SEC. ___. SUPERVISION AND ADMINISTRATION COSTS OF SMALL-SCALE CONSTRUCTION FOR PROGRAMS TO BUILD CAPACITY OF FOREIGN SECURITY FORCES.

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

"(3) SUPERVISION AND ADMINISTRATION COSTS OF SMALL-SCALE CONSTRUCTION.—(A) Amounts available in a fiscal year to carry out the authority in subsection (a) may be obligated for supervision and administration costs associated with a small-scale construction project supporting a security cooperation program carried out under such authority at the time funding for such construction is made available to the Department of Defense activity executing the small-scale construction project.

"(B) For purposes of this paragraph, supervision and administration costs include employee labor and all other costs incurred by the Department of Defense activity in executing the small-scale construction project.

"(C) An obligation for supervision and administration costs under this paragraph shall be considered to be an obligation in the same manner as an order or contract placed with a commercial manufacturer or private contractor is an obligation.".

[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 purpose of this proposed legislation is to add language to 10 U.S.C. 333 that would authorize DoD construction agents to obligate all estimated supervision and administration (S&A) costs during the period of availability of the funds authorized for the construction project.

This legislative proposal would clarify that DoD may use Operation and Maintenance (O&M) funds to perform S&A services throughout the life of the project until the funds cancel. The proposal also aims to align 10 U.S.C. 333 with other existing construction authorities that

allow for the obligation of all estimated S&A costs at the outset of the project. If accepted, this proposal would authorize construction agents to obligate all S&A costs when funds are made available by the requesting organization to the servicing organization for the project. It would allow for better forecasting of S&A costs, and ensure that the funds would be available for continued U.S. Government oversight of construction, contract administration, and quality assurance. In addition, adopting this proposal would eliminate the necessity of executing follow-on programs with additional funds, and would allow S&A costs arising from the warranty and maintenance period to be captured in the total project cost at the outset rather than budgeted and notified to Congress separately in future fiscal years.

The U.S. Army Corps of Engineers (USACE) is unable to obligate O&M funds for programs under 10 U.S.C. 333 to pay for S&A costs for small-scale construction projects beyond the second fiscal year after a program begins due to general fiscal law limitations that require current year funds to be used for bona fide needs of the current fiscal year. In the case of S&A expenses, the bona fide need for the S&A activities does not arise until the S&A activities take place. Therefore, absent an available exception to the bona fide need rule, such as the one provided in Section 333(g)(2)(A), current-year funds must be obligated to pay for S&A costs each fiscal year as construction progresses. These restrictions create significant challenges to executing small-scale construction projects beyond the second subsequent fiscal year since current year funds must be available and allocated to pay for S&A expenses, and therefore require re-notification to Congress for a given construction project each time the funds being used to carry out S&A activities for that project expire.

S&A costs consist of all in-house government labor costs for construction, which include pre-contract award activities, construction phase project management, quality assurance and control, and post-construction warranty enforcement. Congress has already authorized obligating S&A costs for certain construction projects funded from O&M funds at the time that the construction agent accepts the work and receives a transfer of funds from the requesting organization. Section 8070 of the Department of Defense Appropriations Act, 2005 (P.L. 108-287, states " Hereafter, funds appropriated for operation and maintenance and for the Defense Health Program in this Act, and in future appropriations acts for the Department of Defense, for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects, or any planning studies, environmental assessments, or similar activities related to installation support functions, may be obligated at the time the reimbursable order is accepted by the performing activity: Provided, that for the purpose of this section, supervision and administration costs includes all in-house Government cost." A similar provision is included in the annual Department of Defense Appropriations Act for construction projects funded with the Afghanistan Security Forces Fund (ASFF) (see section 9003 of Public Law 115-141, which provides: "Supervision and administration costs and costs for design during construction associated with a construction project funded with appropriations available for operation and maintenance or the Afghanistan Security Forces Fund" provided in this Act and executed in direct support of overseas contingency operations in Afghanistan, may be obligated at the time a construction contract is awarded…")

These provisions are exceptions to the fiscal law principle that the Government may only obligate current year funds for employee labor costs for reimbursable orders executed under the

Economy Act (31 U.S.C. § 1535), they also allow funding provided for S&A costs to remain obligated, despite the requirement under 1535(d)(1) that funds not obligated by the servicing agency during the funds' period of availability be deobligated and returned to the requesting agency.

The use of section 8070 to obligate O&M funds at the outset is limited to military construction projects and other activities related to DoD installation support and, thus, is not available for small-scale construction projects under 10 U.S.C. 333. This legislative proposal, therefore, would provide USACE with the same flexibility when carrying out construction activities under 10 U.S.C. 333 as it has when conducting military construction projects under the military construction authorities or under the ASFF authority.

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

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

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

§ 333. Foreign security forces: authority to build capacity

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

(1) Counterterrorism operations.
(2) Counter-weapons of mass destruction operations.
(3) Counter-illicit drug trafficking operations.
(4) Counter-transnational organized crime operations.
(5) Maritime and border security operations.
(6) Military intelligence operations.
(7) Operations or activities that contribute to an international coalition operation that is determined by the Secretary to be in the national interest of the United States.

* * * * *

(g) FUNDING.-

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

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

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

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

(3) SUPERVISION AND ADMINISTRATION COSTS OF SMALL-SCALE CONSTRUCTION.—

(A) Amounts available in a fiscal year to carry out the authority in subsection (a) may be obligated for supervision and administration costs associated with a small-scale construction project supporting a security cooperation program carried out under such authority at the time funding for such construction is made available to the Department of Defense activity executing the small-scale construction project.

(B) For purposes of this paragraph, supervision and administration costs include employee labor and all other costs incurred by the Department of Defense activity in executing the small-scale construction project.

(C) An obligation for supervision and administration costs under this paragraph shall be considered to be an obligation in the same manner as an order or contract placed with a commercial manufacturer or private contractor is an obligation.

SEC. ___. NUMBER OF OPPORTUNITIES FOR CONSIDERATION FOR PROMOTION UNDER ALTERNATIVE PROMOTION AUTHORITY.

Section 649c of title 10, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

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

"(d) INAPPLICABILITY OF REQUIREMENT RELATING TO OPPORTUNITIES FOR CONSIDERATION FOR PROMOTION.—Section 645(1)(A)(i)(I) of this title shall not apply to the promotion of officers described in subsection (a) to the extent that such section is inconsistent with a number of opportunities for promotion specified pursuant to section 649d of this title.".

[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 649c of title 10, United States Code, to correct an administrative error in the new alternative promotion authority concerning the definition of "promotion zone".

Section 645 of title 10, United States Code, defines the term "promotion zone" in part as officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, who have not "failed of selection for promotion to the next higher grade". Though appropriate for conventional promotions, this portion of the definition unnecessarily restricts the population of officers within the promotion zone under the alternative promotion authority.

The alternative promotion authority, as enacted by subchapter VI of chapter 36 of title 10, United States Code, is designed to provide the Secretaries of the Military Departments additional flexibility to manage officer promotions. Specific officer competitive categories or skill sets can be targeted for this authority to better retain and promote talent. However, the current definition of "promotion zone" would prohibit more than one opportunity for in-zone promotion at those grades. This prohibition is contrary to the authorities granted in section 649d of title 10, United States Code, which allows up to five opportunities.

This proposed change to section 649c would remove the current statutory requirement that officers in the grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have not failed of selection for promotion to the next higher grade when eligible for promotion under the alternative promotion authority. Instead, the

promotion zone will be determined by each Service Secretary, allowing up to five opportunities for promotion under the alternative promotion authority.

Budget Implications: No budget impact. This proposal would not result in a change in the total number of promotions or officers in a particular grade and Service. The number of promotions would still be limited under the current grade ceilings provided by title 10, United States Code. Instead, this proposal would provide for a more effective officer corps, as it would yield a better match between skillsets required by the mission-driven force structure and the inventory of officers to meet those requirements.

Changes to Existing Law: This proposal would amend section 649c of title 10, United States Code, as follows:

§ 649c. Eligibility for consideration for promotion

(a) In General.-Except as provided by this section, eligibility for promotion of officers in any competitive category of officers designated for purposes of this subchapter shall be governed by the provisions of section 619 of this title.

(b) Inapplicability of Certain Time-in-grade Requirements.-Paragraphs (2) through (4) of section 619(a) of this title shall not apply to the promotion of officers described in subsection (a).

(c) Inapplicability to Officers Above and Below Promotion Zone.-The following provisions of section 619(c) of this title shall not apply to the promotion of officers described in subsection (a):

(1) The reference in paragraph (1) of that section to an officer above the promotion zone.

(2) Paragraph (2)(A) of that section.

(d) Inapplicability of Requirement Relating to Opportunities for Consideration for Promotion.—Section 645(1)(A)(i)(I) of this title shall not apply to the promotion of officers described in subsection (a) to the extent that such section is inconsistent with a number of opportunities for promotion specified pursuant to section 649d of this title.

~~(d)~~(e) Ineligibility of Certain Officers.-The following officers are not eligible for promotion under this subchapter:

(1) An officer described in section 619(d) of this title.

(2) An officer not included within the promotion zone.

(3) An officer who has failed of promotion to a higher grade the maximum number of times specified for opportunities for promotion for such grade within the competitive category concerned pursuant to section 649d of this title.

(4) An officer recommended by a selection board to be removed from consideration for promotion in accordance with section 649b(c) of this title.

SEC. ___. EXPANSION OF AUTHORITY FOR SUPPORT OF SPECIAL OPERATIONS FOR IRREGULAR WARFARE.

Section 1202(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1639), as most recently amended by section 1207 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92), is amended by striking "$10,000,000" and inserting "$20,000,000".

[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 for the Fiscal Year (FY) 2021 legislative cycle would increase the funding cap of section 1202 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 (Public Law 115-91), adding $10,000,000 in funding authority to address ongoing and emerging requirements. An increase of the authority cap in the FY 2021 cycle would enable the Department of Defense and U.S. Special Operations Command (USSOCOM) to sustain ongoing operations and to apply a broader, global approach to the application of section 1202 in support of Combatant Command Irregular Warfare (IW) campaign activities carried out by U.S. Special Operations Forces (USSOF).

Section 1202 authority is a highly effective tool for enabling operations in alignment with the National Defense Strategy's emphasis on expanding the competitive space to deter and defeat great power aggression, and there is significant demand from multiple GCCs to apply Section 1202 to enable irregular warfare operations in support of these strategic priorities. Subsection (a) of section 1202 limits the Department of Defense to a $10,000,000 authority cap. In FY 2019, the Department expended the entire $7,000,000 appropriation for section 1202 authority. FY 2020 requirements exceeded the $10,000,000 authority cap, forcing the Department to limit use of the authority, thereby restricting the Combatant Commands' Irregular Warfare operations. An increase in the funding cap will allow USSOCOM to offer the Combatant Commanders greater flexibility and capability with regard to their USSOF Irregular Warfare requirements.

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 IMPACTS ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element**
USSOCOM	20.0	20.0	20.0	0	0	Operations & Maintenance, Defense-Wide	01	1PLR	1150491B

Total	20.0	20.0	20.0	0	0	--	--	--	--

Changes to Existing Law: This section would amend section 1202(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1639) as follows:

SEC. 1202. SUPPORT OF SPECIAL OPERATIONS FOR IRREGULAR WARFARE.

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the relevant Chief of Mission, expend up to ~~$10,000,000~~ $20,000,000 during each of fiscal years 2018 through 2023 to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing and authorized irregular warfare operations by United States Special Operations Forces.

* * * * *

SEC. ___. EXPANSION OF AVAILABILITY OF ENHANCED CONSTRUCTIVE SERVICE CREDIT IN A PARTICULAR OFFICER CAREER FIELD UPON ORIGINAL APPOINTMENT AS A COMMISSIONED OFFICER.

(a) REGULAR OFFICERS.—Section 533(b)(1)(D) of title 10, United States Code, is amended—

(1) by inserting "advanced education or" before "special training or experience"; and

(2) by striking "if such training" and inserting "if such education, training,".

(b) RESERVE OFFICERS.—Section 12207(b)(1) of title 10, United States Code, is amended—

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

(A) by striking ", or a designation in, or an assignment to, an officer category in which advanced education or training is required"; and

(B) by inserting "or special experience" after "who has advanced education or training"; and

(2) in subparagraph (D)—

(A) by inserting "advanced education or" before "special training or experience"; and

(B) by striking "if such training" and inserting "if such education, training,".

