Section-by-Section Analysis

TITLE I—PROCUREMENT

Sections 101 through 105 would authorize appropriations for fiscal year 2020 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2020.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2020 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2020.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 would authorize appropriations for fiscal year 2020 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2020.

Subtitle B—Energy and Environment

Section 311. The National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) are charged with implementing the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Delays associated with the completion of various environmental review, planning, consultation, permitting, and approval processes under these laws present an increasing unreasonable risk that the military departments will be unable to conduct critical testing and training activities or military construction projects. This presents a particular concern for the Department of Defense (DoD) regarding the rebalancing of United States forces in the Pacific area of responsibility. For example, the DoD, the Department of the Navy (DON), and the USFWS leadership met in 2015 to discuss a solution regarding delays associated with consultation under section 7 of the Endangered Species Act of 1973. Unfortunately, the outcome was agreement that legal constraints significantly limit the ability of a military department to provide support to the USFWS to complete section 7 consultations under the Endangered Species Act of 1973 on DoD actions so as to avoid adverse impacts to military readiness. However, the USFWS advised the DoD that authority granted to the Department of Transportation under the Fixing America's Surface Transportation Act (FAST Act; Public Law 114-94) enabled the Secretary of Transportation to enter into agreements with Federal or State agencies or Indian Tribes to expedite environmental reviews, planning, permitting, consultation, or approval.

The military departments do not currently have the authority to enter to agreements with either the NMFS or the USFWS to ensure that the NMFS or the USFWS can meet a military department's requirement to complete an environmental review, planning, consultation, permitting, and approval process under either or both Acts within a specific time limit. The NMFS and the USFWS are subject to significant constraints, including the review of competing non-DoD Federal agency actions, which often impact their ability to meet a military department's requirement that a specific environmental process be completed within a certain time limit. These constraints have placed the military departments in the frequent position of having to prioritize their actions for the NMFS or the USFWS, often with adverse impacts to certain project or program schedules.

This proposal, which mirrors the authority provided to the Secretary of Transportation under section 1312 of the FAST Act, would authorize a military department to enter into an agreement with a Service to expedite an environmental review, planning, consultation, permitting, or approval process under the Marine Mammal Protection Act or the Endangered Species Act for a project or program undertaken by the military department using funds available for operations and maintenance. The Agreement must specify the amounts of and basis for the payment that the military department will provide to the Service and requires that the Service use the payment only to contribute toward undertaking the environmental review, planning, consultation, permitting, or approval process for the military department project or program within an expedited time period. The total amount to be paid is limited to the amount determined by the head of the military department concerned to expedite the environmental review or other process. The proposal requires the Secretary of Defense to establish guidelines to implement this new authority. This proposal will allow the military departments to ensure that the NMFS and the USFWS have the ability to complete environmental reviews or other processes for projects or programs undertaken by the military departments so as to avoid any delay in the overall time limit for the underlying action which could adversely impact national defense.

NMFS receives authority each year with its annual appropriations that allows the agency to receive payments from Federal agencies (and other entities) to assist the agency in carrying out its permitting and regulatory responsibilities. The DOD, however, does not have concurrent authority to make such payments, and is requesting specific legislative authority to allow DOD to provide, and NMFS to receive, funds for the specified activities.

Budget Implications: The resources reflected in the table below are funded within the Fiscal Year (FY) 2020 President's Budget. As a practical matter, consistent with DoD's budget implications assessment for the FY 2017 National Defense Authorization Act (NDAA) proposal discussed below, funds would likely come from funds programmed for completing the environmental review, planning, consultation, permitting, or approval process associated with a particular project or program.

RESOURCE REQUIREMENTS ($M)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**

Navy	$1.0	$1.0	$1.0	$1.0	$1.0	Operation and Maintenance, Navy
Air Force	$0.5	$0.5	$0.5	$0.5	$0.5	Operation and Maintenance, Air Force
Army does not intend to use this authority, which would have been funded in Operation and Maintenance, Army.						
Total	$1.5	$1.5	$1.5	$1.5	$1.5	--

Changes to Existing Law: None

Subtitle C—Logistics and Sustainment

Section 321. Since the inception of this statute, Centers of Industrial and Technical Excellence (CITEs) have garnered substantial business benefits through partnerships with industry, directly contributing to improved materiel readiness across the Department through measurable reductions in lifecycle cost and repair cycle times. These partnerships have also served to incentivize collaborative process and product improvements frequently contributing to more effective and efficient service to the warfighter. As the process of partnering has matured over time it has become evident that these same benefits could be realized outside the physical constraint of the CITE, but the statute only affirmatively authorizes partnerships for work performed at a CITE. This limitation represents a lost opportunity to reduce cost to the taxpayer and improve service to the warfighter. This legislative proposal expands the authority for non-CITE providers to enter into public-private partnerships. The objective of expanded authority is to leverage the benefits of public-private partnering across a broader scope of partners to more effectively and efficiently deliver readiness to the warfighter categorically by functional area, including:

- Reliability engineering, maintainability engineering and maintenance (preventive, predictive and corrective) planning.
- Supply support
- Support equipment and test equipment support.
- Manpower and personnel.
- Training and training support
- Technical data/publications
- Computer resources support
- Facilities
- Packaging, handling, storage and transportation (PHS&T)
- Design interface

Collectively these product support areas represent billions of dollars of effort; and substantial potential savings if performed under Public Private Partnerships.

Budgetary Implications: There are no budgetary impacts. No additional resources are required and the proposal is revenue neutral. Work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund that incurs the cost of

performing the work. Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding title 10 section 2667(e), revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

In 2016 $31.2B was made available to the Military Departments for depot-level maintenance, of that amount approximately 3.2 percent, or $1B was excluded from the reporting requirements of percentage limitation in title 10 section 2466(a). Based on those data, it is estimated that the addition of product support functions would equal, over-time, anywhere from 2 to 30 percent of that amount, or $20M to $300M.

Changes to Existing Law: This proposal would make the following changes to section 2474 of title 10, United States Code:

§2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships

(a) DESIGNATION.—(1) The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, shall designate each depot-level activity or military arsenal facility of the military departments and the Defense Agencies (other than facilities approved for closure or major realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)) as a Center of Industrial and Technical Excellence in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department and the head of each Defense Agency to reengineer industrial processes and adopt best-business practices at their Centers of Industrial and Technical Excellence in connection with their core competency requirements, so as to serve as recognized leaders in their core competencies throughout the Department of Defense and in the national technology and industrial base (as defined in section 2500(1) of this title).

(3) The Secretary of a military department may conduct a pilot program, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Secretary determines could improve the efficiency and effectiveness of operations at Centers of Industrial and Technical Excellence, improve the support provided by the Centers for the armed forces user of the services of the Centers, and enhance readiness by reducing the time that it takes to repair equipment.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary designating a Center of Industrial and Technical Excellence under subsection (a) may authorize and encourage the head of the Center <u>or the head of a component that provides product support to the Center (in this section referred to as a “product support provider”)</u> to enter into public-private cooperative arrangements (in this section referred to as a "public-private partnership") to provide for any of the following:

(A) For employees of the Center, <u>a product support provider,</u> private industry, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the core competencies of the Center, including any depot-

level maintenance and repair work that involves one or more core competencies of the Center.

(B) For private industry or other entities outside the Department of Defense to use, for any period of time determined to be consistent with the needs of the Department of Defense, any facilities or equipment of the Center or a product support provider that are not fully utilized for a military department's own production or maintenance requirements.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the utilization of the capacity of a Center of Industrial and Technical Excellence and product support providers.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense or a facility of a product support provider in such areas of responsibility as operations and maintenance and environmental remediation.

(C) To reduce the cost of products of the Department of Defense produced or maintained at a Center or a facility of a product support provider.

(D) To leverage private sector investment in—

(i) such efforts as plant and equipment recapitalization for a Center or a product support provider; and

(ii) the promotion of the undertaking of commercial business ventures ~~at a Center~~ of a Center or a product support provider.

(E) To foster cooperation between the armed forces and private industry.

(3) If the Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, authorizes the use of public-private partnerships under this subsection, the Secretary shall submit to Congress a report evaluating the need for loan guarantee authority, similar to the ARMS Initiative loan guarantee program under section 7555 of this title, to facilitate the establishment of public-private partnerships and the achievement of the objectives set forth in paragraph (2).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any facilities or equipment of a Center of Industrial and Technical Excellence or a product support provider made available to private industry may be used to perform maintenance or to produce goods in order to make more efficient and economical use of Government-owned industrial plants and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary manufacturing and maintenance skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center or a product support provider for work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund, that incurs the cost of performing the work. Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(e) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

(e) AVAILABILITY OF EXCESS EQUIPMENT TO PRIVATE-SECTOR PARTNERS.—Equipment or facilities of a Center of Industrial and Technical Excellence or a product support provider may be made available for use by a private-sector entity under this section only if—

(1) the use of the equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned or, in the case of a Center or a product support provider in a Defense Agency, by the Secretary of Defense; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense for the direct and indirect costs (including any rental costs) that are attributable to the entity's use of the equipment or facilities, as determined by that Secretary; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the equipment or facilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned or the Secretary of Defense to suspend or terminate that use of equipment or facilities during a war or national emergency.

(f) EXCLUSION OF CERTAIN EXPENDITURES FROM PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

(g) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center of Industrial and Technical Excellence by Department of Defense personnel to performance by a contractor.

Section 322. This change would introduce new opportunities to achieve business benefits through the sale of articles and services across a broader sector of Government operations. Under the current statute, Industrial Facilities are affirmatively authorized to sell products and services to the private sector, but other providers in the value chain are not. This proposal shifts the focus from facilities to operations, and extends the authority to sell products and services to the private sector across the full spectrum of product support. The sale of services from industrial facilities to the private sector has garnered substantial operational benefits to the Government since the inception of this statute by providing the means to optimize capacity utilization of the facility, and to keep processes and skills critical to a ready and controlled work force well practiced. The proposed expanded authority would extend further across all of the accepted integrated product support elements which include:

- Reliability engineering, maintainability engineering and maintenance (preventive, predictive and corrective) planning.
- Supply (spare part) support (e.g. ASD S2000M specification)/acquire resources.

- Support and test equipment/equipment support.
- Manpower and personnel.
- Training and training support
- Technical data/publications
- Computer resources support
- Facilities
- Packaging, handling, storage and transportation (PHS&T)
- Design interface

Budgetary Implications: None. Provides enhanced opportunities to gain best value through collaborative agreements between government and industry. When submitted last cycle as LP #232, the OUSD(C) agreed that this proposal had no budgetary impact, and accordingly was sent to Congress on April 3, 2018.

Changes to Existing Law: This proposal would make the following changes to section 2563 of title 10, United States Code:

§2563. Articles and services of industrial facilities <u>or operations</u>: sale to persons outside the Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility or <u>industrial operation</u> of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility <u>or an Army industrial operation</u> (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 7543 of this title.

