of current continuous service. Therefore, *only* preference eligible excepted service employees enjoy the one year probationary period. The recommended change would result in DoD affording all individuals, regardless of competitive or excepted service appointment, the same timeframe to meet the definition of employee after two years of current continuous service. The definition of employee creates the ability to use an expedited termination process should the individual not meet performance or conduct expectations during their probation/trial period.

Budget Implications: No budget impact.

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

SEC. 1599e. PROBATIONARY PERIOD FOR EMPLOYEES.

(a) In General.—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of two years. The Secretary concerned may extend a probationary period under this subsection at the discretion of such Secretary.

(b) Definitions.—In this section:

(1) The term “covered employee” means any individual—

(A) appointed to a permanent position within the competitive service at the Department of Defense; ~~or~~

(B) appointed to a permanent position within the excepted service at the Department of Defense; or

~~(C)~~ appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

(2) The term “Secretary concerned” includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(c) Employment Becomes Final.—Upon the expiration of a covered employee’s probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary of Defense.

(d) Application of Chapter 75 of Title 5 for Employees in the Competitive or Excepted Service.—With respect to any individual described in subsection (b)(1)(A) or (b)(1)(B) and to whom this section applies, section 7501(1), ~~and~~ section 7511(a)(1)(A)(ii), and section 7511(a)(1)(B) of title 5 shall be applied to such individual by substituting “completed 2 years” for “completed 1 year” in each instance it appears.

1 **SEC. __. REPEAL AND MODIFICATION OF REPORTING REQUIREMENTS.**

2 (a) QUARTERLY REPORTS ON USE OF FUNDS FOR SECURITY COOPERATION.—Section
3 381(b) of title 10, United States Code, is amended—

4 (1) in the heading, by striking “QUARTERLY” and inserting “ANNUAL”;

5 (2) by striking “30 days” and inserting “60 days”; and

6 (2) by striking “calendar quarter” each place it appears and inserting “fiscal year”.

7 (b) STRATEGY TO COUNTER DESTABILIZING ACTIVITIES OF IRAN.—Section 1237(b) of the
8 John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232;
9 132 Stat. 2043) is amended by striking “and annually thereafter through December 31, 2021,”.

10 (c) NORMALIZING THE TRANSFER OF DEFENSE ARTICLES AND DEFENSE SERVICES TO
11 TAIWAN.—Section 1259A of the National Defense Authorization Act for Fiscal Year 2018 (22
12 U.S.C. 3302 note) is repealed.

13 (d) REPORT ON DEFENSE ASSISTANCE.—Section 1059(f) of the National Defense
14 Authorization Act for Fiscal Year 2016 (10 U.S.C. 271 note prec) is amended by striking “At the
15 end of each three-month period” and inserting “Not later than 90 days after the end of a fiscal
16 year”.

[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

Quarterly Reports on Use of Funds for Security Cooperation. This proposal would change the reporting requirement from quarterly to annually. The data collected, analyzed, and coordinated would reflect the total fiscal year use of Security Cooperation (SC) funds. The 381b report incorporates execution data related to programs and activities funded from DSCA’s Operation and Maintenance, Defense-wide and Overseas, Humanitarian, Disaster, and Civic Aid accounts, as well as consolidated data provided from the U.S. Geographic Combatant Commands and U.S. Services. The data required is both quantitative and qualitative to depict security cooperation funds by region, budget category, as well as notable accomplishments. Therefore,

this complexity requires contextual inputs and coordination down to the implementation level resulting in a lengthy process.

The 381b reporting deadline is likely to be amended from 30 days to 60 days to accommodate the delay in financial systems reporting and coordination across DSCA, GCCs, and U.S. Services. The complexity of the reporting required to complete the 381b lends this report to be an annual instead of quarterly report. DSCA submits other congressional reports that in part report on the same data in the 381b report causing some duplication of effort. DSCA requests to change the status of the 381b report from a quarterly to an annual report focusing on overall fiscal year use of funds and highlighting key accomplishments.