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

Section-by-Section Analysis

This proposal would expand the authority provided under section 502 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), as codified in sections 533 and 12207 of title 10, United States Code, to award enhanced constructive service credit upon original appointment in particular officer career fields as designated by the Secretary concerned. Expansion of this authority would afford the Secretaries of the military departments greater flexibility to award credit for not only "special training or experience" but also "advanced education" in designated career fields such as cyberspace.

The FY19 NDAA repealed the prior temporary authority for service credit for critically necessary cyberspace-related experience previously codified at sections 533(g) and 12207(b)(1)(D) of title 10, U.S.C.. This temporary authority permitted the award of constructive credit for advanced education, special experience, or training. In lieu thereof, the FY19 NDAA enacted authority to permit additional credit for "special training or experience in a particular officer career field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned." (10 U.S.C. 533(b)(1)(D) and 12207(b)(1)(D)). No authority, however, was provided to award additional credit for "advanced education." Moreover, the restructuring of 10 U.S.C. 12207 resulted in the new authority provided in section 12207(b)(1)(D) to be constrained by the wording of section 12207(b)(1) that only permits the award of credit when an officer is appointed, designated, or assigned to an officer category in which "advanced education or training is required". Currently neither advanced education, special experience, nor training is "required" for an original appointment into an Air Force cyberspace career field. The net effect of the FY19 NDAA changes is that the authority to award enhanced constructive service credit for cyberspace career field has been diminished under 10 U.S.C. 533 and effectively eliminated under 10 U.S.C. 12207.

Adding back authority to award enhanced constructive service credit for "advanced education" allows the Air Force to quickly increase the number of cyberspace officers. Additionally, because cyber is a total force mission, removing the limiting language of 10 U.S.C. 12207(b)(1) and patterning the language of the subsection as is done in 10 U.S.C. 533(b)(1) would permit the reserve component to effectively use 10 U.S.C. 12207(b)(1)(D)) to meet its cyberspace officer requirements without removing the "required" language in other provisions (i.e. section 12207(b)(1)(A) and (C)).

Utilizing these expanded authorities will allow the Air Force to fill critical officer vacancies with highly qualified, educated, and experienced personnel. Staffing of core cyberspace officers is 78% for the Air Force Reserve, 65% for the Regular Air Force Field Grade Officers, and 47.2% for the Air National Guard Field Grade Officers. These numbers are not sufficient to support current and future cyber requirements such as USCYBERCOM's Cyber Mission Force Teams, Air Force Mission Defense Teams, and the growing need for persistently linked systems with increasingly difficult cybersecurity challenges.

While our accessions have been boosted to try to help remedy the shortfall, it takes 10 to 12 years to train and provide experience to officers to fill key/critical joint and combatant commander positions. The application of enhanced constructive credit for "advanced education" in addition to "special training or experience" will allow the Air Force to directly appoint and

employ highly trained Cyber professionals, immediately increasing the force health of the Air Force 17X officer career field through increased annual accessions with higher education and experience, and reduced number of vacant cyber officer billets.

If enacted, the Army and the Navy would be able to use this authority for skill sets yet to be determined by the respective Secretaries.

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

Estimated impact on Air Force: $23,285 per year. The accession target for FY17 was 262. That's close to the FY19 target of 261. If 4 Officers were gained with cyber-related IT degrees then the percent of the total is 1.5%. Since 260 seems to be the approximate average then applying 1.5% = an expected 4 new cyber accession with the cyber AAD.

The Army and the Navy would also have minor costs similar to the Air Force, if the Service Secretaries choose to use this appointment authority.

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)**
Constructive Credit	.023	.023	.023	.023	.023	Military Personnel, Air Force	BA01	N/A	N/A
Total	.023	.023	.023	.023	.023	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to sections 533 and 12207 of title 10, United States Code:

§ 533. Service credit upon original appointment as a commissioned officer

****

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

****

(D) Additional credit for <u>advanced education or</u> special training or experience in a particular officer career field as designated by the Secretary concerned, if such

education, training, or experience is directly related to the operational needs of the armed force concerned.

*****

§ 12207. Commissioned officers: service credit upon original appointment

*****

(b)(1) Under regulations prescribed by the Secretary of Defense, a person who is receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps, ~~or a designation in, or an assignment to, an officer category in which advanced education or training is required~~ and who has advanced education or training or special experience, shall be credited with constructive service for such education, training, or experience, as follows:

*****

(D) Additional credit for advanced education or special training or experience in a particular officer career field as designated by the Secretary concerned, if such education, training, or experience is directly related to the operational needs of the armed force concerned.

SEC. ___. EXPENDITURE OF FUNDS FOR DEPARTMENT OF DEFENSE CLANDESTINE ACTIVITIES THAT SUPPORT PREPARATION OF THE ENVIRONMENT BY SPECIAL OPERATIONS FORCES.

(a) AUTHORITY.—Subject to subsections (b) and (c), the Secretary of Defense may expend up to $15,000,000 in any fiscal year for clandestine activities for any purpose the Secretary determines to be proper for preparation of the environment operations of a confidential nature. Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) FUNDS.—Funds for expenditures under this section in a fiscal year shall be from amounts appropriated for that fiscal year for Operation and Maintenance, Defense-wide.

(c) EXCLUSION OF INTELLIGENCE ACTIVITIES.—This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities. For purposes of this subsection, the terms "intelligence" and "counterintelligence" have the meanings given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(d) ADDITIONAL AUTHORITY.—The authority provided by this section is in addition to any other authority provided by law.

Section-by-Section Analysis

This proposal would create authority for the expenditure of U.S. Special Operations Command (USSOCOM) operation and maintenance funds for clandestine non-intelligence preparation of the environment (PE) activities. It is modeled after title 10, U.S. Code, section 127, "Emergency and extraordinary expenses" (EEE) and a similar Office of the Under Secretary of Defense (Intelligence) (OUSD(I)) legislative proposal that was submitted for Fiscal

Year (FY) 2020 consideration on "Expenditure of Funds for Department of Defense Intelligence and Counterintelligence Activities."

The legislative history of section 1041 of the National Defense Authorization Act (NDAA) for 2018 reflects congressional concern with the use of existing EEE authority (10 USC 127) for certain recurring or anticipated expenses for intelligence and counterintelligence (CI) activities. USSOCOM currently uses EEE authority to pay for recurring and anticipated clandestine PE activities absent another available fiscal authority. Activities currently supported with EEE authority include the operational use of individuals in support of non-intelligence PE requirements and OPSEC and signature reduction enabling activities. Many PE activities are deliberately planned, anticipated and recurring. They are confidential in nature such that compliance with normal government expenditure and acquisition laws and regulations would place the PE operation, operator, and individual at risk of security compromise.

Analysis of fiscal authority gaps, derived from both legal and policy concerns, for sensitive PE activities:

Fiscal Authority	Analysis
10 USC Section 127 EEE for CMP	Developing congressional concern with use for recurring intelligence and counterintelligence activities.
10 USC Section 127e	Limited to CT activities. Excludes payments to U.S. citizens. Not available for non-CT SOF PE activities, including those in support of National Defense Strategy priorities. Not intended for unilateral clandestine source operations.
Section 1202 of the NDAA for FY 2018	Limited to IW activities. Excludes payments to U.S. citizens. Currently limited by appropriated funding levels and congressional constraints. Not available for non-IW SOF PE activities, including those in support of National Defense Strategy priorities. Not intended for unilateral clandestine source operations.
Section 943 of the NDAA for 2009	Limited to non-conventional assisted recovery (NAR) activities. Not available for non-NAR SOF PE activities, including those in support of National Defense Strategy priorities. Infrastructure is limited to exfiltration activities and does not include infiltration or reception, staging, onward movement, and integration (RSOI).
OUSD(I)'s legislative proposal for "Expenditure of Funds for Department of Defense Intelligence and Counterintelligence Activities" using MIP O&M.	Limited to intelligence and intelligence-related activities and specifically utilizes military intelligence program (MIP) funds. SOF PE activities are not intelligence or intelligence-related activities per joint doctrine and therefore inappropriate to use MIP funding. Joint doctrine states specifically that Intelligence Operations (INTOPs) support PE, but are separate activities.

This proposal complements the proposal related to the expenditure of funds for intelligence and counterintelligence activities and the existing authority of 10 USC 127. PE activities may include operational activities that use intelligence tactics, techniques, and procedures (TTP) to keep operations and relationships secure; however, use of such TTPs does not mean that the underlying activity is an intelligence, CI, or intelligence-related activity. This proposal addresses expenses for clandestine PE activities, that are not intelligence, CI, or intelligence-related activities, but are not necessarily of an extraordinary or emergency nature.

Budget Implications: Resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. USSOCOM will centrally budget for and manage expenditures for this authority.

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)**
USSOCOM Clandestine PE Activities	$15.0	$15.0	$15.0	$15.0	$15.0	Operation & Maintenance, Defense-Wide	01	1PLR	1190492BB
No other defense agency or service intends to use this authority									
Total	$15.0	$15.0	$15.0	$15.0	$15.0	--	--	--	--

Changes to Existing Law: None.

SEC. ___. EXPANSION OF AUTHORITY FOR ACCESS AND INFORMATION RELATING TO CYBERATTACKS ON OPERATIONALLY CRITICAL CONTRACTORS OF THE ARMED FORCES.

Section 391(c) of title 10, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking "(3)" and all that follows through subparagraph (A) and inserting the following:

"(3) ARMED FORCES ASSISTANCE AND ACCESS TO EQUIPMENT AND INFORMATION BY MEMBERS OF THE ARMED FORCES.—The procedures established pursuant to subsection (a) shall—

"(A) include mechanisms for a member of the armed forces—

"(i) if requested by an operationally critical contractor, to assist the contractor in detecting and mitigating penetrations; or

"(ii) at the request of the Department or the Coast Guard, to obtain access to equipment or information of an operationally critical contractor necessary to conduct a forensic analysis, in addition to any analysis conducted by the contractor; and"; and

(B) in subparagraph (B)—

(i) by striking "to determine whether information" and inserting the following: "to determine whether—

"(i) information";

(ii) in clause (i), as so designated—

(I) by striking "the Department in connection with any Department program" and inserting "the armed forces in connection with any program of the armed forces";

(II) by inserting "or compromised on" after "exfiltrated from"; and

(III) by striking the period at the end and inserting "or compromised; or"; and

(iii) by adding at the end the following new clause:

"(ii) the ability of the contractor to provide operationally critical support has been affected and, if so, how and to what extent it has been affected."; and

(2) in paragraph (4), by inserting ", so as to minimize delays in or any curtailing of the Department's or Coast Guard's cyber response and defensive actions" after "specific person"; and

(3) in paragraph (5)(C), by inserting " or counterintelligence activities" after "investigations".

[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 391 of title 10, United States Code, by extending the ability of the Department of Defense (DoD) and the Coast Guard to react immediately to reports of intrusions that may affect critical data of the Armed Forces.

A number of the commercial transportation service providers of DoD and the Coast Guard are operationally critical contractors as defined in section 391 of title 10, United States Code. They are key conduits of logistics-related data, including the personally identifiable information relating to the transportation of members of the Armed Forces and their belongings. Due to this interconnected relationship, the security of defense contractor networks and

information systems has been highlighted as a key risk in the mission assurance analysis of support to a contingency operation or in times of crisis. Although the data relating to the Armed Forces that resides in these systems is usually unclassified, its security and integrity is absolutely critical to the effective management of the worldwide logistics enterprise, especially during wartime or a contingency. The purpose of this legislative proposal is to facilitate the same level of proactive support by the Armed Forces in responding to a cyber incident as that authorized for cleared defense contractors. Specifically, this proposal would require DoD and the Coast Guard to contract in such a way that operationally critical contractors would provide through contract, at DoD or Coast Guard request, access to contractor systems and information to the extent necessary to determine the impact of the incident on the Armed Forces. At present, the operationally critical contractor may request forensic support from DoD in the event of a cyber incident, but the implementing contract clauses do require the operationally critical contractor to accept such support if offered.