(b) DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES <u>OR OPERATIONS</u>.—The Secretary may designate facilities <u>or operations</u> referred to in subsection (a) as the facilities <u>or operations</u> from which articles and services manufactured or performed by such facilities <u>or operations</u> may be sold under this section.

(c) CONDITIONS FOR SALES.—(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility <u>or operation</u> concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility or operation concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility or operation concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(3) Paragraph (1)(B) does not apply in any case of willful misconduct or gross negligence or in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

(d) METHODS OF SALE.—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) DEPOSIT OF PROCEEDS.—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) DEFINITIONS.—In this section:

(1) The term "advance incremental funding", with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term "industrial operation" means a working-capital funded organization, a depot repair organization, or a product support activity supporting these organizations.

(~~2~~3) The term "not available", with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(~~3~~4) The term "variable costs", with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

Subtitle D—Other Matters

Section 331 would update and modernize the statutory basis for the Department of Defense Explosives Safety Board. The proposal would provide for a modernized board membership, to include the possibility of having the United States Coast Guard participate, and expand the statutory description of the Board's charter to cover the matters that the Board actually addresses under the authority of the Secretary of Defense.

Section 172 was partially updated in the National Defense Authorization Act for Fiscal Year 2018. Those changes, however, have caused some unintended problems in the actual operations of the Board. This proposal would correct those issues. The amendments made in the 2018 Act did not fully appreciate the nature of the Board's operations. The Board operates as an advisory panel to the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)). It is not an executive board in that it does not manage programs or oversee activities, other than those assigned to it by the Secretary of Defense. The Board is supported by a professional full-time staff. The Board itself only meets two to three times a year. Its members are not independent advocates free to simply "vote their conscience". They are the representatives of their military services and are expected to represent the views of their components. In this way, the Board is able to inform the USD(AT&L) as to the views of the services. Consequently, whether the Board members are military or civilian is not determinative of the Board's decisions.

Three of four of the military departments have chosen to select civilian employees as the primary Board members. This is due to the fact that Board participation is only a very small part of the member's duties and longer-term civilian representation provides greater continuity. The appointment of a military member has the unfortunate effect of taking a high value but very limited asset out of operational activities and placing them into a secretariat-level administrative job solely for the purpose of having them participate a few days a year in the Board. This is normally undesirable and, consequently, has been avoided by three of the services.

Of perhaps greater import, the language revised by the 2018 Act could severely limit the actual performance of the Board. The language addresses only "storage and transportation" of munitions. The Board's mission is far more expansive and covers the entire life-cycle of munitions, from production to final disposition. The Board's mission is to provide protection and risk management for our troops during the entire life-cycle, not just a small portion of it. The current language, if applied as a limiting factor, would cripple the effectiveness of the Board and thereby endanger the safety of our troops wherever located or operating.

The proposed revised language would return the Board to its prior membership orientation, i.e., each military service could determine for itself whether to appoint a military or civilian representative as its primary member. It would confirm that the Board's mission extends to the activities it has pursued for many years, namely the "life-cycle of the production, storage, and transportation of supplies of military munitions". It would extend coverage to all "organizations listed in section 111(b)", which are all the DoD Components, thereby recognizing that not just the military departments deal with explosives. It would authorize the participation of the United States Coast Guard, a particularly important player, since the Coast Guard figures prominently in management of the nation's ports through which the vast majority of DoD munitions pass.

The end result of this proposed change would be to bring the Board's authorizing statute into the 21st Century and thereby promote the safety of DoD personnel.

Budget Implications: This proposal has no significant budget impact. Any incidental costs are accounted for within the Fiscal Year (FY) 2020 President's Budget.

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

§172. ~~Explosive~~ Explosives safety board

~~(a) IN GENERAL.—The Secretary of Defense, acting through a joint board that includes members selected by the Secretaries of the military departments composed of military officers designated as the chair and voting members of the board for each military department, and other civilian officers and employees of the Department of Defense, as necessary, shall provide oversight on storage and transportation of supplies of ammunition and components thereof for use of the Army, Navy, Air Force, and Marine Corps, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations.~~

(a) EXPLOSIVES SAFETY RISK MANAGEMENT.—The Secretary of Defense, acting through a joint board composed of members as described in subsection (b), shall develop guidance for oversight of the explosives safety munitions risk management life-cycle of the production, storage, and transportation of supplies of military munitions for use of the organizations listed in section 111(b) of this title, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations.

~~(b) OVERSIGHT BY SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments shall provide research, development, test, evaluation, and manufacturing oversight for energetic materials supporting military requirements.~~

(b) COMPOSITION OF BOARD.—The joint board referred to in subsection (a) shall include members selected by the Secretaries of the military departments and be composed of military officers, civilian officers and employees of the Department of Defense, or both. The joint board may, under agreement with the Secretary of Homeland Security, include a member from the Coast Guard, when the Coast Guard is not operating as a service in the Department of the Navy.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2020.

Subtitle B—Reserve Forces

Section 411 would prescribe the end strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense, and the Department of Homeland Security for the Coast Guard Reserve, in the President's Budget for fiscal year 2020.

Section 412 would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2020.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2020.

Section 414 would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

Subtitle C—Authorization of Appropriations

Section 421 would authorize appropriations for fiscal year 2020 for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would revise the statutory approval authority for non-Joint Qualified Officers to fill a critical joint duty assignment position. Current statute only allows the Secretary of Defense to delegate this approval authority to the Chairman of the Joint Chiefs of Staff. All other Joint Officer Management authorities delegated to the Chairman of the Joint Chiefs of Staff allow for further delegation.

The Chairman of the Joint Chiefs of Staff is responsible for the overall administration and execution of Joint Officer Management. Seven of eight Joint Officer Management authorities delegated to the Chairman of the Joint Chiefs of Staff allow for further delegation. The only Joint Officer Management approval authority which does not allow further delegation is for non-Joint Qualified Officers filling critical joint duty assignment positions. Revision allows the

Chairman's designee to approve or disapprove the waiver, thus giving the Chairman more time to focus on higher priority defense initiatives and requirements, as well as provide a more expedited waiver process for the Service, joint organization, and the military officer.

Budgetary Implications: None.

Changes to Existing Law: This section would make the following changes to section 661 of title 10, United States Code:

TITLE 10, UNITED STATES CODE

§661. Management policies for joint qualified officers

* * * * *

(d) NUMBER OF JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above major or, in the case of the Navy, lieutenant commander are filled at any time by officers who have the appropriate level of joint qualification.

(2) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall designate an appropriate number of joint duty assignment positions as critical joint duty assignment positions. A position may be designated as a critical joint duty assignment position only if the duties and responsibilities of the position make it important that the occupant be particularly trained in, and oriented toward, joint matters.

(3)(A) Subject to subparagraph (B), a position designated under paragraph (2) may be held only by an officer who—

(i) was designated as joint qualified in accordance with this chapter; or

(ii) was selected for the joint specialty before October 1, 2007.

(B) The Secretary of Defense may waive the requirement in subparagraph (A) with respect to the assignment of an officer to a position designated under paragraph (2). Any such waiver shall be granted on a case-by-case basis. The authority of the Secretary to grant such a waiver may be delegated only to the Chairman of the Joint Chiefs of Staff <u>or a designee of the Chairman who is a member of the armed forces in grade O-8 or higher</u>.

(4) The Secretary of Defense shall ensure that, of those joint duty assignment positions that are filled by general or flag officers, a substantial portion are among those positions that are designated under paragraph (2) as critical joint duty assignment positions.

Subtitle B—Reserve Component Management

Section 511 would repeal the requirement for the commander of an active duty unit associated with an Army Selected Reserve unit to review promotion recommendations for unit vacancy promotions. Currently, section 1113 of the Army National Guard Combat Readiness Reform Act of 1992 (which was enacted as title XI of the National Defense Authorization Act for Fiscal Year 1993) requires commanders of associated active duty units to review candidates for unit vacancy promotions and inform the promotion authority within 60 days of receiving notice of a recommended promotion whether the active duty commander concurs or non-concurs

with the unit vacancy promotion. The Active Component (AC) does not utilize the Unit Vacancy Promotion (UVP) system. The Army National Guard (ARNG) and U.S. Army Reserve (USAR) have separate peacetime chains of command, which informs the UVP selection criteria. Requiring an AC associate unit commander's recommendation adds an unnecessary layer of bureaucracy that could delay promotions for Reserve Component (RC) Soldiers. Additionally, many AC associate unit commanders may have limited interaction with RC Soldiers unless they are activated under title 10, U.S.C., orders for deployment. Furthermore, the Army has established other processes for review of RC promotions. The associations have been replaced by training partnerships, which do not include review of promotions.

Budget Implications: This proposal has no budgetary impact. The cessation of the activity and the removal of the provision from the law will not consume any resources.

Changes to Existing Law: This proposal would repeal section 1113 of the Army National Guard Combat Readiness Reform Act of 1992 (10 U.S.C. 10105 note).

~~**SEC. 1113. REVIEW OF OFFICER PROMOTIONS BY COMMANDER OF ASSOCIATED ACTIVE DUTY UNIT.**~~

~~(a) REVIEW.—Whenever an officer in an Army Selected Reserve unit as defined in subsection (b) is recommended for a unit vacancy promotion to a grade above first lieutenant, the recommended promotion shall be reviewed by the commander of the active duty unit associated with the Selected Reserve unit of that officer or another active duty officer designated by the Secretary of the Army. The commander or other active duty officer designated by the Secretary of the Army shall provide to the promoting authority, through the promotion board convened by the promotion authority to consider unit vacancy promotion candidates, before the promotion is made, a recommendation of concurrence or nonconcurrence in the promotion. The recommendation shall be provided to the promoting authority within 60 days after receipt of notice of the recommended promotion.~~

~~(b) COVERAGE OF SELECTED RESERVE COMBAT AND EARLY DEPLOYING UNITS.—(1) Subsection (a) applies to officers in all units of the Selected Reserve that are designated as combat units or that are designated for deployment within 75 days of mobilization.~~

~~(2) Subsection (a) shall take effect with respect to officers of the Army Reserve, and with respect to officers of the Army National Guard in units not subject to subsection (a) as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 [Feb. 10, 1996], at the end of the 90-day period beginning on such date of enactment.~~

~~(c) REPORT ON FEASIBILITY.—The Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report, not later than March 1, 1993, containing a plan for implementation of subsection (a). The Secretary may include with the report such proposals for legislation to clarify, improve, or modify the provisions of subsection (a) in order to better carry out the purposes of those provisions as the Secretary considers appropriate.~~

Subtitle C—General Service Authorities and Correction Military Records

Section 521. Section 1553 of title 10, United States Code (Review of discharge or dismissal), requires boards of review to have five members. This proposal would authorize the Secretaries of the military departments to constitute boards of review with a minimum of three members. Having panels comprised of a minimum of three members, rather than five, would allow the Naval Discharge Review Board (NDRB) to process cases in a more efficient manner. Current processing times exceed eight months for a document review and 19 months for a personal appearance hearing. The use of a three-member panel will not detract from the quality of review or due process provided to the applicants as evidenced by the historical use of three-member panels in administrative separation proceedings or special courts-martial. Additionally, the Board for Correction of Naval Records (BCNR), the final administrative review authority within the Department of Navy (DON), is authorized, by instruction, to use no less than three members in the adjudication of cases. A minimum statutory membership requirement is not mandated for the BCNR under 10 U.S.C. 1552.