Strategy to Counter Destabilizing Activities of Iran. This proposal would eliminate the requirement for an annual report about on actions taken to enhance cooperation and encourage military-to-military engagement between the United States and foreign partners with the goal of countering the destabilizing actions of Iran. OSD will provide an annual briefing to congressional staff in place of a formal report.

Normalizing the Transfer of Defense Articles and Defense Services to Taiwan. This proposal would strike section 1259A of the National Defense Authorization Act for Fiscal Year 2018 (22 U.S.C. 3302 note) which directed the Secretary of Defense, in consultation with the Secretary of State, to provide a report on the proposed transfer to Taiwan of any defense articles or services requiring certification or report to Congress pursuant to section 36 of the Arms Export Control Act (22 U.S.C. 2776), the status of any Letter of Offer and Acceptance (LOA) the Secretary of Defense intends to issue with respect to such request, and an assessment of whether the transfer of such article or service would be consistent with United States obligations under the Taiwan Relations Act (Public Law 96–8; 22 U.S.C. 3301 et seq.).

This proposal would also eliminate the briefing required under section (c) with respect to the security challenges faced by Taiwan and the military cooperation between the United States and Taiwan, including a description of any requests from Taiwan for the transfer of defense articles or defense services and the status, whether signed or unsigned, of any LOAs with respect to such requests.

The reporting and briefing requirements per section 1259A are redundant as this information is already shared with Congress pursuant to section 36 of the Arms Export Control Act (22 U.S.C. 2776). In addition, the process for transferring defense articles and services to Taiwan has been normalized with the establishment of routine Congressional engagements with Hill staff to address queries or concerns, requests for information, and to provide program updates as needed.

Report on Defense Assistance. Section (f) would amend Section 1059(f) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), modifying the report requirement from “[a]t the end of each three-month period during which assistance is provided under subsection (a),” to “[n]ot later than 90 days after the end of a fiscal year during which assistance is provided under subsection (a).” As illustrated by the reports required in connection with the ongoing DoD support of CBP Operation SECURE LINE at the U.S. southern border,

producing a report every three months is a significant administrative burden. The annual report that would be produced, if amended as proposed, would be more comprehensive and, therefore, more informative to Congress. Moreover, the timing of the annual report would inform congressional defense committees as they prepare for markup of the annual defense authorization and appropriation bills.

Budget Implications: No budget impact.

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

Title 10, United States Code

§381. Consolidated budget

(a) CONSOLIDATED BUDGET.—The budget of the President for each fiscal year, as submitted to Congress by the President pursuant to section 1105 of title 31, shall set forth by budget function and as a separate item the amounts requested for the Department of Defense for such fiscal year for all security cooperation programs and activities of the Department of Defense, including the military departments, to be conducted in such fiscal year, including the specific country or region and the applicable authority, to the extent practicable.

(b) ~~QUARTERLY ANNUAL~~ REPORT ON USE OF FUNDS.—Not later than ~~30~~ 60 days after the end of each ~~calendar quarter~~ fiscal year, the Secretary shall submit to the appropriate committees of Congress a report on the obligation and expenditure of funds for security cooperation programs and activities of the Department of Defense during such ~~calendar quarter~~ fiscal year.

JOHN S. MCCAIN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019

SEC. 1237. STRATEGY TO COUNTER DESTABILIZING ACTIVITIES OF IRAN.

(a) STRATEGY AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may develop a strategy with foreign partners to counter the destabilizing activities of Iran.

(2) ELEMENTS.—The strategy described in paragraph (1)—

(A) should identify specific countries in which Iran and Iranian-backed entities are operating; and

(B) should establish a cooperative framework that includes, as appropriate—

(i) investing in intelligence, surveillance, and reconnaissance capabilities;

(ii) investing in mine countermeasures resources and platforms;

(iii) investing in integrated air and missile defense platforms and technologies;

- (iv) sharing intelligence and data between the United States and such foreign countries;
- (v) investing in cyber security and cyber defense capabilities;
- (vi) engaging in combined planning and exercises;
- (vii) engaging in defense education, institution building, doctrinal development, and reform; and
- (viii) assessing Iran's destabilizing activities in the countries identified under subparagraph (A) and the implications thereof.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, ~~and annually thereafter through December 31, 2021,~~ the Secretary of Defense, in consultation with the Secretary of State, should submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on actions taken to enhance cooperation and encourage military-to-military engagement between the United States and foreign partners with the goal of countering the destabilizing actions of Iran and, if applicable, the strategy authorized by subsection (a).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018