The enhanced level of access by the Armed Forces sought in this proposal may be required by contract and would thus appear to make additional legislation unnecessary. However, the liability protections provided to an operationally critical contractor under section 391 only extend to the activities currently addressed in that section. While a contractor may agree by contract to provide greater access to the Armed Forces than the law requires, it does so at its own risk. Not only does this increase the contractor's potential liability exposure, but it may also serve as a deterrent to doing business with DoD or the Coast Guard in the first place. Since the Armed Forces need greater access than the law currently requires, it is imperative that this greater level of access be incorporated into section 391--rather than just required by contract--in order to accord the contractor liability protections commensurate with the level of access it is required to provide.

This proposal would facilitate proactive support by the Armed Forces to operationally critical contractors to allow for immediate forensic analysis and the protection of crucial information of the Armed Forces. In addition, it would expand the liability protections currently available to such contractors under the law to cover the level of access being sought by the Armed Forces with this proposal.

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

Changes to Existing Law: This proposal would make the following changes to section 391 of title 10, United States Code:

§391. Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors

(a) DESIGNATION OF DEPARTMENT COMPONENT TO RECEIVE REPORTS.—The Secretary of Defense shall designate a component of the Department of Defense to receive reports of cyber incidents from contractors in accordance with this section and section 393 of this title or from other governmental entities.

(b) PROCEDURES FOR REPORTING CYBER INCIDENTS.—The Secretary of Defense shall establish procedures that require an operationally critical contractor to report in a timely manner to component designated under subsection (a) each time a cyber incident occurs with respect to a network or information system of such operationally critical contractor.

(c) PROCEDURE REQUIREMENTS.—

(1) DESIGNATION AND NOTIFICATION.—The procedures established pursuant to subsection (a) shall include a process for—

(A) designating operationally critical contractors; and

(B) notifying a contractor that it has been designated as an operationally critical contractor.

(2) RAPID REPORTING.—The procedures established pursuant to subsection (a) shall require each operationally critical contractor to rapidly report to the component of the Department designated pursuant to subsection (d)(2)(A) on each cyber incident with respect to any network or information systems of such contractor. Each such report shall include the following:

(A) An assessment by the contractor of the effect of the cyber incident on the ability of the contractor to meet the contractual requirements of the Department.

(B) The technique or method used in such cyber incident.

(C) A sample of any malicious software, if discovered and isolated by the contractor, involved in such cyber incident.

(D) A summary of information compromised by such cyber incident.

(3) ~~DEPARTMENT~~ ARMED FORCES ASSISTANCE AND ACCESS TO EQUIPMENT AND INFORMATION BY ~~DEPARTMENT PERSONNEL~~ MEMBERS OF THE ARMED FORCES.—The procedures established pursuant to subsection (a) shall—

~~(A) include mechanisms for Department personnel to, if requested, assist operationally critical contractors in detecting and mitigating penetrations; and~~

(A) include mechanisms for a member of the armed forces—

(i) if requested by an operationally critical contractor, to assist the contractor in detecting and mitigating penetrations; or

(ii) at the request of the Department or the Coast Guard, to obtain access to equipment or information of an operationally critical contractor necessary to conduct a forensic analysis, in addition to any analysis conducted by the contractor; and

(B) provide that an operationally critical contractor is only required to provide access to equipment or information as described in subparagraph (A) ~~to determine whether information~~ to determine whether—

(i) information created by or for the ~~Department~~ armed forces in connection with any ~~Department~~ program of the armed forces was successfully exfiltrated from or compromised on a network or information system of such contractor and, if so, what information was exfiltrated~~.~~ or compromised; or

(ii) the ability of the contractor to provide operationally critical support has been affected and, if so, how and to what extent it has been affected.

(4) PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.—The procedures established pursuant to subsection (a) shall provide for the reasonable protection of trade secrets, commercial or financial information, and information that can be used to identify a specific person, so as to minimize delays in or any curtailing of the Department's or Coast Guard's cyber response and defensive actions.

(5) DISSEMINATION OF INFORMATION.—The procedures established pursuant to subsection (a) shall limit the dissemination of information obtained or derived through the procedures to entities—

(A) with missions that may be affected by such information;

(B) that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(C) that conduct counterintelligence or law enforcement investigations or counterintelligence activities; or

(D) for national security purposes, including cyber situational awareness and defense purposes.

(d) PROTECTION FROM LIABILITY OF OPERATIONALLY CRITICAL CONTRACTORS.—

(1) No cause of action shall lie or be maintained in any court against any operationally critical contractor, and such action shall be promptly dismissed, for compliance with this section that is conducted in accordance with procedures established pursuant to subsection (b).

(2)(A) Nothing in this section shall be construed—

(i) to require dismissal of a cause of action against an operationally critical contractor that has engaged in willful misconduct in the course of complying with the procedures established pursuant to subsection (b); or

(ii) to undermine or limit the availability of otherwise applicable common law or statutory defenses.

(B) In any action claiming that paragraph (1) does not apply due to willful misconduct described in subparagraph (A), the plaintiff shall have the burden of proving by clear and convincing evidence the willful misconduct by each operationally critical contractor subject to such claim and that such willful misconduct proximately caused injury to the plaintiff.

(C) In this subsection, the term "willful misconduct" means an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(e) DEFINITIONS.—In this section:

(1) CYBER INCIDENT.—The term "cyber incident" means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system or the information residing therein.

(2) OPERATIONALLY CRITICAL CONTRACTOR.—The term "operationally critical contractor" means a contractor designated by the Secretary for purposes of this section as a critical source of supply for airlift, sealift, intermodal transportation services, or logistical

support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

SEC. ___. INFORMATION REQUIRED TO COMPLY WITH POLICY ON RESPONSE TO JUVENILE-ON-JUVENILE PROBLEMATIC SEXUAL BEHAVIOR COMMITTED ON MILITARY INSTALLATIONS.

Section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 1781 note; 132 Stat. 1996) is amended by adding at the end the following new subsection:

"(c) PROVISION OF CERTAIN INFORMATION.—The provision of information from a juvenile delinquency proceeding, including any associated law enforcement investigation, for purposes of compliance with the policy required under this section, shall be treated as a release of records authorized under section 5038 of title 18, United States Code.".

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

Section-by-Section Analysis

This proposal would extend authority for the Department of Defense (DoD) to receive information from law enforcement investigations for inclusion in the centralized database on problematic sexual behavior in children and youth (PSB-CY) and fulfill DoD's statutory requirements as outlined in section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA for FY 2019).

The current statute requires DoD to establish and maintain a centralized database on incidents of PSB-CY reported to the Family Advocacy Program. The statute specifies categories of information that must be captured on such incidents, including data on investigations. However, per Department of Justice (DoJ) opinion, the privacy provisions of the Federal Juvenile Delinquency Act (JDA) (18 U.S.C. 5038) prohibit law enforcement from contributing such data. The JDA privacy provisions are intended to protect the identity of juveniles involved in the justice process and, as such, are in effect upon the start of any investigative activity involving an alleged juvenile offense. The JDA provides that information on investigations may be disclosed only to those entities defined by exception in the statute. The requirement to include investigative information on incidents of PSB-CY in the centralized database is, therefore, in direct conflict with the privacy protections applied to juvenile record information in the JDA.

This proposal would resolve the conflict between these statutory requirements by authorizing DoD, under section 5038 of title 18, United States Code, to receive information on incidents of

PSB-CY from law enforcement organizations. Subsequent DoD policy will clarify that information collected from juvenile delinquency proceedings under this proposal would be limited to data necessary to meet the requirements of section 1089(b)(7) of the NDAA for FY 2019.

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. Adoption of this proposal would allow the Department to comply with existing requirements.

Changes to Existing Law: This proposal would amend section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 1781 note; 132 Stat. 1996) as follows:

§1089. POLICY ON RESPONSE TO JUVENILE-ON-JUVENILE PROBLEMATIC SEXUAL BEHAVIOR COMMITTED ON MILITARY INSTALLATIONS.

(a) POLICY REQUIRED.—The Secretary of Defense shall establish a policy, applicable across the military installations of the Department of Defense (including installations outside the United States), on the response of the Department to allegations of juvenile-on-juvenile problematic sexual behavior on military installations. The policy shall be designed to ensure a consistent, standardized response to such allegations across the Department.

(b) ELEMENTS.—The policy required by this section shall provide for the following:

(1) Any report or other allegation of juvenile-on-juvenile problematic sexual behavior on a military installation that is received by the installation commander, a law enforcement organization, a Family Advocacy Program, a child development center, a military treatment facility, or a Department school operating on the installation or otherwise under Department administration for the installation shall be reviewed by the Family Advocacy Program of the installation.

(2) Personnel of Family Advocacy Programs conducting reviews shall have appropriate training and experience in working with juveniles.

(3) Family Advocacy Programs conducting reviews shall conduct a multi-faceted, multi-disciplinary review and recommend treatment, counseling, or other appropriate interventions for complainants and respondents.

(4) Each review shall be conducted—

(A) with full involvement of appropriate authorities and entities, including parents or legal guardians of the juveniles involved (if practicable); and

(B) to the extent practicable, in a manner that protects the sensitive nature of the incident concerned, using language appropriate to the treatment of juveniles in written policies and communication with families.

(5) The requirement for investigation of a report or other allegation shall not be deemed to terminate or alter any otherwise applicable requirement to report or forward the report or allegation to appropriate Federal, State, or local authorities as possible criminal activity.

(6) There shall be established and maintained a centralized database of information on each incident of problematic sexual behavior that is reviewed by a Family Advocacy Program under the policy established under this section, with—

(A) the information in such database kept strictly confidential; and

(B) because the information involves alleged conduct by juveniles, additional special precautions taken to ensure the information is available only to persons who require access to the information.

(7) There shall be entered into the database, for each substantiated or unsubstantiated incident of problematic sexual behavior, appropriate information on the incident, including—

(A) a description of the allegation;

(B) whether or not the review is completed;

(C) whether or not the incident was subject to an investigation by a law enforcement organization or entity, and the status and results of such investigation; and

(D) whether or not action was taken in response to the incident, and the nature of the action, if any, so taken.

(c) PROVISION OF CERTAIN INFORMATION.—The provision of information from a juvenile delinquency proceeding, including any associated law enforcement investigation, for purposes of compliance with the policy required under this section, shall be treated as a release of records authorized under section 5038 of title 18, United States Code.

SEC. __. FIVE-YEAR EXTENSION OF AUTHORIZATION OF NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.

Section 943(g) of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4578) is amended by striking "2021" and inserting "2026".

[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 will extend the authority for the Department of Defense (DoD) to engage in Non-Conventional Assisted Recovery (NAR) activities for five years. The initial authorization contained in section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year (FY) 2009 (Public Law 110-417) provided that funds for NAR programs would be available through fiscal year (FY) 2011. In FY 2012, the Department sought to extend NAR authority through 2016; Section 1205 of the NDAA for FY 2012 (Public Law 112-81), extended section 943 only through FY 2013. Section 1241 of the NDAA for FY 2014 (Public Law 113-66) subsequently amended Section 943 to provide funds for NAR activities through FY 2015. Section 943 was further amended by the NDAA for FY 2015 (Public Law 113-291), section 1261, to extend the authority through FY 2016, in the NDAA for FY 2016 (Public Law 114-92), section 1271, to extend the authority through FY 2018, and again in the NDAA for FY 2017 (Public Law 114-328) to extend the authority through 2021. The NDAA for FY 2018 (Public Law 115-91) did not extend the authority beyond FY 2021, pending the Secretary of Defense task to submit to the congressional defense committees a review and assessment of personnel recovery and non-conventional assisted recovery programs. The NDAA for FY 2019 (Public Law 115-232) did not address NAR.

The DoD conducted a Chairman of the Joint Chiefs of Staff directed, NAR program-wide process impediments analysis in 2017, whereby it concluded the temporary nature of Congressional reauthorization discourages the combatant commands from conducting long-range, steady-state projections of NAR requirements and funding, nor is it favorably viewed by the department's resourcing programmers, since it cannot be sure the authority will be available in the out years. As a result, section 943, as amended, is not "Future Years Defense Plan (FYDP)-relevant," meaning the statutory authority of the NAR program does not extend over the entire five years of the FYDP. Historically, Congress has renewed section 943 funding authority in no more than three year increments, which would indicate that NAR is not an enduring requirement. Financial managers may apply less analytical rigor to examining budget estimates beyond the expiration of the statutory funding authority. As a result, section 943 authorized funds may not receive the same attention as FYDP-relevant funds. Partly as a result of this limited period of duration in NAR authority, the combatant command's executive agents are also reluctant to POM for NAR requirements.