The NDRB currently has a backlog of over 1,500 applications from former service members and receives approximately 140 new cases monthly. Recent policy and legislative changes have generated more service members requesting discharge reviews. Cases have become more complex due to Post Traumatic Stress Disorder, Traumatic Brain Injury, and Military Sexual Trauma related issues, lengthening the review time required. Additionally, the NDRB's implementation of telephonic hearings has nearly doubled the number of applicants exercising their right to a hearing. Each telephonic hearing can last up to two hours, significantly increasing the demand upon the board members to process cases. The NDRB's goal to reduce adjudication time down to 6 months, to provide the applicant a timely answer and reduce backlogs, has not been accomplished in this increasingly complex environment.

The board can effectively run two panels with only six personnel if this proposal is adopted. By reducing the minimum board members to three, NDRB can become more efficient with their manning resources to manage increasing caseloads of increasing complexity, reduce backlogs, and achieve a more reasonable response time. Additionally, the proposed language retains the flexibility for the Secretaries to retain five-member panels, if desired.

Budgetary Implications: There are no costs or savings associated with this proposal since the change in board membership requirements will not result in a change in the labor force. The personnel who would have been on the larger boards will now become available for other tasks, such as reducing the case-backlog. This proposal is non-budgetary.

Changes to Existing Law: This proposal would make the following change to section 1553 of title 10, United States Code:

§1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of ~~five~~ not less than three members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-

martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(d)(1) In the case of a former member of the armed forces who, while serving on active duty as a member of the armed forces, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury as a consequence of that deployment, a board established under this section to review the former member's discharge or dismissal shall include a member who is a physician, clinical psychologist, or psychiatrist.

(2) In the case of a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale or as justification for priority consideration, the Secretary concerned shall expedite a final decision and shall accord such cases sufficient priority to achieve an expedited resolution. In determining the priority of cases, the Secretary concerned shall weigh the medical and humanitarian circumstances of all cases and accord higher priority to cases not involving post-traumatic stress disorder or traumatic brain injury only when the individual cases are considered more compelling.

Subtitle D—Military Justice

Section 531. The original intent of section 586(g) of Public Law 112-81, as added by section 538 of Public Law 113-291,was to allow sexual assault victims to reclaim their personal property at the conclusion of all legal, adverse action, and administrative proceedings related to the incident. As written, this legislation has the unintended consequence of re-victimizing victims because it fails to address instances where victims have filed a Restricted Report and chosen not to convert to an Unrestricted Report, resulting in a situation where the case will never enter the military justice system and attain a legal conclusion. Consequently, absent conversion to an Unrestricted Report, Restricted Reporting victims' personal property is automatically held for five years, without giving victims a recourse for recovering their personal property before the

expiration of the statutory 5-year timeframe.

The return of a victim's personal property assists in giving victims closure and helping in their recovery. Personal property seized could include articles of clothing, jewelry, bedding, shoes, cell phones, computers or other electronic devices, or anything the victim submitted for evidence during their forensic examination. These items could have significant sentimental value (e.g., necklace given by a parent) or considerable monetary value, as with an electronic device. Accordingly, if left unamended section 536 of Public Law 112-81 brings unnecessary anguish to Restricted Reporting victims and places the Department of Defense in a difficult and uncomfortable position of denying victims access to personal property, which is rightfully theirs.

Budget Implications: There is a *de minimis* budget implication to returning personal property to victims who filed a Restricted Report; it is expected to involve one or two requests per Service per year. This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 586 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 1561 note):

SEC. 586. DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON RETENTION AND ACCESS TO EVIDENCE AND RECORDS RELATING TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES.

(a) Comprehensive Policy on Retention and Access to Records.-Not later than October 1, 2012, the Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, develop a comprehensive policy for the Department of Defense on the retention of and access to evidence and records relating to sexual assaults involving members of the Armed Forces.

(b) Objectives.-The comprehensive policy required by subsection (a) shall include policies and procedures (including systems of records) necessary to ensure preservation of records and evidence for periods of time that ensure that members of the Armed Forces and veterans of military service who were the victims of sexual assault during military service are able to substantiate claims for veterans benefits, to support criminal or civil prosecutions by military or civil authorities, and for such purposes relating to the documentation of the incidence of sexual assault in the Armed Forces as the Secretary of Defense considers appropriate.

(c) Elements.-In developing the comprehensive policy required by subsection (a), the Secretary of Defense shall consider, at a minimum, the following matters:

(1) Identification of records, including non-Department of Defense records, relating to an incident of sexual assault, that must be retained.

(2) Criteria for collection and retention of records.

(3) Identification of physical evidence and non-documentary forms of evidence relating to sexual assaults that must be retained.

(4) Length of time records, including Department of Defense Forms 2910 and 2911, and evidence must be retained, except that-

(A) the length of time physical evidence and forensic evidence must be retained shall be not less than five years; and

(B) the length of time documentary evidence relating to sexual assaults must be retained shall be not less than the length of time investigative records relating to reports of sexual assaults of that type (restricted or unrestricted reports) must be retained.

(5) Locations where records must be stored.

(6) Media which may be used to preserve records and assure access, including an electronic systems [sic] of records.

(7) Protection of privacy of individuals named in records and status of records under section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act'), section 552a of title 5, United States Code (commonly referred to as the 'Privacy Act'), restricted reporting cases, and laws related to privilege.

(8) Access to records by victims of sexual assault, the Department of Veterans Affairs, and others, including alleged assailants and law enforcement authorities.

(9) Responsibilities for record retention by the military departments.

(10) Education and training on record retention requirements.

(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

(d) Uniform Application to Military Departments.-The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

~~(f)~~ (e)Return of Personal Property Upon Completion of Related Proceedings in Unrestrircted Reporting Cases.-Notwithstanding subsection (c)(4)(A), personal property retained as evidence in connection with an incident of sexual assault involving a member of the Armed Forces may be returned to the rightful owner of such property after the conclusion of all legal, adverse action, and administrative proceedings related to such incident.

(f) Return of Personal Property in Restricted Reporting Cases.—(1) The Secretary of Defense shall prescribe procedures under which a victim who files a restricted report on an incident of sexual assault may request, at any time, the return of personal property of the victim obtained as part of the sexual assault forensic examination.

(2) The procedures shall ensure that—

(A) a request of a victim under paragraph (1) may be made on a confidential basis and without affecting the restricted nature of the restricted report; and

(B) at the time of the filing of the restricted report, a Sexual Assault Response Coordinator or Sexual Assault Prevention and Response Victim Advocate—

(i) informs the victim that the victim may request the return of personal property as described in paragraph (1); and

(ii) advises the victim that such a request for the return of personal property may negatively impact a subsequent case adjudication if the victim later decides to convert the restricted report to an unrestricted report.

(3) Except with respect to personal property returned to a victim under this subsection, nothing in this subsection may be construed to affect the requirement to retain a sexual assault forensic examination (SAFE) kit for the period specified in subsection (c)(4)(A).

Subtitle E—Member Education, Training, Resilience, and Transition

Section 541 amends the statute affecting delivery of Joint Professional Military Education Phase (JPME) II instruction. The Joint Forces Staff College (JFSC) is recognized by statute as a JPME II credit producing joint institution. The JFSC educates national security professionals to plan and execute operational-level joint, multinational, and interagency operations to instill a primary commitment to joint, multinational, and interagency teamwork, attitudes, and perspectives. The SECDEF and CJCS require the latitude to incorporate assets from across all joint and service education institutions to implement efficient and innovative delivery of JPME II. For example, by enhancing delivery and efficiency of in-resident and distance learning means available at joint and service level senior colleges.

JPME II has stagnated, focused more on the accomplishment of mandatory credit at the expense of efficiency and innovation. JFSC is one of several options within the National Defense University. JFSC principally develops joint attitudes and perspectives and exposes officers to—and increases their understanding of—Service cultures while concentrating on joint staff operations. To create flexibility, the Department requires Congressional approval to allow DoD to provide JPME II through additional JPME means.

To maintain our competitive advantage, JPME II must develop Service members that thrive at all levels of the Joint Force. To accomplish this aim, JPME II education must emphasize intellectual leadership and military professionalism in the art and science of warfighting at the strategic level, deepening knowledge of history while embracing new technology and techniques to counter competitors. Innovative means exist and can be expanded across the joint and service level senior colleges adding JPME II accredited capacity.

Section 2154(a)(2)(A) constrains the Joint Force's ability to leverage academic innovations and strengths. The emphasis is on mandatory credit at the expense of potential further ingenuity. A menu of academic options exist within the Department that can offer flexibility in JPME II accredited courses with the level of rigor required of a strategic education designed to enhance the art and science of warfighting. With the enactment of this proposal, National Defense University and its colleges are all potential options and institutional means that may contribute to innovations in JPME II.

By striking the Joint Forces Staff College in section 2154(a)(2)(A), the proposal would enable the increased efficiency and innovation for JPME II across all joint and service institutions. Furthermore, it would provide the SECDEF additional options to further select and certify the best available joint institutions for JPME II credit.

Budget Implications: There are no budget implications associated with this proposal. No additional costs are associated with the enactment of this proposal. This proposal offers increased flexibility for efficient and innovative JPME II delivery across already existing joint institutions and the potential to achieve cost savings.

Changes to Existing Law: This proposal would make the following changes to section 2154 of title 10, United States Code:

§2154. Joint professional military education: three-phase approach

(a) THREE-PHASE APPROACH.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school or at a joint intermediate level school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of—

(A) a joint professional military education curriculum taught in residence at, or offered through, ~~the Joint Forces Staff College or a~~ a joint or senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution; or

(B) a senior level service course of at least ten months that has been designated and certified by the Secretary of Defense as a joint professional military education course.

(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

(b) SEQUENCED APPROACH.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

Section 542 would amend section 9415(b) of title 10, United States Code, to authorize the Community College of the Air Force (CCAF) to award associate degrees to enlisted members of services other than the Air Force who are participating in CCAF affiliated joint-service training and education courses.

Section 9415(b) of title 10, United States Code, authorizes CCAF to award associate degrees to Air Force enlisted members serving on active duty or in the Air National Guard or Air Force Reserve Command, and faculty members from other Armed Forces assigned to CCAF affiliated schools. Without this proposed legislative change, other-service students would continue to remain ineligible to earn CCAF Associate in Applied Science (AAS) degrees, while Air Force students attending the same CCAF credit awarding courses delivered at affiliated joint service schools would be able to earn job-related CCAF associate degrees. Also, allowing other

service members to earn a regionally accredited associate degree through CCAF increases the availability of future instructor candidates for assignment to CCAF affiliated schools, thus supporting multiple Armed Forces students. Having an increased pool of instructor candidates helps maintain the relevance and viability for all training groups that develop curriculum and deliver training and education to students from multiple branches of the Armed Forces.