~~SEC. 1259A. NORMALIZING THE TRANSFER OF DEFENSE ARTICLES AND DEFENSE SERVICES TO TAIWAN.~~

~~(a) SENSE OF CONGRESS.—It is the sense of Congress that any requests from the Government of Taiwan for defense articles and defense services should receive a case-by-case review by the Secretary of Defense, in consultation with the Secretary of State, that is consistent with the standard processes and procedures in an effort to normalize the arms sales process with Taiwan.~~

~~(b) REPORT.—~~

~~(1) IN GENERAL.—Not later than 120 days after the date on which the Secretary of Defense receives a Letter of Request from Taiwan with respect to the transfer of a defense article or defense service to Taiwan, the Secretary, in consultation with the Secretary of State, shall submit to the appropriate congressional committees a report that includes—~~

~~(A) the status of such request;~~

~~(B) if the transfer of such article or service would require a certification or report to Congress pursuant to any applicable provision of section 36 of the Arms Export Control Act (22 U.S.C. 2776), the status of any Letter of Offer and Acceptance the Secretary of Defense intends to issue with respect to such request; and~~

~~(C) an assessment of whether the transfer of such article or service would be consistent with United States obligations under the Taiwan Relations Act (Public Law 96–8; 22 U.S.C. 3301 et seq.).~~

~~(2) ELEMENTS.—Each report required under paragraph (1) shall specify the following:~~

~~(A) The date the Secretary of Defense received the Letter of Request.~~

~~(B) The value of the sale proposed by such Letter of Request.~~

~~(C) A description of the defense article or defense service proposed to be transferred.~~

~~(D) The view of the Secretary of Defense with respect to such proposed sale and whether such sale would be consistent with United States defense initiatives with Taiwan.~~

~~(3) FORM.—Each report required under paragraph (1) shall be submitted in unclassified form but may contain a classified annex.~~

~~(c) BRIEFING.—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of Defense, in coordination with the Secretary of State, shall provide a briefing to the appropriate congressional committees with respect to the security challenges faced by Taiwan and the military cooperation between the United States and Taiwan, including a description of any requests from Taiwan for the transfer of defense articles or defense services and the status, whether signed or unsigned, of any Letters of Offer and Acceptance with respect to such requests.~~

~~(d) DEFINITIONS.—In this section:~~

~~(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—~~

~~(A) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and~~

~~(B) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.~~

~~(2) DEFENSE ARTICLE; DEFENSE SERVICE.—The terms “defense article” and “defense service” have the meanings given such terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).~~

~~(3) LETTER OF REQUEST; LETTER OF OFFER AND ACCEPTANCE.—The terms “Letter of Request” and “Letter of Offer and Acceptance” have the meanings given such terms for purposes of Chapter 5 of the Security Assistance Management Manual of the Defense Security Cooperation Agency, as in effect on the date of the enactment of this Act.~~

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

SEC. 1059. DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE ASSISTANCE TO SECURE THE SOUTHERN LAND BORDER OF THE UNITED STATES.

(a) **AUTHORITY TO PROVIDE ASSISTANCE.**—The Secretary of Defense may provide assistance to United States Customs and Border Protection for purposes of increasing ongoing efforts to secure the southern land border of the United States.

(b) **CONCURRENCE IN ASSISTANCE.**—Assistance under subsection (a) shall be provided with the concurrence of the Secretary of Homeland Security.

(c) **TYPES OF ASSISTANCE AUTHORIZED.**—The assistance provided under subsection (a) may include the following:

(1) Deployment of members and units of the regular and reserve components of the Armed Forces to the southern land border of the United States.

(2) Deployment of manned aircraft, unmanned aerial surveillance systems, and ground-based surveillance systems to support continuous surveillance of the southern land border of the United States.

(3) Intelligence analysis support.