This personnel recovery program authorizes the use of irregular groups or individuals, including indigenous personnel, tasked with establishing infrastructures and capabilities that would be used to facilitate the recovery of isolated personnel conducting activities globally in support of U.S. military operations. Support to surrogate forces may include the provision of limited amounts of equipment, supplies, training, transportation, other logistical support, or funding.

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

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
NAR	1.4	1.4	1.4	1.4	1.4	Operation and Maintenance, Defense Wide	01	1PL1	
NAR	2.9					Operation and Maintenance, Defense Wide	01	1PL1	
Total	4.3	1.4	1.4	1.4	1.4				

Changes to Existing Law: This proposal would make the following changes to section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417):

SEC. 943. AUTHORIZATION OF NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.

(a) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—

(1) IN GENERAL.—Upon a determination by a commander of a combatant command that an action is necessary in connection with a non-conventional assisted recovery effort, and with the concurrence of the relevant Chief of Mission or Chiefs of Mission, amounts appropriated or otherwise made available for the Department of Defense for operation and maintenance may be used to establish, develop, and maintain non-conventional assisted recovery capabilities.

(2) ANNUAL LIMIT.—The total amount made available for support of non-conventional assisted recovery activities under this subsection in any fiscal year may not exceed $25,000,000.

(b) PROCEDURES AND OVERSIGHT.—

(1) PROCEDURES.—The Secretary of Defense shall establish procedures for the exercise of the authority under subsection (a). The Secretary shall notify the

congressional defense committees of those procedures before any exercise of that authority.

(2) PROGRAMMATIC AND POLICY OVERSIGHT.—The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict shall have primary programmatic and policy oversight of non-conventional assisted recovery activities authorized by this section.

(c) AUTHORIZED ACTIVITIES.—Non-conventional assisted recovery capabilities authorized under subsection (a) may, in limited and special circumstances, include the provision of support to entities conducting activities relating to operational preparation of the environment, including foreign forces, irregular forces, groups, or individuals, in order to facilitate the recovery of Department of Defense or Coast Guard military or civilian personnel, or other individuals who, while conducting activities in support of United States military operations, become separated or isolated and cannot rejoin their units without the assistance authorized in subsection (a), or other individuals as determined by the Secretary of Defense, with respect to already established non-conventional assisted recovery capabilities.

(d) NOTICE TO CONGRESS ON USE OF AUTHORITY.—

(1) NOTICE.—The Secretary of Defense shall notify the congressional defense committees not later than 30 days prior to using the authority in subsection (a) to make funds available for support of non-conventional assisted recovery activities. Any such notice shall be in writing.

(2) CONTENT.—Each notification required under paragraph (1) shall include the following information:

(A) The amount of funds made available for support of non-conventional assisted recovery activities.

(B) A description of the non-conventional assisted recovery activities.

(C) An identification of the type of recipients to receive support for non-conventional assisted recovery activities, including foreign forces, irregular forces, groups, or individuals, as appropriate.

(e) LIMITATION ON INTELLIGENCE ACTIVITIES.—This section does not constitute authority to conduct or support a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(f) LIMITATION ON FOREIGN ASSISTANCE ACTIVITIES.—This section does not constitute authority—

(1) to build the capacity of foreign military forces or provide security and stabilization assistance, as described in section 2282 of title 10, United States Code, and section 1207 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3458), respectively; and

(2) to provide assistance that is otherwise prohibited by any other provision in law, including any provision of law relating to the control of exports of defense articles, defense services, or defense technologies.

(g) PERIOD OF AUTHORITY.—The authority under this section is in effect during each of the fiscal years 2009 through ~~2021~~ 2026.

SEC. ___. SECRETARY DELEGATION OF THE APPROVAL AUTHORITY FOR TRANSITIONAL COMPENSATION.

Section 1059(m) of title 10, United States Code, is amended by striking paragraph (4).

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

Section-by-Section Analysis

This proposal removes the prohibition exclusive to subsection (m) of section 1059 of title 10, United States Code, against the delegation of the approval authority for transitional compensation. Instead, the approval authority would be as set by regulations approved by the Secretary of Defense under subsection (k) of that section. This would improve processing times for approval of transitional compensation applications considered under the exceptional eligibility provision, enabling families to more quickly receive transitional compensation benefits.

Budget Implications: This proposal has no budgetary impact.

Changes to Existing Law: This proposal would make the following changes to section 1059(m) of title 10, United States Code:

§ 1059. Dependent of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

*** * * * ***

(m) EXCEPTIONAL ELIGIBILITY FOR DEPENDENTS OF MEMBERS OR FORMER MEMBERS.—(1) The Secretary concerned, under regulations prescribed under subsection (k), may authorize eligibility for benefits under this section for dependents and former dependents of a member or former member of the armed forces in a case in which the dependents or former dependents are not otherwise eligible for such benefits and the Secretary concerned determines that the member or former member engaged in conduct that is a dependent-abuse offense under this section and the member or former member was separated from active duty other than as described in subsection (b).

(2) In a case in which the Secretary concerned, under the authority of paragraph (1), authorizes benefits to be provided under this section, such benefits shall be provided in the same manner as if the member or former member were an individual described in subsection (b), except that, under regulations prescribed under subsection (k), the Secretary shall make such adjustments to the commencement and duration of payment provisions of subsection (e), and may make adjustments to other provisions of this section, as the Secretary considers necessary in light of the circumstances in order to provide benefits substantially equivalent to the benefits provided in the case of an individual described in subsection (b).

(3) For the purposes of the provision of benefits under this section pursuant to this subsection, a member shall be considered separated from active duty upon the earliest of—

(A) the date an administrative separation is initiated by a commander of the member;

(B) the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

(C) the date the member's term of service expires.

~~(4) The authority of the Secretary concerned under paragraph (1) may not be delegated.~~

SEC. ___. PREFERENCE FOR PERFORMANCE-BASED CONTRACT PAYMENTS.

Section 2307(b)(2) of title 10, United States Code, is amended—

(1) by striking "shall not be conditioned upon costs incurred in contract performance but on" and inserting "shall be conditioned upon"; and

(2) by inserting before the period at the end the following: "and shall not exceed total costs incurred at any point during contract performance".

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

Section-by-Section Analysis

This proposal is a top Acquisition and Sustainment efficiency initiative to ensure that the Department is able to appropriately provide contract financing in the form of performance-based payments while protecting the taxpayers' liability. The fundamental purpose of all contract financing is to assist the contractor in paying costs incurred during the performance of the contract. As such, financing is intended to be provided only to the extent actually needed for prompt and efficient performance. Unless the Department contractually agrees that it is in the public interest to provide advance payments, which in accordance with 10 U.S.C. 2307(d) requires the contractor to give adequate security, a contractor should never be reimbursed more than its actual costs incurred at any point in time. This would result in negative levels of contractor investment in the contract and provide a disincentive for contractors to complete work on the contract and deliver goods and services in a timely manner, if at all.

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 2307 of title 10, United States Code:

§2307. Contract financing

(a) Payment Authority.-(1) The head of any agency may

(A) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(B) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(2)(A) For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a

goal of 15 days after receipt of a proper invoice for the amount due if a specific payment date is not established by contract.

(B) For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if-

(i) a specific payment date is not established by contract; and

(ii) the prime contractor agrees to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(b) Preference for Performance-Based Payments.-(1) Whenever practicable, payments under subsection (a) shall be made using performance-based payments on any of the following bases:

(A) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(B) Accomplishment of events defined in the program management plan.

(C) Other quantifiable measures of results.

(2) Performance-based payments ~~shall not be conditioned upon costs incurred in contract performance but on~~ shall be conditioned upon the achievement of performance outcomes listed in paragraph (1) and shall not exceed total costs incurred at any point during contract performance.

(3) The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

(4)(A) In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(B) Nothing in this section shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(c) Payment Amount.-Payments made under subsection (a) may not exceed the unpaid contract price.

(d) Security for Advance Payments.-Advance payments made under subsection (a) may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(e) Conditions for Progress Payments.-(1) The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information

and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(2) The Secretary shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(3) This subsection applies to any contract in an amount greater than $25,000.

(f) Conditions for Payments for Commercial Items.-(1) Payments under subsection (a) for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) Advance payments made under subsection (a) for commercial items may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).

* * * * *

SEC. ___. EXTENSION AND MODIFICATION OF AUTHORITY FOR REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) EXTENSION.—Subsection (a) of section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393), as most recently amended by section 1217 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92), is further amended in the matter preceding paragraph (1) by striking "October 1, 2019, and ending on December 31, 2020" and inserting "October 1, 2020, and ending on December 31, 2021".

(b) MODIFICATION TO LIMITATIONS.—Subsection (d)(1) of such section is amended by striking "October 1, 2019, and ending on December 31, 2020, may not exceed $450,000,000" and inserting "October 1, 2020, and ending on December 31, 2021, may not exceed $300,000,000".

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

Section-by-Section Analysis

This proposal would extend through December 31, 2021, current authority for the use of Operation and Maintenance, Defense-wide (O&M D-W) appropriations under the Coalition Support Fund (CSF) authority. The existing requirements and limitations with respect to such authority, including the exemption from the congressional notification requirement of CSF reimbursements for access based on an international agreement, are continued unchanged.

Budget Implications: $300 million of this proposal would be funded through O&M, D-W under the FY 2021 Overseas Contingency Operations budget request, of which $300 million is for the CSF authority. This is funded within the FY 2021 President's Budget submission.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**

Coalition Support Funds (CSF)	$300					Operation and Maintenance, Defense Wide	04	DSCA	1002199T
Total	$300								

Changes to Existing Law: This proposal would make the following changes to section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393):

SEC. 1233. REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) AUTHORITY.—From funds made available for the Department of Defense for the period beginning on ~~October 1, 2019~~ October 1, 2020, and ending on ~~December 31, 2020~~ December 31, 2021, for overseas contingency operations for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation (other than Pakistan) for—

(1) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and

(2) logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in paragraph (1).

(b) OTHER SUPPORT.—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military operations in Afghanistan, Iraq, or Syria through the following:

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a non-reimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

(2) SUPPORT.—Support authorized by subsection (b) may be provided in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, considers appropriate.

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.— The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during the period beginning on ~~October 1, 2019~~ October 1, 2020, and ending on ~~December 31, 2020~~ December 31, 2021, may not exceed ~~$450,000,000~~ $300,000,000.

(2) PROHIBITION ON CONTRACTUAL OBLIGATIONS TO MAKE PAYMENTS.—The Secretary of Defense may not enter into any contractual obligation to make a reimbursement under the authority in subsection (a).

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b).

(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.

(f) QUARTERLY REPORTS.—The Secretary of Defense shall submit to the appropriate congressional committees on a quarterly basis a report on any reimbursements made under the authority in subsection (a), and any support provided under the authority in subsection (b), during such quarter.

(g) DEFINITION.—In this section, the term "appropriate congressional committees" means—

(1) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.

SEC. ___. REMOVAL OF WAIVER AND INSTALLATION OF PROCESS FOR USE OF MILITARY STANDARDS.

Section 875(b)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2310; 10 U.S.C. 2305 note) is amended to read as follows:

"(2) PROCESS FOR OVERSIGHT.—The Secretary of Defense shall establish a process to oversee the use of military specifications and ensure that the Department of Defense complies with the requirements of paragraph (1).".

[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 a wasteful waiver requirement established by subsection (b)(2) of section 875 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA), Use of Commercial or Non-Government Standards in Lieu of Military Specifications and Standards, and insert language that would be more effective and efficient. In accordance with Federal Government policy and with best business practices the Department already makes extensive use of non-Government standards where they are appropriate.

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 875 of the National Defense Authorization Act for Fiscal Year 2017:

SEC. 875. USE OF COMMERCIAL OR NON-GOVERNMENT STANDARDS IN LIEU OF MILITARY SPECIFICATIONS AND STANDARDS.

(a) IN GENERAL.—The Secretary of Defense shall ensure that the Department of Defense uses commercial or non-Government specifications and standards in lieu of military specifications and standards, including for procuring new systems, major modifications, upgrades to current systems, non-developmental and commercial items, and programs in all acquisition categories, unless no practical alternative exists to meet user needs. If it is not practicable to use a commercial or non-Government standard, a Government unique specification may be used.