As an example, this could be of great benefit to members attending CCAF affiliated joint-service schools attached to the 17th Training Group (TRG) at Goodfellow Air Force Base (AFB), Texas. The 17th TRG hosts the 312th Training Squadron (TRS), which provides the Department of Defense (DoD) and international customers with mission ready fire protection and special instruments graduates; the 315th TRS, which provides combat-ready intelligence professionals; and the 316th TRS, which conducts U.S. Air Force, U.S. Army, U.S. Marine Corps, U.S. Navy, and U.S. Coast Guard cryptologic, human intelligence and joint-service military training. In many cases, civilian degrees in the intelligence and security fields are not readily available and those that are available require more civilian course work to complete degree requirements, which in turn requires significantly more DoD Tuition Assistance funding than a CCAF degree. Although these 17th TRG schools are CCAF affiliate schools, disparity exists because Air Force students attending these technical school courses earn CCAF collegiate credit and have an education path toward a technical associate in applied science degree. However, other service students are not afforded this same benefit and opportunity due to the restriction clause in the current legislation. Modifying the legislation to remove this restriction would expand CCAF AAS degree eligibility to include all U.S. Armed Forces enlisted students and instructors, which would correct this disparity.

An associate degree from CCAF, or any other accredited institution, is a human capital investment where the student increases his educational experience base, improves self-esteem, and builds academic and professional confidence. This investment provides support and documentation for future academic achievement, improves job performance, translates military education and training into collegiate semester hours and academic terms understood by civilian educators and employers, and aids in transition to the civilian job market. Peer-reviewed academic research indicates that a two-year technical degree is associated with significantly higher lifetime earnings. As with any other degree for U.S. service members, a CCAF AAS degree enhances readiness, provides degree programs directly related to military occupations, enhances the competence of enlisted members, builds better leaders, encourages personal responsibility, aids in retaining quality personnel, ensures a healthy use of off-duty time by members pursuing a degree, and aids in recruiting a quality force. Many enlisted members cite continuing their education as a primary reason for enlisting in the U.S. Armed Forces. Expanding the CCAF AAS degree eligibility to include enlisted members of all U.S. Armed Forces provides them with more degree choices as they pursue their education goals. Annually, approximately 7,000 non-Air Force Service members attend CCAF credit-awarding courses at Fort Sam Houston, Sheppard AFB, and Goodfellow AFB alone. Approximately 15 percent of other-service students each year have inquired about the possibility of earning a CCAF AAS degree.

Budgetary Implications: There would initially be minimal budget increase incurred with this proposal. CCAF already fulfills transcript requests from other service students attending CCAF

credit awarding courses. Additionally, this legislative change would only expand the degree awarding authority to other service enlisted members attending CCAF affiliated joint training and education courses. This legislative change would not drive the creation of additional degree programs.

The primary cost associated with this proposal would be the cost of educating non-degreed instructors. On average, other-service instructors require 21 credit hours to complete their associate degree—a prerequisite for qualification to teach CCAF courses. This cost is typically offset by Military Tuition Assistance (MilTA), which would be paid for by AF/A1. There is also an administrative cost to CCAF for each graduate, both in terms of manning and in terms of goods consumed, such as diploma paper.

Other service graduates of CCAF courses (who are not assigned to CCAF instructor duty) would use MilTA to finance the remainder of their education, but this cost would be absorbed by their respective service and would be reduced due to their earning college credit from CCAF. Based on the annual throughput of the two largest joint schools teaching CCAF courses—the 17th Training Group and the Medical Education and Training Campus—we estimate an upper bound of approximately 200 other service CCAF graduates per year. Based on an analysis of how this additional workload would affect the CCAF administrative center, as well as the costs associated with MilTA, we anticipate an annual cost of approximately $66,000. These figures are elaborated in the table below. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

Estimated impact of 200 annual other service CCAF graduates: $66,000

$57,000	MilTA costs to educate instructors
$9,000	CCAF administrative costs (1.7% increase in annual operating budget)
1 additional GS-5 position at CCAF administrative center	

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
HAF/A1	.057	.057	.057	.057	.057	Operation and Maintenance, Air Force
BCEE	.009	.009	.009	.009	.009	Operation and Maintenance, Air Force
BCEE	.034	.034	.034	.034	.034	Operation and Maintenance, Air Force
Total	.100	.100	.100	.100	.100	--

Additionally AU/A6 would develop the necessary interface to allow STARS or the new AU enterprise SIS (Student Information System) to interact with other training and student management systems used by the other services.

Changes to Existing Law: This proposal would make the following changes to section 9415 of title 10, United States Code:

§ 9415. Community College of the Air Force: associate degree

(a) ESTABLISHMENT AND MISSION.—There is in the Air Force a Community College of the Air Force. Such college, in cooperation with civilian colleges and universities, shall—

(1) prescribe programs of higher education for enlisted members described in subsection (b) designed to improve the technical, managerial, and related skills of such members and to prepare such members for military jobs which require the utilization of such skills; and

(2) monitor on a continuing basis the progress of members pursuing such programs.

(b) MEMBERS ELIGIBLE FOR PROGRAMS.—Subject to such other eligibility requirements as the Secretary concerned may prescribe, the following members of the armed forces are eligible to participate in programs of higher education under subsection (a)(1):

(1) Enlisted members of the Air Force.

(2) Enlisted members of the armed forces other than the Air Force who are serving as instructors at Air Force training schools.

(3) Enlisted members of the armed forces other than the Air Force who are participating in Community College of the Air Force affiliated joint-service training and education courses.

(c) SERIOUSLY WOUNDED, ILL, OR INJURED FORMER AND RETIRED ENLISTED MEMBERS.—(1) The Secretary of the Air Force may authorize participation in a program of higher education under subsection (a)(1) by a person who is a former or retired enlisted member of the armed forces who at the time of the person's separation from active duty—

(A) had commenced but had not completed a program of higher education under subsection (a)(1); and

(B) is categorized by the Secretary concerned as seriously wounded, ill, or injured.

(2) For purposes of this subsection, a person who may be categorized as seriously wounded, ill, or injured is a person with a serious injury or illness (as that term is defined in section 1602(8) of the Wounded Warrior Act (title XVI of Public Law 110-181; 10 U.S.C. 1071 note)).

(3) A person may not be authorized under paragraph (1) to participate in a program of higher education after the end of the 10-year period beginning on the date of the person's separation from active duty.

(4) The Secretary may not pay the tuition for participation in a program of higher education under subsection (a)(1) of a person participating in such program pursuant to an authorization under paragraph (1).

(d) ASSOCIATE DEGREES.—(1) Subject to paragraph (2), an academic degree at the level of associate may be conferred under section 9317 of this title upon any person who has completed a program prescribed by the Community College of the Air Force.

(2) No degree may be conferred upon any person under this section unless the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.

Section 543 would authorize the United States Army Armament Graduate School (AGS), at Picatinny Arsenal, New Jersey, to grant graduate degrees in armament engineering.

Degree-granting authority will validate the valuable graduate-level learning that AGS provides by attracting strong students and rewarding their educational efforts. Students who complete course-work and dissertation requirements of the graduate program become broadly trained in all core armament engineering fields with deep expertise on a specific problem area within armament engineering. Educating the next generation of experts in armament engineering through AGS will fill identified gaps in succession planning by ensuring future capabilities in armament-related research and in the innovation and development of advanced effective armaments to meet America's future defense needs.

Federal authorization for this successful, academically rigorous, and pedagogically effective graduate program will enhance the education currently delivered by AGS by allowing students to receive actual degrees instead of completion certificates. It will also pave the way for AGS to obtain accreditation by the Middle States Council on Higher Education—the Department of Education designated accreditation authority for the region. Federal authorization and regional accreditation will attract and retain the best and brightest students thus ensuring a vital armament engineering capability and a strong future of Army expertise.

About 90 percent of all armament engineers are located at the U.S. Army Armament Research, Development and Engineering Center (ARDEC). Current employee demographics suggest that the Army will soon face a shortage of expert armament engineers. About 40 percent of the ARDEC workforce, including over 60 percent of the expert cadre, will become eligible for retirement within the next 10 years. We face the risk that the Army will lack a cadre of trained and experienced experts to take their place. The traditional process for training expert armament engineers, with expertise commensurate with those who are retiring, is a slow one.

Without serious effort to accelerate and improve the training the Army provides, the projected shortage cannot be averted. This proposal provides a mechanism for speeding the process of developing the particular expertise needed to maintain current ARDEC capabilities. Degree-granting authority would allow us to sustain a viable program unique in its academic rigor and subject matter focus from any existing science or engineering program in civilian institutions of higher learning.

The existing internal training and mentoring process, which takes young scientists and engineers and grooms them for high-level expert positions over the course of about 7–10 years, would only be viable if paired with lucrative incentives to induce our existing experts to remain in Government service beyond their intended retirement dates (at the highest income level of their careers). Such an expensive option would not promote any of the advantages of maintaining a viable Armament Graduate School and would cost the government more money. In addition, the 7–10 year process does not produce well-rounded armament engineers. Initially it produces narrowly trained engineers who, only after an extended period, become more broadly experienced in the many technical areas of expertise encompassed by armament engineering.

To address these problems—the slow pace, high cost, and narrow expertise range of current training practices—ARDEC launched AGS 6 years ago. AGS takes talented Army civilian scientists, mathematicians, and engineers, instills in them an understanding of armament engineering-related materials from across the knowledge landscape, and culminates in a dissertation research project. The dissertation research requires using rigorous scientific methods, critical thinking, and an extensive familiarity with a specific body of literature and knowledge to create new knowledge and solve problems or remove barriers to engineering success. AGS produces broadly trained armament engineering experts in about 3 years and continues with added breadth and considerable depth of training and research until the employee obtains Ph.D.-level expertise in armament engineering at the end of 5 years. AGS has graduated classes from September 2015 through September 2018. The graduating students met all the requirements of a Master of Armament Engineering degree, but the AGS presented them with certificates of completion because AGS does not currently hold the authority to grant degrees.

Without authorization and accreditation, the AGS will not attract and retain the best students from the Army workforce, and eventually, due to declining enrollment, will not survive to accomplish its essential mission. Accreditation requires that the educational program first be authorized under title 10, United States Code.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would add section 4322 to chapter 401 of title 10, United States Code, as previously shown.

Section 544 would allow the Secretaries of the military departments and civilian faculty members at accredited educational institutions to accept grants for faculty research for scientific, literary, and educational purposes. The ability to accept research grants would enable the Services' civilian and military faculty to develop more advanced research skills, conduct analysis in areas as directed by the institutions, and produce intellectual advances relevant to the military departments' current and future needs.

To effect these changes, the proposal would amend sections 7487, 8593, 8594, and 9487 of title 10, United States Code, for the Army, Navy, Marine Corps, and Air Force, respectively. To the extent possible, the language and authorities for each military department under this proposal are the same.