(d) MATERIEL AND LOGISTICAL SUPPORT.—The Secretary of Defense is authorized to deploy such materiel and equipment and logistics support as is necessary to ensure the effectiveness of assistance provided under subsection (a).

(e) FUNDING.—Of the amounts authorized to be appropriated for the Department of Defense by this Act, the Secretary of Defense may use up to \$75,000,000 to provide assistance under subsection (a).

(f) REPORTS.—~~At the end of each three month period~~ Not later than 90 days after the end of a fiscal year during which assistance is provided under subsection (a), the Secretary of Defense, in coordination with the Secretary of Homeland Security, shall submit to the congressional defense committees, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Government Affairs of the Senate a report on the provision of such assistance during that period. Each report shall include, for the period covered by the report, the following:

(1) A description of the assistance provided.

(2) A description of the sources and amounts of funds used to provide such assistance.

(3) A description of the amounts obligated to provide such assistance.

(4) An assessment of the efficacy and cost-effectiveness of such assistance in support of the Department of Homeland Security's objectives and strategy to address the challenges on the southern land border of the United States and recommendations, if any, to enhance the effectiveness of such assistance.

1 **SEC. ____. REPEAL OF THE OCEAN RESEARCH ADVISORY PANEL.**

2 (a) REPEAL.—Section 8933 of title 10, United States Code, is repealed.

3 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 893 of
4 such title is amended by striking the item relating to section 8933.

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

Section-by-Section Analysis

This proposal repeals the language authorizing the Ocean Research Advisory Panel (ORAP), currently managed by the Department of the Navy (DoN) on behalf of the Department of Defense.

The ORAP’s stated objective (see 10 U.S.C. § 8933(b)) is to advise the National Ocean Research Leadership Council (NORLC) on policies and procedures to implement the National Oceanographic Partnership Program, to advise the NORLC on partnership project selection and allocation of funds for implementation, to advise the NORLC on matters relating to national oceanographic data requirements, and any other additional responsibilities that the NORLC considers appropriate.

On July 19, 2018, President Trump released Executive Order 13840, which enhanced the focus of the NORLC toward economic development and changed the participation for the Department of Defense (DoD) from the U.S. Navy to the U.S. Army and includes in the applicable domain ocean, coastal regions, Great Lakes waters, and related seabed, subsoil, waters adjacent to seabed, and natural resources. Much of this domain with respect to environmental protection, travel, and trade is overseen or managed by other Federal departments and agencies,, and not DoD. Additionally, the Executive Order does not mention the ORAP, nor its prior function of informing the NORLC, or its predecessors, of policy recommendations or advice.

The last two ORAP reports issued in fiscal year (FY) 2016, *Priorities of the Administration* and *Improving the Balance Between Ocean Infrastructure and Ocean Research in the U.S.*, reviewed balancing ocean science infrastructure with ocean research support. The content of each report is evidence of a focus shift from a defense-led discussion to a maritime engagement and research discussion involving trash, algae-blooms, and the long-term health, resilience, safety, and productivity of domestic marine and Great Lakes waters – which does not belong under DoD’s jurisdiction. The 2017 report, *Priorities for the Administration*, had only one section on national security, which focused on ensuring energy and food security, not defense.

The ORAP originally fell under the DoN’s sponsorship, and therefore the DoD, because the original statute contained a subsection directing that “[the] Secretary of the Navy annually

shall make funds available to support the activities of the Advisory Panel.¹” In 2015, in Public Law 114-92, Congress struck “the Secretary of the Navy annually shall make funds available to support the activities of the Advisory Panel” from the statute. Since FY2016, the DoN has called no ORAP meetings and allocated no budget toward ORAP meetings or member travel or per diem, and the ORAP has provided no new recommendations. Between 2015 and 2017, the ORAP has received no tasking from the NOC or NORLC nor appointed any new members.

The sense of Congress, as identified in the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App.), is that “advisory committees should be terminated when they are no longer carrying out the purposes for which they are established.” Current DoD policy is to “continually evaluate advisory committee requirements and, when appropriate, request termination when the advisory committee’s objectives have been accomplished, the advisory committee’s work is made obsolete by the passing of time; [or] another entity has assumed the advisory committee’s functions...” Since the NORLC has not tasked the ORAP and the ORAP has not met since FY 2016, its work is obsolete.