(b) LIMITED USE OF MILITARY SPECIFICATIONS.—

(1) IN GENERAL.—Military specifications shall be used in procurements only to define an exact design solution when there is no acceptable commercial or non-Government standard or when the use of a commercial or non-Government standard is not cost effective.

~~(2) WAIVER.—A waiver for the use of military specifications in accordance with paragraph (1) shall be approved by either the appropriate milestone decision authority, the appropriate service acquisition executive, or the Under Secretary of Defense for Acquisition, Technology, and Logistics.~~

(2) PROCESS FOR OVERSIGHT.—The Secretary of Defense shall establish a process to oversee the use of military specifications and ensure that the Department of Defense complies with the requirements of paragraph (1).

(c) REVISION TO DFARS.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall revise the Defense Federal Acquisition Regulation Supplement to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of the military specifications and standards.

(d) DEVELOPMENT OF NON-GOVERNMENT STANDARDS.—The Under Secretary for Acquisition, Technology, and Logistics shall form partnerships with appropriate industry associations to develop commercial or non-Government standards for replacement of military specifications and standards where practicable.

(e) EDUCATION, TRAINING, AND GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that training, education, and guidance programs throughout the Department are revised to incorporate specifications and standards reform.

(f) LICENSES.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall negotiate licenses for standards to be used across the Department of Defense and shall maintain an inventory of such licenses that is accessible to other Department of Defense organizations.

SEC. ____. REPEAL OF PROCEDURES AND REPORTING REQUIREMENT ON LOSS OF PERSONALLY IDENTIFIABLE INFORMATION.

Section 1639 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2129; 10 U.S.C. 2224 is amended—

(1) in the section heading, by striking "**CYBERSECURITY BREACHES AND LOSS OF PERSONALLY IDENTIFIABLE INFORMATION**" and inserting "**SIGNIFICANT LOSSES OF CONTROLLED UNCLASSIFIED INFORMATION BY CLEARED DEFENSE CONTRACTORS"**;

(2) in subsection (a), by striking "a significant loss of personally identifiable information of civilian or uniformed members of the Armed Forces, or a";

(3) in subsection (b), by striking "the protection of personally identifiable information of civilian and uniformed members of the Armed Forces,"; and

(4) in subsection (c)—

(A) by striking paragraph (2); and

(B) by striking "DEFINITIONS.—" and all that follows through "The term" and inserting the following: "SIGNIFICANT LOSS OF CONTROLLED UNCLASSIFIED INFORMATION DEFINED.—The term".

[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 the requirement for DoD to notify and establish reporting procedures to the congressional defense committees for significant losses of personally identifiable information (PII)—defined to include PII losses "involving 250 or more civilian or uniformed members of the Armed Forces". Repeal of this requirement would restore uniformity and consistency of breach reporting procedures to all executive branch agencies, without singling out DoD and requiring it to apply more restrictive, and potentially conflicting procedures outside of the framework established by the Office of Management and Budget in implementing the

Federal Information Security Modernization Act (FISMA), 44 U.S.C. Chapter 35.

Section 1639 of the FY 2019 National Defense Authorization Act (NDAA) (Public Law 115-232) requires the Department to report "significant losses of controlled unclassified information by a cleared defense contractor" and breaches "involving 250 or more civilian or uniformed members of the Armed Forces" to congressional defense committees. As Congress has already mandated under FISMA, OMB is required to provide guidance on data breach notification policies and procedures, including executive branch agency responsibilities for reporting breaches of PII and reporting other incidents to certain congressional committees. In accordance with FISMA, OMB promulgated its data breach notification guidance in M-17-12,[1] which requires all Federal executive branch agencies to report breaches that are deemed "major incidents" to 11 Congressional Committees[2] no later than seven days after the date on which there is a reasonable basis to conclude that a major incident has occurred, and to supplement the initial notification no later than 30 days after discovery of the breach. The OMB Memorandum M-20-04 defines "major incident" in relevant part as (1) "[a]ny incident[3] that is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States or to the public confidence, civil liberties, or public health and safety of the American people…."; or (2) "a breach that involves personally identifiable information (PII) that, if exfiltrated, modified, deleted, or otherwise compromised, is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people." OMB Memorandum M-20-04 "requires a determination of major incident for any unauthorized modification of, unauthorized deletion of, unauthorized exfiltration of, or unauthorized access to the *PII of 100,000 or more people*." (emphasis added) Consistent with OMB guidance and the above definition of "major incident," DoD has made the determination that reaching the 100,000 individual threshold ***automatically*** constitutes a major incident. By repealing the PII requirement in section 1639, DoD would follow a singular framework for reporting breaches of PII to Congress afforded to all other executive branch agencies under the guidance issued by OMB pursuant to the FISMA.

In addition, the existing language from section 1639 of the FY 2019 NDAA uses improper and/or contradictory terminology, which results in interpretive difficulties and inconsistent application. For example, subsection (a) identifies the scope of the requirement to apply to the loss of personally identifiable information of ***civilian and uniformed members of the Armed Forces***. (emphasis added) First, there are no civilian members of the Armed Forces and, as written, the section would not require DoD to calculate breaches of personally identifiable information pertaining to DoD civilian employees whether employed by a military

[1] Office of Management and Budget Memorandum M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," January 3, 2017.

[2] FISMA requires notification to the House Committees on Oversight and Government Reform; Homeland Security; Science, Space, and Technology; Judiciary; Armed Services; and Appropriations; and to the Senate Committees on Homeland Security and Governmental Affairs; Commerce, Science, and Transportation; Judiciary; Armed Services; and Appropriations. 44 U.S.C. §§ 3554(b)(7)(C)(iii)(III), 3554(c)(1), 3553 note

[3] FISMA 2014 defines "incident" as: "an occurrence that—(A) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies." 44 U.S.C. § 3552(b)(2).

department or the fourth estate. Second, the intended scope of covered members is not entirely clear. The term "Armed Forces" applies to not only the Departments of the Army, Navy, and Air Force but also to the Coast Guard, which is usually under the control of the Secretary of Homeland Security. Moreover, another term "Uniformed Services," applies to not only the Departments of the Army, Navy, and Air Force, but also to the Coast Guard, United States Public Health Service, and National Oceanic and Atmospheric Administration. The Coast Guard, United States Public Health Service, and the National Oceanic and Atmospheric Administration do not report breaches through the DoD.

Further, subsection (c)(2) introduces a definition—"significant loss of personally identifiable information"—that implicates two existing and well recognized terms defined by OMB. The first, "significant loss" implicates and is at odds with the OMB definition of "major incident." The second term, "personally identifiable information," is inconsistent with the definition established by OMB as "information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual."[4]

Repeal of the provisions pertaining to the PII reporting requirement would greatly clarify and unify DoD's reporting responsibilities as it would follow the rules already known and established by OMB in accordance with the FISMA.

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 1639 of Public Law 115–232 as follows:

SEC. 1639. PROCEDURES AND REPORTING REQUIREMENT ON ~~CYBERSECURITY BREACHES AND LOSS OF PERSONALLY IDENTIFIABLE INFORMATION~~ SIGNIFICANT LOSSES OF CONTROLLED UNCLASSIFIED INFORMATION BY CLEARED DEFENSE CONTRACTORS.

(a) IN GENERAL.—In the event of a ~~significant loss of personally identifiable information of civilian or uniformed members of the Armed Forces, or a~~ significant loss of controlled unclassified information by a cleared defense contractor, the Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of such loss. Such notice may be submitted in classified or unclassified formats.

(b) PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirement of subsection (a). Such procedures shall be consistent with the national security of the United States, the protection of operational integrity, ~~the protection of personally identifiable information of civilian and uniformed members of the Armed Forces,~~ and the protection of controlled unclassified information.

[4] OMB Circular A-130, Managing Information as a Strategic Resource, July 28, 2016.

(c) ~~DEFINITIONS.—In this section:~~

~~(1)~~ SIGNIFICANT LOSS OF CONTROLLED UNCLASSIFIED INFORMATION DEFINED.—The term ''significant loss of controlled unclassified information'' means an intentional, accidental, or otherwise known theft, loss, or disclosure of Department of Defense programmatic or technical controlled unclassified information the loss of which would have significant impact or consequence to a program or mission of the Department of Defense, or the loss of which is of substantial volume.

~~(2) SIGNIFICANT LOSS OF PERSONALLY IDENTIFIABLE INFORMATION.—The term ''significant loss of personally identifiable information'' means an intentional, accidental, or otherwise known disclosure of information that can be used to distinguish or trace an individual's identity, such as the name, Social Security number, date and place of birth, biometric records, home or other phone numbers, or other demographic, personnel, medical, or financial information, involving 250 or more civilian or uniformed members of the Armed Forces.~~

SEC. ___. REPEAL OF VETERANS' ADVISORY BOARD ON DOSE RECONSTRUCTION.

(a) REPEAL OF ADVISORY BOARD.—Section 601(c) of the Veterans Benefits Act of 2003 (Public Law 108-183; 117 Stat. 2667; 38 U.S.C. 1154 note) is repealed.

(b) CONFORMING AMENDMENT.—Section 601(b) of such Act is amended by striking ", including the establishment of the advisory board required by subsection (c)".

[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 terminates the Veterans' Advisory Board on Dose Reconstruction (VBDR), as this committee has achieved its statutory objectives. The VBDR's objectives were to provide review and oversight of the Radiation Dose Reconstruction Program and make recommendations on modifications in the mission or procedures of the Radiation Dose Reconstruction program to the Secretaries of the Departments of Defense (DoD) and Veterans Affairs (VA). The VBDR was composed of private sector experts and scientists in historical dose reconstruction, radiation health, and risk communication, as well as one representative each from the Defense Threat Reduction Agency and VA, and three veterans, one of whom is a member of an atomic veterans group (see section 601(c)(2) for details).

The sense of Congress, as identified in the Federal Advisory Committee Act (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 objects 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…".

From 2003 to 2012, the VBDR submitted 76 recommendations to the Departments of Defense and Veterans Affairs, all of which were fully implemented for an estimated cost savings, for DoD alone, at over $21 million, as well as improved health care for DoD Veterans. A full list of the VBDR recommendations can be found on the VBDR website as all VBDR meetings were open to the public and all meeting minutes were posted for public review and access. Since its last meeting on July 23, 2013, the VBDR has not met and then-Under Secretary of Defense for Acquisition, Technology, and Logistics Kendall and then-Secretary of Defense Hagel concluded that VBDR has accomplished its mission. The DoD, in consultation with the General Services Administration, made the VRBD administratively inactive on July 14, 2014, pending final termination, which requires this statutory language change.

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

Changes to Existing Law: This proposal would amend section 601 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2667; 38 U.S.C. 1154 note) as follows:

SEC. 601. RADIATION DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE.

(a) REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION.— (1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Radiation Dose Reconstruction Program of the Department of Defense.

(2) In conducting the review under paragraph (1), the Secretaries shall—

(A) determine whether any additional actions are required to ensure that the quality assurance and quality control mechanisms of the Radiation Dose Reconstruction Program are adequate and sufficient for purposes of the program; and

(B) determine the actions that are required to ensure that the mechanisms of the Radiation Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit veterans to review the assumptions utilized in their dose reconstructions.

(3) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth— .

(A) the results of the review;

(B) a plan for any actions determined to be required under paragraph (2); and

(C) such other recommendations for the improvement of the mission, procedures, and administration of the Radiation Dose Reconstruction Program as the Secretaries jointly consider appropriate.

(b) ON-GOING REVIEW AND OVERSIGHT.— The Secretaries shall jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose Reconstruction Program~~, including the establishment of the advisory board required by subsection (c)~~.

~~(c) ADVISORY BOARD.— (1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Radiation Dose Reconstruction Program.~~

~~(2) The advisory board under paragraph (1) shall be composed of the following:~~

~~(A) At least one expert in historical dose reconstruction of the type conducted under the Radiation Dose Reconstruction Program.~~

~~(B) At least one expert in radiation health matters.~~

~~(C) At least one expert in risk communications matters.~~

~~(D) A representative of the Department of Veterans Affairs.~~

~~(E) A representative of the Defense Threat Reduction Agency.~~

(F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.