Under current law, the Secretaries of the military departments may authorize only the Commandants of the Army War College and the Air War College and the Presidents of the Naval War College and Marine Corps University to accept qualifying research grants. The inability of the military departments and the faculty at their accredited institutions to accept research grants to support additional research severely restricts the ability of the military departments to meet several directed tasks and end-state conditions, including developing world class faculties and improving professional research and publication.

Under regulations prescribed by the Secretary concerned, designated individuals (the Commandants of the Army War College and Air War College and the Presidents of the Naval War College and Marine Corps University), as well as the heads of accredited institutions would be authorized to accept qualifying research grants. Allowing the heads of accredited institutions to accept research grants puts positions like the Executive Vice Chancellor of Army University on par with, for example, the Chancellor of the State University of New York (SUNY), who acts as the head of the umbrella organization to supervise and broadly manage the individual accredited institutions in the system.

This proposal would contribute significantly to the ability of the military departments to improve professional research skills and publication opportunities. The ability to accept research grants would also enable the faculty of the Services' accredited institutions to participate more actively in civilian academic forums, build partnerships with civilian academic institutions, contribute more robustly to the active national security dialogue, and ultimately improve the applicability and quality of findings to contemporary challenges of the military departments. It will ensure that the faculty of the Department's academic institutions have the same opportunity as their counterparts at civilian educational institutions to catalyze their research and more rapidly gain advances, develop initiatives, initiate projects, and even earn honors.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would make the following changes to sections 7487, 8593, 8594 and 9487 of title 10, United States Code:

§7487. United States Army War College and other accredited institutions of the Army: acceptance of grants for faculty research for scientific, literary, and educational purposes

~~(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Army may authorize the Commandant of the United States Army War College to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College for a scientific, literary, or educational purpose.~~

(a) Acceptance of Research Grants.—(1) The Secretary of the Army may authorize the Commandant of the United States Army War College or the head of any other accredited institution of the Army to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College or institution, as appropriate, for a scientific, literary, or educational purpose.

(2) A civilian member of the faculty of the Army War College or any other accredited institution of the Army may accept a grant to conduct research in the civilian faculty member's personal capacity, but such research may not be accomplished in direct support of lectures, instruction, curriculum development, or special duties as assigned at the College or institution, as appropriate. For the purpose of determining rights with respect to any invention made under such a grant, the civilian faculty member shall be deemed a Government employee.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant or the head of any other accredited institution of the Army, as appropriate, shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the ~~Army War College may be used to pay expenses incurred by the College in applying for, and otherwise pursuing, the award of qualifying research grants.~~ Army War College or any other accredited institution of the Army may be used to pay expenses incurred by the College or institution, as appropriate, in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

* * * * *

§8593. Naval War College and other accredited institutions of the Navy: acceptance of grants for faculty research for scientific, literary, and educational purposes

~~(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the President of the Naval War College to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College for a scientific, literary, or educational purpose.~~

(a) Acceptance of Research Grants.—(1) The Secretary of the Navy may authorize the President of the Naval War College or the head of any other accredited institution of the Navy to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College or institution, as appropriate, for a scientific, literary, or educational purpose.

(2) A civilian member of the faculty of the Naval War College or any other accredited institution of the Navy may accept a grant to conduct research in the civilian faculty member's personal capacity, but such research may not be accomplished in direct support of lectures, instruction, curriculum development, or special duties as assigned at the College or institution, as appropriate. For the purpose of determining rights with respect to any invention made under such a grant, the civilian faculty member shall be deemed a Government employee.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The President of the Naval War College or the head of any other accredited institution of the Navy shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the ~~Naval War College may be used to pay expenses incurred by the College in applying for, and otherwise pursuing, the award of qualifying research grants.~~ Naval War College or any other accredited institution of the Navy may be used to pay expenses incurred by the College or institution, as appropriate, in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

* * * * *

§8594. Marine Corps University and other accredited institutions of the Marine Corps: acceptance of grants for faculty research for scientific, literary, and educational purposes

~~(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the President of the Marine Corps University to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of one of the institutions comprising the University for a scientific, literary, or educational purpose.~~

(a) Acceptance of Research Grants.—(1) The Secretary of the Air Force may authorize the Commandant of the Air War College or the head of any other accredited institution of the Air Force to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College or institution, as appropriate, for a scientific, literary, or educational purpose.

(2) A civilian member of the faculty of the Air War College or any other accredited institution of the Air Force may accept a grant to conduct research in the civilian faculty member's personal capacity, but such research may not be accomplished in direct support of lectures, instruction, curriculum development, or special duties as assigned at the College or institution, as appropriate. For the purpose of determining rights with respect to any invention made under such a grant, the civilian faculty member shall be deemed a Government employee.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The President of the Marine Corps University or the head of any other accredited institution of the Marine Corps, as appropriate, shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the ~~Marine Corps University may be used to pay expenses incurred by the University in applying for, and otherwise pursuing, the award of qualifying research grants.~~ Marine Corps University or any other accredited institution of the Marine Corps may be used to pay expenses incurred by the College or institution, as appropriate, in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

* * * * *

§9487. Air War College and other accredited institutions of the Air Force: acceptance of grants for faculty research for scientific, literary, and educational purposes

~~(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Air Force may authorize the Commandant of the Air War College to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College for a scientific, literary, or educational purpose.~~

(a) Acceptance of Research Grants.—(1) The Secretary of the Air Force may authorize the Commandant of the Air War College or the head of any other accredited institution of the Air Force to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College or institution, as appropriate, for a scientific, literary, or educational purpose.

(2) A civilian member of the faculty of the Air War College or any other accredited institution of the Air Force may accept a grant to conduct research in the civilian faculty member's personal capacity, but such research may not be accomplished in direct support of lectures, instruction, curriculum development, or special duties as assigned at the College or institution, as appropriate. For the purpose of determining rights with respect to any invention made under such a grant, the civilian faculty member shall be deemed a Government employee.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant or the head of any other accredited institution of the Air Force, as appropriate, shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the ~~Air War~~ Air War College or any other accredited institution of the Air Force may be used to pay expenses incurred by the College or institution, as appropriate, in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

Subtitle F—Decorations and Awards

Section 551 would extend and enhance authority for the Secretary of Defense to furnish one gold star lapel button to stepbrothers and stepsisters who may have grown up in the same household as the service member. Today, the only types of siblings authorized to receive the gold star lapel button are brothers, sisters, half-brothers, and half-sisters. Section 1126(d)(4) of title 10, United States Code (U.S.C.), includes stepchildren; however, section 1126(d)(3) of such title does not include stepsiblings as next of kin. To remedy this situation, amendments to section 1126 of title 10, U.S.C., are warranted. The Gold Star and Surviving Family Member Representatives Program expressed concerns to the Casualty Advisory Board from surviving stepbrothers and stepsisters who grew up together in the same household as their deceased military family member. They feel that their relationships within the family are similar to a brother, sister, half-brother, or half-sister, as they shared the same parents when living in the same household and grew up with a similar relationship as other siblings.

This proposal would also eliminate the requirement for an eligible family member to pay for a replacement Gold Star Lapel Button that has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the family member to whom it was furnished. The cost of providing a replacement Gold Star Lapel Button ($1.78 each) is insignificant compared to the significant loss the family member suffered due to the death of their loved one.

Budget Implications: This proposal has no significant budget impact. Any incidental costs are accounted for within the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 1126 of title 10 U.S.C.:

§1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces-

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958-

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of-

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent ~~and next of kin~~, next of kin, stepbrother, and stepsister of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button ~~may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution~~ may be replaced upon application and without cost.

(d) In this section:

(1) The term "widow" includes widower.

(2) The term "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term "next of kin" includes only children, brothers, sisters, half brothers, and half sisters.

(4) The term "children" includes stepchildren and children through adoption.

(5) The term "World War I" includes the period from April 6, 1917, to March 3, 1921.

(6) The term "World War II" includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term "military operations" includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term "peacekeeping force" includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(9) The terms “stepbrother” and “stepsister” shall be defined in regulations prescribed by the Secretary of Defense under subsection (b).

Section 552 would amend section 1130 of title 10, United States Code (U.S.C.), to add authority to award or present a decoration following (1) submission to the Committee on Armed Services of the Senate (SASC) and the Committee on Armed Services of the House of Representatives (HASC) and to the requesting Member of Congress of a favorable determination and a detailed discussion of the rationale supporting the determination, and (2) a 60-day period for congressional review of that determination. This would allow for timely award or presentation of decorations pursuant to section 1130 of such title while providing SASC and HASC with ample oversight authority following submission of favorable notifications pursuant to subsection (b) of that section.

Currently, a Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, or Distinguished Service Medal may not be awarded or presented following submission of a favorable determination pursuant to section 1130(b) of title 10, U.S.C., until by-name legislation waiving the five-year statutory time limit on award (10 U.S.C. 3744, 6248, or 8744) is enacted. This results in extensive delays in awarding decorations to deserving veterans who are often elderly and sometimes in poor health. Further exasperating this issue is the practice of only including time waiver legislation for military medals in the annual National Defense Authorization Act (NDAA), which results in some award recommendations being held in abeyance by the Department of Defense for up to a year pending NDAA enactment. This process, although effective, is not efficient and further delays recognition of deserving veterans, many of whom have already waited numerous years to be appropriately recognized.

Including authority to award and present decorations 60 days following submission of a favorable recommendation pursuant to section 1130(b) of title 10, U.S.C., is a practical solution that eliminates the excessive delays in awarding or presenting decorations to deserving veterans, while still providing SASC and HASC with ample oversight on decoration recommendations resulting from favorable determinations pursuant to that section.

Budgetary Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President’s Budget.

Changes to Existing Law: This proposal would make the following changes to section 1130 of title 10, United States Code:

§1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review and award or presentation

(a) Upon request of a Member of Congress, the Secretary concerned ~~shall~~ may review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such

award or presentation. Based upon such review, the Secretary ~~shall~~ may make a determination as to the merits of approving the award or presentation of the decoration.

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination. If the determination includes a favorable recommendation for the award of the Medal of Honor, the Secretary of Defense, instead of the Secretary concerned, shall make the submission under this subsection.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d)(1) A decoration may be awarded or presented following submission of a favorable recommendation for the award or presentation under subsection (b).

(2) An award or presentation under paragraph (1) may not occur before the expiration of a 60-day period for congressional review beginning on the date of the favorable submission under subsection (b) regarding the award or presentation.

(3) The authority to make an award or presentation under this subsection shall apply notwithstanding any limitation described in subsection (a).

~~(d)~~(e) In this section:

(1) The term "Member of Congress" means-

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term "decoration" means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

Subtitle G—Other Matters

Section 561. Currently, section 511 of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 4001) does not include personal property tax protections for servicemembers who lease a vehicle because a leased vehicle is technically owned by the lessor. In practice, the lease often includes a provision in which the responsibility to pay the vehicle's property taxes is passed to the servicemember lessee. In Virginia, for example, State law allows for the lessor to shift the tax burden to the servicemember through the vehicle lease terms. *See* Va. Code Ann. §58.1-3516.2. Some States, such as Connecticut, already exempt servicemembers from paying the personal property taxes on leased motor vehicles. *See* Conn. Gen. Stat. §12-81(53). Without a State statute specifically exempting servicemembers from paying personal property taxes on a leased vehicle, servicemembers lose the personal property tax relief envisioned by the SCRA.