Repealing the ORAP language removes any administrative burden from the DoD for this inactive advisory committee. Termination of the ORAP does not eliminate Government work on protecting U.S. maritime domains but rather enables the more active entities, such as the National Oceanic and Atmospheric Administration, to lead these discussions outside the defense arena.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year 2021 President's Budget.

Changes to Existing Law: This proposal would amend section 8933 of title 10, United States Code, as follows:

~~§8933. Ocean Research Advisory Panel~~

~~(a) Establishment. The Council shall establish an Ocean Research Advisory Panel consisting of not less than 10 and not more than 18 members appointed by the chairman, including the following:~~

- ~~(1) One member who will represent the National Academy of Sciences.~~
- ~~(2) One member who will represent the National Academy of Engineering.~~
- ~~(3) One member who will represent the Institute of Medicine.~~
- ~~(4) Members selected from among individuals who will represent the views of ocean industries, State governments, academia, and such other views as the chairman considers appropriate.~~

~~(5) Members selected from among individuals eminent in the fields of marine science or marine policy, or related fields.~~

~~(b) Responsibilities. The Council shall assign the following responsibilities to the Advisory Panel:~~

¹ Subsection (c) of section 7903 (now renumbered 8933) of title 10, United States Code. That subsection (c) was repealed in FY 2016 (see Pub.L. 114-92, Div.A, Title X, § 1084, Nov. 25, 2015, 129 Stat. 1004).

~~(1) To advise the Council on policies and procedures to implement the National Oceanographic Partnership Program.~~

~~(2) To advise the Council on selection of partnership projects and allocation of funds for partnership projects for implementation under the program.~~

~~(3) To advise the Council on matters relating to national oceanographic data requirements.~~

~~(4) Any additional responsibilities that the Council considers appropriate.~~

1 **SEC. __. TEMPORARY AUTHORITY TO ORDER RETIRED MEMBERS TO ACTIVE**
2 **DUTY IN HIGH-DEMAND, LOW-DENSITY ASSIGNMENTS DURING**
3 **WAR OR NATIONAL EMERGENCY.**

4 Section 688a of title 10, United States Code, is amended—

5 (1) by redesignating subsection (g) as subsection (h); and

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

7 “(g) EXCEPTION DURING PERIODS OF WAR OR NATIONAL EMERGENCY.—The limitations
8 in subsections (c) and (f) shall not apply during time of war or of national emergency declared by
9 the President or Congress.”.

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

Section-by-Section Analysis

This proposal would amend section 688a of title 10, United States Code, by inserting a new subsection (g), which would allow the Secretary of a military department to recall more than 1,000 retirees to active duty during a war or national emergency. Waiving the 1,000 member limitation on this temporary recall authority and the authority’s expiration date in time of war or of national emergency will increase the Department of Defense’s flexibility and agility in generating forces with the expertise required to respond rapidly and efficiently during such a period.

Given the unpredictability of war and national emergencies, such as the COVID 19 pandemic, waiver of the 1,000-member limit will better posture the Department to respond to unpredictable and rapidly evolving situations. The Office of the Secretary of Defense will ensure the amount of recalled retirees does not exceed the number warranted by mission requirements.

Budget Implications: This is a proposal to allow the recall of retired members if needed in a national emergency. Although it is unlikely to be needed, it gives the military departments the flexibility to meet emerging needs in such an emergency. Any budget requirements will be determined at the time of need and funded either from existing authorities or any supplemental enacted to support the emergency.

Changes to Existing Law: This proposal would make the following changes to section 688a of title 10, United States Code:

§688a. Retired members: temporary authority to order to active duty in high-demand, low-density assignments

(a) **AUTHORITY.**—The Secretary of a military department may order to active duty a retired member who agrees to serve on active duty in an assignment intended to alleviate a high-demand, low-density military capability or in any other specialty designated by the Secretary as critical to meet wartime or peacetime requirements. Any such order may be made only with the consent of the member ordered to active duty and in accordance with an agreement between the Secretary and the member.