(3) The advisory board under paragraph (1) shall—

(A) conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of decisions by the Department of Veterans Affairs on claims for service connection of radiogenic diseases;

(B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program; and

(C) carry out such other activities with respect to the review and oversight of the Radiation Dose Reconstruction Program as the Secretaries shall jointly specify.

(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Radiation Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).

SEC. ___. REVISION OF DEADLINE FOR DEPARTMENT OF DEFENSE ANNUAL STOCKPILE REPORT.

Section 494(b)(2) of title 10, United States Code, is amended by striking "March 1 of each year" and inserting "30 days after the signature by the President on the annual Nuclear Weapons Stockpile Plan, as required pursuant to section 91a.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2121(a)(2))".

[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 modify the annual deadline for the Department of Defense (DoD) Report to Congress on the U.S. Nuclear Weapons Stockpile to better align with the release of the Nuclear Weapons Stockpile Plan (NWSP) signed by the President. The current legislative requirement under section 494 of title 10, United States Code, requires that the Secretary of Defense submit to the congressional defense committees a report on the nuclear weapons stockpile of the United States not later than March 1, 2012, and annually thereafter.

Stockpile number projections in the DoD Stockpile Report to Congress are derived from the NWSP, a plan signed by the President annually. Maintaining the current March 1 suspense date for the DoD Stockpile Report limits the content of the report to the approved stockpile number projections of the signed NWSP from the previous year. Readjusting the due date of the DoD Stockpile Report to coincide with the President's plan each year enables the Secretary of Defense to provide Congress with the most current nuclear weapons stockpile information.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request**.** The modification shifts the congressional deadline of an annual reporting requirement to better align with the annual release of a corresponding presidential document.

Changes to Existing Law: This proposal would make the following changes to section 494(b) of title 10, United States Code:

(b) ANNUAL REPORT ON THE NUCLEAR WEAPONS STOCKPILE OF THE UNITED STATES.—

(1) Sense of congress.--It is the sense of Congress that—

(A) sustained investments in the nuclear weapons stockpile and the nuclear security complex are needed to ensure a safe, secure, reliable, and credible nuclear deterrent; and

(B) such investments could enable additional future reductions in the hedge stockpile.

(2) Report required.-- Not later than ~~March 1 of each year~~ 30 days after the signature by the President on the annual Nuclear Weapons Stockpile Plan, as required pursuant to section 91a.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2121(a)(2)), the Secretary of Defense shall submit to the congressional defense committees a report on the nuclear weapons stockpile of the United States that includes the following:

(A) An accounting of the weapons in the stockpile as of the end of the fiscal year preceding the submission of the report that includes all weapons in the active and inactive stockpiles, both deployed and non-deployed, and all categories and readiness states of such weapons.

(B) The planned force levels for each category of nuclear weapon over the course of the future-years defense program submitted to Congress under section 221 of this title for the fiscal year following the fiscal year in which the report is submitted.

SEC. ___. CONGRESSIONAL NOMINATIONS FOR SENIOR RESERVE OFFICER TRAINING CORPS SCHOLARSHIPS.

Section 7442 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(k) Any qualified candidate not nominated under paragraphs (3) through (10) of subsection (a) may be referred by a Member of Congress or other selecting official specified in such paragraphs to the Secretary of the Army for consideration by the Secretary in order of merit for appointment as a Senior Reserve Officers' Training Corps cadet under section 2107 of this title.".

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

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 7442 to allow any qualified candidate for nomination to a vacancy at the U.S. Military Academy (USMA) who is not nominated by a Member of Congress to be referred by that Member of Congress to the Secretary of the Army for consideration for appointment as a Senior Reserve Officers' Training Corps (ROTC) cadet.

Each year, there are approximately 100,000 college-bound high school seniors who are eligible for military service and demonstrate a propensity to serve as an officer. Approximately two-thirds of these students will graduate and immediately enroll as full-time students pursuing 4-year baccalaureate degrees.

There is limited knowledge of the ROTC opportunity among these eligible and propensed college-bound youth:

- While 65 percent of college-bound propensed youth have "heard" of ROTC, only 33 percent have actually received any information about the ROTC program.
- 25 percent are NOT aware that ROTC programs offer college scholarships.
- Only 46 percent associate ROTC with college attendance. Over half of those who do associate ROTC with college believe that college ROTC programs are a continuation of high school JROTC programs with another third unsure of the relationship between JROTC and ROTC.

At the same time, under 10 U.S.C 7442, Members of Congress currently nominate high school students from public and private high schools for appointment to the United States Military Academy (USMA). Successful candidates, 17 to 23 years of age, receive a funded college education, are commissioned as second lieutenants, and remain in the military for at least 5 years after graduation. However, the number of applicants for congressional nominations exceeds the number of cadets that USMA can admit. Many of these high quality students become disillusioned because they are unaware of other options for military service as a commissioned officer.

With this proposal, the Army aims to: 1) provide an alternative avenue to a funded education and commission for those high quality candidates not nominated for admission to USMA; 2) limit the perception that candidates are excluded from Army service because of the statutory limitations on nominations for admission to USMA; 3) serve as another method of educating the public about the paths to becoming an Army officer; and 3) expand the actions that Members of Congress may take to aid high quality constituents in gaining post-secondary education and serving their country as officers.

If enacted, this proposal would not require additional vetting by or otherwise burden congressional offices. Through this proposal, DOD merely aims to encourage congressional offices to forward along the names and relevant details of qualified candidates who were not nominated for admission to USMA.

The potential pool of candidates for consideration for ROTC scholarships under this proposal does not include those candidates nominated by Members of Congress for appointment to USMA who are then not selected for appointment. The Army already has access to those individuals and reaches out to them with an offer to apply for ROTC scholarship. This proposal is specifically geared to those candidates who have sought a nomination to USMA through a Member of Congress, but for whom the Member is unable to nominate to USMA due to limits on the number of nominations a Member may make.

Budget Implications: This proposal would not directly affect the manpower requirements at U.S. Army Cadet Command (USACC) headquarters. The increased number of nominations would create an additional processing requirements workload at the USACC headquarters equaling approximately one-half a work year (full-time equivalent) but would not create an additional manpower requirement (the additional workload to process scholarship applications should be offset by a reduction in recruiting efforts). The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE REQUIREMENTS ($Millions)									
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation From**	**Budget Activity**	**BLI/ SAG**	**Program Element**
Army	$0.06	0.06	0.06	0.07	0.07	Operation and Maintenance, Army	03	314	0804723A
Total	$0.06	0.06	0.06	0.07	0.07				

PERSONNEL AFFECTED (Full Time Equivalents)					
	FY 2021	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Army	.5	.5	.5	.5	.5
Total	.5	.5	.5	.5	.5

Changes to Existing Law: This proposal would make the following change to section 7442 of title 10, United States Code:

§ 7442. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,400 or such lower number as may be prescribed by the Secretary of the Army under subsection (j). Subject to that limitation, cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examinations from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Army.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Four cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Four cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) Three cadets from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) Three cadets from the Commonwealth of the Northern Mariana Islands, nominated by the Delegate in Congress from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter. When a nominee of a Senator, Representative, or Delegate is selected for appointment as a cadet, the Senator, Representative, or Delegate shall be notified at least 48 hours before the official notification or announcement of the appointment is made.

* * * * *

(k) Any qualified candidate not nominated under paragraphs (3) through (10) of subsection (a) may be referred by a Member of Congress or other selecting official specified in such paragraphs to the Secretary of the Army for consideration by the Secretary in order of merit for appointment as a Senior Reserve Officers' Training Corps cadet under section 2107 of this title.

SEC. ___. FRIENDLY FOREIGN COUNTRIES: AUTHORITY TO PROVIDE SUPPORT FOR CONDUCT OF OPERATIONS.

Section 331 of title 10, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (3)—

(i) by inserting "or grant" after "purpose of the loan";

(ii) by inserting ", and the loan or grant of such equipment," before "to the military forces"; and

(iii) by striking "participating in" and all that follows and inserting "in connection with a security operation that supports a military operation of the United States or that benefits the national security interests of the United States."; and

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

"(6) Reimbursement of a friendly foreign country for the costs associated with the conduct of operations by such country that support a military operation of the United States or that benefit the national security interests of the United States.";

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

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

"(d) AUTHORITY TO ACCEPT CONTRIBUTIONS.—

"(1) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, accept and retain contributions, including assistance in-kind, from a foreign government to provide support under subsection (a).

"(2) USE OF FUNDS.—Any funds accepted by the Secretary shall be credited to the appropriate appropriation, fund, or account from which funds are made available for the provision of support under this section and may be used for such purposes until expended.".

(4) in subsection (h), as redesignated by paragraph (2) of this section, by adding at the end the following new paragraph:

"(3) The aggregate value of reimbursement support provided under subsection (c)(6) in any fiscal year may not exceed $300,000,000.".

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

Section-by-Section Analysis

This proposal would amend section 331 of title 10, United States Code, (section 331) by adding the authority for the Secretary of Defense, with the concurrence of the Secretary of State, to provide equipment on a loan or grant basis, and reimbursement for the cost of operations, to the security forces of a friendly foreign country in connection with a security operation that supports a U.S. military operation or that benefits the national security interests of the United States. In doing so, this proposal would provide a permanent, global operational support authority as a successor to section 1226 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Public Law 114-92), as most recently amended by section 1294 of the NDAA for FY 2019 (Public Law 115-232), a temporary, contingency-based authority allowing the Department of Defense (DoD) to reimburse 6 specific countries for their border security operations that support U.S. military operations. Additionally, this proposal amends section 331 by adding the authority for the Secretary of Defense to accept and retain contributions, including assistance in-kind, from a foreign government to provide assistance authorized under that section. In doing so, this proposal would strengthen the Secretary of Defense's ability to work with allies and partners towards U.S. goals. This proposal contributes to burden-sharing efforts and adds another tool for DoD to support friendly foreign countries abroad.

The authority to accept and retain contributions contributes directly to the Defeat-ISIS mission and allows DoD to enable ally and partner capacity with contributions from third party foreign governments in an environment facing diminished resources and U.S. presence. As the U.S. transitions to a steady-state of working to prevent ISIS re-emergence, it will be necessary to leverage resources and capabilities from allies and regional partners to address emergent operational environmental conditions and to enable burden sharing.

This proposal complements the President's FY 2020 budget request, which includes a $250 million request for counter-ISIS and al-Qa'ida border security globally, by adding the permanent authority to provide equipment on a loan or grant basis to the security forces of a friendly foreign country in connection with a security operation that supports a U.S. military operation or that benefits the national security interests of the United States. Currently, DoD provides equipment for counter-ISIS border security operations both inside Iraq and Syria and in countries adjacent to the ISIS conflict under the Counter-ISIL Train and Equip (CTEF) appropriation, another temporary authority. The Department expects Iraq and Syria train-and-equip and border security requirements to continue to be met by the CTEF appropriation in FY 2020.

Following the enactment of security cooperation reforms in the NDAA for FY 2017, the Department has relied heavily on two key security cooperation authorities. 10 U.S.C. 333 is a consolidated train-and-equip authority intended for the deliberate, strategic capacity-building of foreign security forces. 10 U.S.C. 331 is an operational support authority, derived from the previous "global lift and sustain" authority in 10 U.S.C. 127d. By amending section 331 to add the authority to provide equipment on a loan or grant basis and to reimburse friendly foreign countries in connection with a security operation that supports a U.S. military operation or that benefits the national security interests of the United States, the Department is attempting to create a permanent, flexible operational support authority that will increase the effectiveness of U.S. military operations, protect U.S. forces, and further U.S. national security interests.

The Department's budget request will scope the use of this authority on an annual basis, depending on emerging threats, and this proposal caps the support authorized by the new authority to reimburse friendly foreign countries to $300,000,000 per fiscal year.

As with other support provided under the authority of section 331, using the new authority in the proposal would be subject to Secretary of State concurrence and notice to Congress of the operations designated by the Secretary of Defense as operations for which support may be provided under section 331. Also, for support provided under the new authority to friendly foreign countries in connection with the conduct of operations in which the United States is not participating (e.g., the loan or grant of equipment to a friendly foreign country for its border security operations that support a U.S. military operation), section 331 requires joint certification to Congress from the Secretary of Defense and the Secretary of State that the friendly foreign country's operation is in the national security interests of the United States, an accompanying report, and a 15-day waiting period.