This legislative proposal would extend the SCRA's personal property tax protections to include servicemembers who lease any item that might be considered taxable personal property

by a State. Further, this proposal would protect the lessor of motor vehicles, as the proposed language extends the SCRA protections to the actual vehicle, if leased by a servicemember or the spouse of a servicemember. This language effectively shifts the protections of the SCRA to the lessor, by stating that a tax jurisdiction cannot tax a servicemember's leased vehicle simply because the vehicle is located in that tax jurisdiction as a result of the servicemember's orders.

Budget Implications: This proposal would not have an impact on DoD Budgets.

Changes to Existing Law: This proposal would make the following changes to section 511(d)(1) of the Servicemembers Civil Relief Act (50 U.S.C. 4001(d)(1)):

SEC. 511. RESIDENCE FOR TAX PURPOSES.

(a) RESIDENCE OR DOMICILE.—

(1) IN GENERAL.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) SPOUSES.—

(A) IN GENERAL.—A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

(B) ELECTION.—For any taxable year of the marriage, the spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.

(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) INCOME OF A MILITARY SPOUSE.—Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) PERSONAL PROPERTY.—

(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember or the spouse of a servicemember<u>, whether leased or owned,</u> shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in

which the servicemember is serving in compliance with military orders. The relief from personal property taxes extends to a servicemember or the spouse of a servicemember who leases a motor vehicle, as well as to a lessor who leases a motor vehicle to the servicemember or spouse. When a servicemember or the spouse of the servicemember leases a motor vehicle, the leased motor vehicle shall not be deemed to be located or present in, or have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders unless the servicemember or spouse has adopted that tax jurisdiction as the legal residence of the servicemember or spouse, respectively.

(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) DEFINITIONS.—For purposes of this section:

(1) PERSONAL PROPERTY.—The term "personal property" means intangible and tangible property (including motor vehicles).

(2) TAXATION.—The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) TAX JURISDICTION.—The term ''tax jurisdiction'' means a State or a political subdivision of a State.

Section 562. A common issue that legal assistance attorneys in the field are seeing involves servicemembers who separate from active duty due to retirement or because their service requirements are over or have been satisfied. Often landlords and lessors have challenged servicemembers on whether these final orders meet the definition of "military orders" per section 305 of the Servicemembers Civil Relief Act (50 U.S.C. 3955). These challenges unnecessarily expose servicemembers and former servicemembers to litigation and potential losses in court.

This proposal clarifies that, in the context of terminating residential or motor vehicle leases under section 305, military orders for a permanent change of station (PCS) include

separation or retirement orders. This will leave no doubt that servicemembers who are separating or retiring are to receive the same protections as servicemembers executing a normal PCS.

Budget Implications: The proposed changes would not have an impact on DOD Budgets.

Changes to Existing Law: This proposal would make the following changes to section 305 of the Servicemembers Civil Relief Act (50 U.S.C. 3955):

SEC. 305. TERMINATION OF RESIDENTIAL OR MOTOR VEHICLE LEASES.

(a) TERMINATION.—

(1) TERMINATION BY LESSEE.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) JOINT LEASES.—A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(3) DEATH OF LESSEE.—The spouse of the lessee on a lease described in subsection (b)(1) may terminate the lease during the one-year period beginning on the date of the death of the lessee, if the lessee dies while in military service or while performing full-time National Guard duty, active Guard and Reserve duty, or inactive-duty training (as such terms are defined in section 101(d) of title 10, United States Code).

(b) COVERED LEASES.—This section applies to the following leases:

(1) LEASES OF PREMISES.—A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) LEASES OF MOTOR VEHICLES.—A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders—

(i) for a change of permanent station—

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) MANNER OF TERMINATION.—

(1) IN GENERAL.—Termination of a lease under subsection (a) is made—

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and (B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) DELIVERY OF NOTICE.—Delivery of notice under paragraph (1)(A) may be accomplished—

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) EFFECTIVE DATE OF LEASE TERMINATION.—

(1) LEASE OF PREMISES.—In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) LEASE OF MOTOR VEHICLES.—In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) ARREARAGES AND OTHER OBLIGATIONS AND LIABILITIES.—

(1) LEASES OF PREMISES.—Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(2) LEASES OF MOTOR VEHICLES.—Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) RENT PAID IN ADVANCE.—Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) RELIEF TO LESSOR.—Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(i) DEFINITIONS.—

(1) MILITARY ORDERS.—The term "military orders", with respect to a servicemember, means official military orders, <u>including orders for separation or retirement,</u> or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS.—The term "continental United States" means the 48 contiguous States and the District of Columbia.

<u>(3) PERMANENT CHANGE OF STATION.—The term "permanent change of station" includes separation or retirement from military service.</u>

Section 563 would add a provision to section 511 of the Servicemembers Civil Relief Act (SCRA) (Section 511) to ensure servicemembers are protected against "double taxation" when they temporarily live in a tax jurisdiction that is different from the State listed on their military orders. In accordance with section 511 of the SCRA, a servicemember "shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." Furthermore, the compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the

servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

However, some States have asserted that these protections provided by Section 511 do not apply to servicemembers when they live in a tax jurisdiction different than the State of the Department of Defense installation listed on their military orders. For example, numerous active-duty servicemembers stationed at Fort Leavenworth, Kansas, and Scott Air Force Base, Illinois, who live across the border in nearby Missouri, were initially informed by the Missouri Department of Revenue that they owed delinquent state income taxes as non-residents of Missouri. The members were informed they were "not covered under the Servicemembers Civil Relief Act" for purposes of taxation of their personal property and military income. In other words, the State's interpretation was that a servicemember stationed at Fort Leavenworth, Kansas, but living in Missouri, was not considered to be living in Missouri solely in compliance with military orders, and thus, the Servicemembers Civil Relief Act. The Air Force, working with the other Military Services through the Armed Forces Tax Council, ultimately resolved the immediate issues with the Missouri Department of Revenue in the favor of the servicemembers. However, this remains an unresolved issue in other States and tax jurisdictions.

A servicemember should not lose his or her tax-relief protections when the servicemember lives across the state line from his duty station and remains within a reasonable commuting distance. The intent of Section 511 is to protect and preserve the residence or domicile of servicemembers who move frequently during the course of a military career. This proposed change would modify the definition of tax jurisdiction to fix this perceived gap in the law. This would ensure that servicemembers will not be unfairly taxed by multiple states or tax jurisdictions when they move on account of military service.

Budget Implications: This proposal would not have any impact on Federal funds. The policy change may impact state tax revenues and finances of individual military members, but it would have no impact on the Federal budget.

Changes to Existing Law: This proposal would make the following changes to section 511 of the Servicemembers Civil Relief Act (50 U.S.C. 4001):

SEC. 511. RESIDENCE FOR TAX PURPOSES.

(a) RESIDENCE OR DOMICILE.—

(1) IN GENERAL.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) SPOUSES.—A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax

jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) INCOME OF A MILITARY SPOUSE.—Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) PERSONAL PROPERTY.—

(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) DEFINITIONS.—For purposes of this section:

(1) PERSONAL PROPERTY.—The term "personal property" means intangible and tangible property (including motor vehicles).

(2) TAXATION.—The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) TAX JURISDICTION.—The term "tax jurisdiction" means a State or a political subdivision of a State.

(h) DETERMINATION OF SERVICEMEMBER'S TAX JURISDICTION.—For purposes of this section, the State or political subdivision where a servicemember is serving in compliance with military orders includes any State or political subdivision within 150 miles of the servicemember's assigned duty location.

Section 564 would ensure that all military spouses receive equal treatment under the Servicemembers Civil Relief Act (SCRA). Currently, the SCRA, as amended by section 3 of the Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97), allows some military spouses to maintain their State residency upon a permanent change of station (PCS). Currently, section 511(a)(2) of the SCRA requires military spouses to share the same legal residence or domicile as the Service member in order for the SCRA's residency and tax protections to apply.

This requirement to share the same legal residence or domicile results in a substantial number of military spouses being ineligible to avail themselves of the residency and State tax protections otherwise afforded under the SCRA. Removing the shared residency requirement from section 511(a)(2) of the SCRA will ensure all military spouses receive the protections of the SCRA and alleviate the onerous residency and tax burdens associated with a PCS.

Before the MSRRA amended the SCRA in 2009, all military spouses were required to re-establish legal residency in each new State following a spouse's PCS and cut legal ties with their home State. Conversely, Service members did not lose or change their legal residence due to the same move because the SCRA protected both the Service member's legal residence and, as a result, their military income from State taxation in the non-domiciliary State. The Service member, however, did have the option to change his or her residency status affirmatively if it would be advantageous to do so. The military spouse had no option; to accompany the Service member, the military spouse had to establish legal residence in the new State of residence. The absence of the SCRA's residency protections for military spouses caused significant hardships upon military families when it came to State taxation of the military spouse's income. The MSRRA allows the military spouse to be treated the same as the Service member as long as they share the same State of legal residence.

Without the protections of the SCRA extending to both the Service member and military spouse, military families likely find their State tax liability increased upon a PCS. Military spouses can face a higher incidence of State tax due to moving to a State with a higher income tax rate. There are significant differences in tax rates within States; some States impose no income tax while some have as high as an 11 percent marginal tax rate. If the military spouse was forced to move with the Service member to a State with a higher income tax rate, the result could be a net decrease in income available to support the military family. In addition to a potential loss in income, the military spouse would also face an increased administrative burden of filing multiple State tax returns. These were the residency and tax burdens that the MSRRA was intended to resolve. Yet, the statute has not resolved these burdens for all military spouses, which is fundamentally unfair and can cause substantial financial hardship for a substantial number of military families.

Without shared legal residence with the Service member, the military spouse is left in the same position as before the MSRRA was enacted. Yet, shared legal residence of a military couple can only occur in one of two ways. First, a married couple who established a State of domicile before one enters active duty service will be able to maintain their shared legal residence no matter the location of military service. However, if a Service member is stationed outside his State of legal residence and marries in the physical location of his military service, the newly married military couple has two options to have the SCRA apply to the military spouse. One option for the military couple would be for the Service member to abandon his legal residence and establish domicile in the spouse's State of residence. The military couple would then share the same legal residence and could maintain it in future assignments. The military couple could also seek assignment, if available, in the Service member's State of legal residence, thereby allowing the military spouse to establish and assume the same legal residence once stationed in the Service member's home State. But assignments are based upon the needs of the Service, and until a favorable assignment occurs, many military spouses are without the

residency and tax protections afforded under the SCRA. The SCRA should not require military families to make difficult choices or wait for chance to determine the scope of its protections for military spouses.