(b) **DURATION.**—The period of active duty of a member under an order to active duty under subsection (a) shall be specified in the agreement entered into under that subsection.

(c) **LIMITATION.**—No more than a total of 1,000 members may be on active duty at any time under subsection (a).

(d) **RELATIONSHIP TO OTHER AUTHORITY.**—The authority to order a retired member to active duty under this section is in addition to the authority under section 688 of this title or any other provision of law authorizing the Secretary concerned to order a retired member to active duty.

(e) **INAPPLICABILITY OF CERTAIN PROVISIONS.**—Retired members ordered to active duty under subsection (a) shall not be counted for purposes of section 688 or 690 of this title.

(f) **EXPIRATION OF AUTHORITY.**—A retired member may not be ordered to active duty under this section outside a period as follows:

(1) The period beginning on December 2, 2002, and ending on December 31, 2011.

(2) The period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018 and ending on December 31, 2022.

(g) EXCEPTION DURING PERIODS OF WAR OR NATIONAL EMERGENCY.—The limitations in subsections (c) and (f) shall not apply during time of war or of national emergency declared by the President or Congress.

(gh) HIGH-DEMAND, LOW-DENSITY MILITARY CAPABILITY DEFINED. —In this section, the term “high-demand, low-density military capability” means a combat, combat support or service support capability, unit, system, or occupational specialty that the Secretary of Defense determines has funding, equipment, or personnel levels that are substantially below the levels required to fully meet or sustain actual or expected operational requirements set by regional commanders.

1 **SEC. ____ . SAFETY OF NAVIGATION MISSION OF THE NATIONAL GEOSPATIAL-**
2 **INTELLIGENCE AGENCY.**

3 (a) MISSION OF NATIONAL-GEOSPATIAL-INTELLIGENCE AGENCY.—Section 442 of title 10,
4 United States Code, is amended—

5 (1) in subsection (b)—

6 (A) by striking “means of navigating vessels of the Navy and the merchant
7 marine” and inserting “the means for safe navigation”; and

8 (B) by striking “and inexpensive nautical charts” and all that follows and
9 inserting “geospatial information for use by the departments and agencies of the
10 United States, the merchant marine, and navigators generally.”; and

11 (2) in subsection (c)—

12 (A) by striking “shall prepare and” and inserting “shall acquire, prepare,
13 and”;

14 (B) by striking “charts” and inserting “safe for navigation charts and
15 datasets”; and

16 (C) by striking “geodetic” and inserting “geomatics”.

17 (b) MAPS, CHARTS, AND BOOKS.—

18 (1) IN GENERAL.—Section 451 of title 10, United States Code, is amended—

19 (A) in the heading, by striking “**and books**” and inserting “**books, and**
20 **datasets**”;

21 (B) in paragraph (1), by striking “maps, charts, and nautical books” and
22 inserting “nautical and aeronautical charts, topographic and geomatics maps,
23 books, models, and datasets”; and

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

2 “(2) acquire (by purchase, lease, license, or barter) all necessary rights, including
3 copyrights and other intellectual property rights, required to prepare, publish, and furnish
4 to navigators the products described in paragraph (1).”.

5 (2) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of
6 subchapter II of chapter 22 of title 10, United States Code, is amended by striking the
7 item relating to section 451 and inserting the following new item:

“451. Maps, charts, books, and datasets.”.

8 (c) CIVIL ACTIONS BARRED.—Section 456 of title 10, United States Code, is amended by
9 striking subsections (a) and (b) and inserting the following:

10 “No civil action may be brought against the United States on the basis of the content of
11 geospatial information prepared or disseminated by the National Geospatial-Intelligence
12 Agency.”.

13 (d) DEFINITIONS.—Section 467 of title 10, United States Code, is amended—

14 (1) in paragraph (4)—

15 (A) in the matter preceding subparagraph (A), by inserting “or about” after
16 “boundaries on”;

17 (B) in subparagraph (A), by striking “statistical”; and

18 (C) in subparagraph (B)—

19 (i) by striking “geodetic” and inserting “geomatics”; and

20 (ii) by inserting “and services” after “products”; and

21 (2) in paragraph (5), by inserting “or about” after “activities on”.