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

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**

Border Security	$250					Operation and Maintenance, Defense-wide, (0100) OCO	04	4GTD0000	1002200T
Total	$250								

Changes to Existing Law: This proposal would make the following changes to section 331 of title 10, United States Code:

§ 331. Friendly foreign countries: authority to provide support for conduct of operations

(a) AUTHORITY.—The Secretary of Defense may provide support to friendly foreign countries in connection with the conduct of operations designated pursuant to subsection (b).

(b) DESIGNATED OPERATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall designate the operations for which support may be provided under the authority in subsection (a).

(2) NOTICE TO CONGRESS.—The Secretary shall notify the appropriate committees of Congress of the designation of any operation pursuant to this subsection.

(3) ANNUAL REVIEW FOR CONTINUING DESIGNATION.—The Secretary shall undertake on an annual basis a review of the operations currently designated pursuant to this subsection in order to determine whether each such operation merits continuing designation for purposes of this section for another year. If the Secretary determines that any operation so reviewed merits continuing designation for purposes of this section for another year, the Secretary—

(A) may continue the designation of such operation under this subsection for such purposes for another year; and

(B) if the Secretary so continues the designation of such operation, shall notify the appropriate committees of Congress of the continuation of designation of such operation.

(c) TYPES OF SUPPORT AUTHORIZED.—The types of support that may be provided under the authority in subsection (a) are the following:

(1) Logistic support, supplies, and services to security forces of a friendly foreign country participating in—

(A) an operation with the armed forces under the jurisdiction of the Secretary of Defense; or

(B) a military or stability operation that benefits the national security interests of the United States.

(2) Logistic support, supplies, and services—

(A) to military forces of a friendly foreign country solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in a combined operation with the United States in order to facilitate such operation; or

(B) to a nonmilitary logistics, security, or similar agency of a friendly foreign government if such provision would directly benefit the armed forces under the jurisdiction of the Secretary of Defense.

(3) Procurement of equipment for the purpose of the loan or grant of such equipment, and the loan or grant of such equipment, to the military forces of a friendly foreign country in connection with a security operation that supports a military operation of the United States or that benefits the national security interests of the United States. ~~participating in a United States-supported coalition or combined operation and the loan of such equipment to those forces to enhance capabilities or to increase interoperability with the armed forces under the jurisdiction of the Secretary of Defense and other coalition partners.~~

(4) Provision of specialized training to personnel of friendly foreign countries in connection with such an operation, including training of such personnel before deployment in connection with such operation.

(5) Small-scale construction to support military forces of a friendly foreign country participating in a United States-supported coalition or combined operation when the construction is directly linked to the ability of such forces to participate in such operation effectively and is limited to the geographic area where such operation is taking place. In the case of support provided under this paragraph that results in the provision of small-scale construction above $750,000, the notification pursuant to subsection (b)(2) shall include the location, project title, and cost of each such small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location.

(6) Reimbursement of a friendly foreign country for the costs associated with the conduct of operations by such country that support a military operation of the United States or that benefit the national security interests of the United States.

(d) AUTHORITY TO ACCEPT CONTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may accept and retain contributions, including assistance in-kind, from a foreign government to provide support under subsection (a).

(2) USE OF FUNDS.—Any funds accepted by the Secretary shall be credited to the appropriate appropriation, fund, or account from which funds are made available for the provision of support under this section and may be used for such purposes until expended.

(~~d~~e) CERTIFICATION REQUIRED.—

(1) OPERATIONS IN WHICH THE UNITED STATES IS NOT PARTICIPATING.—The Secretary of Defense may provide support under subsection (a) to a friendly foreign country with respect to an operation in which the United States is not participating only—

(A) if the Secretary of Defense and the Secretary of State jointly certify to the appropriate committees of Congress that the operation is in the national security interests of the United States; and

(B) after the expiration of the 15-day period beginning on the date of such certification.

(2) ACCOMPANYING REPORT.—Any certification under paragraph (1) shall be accompanied by a report that includes the following:

(A) A description of the operation, including the geographic area of the operation.

(B) A list of participating countries.

(C) A description of the type of support and the duration of support to be provided.

(D) A description of the national security interests of the United States supported by the operation.

(E) Such other matters as the Secretary of Defense and the Secretary of State consider significant to a consideration of such certification.

(~~e~~f) SECRETARY OF STATE CONCURRENCE.—The provision of support under subsection (a) may be made only with the concurrence of the Secretary of State.

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

(~~g~~h) LIMITATIONS ON VALUE.—

(1) The aggregate value of all logistic support, supplies, and services provided under paragraphs (1), (4), and (5) of subsection (c) in any fiscal year may not exceed $450,000,000.

(2) The aggregate value of all logistic support, supplies, and services provided under subsection (c)(2) in any fiscal year may not exceed $5,000,000.

(3) The aggregate value of reimbursement support provided under subsection (c)(6) in any fiscal year may not exceed $300,000,000.

(~~h~~i) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES DEFINED.—In this section, the term "logistic support, supplies, and services" has the meaning given that term in section 2350(1) of this title.

SEC. ___. TRAINING WITH FRIENDLY FOREIGN COUNTRIES.

(a) TRAINING AUTHORIZED.—Section 321(a) of title 10, United States Code, is amended—

(1) paragraph (1), by striking "security forces" and inserting "national security forces"; and

(2) in paragraph (2), by inserting "or, with the concurrence of the Secretary of State, other national security forces" before the period.

(b) AUTHORITY TO PAY TRAINING AND EXERCISE EXPENSES.—Section 321(b)(1) of such title is amended by striking "security forces" and inserting "national security forces".

(c) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Section 321(e) of such title is amended to read as follows:

"(e) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Not later than 90 days after the end of each fiscal year in which training is conducted under the authority of subsection (a), the Secretary of Defense shall provide a briefing to the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.".

(d) REGULATIONS.—Section 321(f)(2) of such title is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

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

Section-by-Section Analysis

This proposal seeks to clarify the purpose of activities conducted pursuant to section 321 of title 10, United States Code (U.S.C.), by allowing for improved efficiency in section 321 programs and adding updates for further alignment with the National Defense Strategy (NDS). This creates a globally available training authority consistent with the NDS and the older 10 U.S.C. 1251 and current 10 U.S.C. 321 authorities. This proposal also streamlines the training authority for military-to-military engagements not associated with broader training and equipping efforts pursuant to 10 U.S.C. 333.

This proposal allows for certain activities previously conducted under 10 U.S.C. 1251, "Training for Eastern European National Security Forces," to be conducted under 10 U.S.C. 321 in the future, a consolidation consistent with ongoing security cooperation (SC) reform efforts. This was accomplished by incorporating elements of 10 U.S.C. 1251 into 10 U.S.C. 321 through consultation with USEUCOM.

Additionally, the proposed changes would open training opportunities for general purpose forces and non-defense forces with concurrence by the Secretary of State. Because the non-defense forces of many partner nations and allies have responsibility for national defense (e.g., border security, maritime security, etc.), it is important for U.S. forces to have the ability to train these vital partners. Because of the expansion of this authority, and in order to maintain consistence with other elements of 10 U.S.C. chapter 16, we have included a provision requiring concurrence by the Secretary of State for such training.

Finally, the congressional notification element of this authority was changed in order to continue to satisfy congressional demand for program updates, but also to achieve consistency with other 10 U.S.C. chapter 16 authorities, as well as 10 U.S.C. 1257 counter-narcotics (CN) activities.

Budget Implications: No budgetary impact.

Changes to Existing Law: This section would make the following changes to section 321 of title 10, United States Code:

§ 321. Training with friendly foreign countries: payment of training and exercise expenses

(a) TRAINING AUTHORIZED.—

(1) TRAINING WITH FOREIGN FORCES GENERALLY.—The armed forces under the jurisdiction of the Secretary of Defense may train with the military forces or other <u>national</u> security forces of a friendly foreign country if the Secretary determines that it is in the national security interest of the United States to do so.

(2) LIMITATION ON TRAINING OF GENERAL PURPOSE FORCES.—The general purpose forces of the United States armed forces may train only with the military forces of a friendly foreign country <u>or, with the concurrence of the Secretary of State, other national security forces</u>.

(3) TRAINING TO SUPPORT MISSION ESSENTIAL TASKS.—Any training conducted pursuant to paragraph (1) shall, to the maximum extent practicable, support the mission

essential tasks for which the unit of the United States armed forces participating in such training is responsible.

(4) ELEMENTS OF TRAINING.—Any training conducted pursuant to paragraph (1) shall, to the maximum extent practicable, include elements that promote—

(A) observance of and respect for human rights and fundamental freedoms; and

(B) respect for legitimate civilian authority within the foreign country concerned.

(b) AUTHORITY TO PAY TRAINING AND EXERCISE EXPENSES.—Under regulations prescribed pursuant to subsection (e), the Secretary of a military department or the commander of a combatant command may pay, or authorize payment for, any of the following expenses:

(1) Expenses of training forces assigned or allocated to that command in conjunction with training, and training with, the military forces or other national security forces of a friendly foreign country under subsection (a).

(2) Expenses of deploying such forces for that training.

(3) The incremental expenses of a friendly foreign country as the direct result of participating in such training, as specified in the regulations.

(4) The incremental expenses of a friendly foreign country as the direct result of participating in an exercise with the armed forces under the jurisdiction of the Secretary of Defense.

(5) Small-scale construction that is directly related to the effective accomplishment of the training described in paragraph (1) or an exercise described in paragraph (4).

(c) PURPOSE OF TRAINING AND EXERCISES.—

(1) IN GENERAL.—The primary purpose of the training and exercises for which payment may be made under subsection (b) shall be to train United States forces.

(2) SELECTION OF FOREIGN PARTNERS.—Training and exercises with friendly foreign countries under subsection (a) should be planned and prioritized consistent with applicable guidance relating to the security cooperation programs and activities of the Department of Defense.

(d) AVAILABILITY OF FUNDS FOR ACTIVITIES THAT CROSS FISCAL YEARS.—Amounts available for the authority to pay expenses in subsection (b) for a fiscal year may be used to pay expenses under that subsection for training and exercises that begin in such fiscal year but end in the next fiscal year.

~~(e) QUARTERLY NOTICE ON PLANNED TRAINING.—Not later than the end of the first calendar quarter beginning after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, and every calendar quarter thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a notice setting forth the schedule of planned training engagement pursuant to subsection (a) during the calendar quarter first following the calendar quarter in which such notice is submitted.~~

(e) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Not later than 90 days after the end of each fiscal year in which training is conducted under the authority of subsection (a), the Secretary of Defense shall provide a briefing to the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations for the administration of this section. The Secretary shall submit the regulations to the Committees on Armed Services of the Senate and the House of Representatives.

(2) ELEMENTS.—The regulations required under this section shall provide the following:

~~(A) A requirement that training and exercise activities may be carried out under this section only with the prior approval of the Secretary.~~

(~~B~~A) Accounting procedures to ensure that the expenditures pursuant to this section are appropriate.

(~~C~~B) Procedures to limit the payment of incremental expenses to friendly foreign countries only to developing countries, except in the case of exceptional circumstances as specified in the regulations.

SEC. ___. REVISION TO TIMING REQUIREMENTS FOR CONSIDERATION OF APPLICATION FOR PERMANENT CHANGE OF STATION OR UNIT TRANSFER FOR MEMBERS ON ACTIVE DUTY WHO ARE THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.

Section 673(b) of title 10, United States Code, is amended by striking "72 hours" each place it appears and inserting "five calendar days".

[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 purpose of 10 U.S.C. §673(b) is to expedite the processing of the application for a change of station or unit transfer for victims of sexual assault. This legislative proposal would make a minor adjustment to the "expedited transfer" timing requirements established in law, which in turn would have two key benefits: (1) improve support to victims, and (2) ensure commanders can gather all appropriate information that may be relevant to a victim's decision related to a transfer.

Part of the process of the Department of Defense for an expedited transfer decision is for the commander of a Service member victim to provide counseling on career trajectories produced by the transfer (e.g., outcomes if the victim cannot complete specialized training or a special duty assignment; outcomes if the victim is in a small career field with limited assignment opportunities; the opportunities of the victim for re-training into new career field). However, if a victim initiates a request for transfer on a Friday, holiday, or during the weekend, the commander is not able to reach back to Service personnel and career resources to obtain information so that the victim can make a fully informed decision about their transfer request. Without this information, commanders cannot fully discuss potential transfer locations and career options with Service member victims. Victims must then make decisions without sufficient, helpful, and accurate career counseling.