All military spouses, no matter their original States of legal residence upon marriage to a Service member, equally bear the burdens of a PCS. Moreover, requiring a military couple to decide which legal residence to abandon potentially puts military couples at odds in deciding where they can both establish legal residence. Arbitrarily denying residency and tax burden protections based upon circumstance, and possibly increasing the burdens on certain military couples, is fundamentally unfair and is contrary to the equity promised in the passage of the MSRRA. This legislative proposal will ensure that the SCRA's residency and State tax protections are afforded to all military spouses who accompany their Service members to a new State upon a PCS.

Budget Implications: This proposal has no budgetary impact.

Changes to Existing Law: This proposal would make the following change to section 511 of the Servicemembers Civil Relief Act (50 USC 4001):

Sec. 511. Residence for tax purposes

(a) **Residence or domicile**

(1) **In general**

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) **Spouses**

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders ~~if the residence or domicile, as the case may be, is the same for the servicemember and the spouse~~.

(b) **Military service compensation**

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) **Income of a military spouse**

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) **Personal property**

(1) **Relief from personal property taxes**

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) **Exception for property within member's domicile or residence**

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) **Exception for property used in trade or business**

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) **Relationship to law of State of domicile**

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) **Increase of tax liability**

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) **Federal Indian reservations**

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) **Definitions**

For purposes of this section:

(1) **Personal property**

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) **Taxation**

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) **Tax jurisdiction**

The term "tax jurisdiction" means a State or a political subdivision of a State.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Section 601 would provide Reserve Component (RC) members the same retirement age eligibility benefits regardless of their volunteer status to perform missions in support of a combatant command. RC members may have their retirement eligibility age reduced when they volunteer to perform active duty under title 10, United States Code, section 12301(d) (10 USC 12301(d)). This proposal would allow RC members who are involuntarily activated under 10 USC 12304b to receive the same benefits as those RC members who have volunteered to perform duty in support of a combatant command.

Currently, two RC members who are serving side-by-side on active duty in support of a combatant command may receive different retirement age eligibility benefits. The RC member who volunteered for the duty (10 USC 12301(d)) may have their retirement age eligibility reduced by 3 months for each aggregate of 90 days of duty performed in any fiscal year. The RC member who was involuntarily activated (10 USC 12304b) for the same duty may not have their retirement age eligibility reduced.

The involuntarily activated RC member may be making additional sacrifices with their civilian career or family situation during the activation compared to the voluntary RC member. Equity suggests the benefits of both voluntarily and involuntarily activated RC members for identical duty should be the same.

Budget Implications: The number of personnel affected is a projection based on fiscal year (FY) 2020 10 USC 12304b programed requirements. This budget methodology makes the following assumption:

The Services provided 10 USC 12304b projections for FY 2020-2024 and expect to maintain a total steady state of 14,000 10 USC 12304b activations to sustain the preprogramed operations tempo from FY 2020-2024.

The Department of Defense (DoD) Office of the Actuary used a 10-year look from FY 2014 to FY 2024 to compute an estimated cost. The cost for the Services is the Retired Pay Accrual contribution paid to the Military Retirement Trust Fund. The actuaries are unsure if this proposal will have a cost, but felt that the estimated costs in the following table should be included in good faith. For example, for budgeting purposes, the early retirement eligibility authorization effectively reduces the budgeted RC retirement age from 60 to 58. Extending early retirement eligibility to 10 USC 12304b active duty may not move the needle enough to reduce effectively the estimated early retirement age from 58 years to 57 years and 11 months.

The DoD Office of the Actuary states "if [the ULB is] enacted, actual results/costs implemented by the DoD Board of Actuaries may differ from those shown in this estimate. They may decide to not reflect costs until actual experience emerges, or decide the impact is below the valuation's rounding thresholds." For example, the actuaries estimate the Retired Pay Accrual contribution of $5.5 million for the Army in FY 2022 for the range of 1,000–10,000 man-years worth of 10 USC 12304b activations.

The 5 years of cost estimated required for the ULB submission (FY 2020-2024) are included in the following table.

Actuary costs assume 14 percent of new entrants to the part-time drilling reserves become eligible for a reserve non-disability retirement. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Air Force	1.15	1.15	1.20	1.25	1.25	Military Personnel, Air Force
Army	5.00	5.10	5.20	5.40	5.50	Military Personnel, Army
Navy	1.43	1.46	1.49	1.52	1.55	Military Personnel, Navy
Marine Corps	The Marine Corps does not intend to use this authority.					
Total	7.58	7.71	7.89	8.17	8.30	

NUMBER OF PERSONNEL AFFECTED					
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
Army (Base)	2,230	2,342	2,453	2,565	2,676
Army (OCO)	21,654	22,737	22,737	22,737	22,737
Air Force	1,010	1,010	1,010	1,010	1,010
Navy	1,540	1,502	1,450	1,450	1,450
Total	24,894	26,089	26,200	26,312	26,423

Changes to Existing Law: This proposal would make the following change to section 12731(f)(2)(B)(i) of title 10, United States Code:

Title 10, United States Code

§ 12731. Age and service requirements

* * * * *

(f)(1) Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

(2)(A) In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C), below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

(B)(i) Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) or under section 12301(d) **or 12304b** of this title. Such service does not include service on active duty pursuant to a call or order to active duty under section 12310 of this title.

(ii) Active service described in this subparagraph is also service under a call to active service authorized by the President or the Secretary of Defense under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President or supported by Federal funds.

(iii) If a member described in subparagraph (A) is wounded or otherwise injured or becomes ill while serving on active duty pursuant to a call or order to active duty under a provision of law referred to in the first sentence of clause (i) or in clause (ii), and the member is then ordered to active duty under section 12301(h)(1) of this title to receive medical care for the wound, injury, or illness, each day of active duty under that order for medical care shall be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this paragraph.

(iv) Service on active duty described in this subparagraph is also service on active duty pursuant to a call or order to active duty authorized by the Secretary of Homeland Security under section 712 of title 14 for purposes of emergency augmentation of the Regular Coast Guard forces.

(C) The eligibility age for purposes of subsection (a)(1) may not be reduced below 50 years of age for any person under subparagraph (A).

(3) The Secretary concerned shall periodically notify each member of the Ready Reserve described by paragraph (2) of the current eligibility age for retired pay of such member under this section, including any reduced eligibility age by reason of the operation of that paragraph. Notice shall be provided by such means as the Secretary considers appropriate taking into account the cost of provision of notice and the convenience of members.

Section 602 would authorize the Secretary of Defense or the Secretary of Homeland Security (in the Coast Guard's case) to waive recoupment of separation pay, severance pay, or readjustment pay from a regular Service member who is involuntarily discharged or released from active duty if the Secretary concerned determines that such a waiver supports the best interests of the United States, or that recoupment would be against equity and good conscience. Currently under section 1174(h) of title 10, United States Code, a member is required to repay any separation pay, severance pay, or readjustment pay received if the member continues to

serve and subsequently qualifies for retired or retainer pay under either title 10 or title 14 (Coast Guard) of the United States Code. Providing authority for the Secretary of Defense or the Secretary of Homeland Security to waive recoupment of separation pay, severance pay, or readjustment pay in certain circumstances facilitates the continuation of service for active component (AC) Service members transitioning to the reserve component (RC) and preserves the investment that the Services have made in training these Service members. Further, this authority to waive recoupment of separation pay, severance pay, or readjustment pay removes a disincentive for a separating AC Service member to join the RC upon release from active duty.

For example, the reserve components need experienced and pre-trained noncommissioned officers (NCOs) and mid-grade officers. This retention increases the RCs' readiness levels as operational forces. For example, as of May 11, 2018, the U.S. Army Reserve (USAR) had critical shortages totaling 6,119 officers in the O-3 (1,329 captains) and O-4 (3,003 majors) grades and O-5 (1,787 lieutenant colonels). In addition, while over strength in its E-1 to E-4 ranks (overage of 15,992), the USAR has a shortage of 16,499 NCOs in the ranks of E-5 through E-9. Giving the Secretary of Defense authority to waive recoupment of separation pay, severance pay, or readjustment pay will eliminate a potential barrier to recruiting and retaining mid-career Service members (Service members who have 6 or more years of service) who aspire to complete their military careers in the RC and that will help to address critical shortages in the RCs.

The current law impedes the RCs' ability to recruit and retain qualified personnel who are separating from active duty. As the economy improves and the Services compete to meet the end strength needs to accomplish given missions, eliminating this repay requirement is one means to remove a barrier to the continuum of service and increase the readiness of the RCs by retaining the knowledge and skills of separating Service members.

Involuntary separation pay in its current incarnation was first intended as a contingency payment for an officer (later expanded to enlisted Service members) who is career-committed but to whom a full military career may be denied. It was designed to encourage pursuit of a Service career, knowing that if the individual is denied a full career under the competitive system, the member can count on an adequate readjustment pay to ease reentry into civilian life.

Current RC compensation models for the Selected Reserve, in most cases, necessitate total reentry into the civilian life to include civilian employment. When the expansion of involuntary separation pay to enlisted personnel was debated in 1990, the Senate Armed Services Committee (SASC) committee report stated, "The committee believes these [proposed separation pay] provisions provide a safety net to personnel who had planned on a career in the military but who may be required to leave active duty before they become eligible to retire." The view that involuntary separation pay is compensation for loss of eligibility for the deferred retired benefit is the basis on which separation pay, severance pay, or readjustment pay is recouped from retirement pay recipients. However, this recoupment transforms involuntary separation pay from a payment intended to ease reentry into civilian life into an interest-free loan for the subset of personnel who complete their military career in the reserve force.

The RCs provide nearly half of the Army's maneuver support, including logistics, transportation, engineer and civil affairs, as well as intelligence and medical assets. In order to maintain our operational proficiency and personnel readiness, it is vital to remove any disincentive for AC Service members (with their vast war time experience, training, and readiness) to continue their service in the RCs.

Budget Implications: No budget impact to the Department of Defense. Eligible service members who are involuntarily separated are paid regardless of whether the member continues to serve in the RC. However, there may be an eventual impact to the Department of Treasury who receives the recoupment of pay. This proposal will eliminate future recoupment of separation pay, severance pay, or readjustment pay for regular Service members who continue to serve in the RC and earn a non-regular retirement. The data in the table below represent that possible lost recoupment based on Army data.