**[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

Introduction: This National Geospatial-Intelligence Agency (NGA) legislative proposal proposes updates to four provisions of title 10 relating to safety of navigation. They consist of amendments to sections 442, 451, 456, and 467. The purposes of these amendments are three-fold: (1) to codify the fact that NGA’s safety of navigation mission goes beyond maritime and includes the aeronautical and geomatics missions, specifically, providing accurate navigational information regarding the Earth from the bottom of the sea to space; (2) to update the provisions of title 10 that require distribution of safety of navigation information to reflect that NGA provides data and services as well as products and that NGA distributes safety of navigation and foundation geospatial intelligence data and products in electronic and digital mediums, as well as in hard-copy formats; and (3) to modernize some of the existing statutory language within the safety of navigation domain, such as removing language on the buying of “[copper] plates” and replacing the terms “navigation aid” and “geodetic” with the terms “geospatial information” and “geomatics” to more accurately reflect the NGA missions as they are executed today.

Section 442: These amendments codify the totality of NGA’s foundation geospatial intelligence and safety of navigation mission. NGA’s navigation mission encompasses not just maritime, but safe land, aeronautical, and space navigation (through geomatics) domains as well. They allow for the widespread dissemination of these products to those in need of land, maritime, geomatics, and aeronautical products, though they do allow the agency to restrict dissemination of these items in accordance with the limited distribution provisions enumerated in section 455(b) of title 10 in order to safeguard national security information and information protected from dissemination pursuant to treaty or international agreement. They also reflect the fact that these geospatial intelligence products and datasets are increasingly being distributed electronically.

Section 451: These amendments affirm that the safety of navigation mission includes not only maritime, but also aeronautical and geomatics missions. They also codify the trend away from providing hard-copy products by allowing for the acquisition and distribution of electronic data sets such as electronic nautical charts. Paragraph (2) reflects the trend away from hard copy as well, as “[copper] plates” are no longer being utilized. Paragraph (2) also provides for the purchase of use or licensing rights to facilitate the accomplishment of the safety of navigation mission.

Section 456: These amendments update the bar on civil actions provision in section 456 by extending that bar to any geospatial information disseminated by NGA in furtherance of its safety of navigation mission, irrespective of whether the data or product is hard-copy or electronic, or whether the data or product is provided to improve navigation at sea, in the air, or on land.

Section 467: These amendments update the definition of geospatial intelligence to ensure consistency with the NGA mission, which is to know the Earth from the bottom of the ocean floor to space. The term “or about” has been added to acknowledge that geospatial information covers not just the surface and subsurface of the Earth, but also the air and space above and relative to the Earth in which military and other governmental assets operate. The word “statistical” has been deleted since geospatial information includes more data than just statistical

data. Geodesy is the science of measuring and understanding three fundamental parameters of the Earth—its shape, rotation and orientation, and gravity field—and their change over time. We have chosen to replace “geodesy” with “geomatics.” Geomatics, which deals with the collection, analysis, and interpretation of data relating to the Earth’s surface, is a much broader term that includes global gravity/elevation/magnetic modeling, astronomic surveying, working with Earth-centered, Earth-fixed terrestrial reference systems, and the construction of precise imagery products. This term more accurately describes NGA’s activities conducted in the execution of its current mission sets. The word “services” has been added to include things like GPS constellation update services and 24 hour maritime warnings, which are examples of services that NGA provides in satisfaction of its safety of navigation mission.

Budget Implications: There are no implications in the FY 2021 President’s budget, as the agency is already performing the mission sets described above.

Changes to Existing Law: This proposal would make the following changes to chapter 22 of title 10, United States Code:

CHAPTER 22—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

* * * * *

§ 442. Missions

(a) NATIONAL SECURITY MISSIONS.—(1) The National Geospatial-Intelligence Agency shall, in support of the national security objectives of the United States, provide geospatial intelligence consisting of the following:

- (A) Imagery.
- (B) Imagery intelligence.
- (C) Geospatial information.