Therefore, this legislative proposal amendment would change the amount of time, as established within 10 U.S.C. §673(b), from 72 hours to five calendar days, for commanders to access better quality information that improves a victim's ability to assess potential impacts on their career as a result of an expedited transfer.

This legislative proposal, Extension of timeframe for decision on sexual assault victim's request for an expedited transfer to 5 calendar days (OFR-001-21), received all "concurs" during the Personnel Legislation Review (PLR) process. Department stakeholders have raised no major concerns regarding this change, as it is seen as an improvement to how the Department empowers victims to restore their lives following a sexual assault. Additionally, the Defense

Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces in their October 19, 2018, public meeting adopted a recommendation to increase the decision timeframe to five working days, and the Services believed that the pertinent career assignment information could be gathered in five calendar days.

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

Changes to Existing Law: This proposal would amend section 673 of title 10, United States Code, as follows:

§ 673. Consideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense

(a) TIMELY CONSIDERATION AND ACTION.—The Secretary concerned shall provide for timely determination and action on an application for consideration of a change of station or unit transfer submitted by a member of the armed forces serving on active duty who was a victim of a sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) so as to reduce the possibility of retaliation against the member for reporting the sexual assault or other offense.

(b) REGULATIONS.—The Secretary concerned shall issue regulations to carry out this section, within in the guidelines provided by the Secretary of Defense. These guidelines shall provide that the application submitted by a member described in subsection (a) for a change of station or unit transfer must be approved or disapproved by the member's commanding officer within ~~72 hours~~ five calendar days of the submission of the application. Additionally, if the application is disapproved by the commanding officer, the member shall be given the opportunity to request review by the first general officer or flag officer in the chain of command of the member, and that decision must be made within ~~72 hours~~ five calendar days of the submission of the request for review.

SEC. ___. TRUTH IN NEGOTIATIONS ACT THRESHOLD FOR DEPARTMENT OF DEFENSE CONTRACTS.

Section 2306a(a)(1) of title 10, United States Code is amended—

(1) in subparagraph (B), by striking "contract if" and all that follows through clause (iii) and inserting "contract if the price adjustment is expected to exceed $2,000,000.";

(2) in subparagraph (C), by striking "section and—" and all that follows through clause (iii) and inserting "section and the price of the subcontract is expected to exceed $2,000,000." ; and

(3) in subparagraph (D), by striking "subcontract if—" and all that follows through clause (ii) and inserting "subcontract if the price adjustment is expected to exceed $2,000,000.".

[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

The proposal seeks to extend threshold revisions already initiated by Congress in section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and support the efficient administration and execution of Department of Defense (DoD) programs. This proposal would revise language in section 2360a of title 10, United States Code, in order to standardize the Truth in Negotiations Act (TINA) threshold changes already initiated by Congress, by uniformly applying $2M as the threshold for changes and modifications to contracts without regard to the date on which the contract was entered into. Standardizing the thresholds will enable contracting officers to streamline the acquisition process, promote efficiencies, and improve acquisition timelines during the administration of DoD contracts, allowing the acquisition contracting workforce to meet the vital needs without the unintended administrative burden of adhering to two separate certification standards.

By enacting section 811, Congress made an effort to create efficiencies within the acquisition community, significantly increased the TINA threshold from $750,000 to $2,000,000 in several scenarios presented in 10 U.S.C. 2306a. However, the revised threshold does not apply to changes or modifications to existing contracts or subcontracts that were entered into before June 30, 2018. Standardizing these thresholds for DoD contracts and subcontracts avoids

any unintended ill effects that maintaining a dual certified cost and pricing threshold would have on the Defense industry.

This action would substantially reduce the award timeline for critical changes or modifications to existing DoD contracts entered into prior to June 30, 2018, when the value falls between $750,000 and $2,000,000. Under the current statute, TINA requires that the Government obtain certified cost and pricing data in sole source negotiated contract actions above a certain value. Certified cost and pricing data is an extensive set of data that requires contractors to complete an exhaustive independent analysis to compile and disclose all facts within their knowledge that could affect price negotiations. Ensuring compliance with the TINA certification adds a substantial amount of time to contractor proposal turnaround time and Government evaluation of the same.

TINA includes authority to waive the requirement for certified cost and pricing data for an "exceptional case." 10 U.S.C. 2306a(b)(1)(C). To use this exception, the head of the procuring activity, without delegation, must make a determination that the TINA requirements must be waived and justify that determination in writing. However, case-by-case waivers are not the appropriate solution to facilitate the efficiencies sought by this proposal to address the problem.

Budgetary Implications: This proposal would have no budget impact.

Changes to Existing Law: This proposal would make the following changes to section 2306a of title 10, United States Code:

§ 2306a. Cost or pricing data: truth in negotiations

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed $2,000,000; and

(ii) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed $750,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if~~—~~

~~(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i),~~ the price adjustment is expected to exceed $2,000,000~~;~~.

~~(ii) in the case of a change or modification made after July 1, 2018, to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $750,000; and~~

~~(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $750,000.~~

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and~~—~~

~~(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i),~~ the price of the subcontract is expected to exceed $2,000,000~~;~~.

~~(ii) in the case of a subcontract entered into after July 1, 2018, under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $2,000,000; and~~

~~(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $750,000.~~

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if~~—~~

~~(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii),~~ the price adjustment is expected to exceed $2,000,000~~; and~~.

~~(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $750,000.~~

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect

subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted in accordance with section 1908 of title 41.

* * * * *

SEC. ___. WAIVER OF RESTRICTIONS ON OVERHAUL, REPAIR, OR MAINTENANCE OF VESSELS IN FOREIGN SHIPYARDS DURING WAR OR THREAT TO NATIONAL SECURITY.

Section 8680 of title 10, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

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

"(c) WAIVER.—(1) The Secretary of the Navy may waive the restrictions in subsections (a) and (b) for the duration of a period of threat to the national security interests of the United States upon a written determination by the Secretary of the Navy that such a waiver is necessary in the national security interest of the United States.

"(2) The Secretary of the Navy shall provide written notification to the congressional defense committees not later than 15 days after making a determination under paragraph (1).

"(3) In this subsection, the term 'period of threat to the national security interests of the United States' means—

"(A) a time of war; or

"(B) any other time the Secretary of Defense determines that the security interest of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, citizens of the United States, the property of citizens of the United States, or the commercial interests of citizens of the United States.".

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

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 8680 to allow the Secretary of the Navy to waive the statute's restrictions during a time of war, or during a threat to national security (as determined by the Secretary of Defense). This proposal will provide the Department of the Navy necessary flexibility in repairing and maintaining its ships during a war, conflict, or imminent conflict, while preserving the policy underlying the statute.

Section 8680 prohibits any naval vessel with a homeport in the United States or Guam from being overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs (10 U.S.C. 8680(a)). The prohibition has a limited exception for certain maintenance or repair on deployed Littoral Combat Ships. The statute also places restrictions on overhaul, repair, and maintenance of vessels during the 15-month period prior to a reassignment of a vessel from a homeport outside the United States (or its territories) to a homeport in the United States (or its territories) or vice versa (10 U.S.C. § 8680(b)).

The statute does not currently contain any waiver provision. This proposal would provide the Secretary of the Navy with limited authority to waive the restrictions in 10 U.S.C. 8680(a) and (b) during a time of war, or when the Secretary of Defense determines that the security of the United States is threatened by particular acts of a foreign government or agency. Specifically, the waiver authority would apply "during a war and at any other time when the Secretary of Defense determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests."

In addition to the existence of a war or a determined national security threat, the proposal would also require a written determination by the Secretary of the Navy that waiving the statute is necessary in the national security of the United States. This ensures that, even during a war or conflict, the authority is only used when necessary.

Finally, the proposal would require the Secretary of the Navy to provide a written notification to the congressional defense committees no later than 15 days after making a written determination. This provision will maintain Congressional oversight over use of the waiver authority, while allowing the Secretary to execute the waiver authority in a timely manner when necessary during a conflict or imminent conflict.

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

Changes to Existing Law: This proposal would amend section 8680 of title 10, United States Code, as follows:

§ 8680. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) VESSELS UNDER JURISDICTION OF THE SECRETARY OF THE NAVY WITH HOMEPORT IN UNITED STATES OR GUAM.—(1) A naval vessel the homeport of which is in the United States or

Guam may not be overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.

(2)(A) Notwithstanding paragraph (1) and subject to subparagraph (B), in the case of a naval vessel classified as a Littoral Combat Ship and operating on deployment, corrective and preventive maintenance or repair (whether intermediate or depot level) and facilities maintenance may be performed on the vessel—

(i) in a foreign shipyard;

(ii) at a facility outside of a foreign shipyard; or

(iii) at any other facility convenient to the vessel.

(B)(i) Corrective and preventive maintenance or repair may be performed on a vessel as described in subparagraph (A) if the work is performed by United States Government personnel or United States contractor personnel.

(ii) Facilities maintenance may be performed by a foreign contractor on a vessel as described in subparagraph (A) only as approved by the Secretary of the Navy.

(C) In this paragraph:

(i) The term "corrective and preventive maintenance or repair" means—

(I) maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(II) scheduled maintenance or repair actions to prevent or discover functional failures.

(ii) The term "facilities maintenance" means—

(I) the effort required to provide housekeeping services throughout the ship;

(II) the effort required to perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(III) the effort required to clean mechanical spaces, mission zones, and topside spaces.

(b) VESSEL CHANGING HOMEPORTS.—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

(c) WAIVER.—(1) The Secretary of the Navy may waive the restrictions in subsections (a) and (b) for the duration of a period of threat to the national security interests of the United States upon a written determination by the Secretary of the Navy that such a waiver is necessary in the national security interest of the United States.

(2) The Secretary of the Navy shall provide written notification to the congressional defense committees not later than 15 days after making a determination under paragraph (1).

(3) In this subsection, the term 'period of threat to the national security interests of the United States' means—

(A) a time of war; or

(B) any other time the Secretary of Defense determines that the security interest of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, citizens of the United States, the property of citizens of the United States, or the commercial interests of citizens of the United States.

(~~c~~d) REPORT.—(1) The Secretary of the Navy shall submit to Congress each year, at the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a report listing all repairs and maintenance performed on any covered naval vessel that has undergone work for the repair of the vessel in any shipyard outside the United States or Guam (in this section referred to as a "foreign shipyard") during the fiscal year preceding the fiscal year in which the report is submitted.

(2) The report shall include the percentage of the annual ship repair budget of the Navy that was spent on repair of covered naval vessels in foreign shipyards during the fiscal year covered by the report.

(3) Except as provided in paragraph (4), the report also shall include the following with respect to each covered naval vessel:

(A) The justification under law and operational justification for the repair in a foreign shipyard.

(B) The name and class of vessel repaired.

(C) The category of repair and whether the repair qualified as voyage repair as defined in Commander Military Sealift Command Instruction 4700.15C (September 13, 2007) or Joint Fleet Maintenance Manual (Commander Fleet Forces Command Instruction 4790.3 Revision A, Change 7), Volume III. Scheduled availabilities are to be considered as a composite and reported as a single entity without individual repair and maintenance items listed separately.

(D) The shipyard where the repair work was carried out.

(E) The number of days the vessel was in port for repair.

(F) The cost of the repair and the amount (if any) that the cost of the repair was less than or greater than the cost of the repair provided for in the contract.

(G) The schedule for repair, the amount of work accomplished (stated in terms of work days), whether the repair was accomplished on schedule, and, if not so accomplished, the reason for the schedule over-run.

(H) The homeport or location of the vessel prior to its voyage for repair.

(I) Whether the repair was performed under a contract awarded through the use of competitive procedures or procedures other than competitive procedures.

(4) In the case of a covered vessel described in subparagraph (C) of paragraph (5), the report shall not be required to include the information described in subparagraphs (A), (E), (F), (G), and (I) of paragraph (3).

(5) In this subsection, the term "covered naval vessel" means any of the following:

(A) A naval vessel.

(B) Any other vessel under the jurisdiction of the Secretary of the Navy.

(C) A vessel not described in subparagraph (A) or (B) that is operated pursuant to a contract entered into by the Secretary of the Navy and the Maritime Administration or the United States Transportation Command in support of Department of Defense operations.