(2)(A) As directed by the Director of National Intelligence, the National Geospatial-Intelligence Agency shall develop a system to facilitate the analysis, dissemination, and incorporation of likenesses, videos, and presentations produced by ground-based platforms, including handheld or clandestine photography taken by or on behalf of human intelligence collection organizations or available as open-source information, into the National System for Geospatial Intelligence.

(B) The authority provided by this paragraph does not include authority for the National Geospatial-Intelligence Agency to manage tasking of handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) Geospatial intelligence provided in carrying out paragraphs (1) and (2) shall be timely, relevant, and accurate.

(b) NAVIGATION INFORMATION.—The National Geospatial-Intelligence Agency shall improve ~~means of navigating vessels of the Navy and the merchant marine~~ the means for safe navigation by providing, under the authority of the Secretary of Defense, accurate geospatial information for use by the departments and agencies of the United States, the merchant marine, and navigators generally and ~~inexpensive nautical charts, sailing directions, books on navigation,~~

~~and manuals of instructions for the use of all vessels of the United States and of navigators generally.~~

(c) MAPS, CHARTS, ETC.—The National Geospatial-Intelligence Agency shall acquire, prepare, and distribute maps, ~~safe for navigation~~ charts and datasets, books, and ~~geodetic geomatics~~ products as authorized under subchapter II of this chapter.

(d) NATIONAL MISSIONS.—The National Geospatial-Intelligence Agency also has national missions as specified in section 110(a) of the National Security Act of 1947 (50 U.S.C. 3045(a)).

(e) SYSTEMS.—The National Geospatial-Intelligence Agency may, in furtherance of a mission of the Agency, design, develop, deploy, operate, and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred to, accepted or used by, or used on behalf of—

- (1) the armed forces, including any combatant command, component of a combatant command, joint task force, or tactical unit; or
- (2) any other department or agency of the United States.

* * * * *

§ 451. Maps, charts, ~~and books~~ and datasets

The Secretary of Defense may—

(1) have the National Geospatial-Intelligence Agency prepare ~~maps, charts, and nautical books~~ nautical and aeronautical charts, topographic and geomatics maps, books, models, and datasets required in navigation and have those materials published and furnished to navigators; and

~~(2) buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.~~

(2) acquire (by purchase, lease, license, or barter) all necessary rights, including copyrights and other intellectual property rights, required to prepare, publish, and furnish to navigators the products described in paragraph (1).

* * * * *

§ 456. Civil actions barred

~~(a) CLAIMS BARRED.—~~No civil action may be brought against the United States on the basis of the content of ~~a navigational aid~~ geospatial information prepared or disseminated by the National Geospatial-Intelligence Agency.

~~(b) NAVIGATIONAL AIDS COVERED.—~~Subsection (a) applies with respect to ~~a navigational aid in the form of a map, a chart, or a publication and any other form or medium of product or information in which the National Geospatial Intelligence Agency prepares or disseminates navigational aids.~~

* * * * *

§ 467. Definitions

In this chapter:

(1) The term “function” means any duty, obligation, responsibility, privilege, activity, or program.

(2)(A) The term “imagery” means, except as provided in subparagraph (B), a likeness or presentation of any natural or manmade feature or related object or activity and the positional data acquired at the same time the likeness or representation was acquired, including—

(i) products produced by space-based national intelligence reconnaissance systems; and

(ii) likenesses or presentations produced by satellites, airborne platforms, unmanned aerial vehicles, or other similar means.

(B) Such term does not include handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) The term “imagery intelligence” means the technical, geographic, and intelligence information derived through the interpretation or analysis of imagery and collateral materials.

(4) The term “geospatial information” means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on or about the earth and includes—

(A) ~~statistical~~ data and information derived from, among other things, remote sensing, mapping, and surveying technologies; and

(B) mapping, charting, ~~geodetic~~ geomatics data, and related products and services.

(5) The term “geospatial intelligence” means the exploitation and analysis of imagery and geospatial information to describe, assess, and visually depict physical features and geographically referenced activities on or about the earth. Geospatial intelligence consists of imagery, imagery intelligence, and geospatial information.