Back up Data: Calculation of Army Separation Costs and Lost Treasury Recoupment

Separation Payments	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FYDP**
Personnel Expected to be affected	265	265	265	265	265	1,325
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Paid	$10,345,059	$10,500,235	$10,681,889	$10,914,755	$11,114,045	$53,585,983
Total Separation $M	**$10.35**	**$10.50**	**$10.68**	**$10.91**	**$11.14**	**$53.58**

Lost Recoupment Opportunity	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FYDP**
Personnel Expected to Retire	30	30	30	30	30	150
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Not Recouped	$1,171,139	$1,188,706	$1,209,270	$1,235,633	$1,261,590	$6,066,338
Total Separation $M	**$1.17**	**$1.18**	**$1.21**	**$1.24**	**$1.26**	**$6.06**

Back up Data: Calculation of Air Force Separation Costs and Lost Treasury Recoupment

Separation Payments	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FYDP**
Personnel Expected to be affected	25	25	25	25	25	125
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Paid	$975,950	$990,600	$1,007,725	$1,029,700	$1,051,323	$5,055,300
Total Separation $M	**$0.98**	**$0.99**	**$1.01**	**$1.02**	**$1.05**	**$5.05**

Lost Recoupment Opportunity	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FYDP**
Personnel Expected to Retire	10	10	10	10	10	50
Average Separation $ per Airmen	39,038	39,624	40,309	41,188	42,053	
Total Separation $ Not Recouped	$390,380	$396,240	$403,090	$411,880	$420,530	$2,022,120
Total Separation $M	**$0.39**	**$0.39**	**$0.40**	**$0.41**	**$0.42**	**$2.37**

*Please note that the U.S. Treasury could lose the opportunity to recoup $5.96 million assuming that the affected personnel will all receive involuntary separation pay, continue to serve, and earn a 20-year RC retirement. However, the recoupment does not occur until the Service member

starts to receive retirement pay at the age of 60 (which would be around 30 years after the receipt of the separation pay, severance pay, or readjustment pay). This lost opportunity is mitigated by the following facts: (1) the program will only be implemented at the discretion of the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, (2) taxes are paid on it by the Service member at the time of the receipt of involuntary separation pay ($5.96 million would be reduced by approximately 25 percent as taxes are withheld), and (3) the future value of this lost opportunity would be approximately $2.3 million (based on 3 percent inflation rate, zero percent return/interest paid by the member, and a time span of 30 years).

Changes to Existing Law: This proposal would make the following change to section 1174 of title 10, United States Code:

§ 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than 20, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person

has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member-

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to

regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(3)(A) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in Navy, may waive the requirement to repay separation pay, severance pay, or readjustment pay under paragraph (1) if such Secretary determines that repayment would be against equity and good conscience or would be contrary to the best interests of the United States.

(B) The authority of the Secretary of Defense in this paragraph may be delegated to the Undersecretary of Defense for Personnel and Readiness and the Principal Deputy Undersecretary of Defense for Personnel and Readiness.

(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—(1) A member of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term “sole survivorship discharge” means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which-

(A) the father or mother or one or more siblings-

(i) served in the armed forces; and

(ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

Section 603 would allow military members to designate that, upon their death, the gratuity provided pursuant to section 1475 or 1476 of title 10, United States Code (10 USC 1475 or 1476), be paid to a trust that is legally established under any Federal, State, or territorial law,

to include a supplemental or special needs trust established for disabled children. The amount of the death gratuity has been increased on several occasions and is currently set at $100,000 pursuant to 10 USC 1478. Originally designed to meet the immediate needs of a Service member's family following his or her death, the death gratuity, at its current level, frequently accounts for a sizeable portion of a Service member's estate. Allowing payment of the death gratuity to a trust would provide greater planning capability for a Service member to provide payments to those who require the protections of a trust, such as minor children or incapacitated adults.

There is currently no express statutory authority for a Service member to designate a legal entity, such as a trust, as the beneficiary of his or her death gratuity. However, there are several reasons a Service member might prefer to designate a legal entity, such as a trust, as the beneficiary of a death gratuity, rather than to designate a natural person. For example, Service members often wish to name their minor children as beneficiaries of their death gratuity. In some instances, simply designating the gratuity for a surviving spouse is acceptable to the Service member. However, in other situations, such as where a Service member has children and does not have a good relationship with the other parent, a Service member might prefer to provide directly for a child. When minor children are designated as the death gratuity beneficiary, a person other than an individual designated by the Service member may receive the gratuity payment on behalf of the minor child. For instance, the gratuity may be disbursed into a custodial account for the child, where the Service member did not select the custodian and the minor will gain full control funds upon attaining the age of 18 or 21 years. Such a system does not allow the Service member to designate a trustee where a trustee of the Service member's choosing would manage the monetary asset during and even after the child's minority. Many estate planning professionals suggest that trusts or custodial accounts for minors should not terminate upon the age of majority, but rather at a time when it is anticipated the child will be mature enough to manage his or her own finances. Under this proposal, Service members would have better planning capability to provide for their minor children in a manner that ensures responsible management of the death gratuity payment.

In addition to trusts for minors, trusts are often established for either incapacitated adults or adults who have simply proven incapable of managing significant amounts of money. In the case of incapacitated or special needs adults, trusts allow money to be used on behalf of the beneficiary while not diminishing Social Security disability payments as a result of personal assets. This proposal would allow the death gratuity to serve such individuals while not impacting eligibility for Social Security disability payments. Service members might also desire to name a trustee for a sibling or other adult that the Service member finds incapable of handling a significant payment of money for reasons such as substance abuse or prior financial mismanagement. Under this proposal, Service members could establish a supplemental or special needs trust for the benefit of the intended beneficiary, while naming a separate trustee to ensure the proceeds to the trust are utilized in a responsible manner.

Budget Implications: This proposal has no budgetary impact. There are no resource requirements or proposed offsets associated with this proposal. This proposal would reduce the gift tax receipts going to the Department of the Treasury triggered by the transfer of death

gratuities directly to trusts instead of first being given to intermediary custodians. The Department of the Treasury estimates the cost to be less than $1 million per year.

Changes to Existing Law: This proposal would make the following changes to section 1477 of title 10, United States Code:

§ 1477. Death Gratuity: eligible survivors.

(a) DESIGNATION OF RECIPIENTS.—(1) On and after July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, a person covered by section 1475 or 1476 of this title may designate one or more persons to receive all or a portion of the amount payable under section 1478 of this title. The designation of a person to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person may receive. The balance of the death gratuity, if any, shall be paid in accordance with subsection (b).

(2) If a person covered by section 1475 or 1476 of this title has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under section 1478 of this title, the Secretary concerned shall provide notice of the designation to the spouse.

(3) In this subsection, the term "person" includes—

(A) the estate of the member; or

(B) a trust legally established under any Federal, State, or territorial law, including a supplemental or special needs trust established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity.

(b) DISTRIBUTION OF REMAINDER; DISTRIBUTION IN ABSENCE OF DESIGNATED RECIPIENT.—If a person covered by section 1475 or 1476 of this title does not make a designation under subsection (a) or designates only a portion of the amount payable under section 1478 of this title, the amount of the death gratuity not covered by a designation shall be paid as follows:

(1) To the surviving spouse of the person, if any.

(2) If there is no surviving spouse, to any surviving children (as prescribed by subsection (d)) of the person and the descendants of any deceased children by representation.

(3) If there is none of the above, to the surviving parents (as prescribed by subsection (c)) of the person or the survivor of them.

(4) If there is none of the above, to the duly-appointed executor or administrator of the estate of the person.

(5) If there is none of the above, to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

(c) TREATMENT OF PARENTS.—For purposes of subsection (b)(3), parents include fathers and mothers through adoption. However, only one father and one mother may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the

date, or most nearly before the date, on which the decedent entered a status described in section 1475 or 1476 of this title.

(d) TREATMENT OF CHILDREN.—Subsection (b)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(e) EFFECT OF DEATH BEFORE RECEIPT OF GRATUITY.—If a person entitled to all or a portion of a death gratuity under subsection (a) or (b) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (b).

Section 604 would amend section 1059(m) of title 10, United States Code, to close an inequitable gap in the statute that delays commencement of transitional compensation to a small subset of dependents or former dependents requesting the Secretary of a military department authorize exceptional eligibility for transitional compensation. This proposal would align initiation of the payment of transitional compensation to those dependents or former dependents relying upon exceptional eligibility under section 1059(m) with those beneficiaries receiving transitional compensation under the other categories of section 1059. Additionally, the proposal removes the prohibition exclusive to subsection (m) 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).

In some cases, documented dependent abuse by a member is omitted in a court-martial conviction that includes a punitive discharge. In these cases, the member’s separation from active duty is not accomplished until appellate review of the court-martial is complete and the discharge is executed. Under the current language of the statute, the Secretary of a military department may not authorize exceptional eligibility for transitional compensation benefits for the dependents or former dependents until appellate review is completed and the member’s discharge is executed. The commencement of the payment of transitional compensation benefits under the exceptional eligibility authority for this small subset of otherwise eligible dependents is unnecessarily longer than other transitional compensation beneficiaries where the sponsor’s court-martial conviction included a charge of dependent abuse with the punitive discharge or forfeiture of all pay and allowances.

This proposal would give the Secretaries of the military departments the discretion to authorize exceptional eligibility for transition compensation before a member is separated from active duty. Unless section 1059(m) is amended, dependents and former dependents will not be eligible to receive transitional compensation in cases of exceptional eligibility until the member's discharge becomes effective, while other recipients of transitional compensation may receive it upon the sponsor's conviction of a dependent-abuse offense (if the sentence includes a punitive discharge or forfeiture of all pay and allowances) or administrative separation based on, at least in part, a dependent-abuse offense. By eliminating the requirement that a member be separated from active duty before the Secretary of a military department may authorize exceptional eligibility for transitional compensation, this proposal would ensure that all dependents and former dependents who have been subjected to dependent abuse are treated in a similar manner.

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 this subsection, a member is 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.

TITLE VII—HEALTH CARE PROVISIONS

Section 701 would extend the authorities granted under section 1108 of title 10, United States Code, for the Secretary of Defense and the Director of the Office of Personnel and Management to conduct a demonstration project for health care coverage for Military Health System beneficiaries through the Federal Employees Health Benefits Program. It would broaden the tools available for the Secretary of Defense and allow the Secretary to provide additional appropriated funds to service members to cover a portion of out-of-pocket expenses of the eligible beneficiaries.

Budget Implications: This proposal extends current authorities to conduct pilot programs in order to offer the best health care coverage options possible. An intricate and comprehensive cost/benefit analysis is not possible before the scope of the pilot programs are developed. This proposal would provide the authority to develop the scope of the programs. At this time, there are no budget implications.

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

§ 1108. Health care coverage through Federal Employees Health Benefits program: demonstration project

(a) FEHBP OPTION DEMONSTRATION. The Secretary of Defense, after consulting with the other administering Secretaries, shall enter into an agreement with the Office of Personnel Management to conduct a demonstration project (in this section referred to as the "demonstration project") under which eligible beneficiaries described in subsection (b) and residing within one of the areas covered by the demonstration project may enroll in health benefits plans offered through the Federal Employees Health Benefits program under chapter 89 of title 5. ~~The number of eligible beneficiaries and family members of such beneficiaries under subsection (b)(2) who may be enrolled in health benefits plans during the enrollment period under subsection (d)(2) may not exceed 66,000.~~

(b) ELIGIBLE BENEFICIARIES; COVERAGE.

(1) An eligible beneficiary under this subsection is a beneficiary under section 1074(a) of this title or a covered beneficiary under this chapter, but does not include a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.). ~~--~~

~~**(A)** a member or former member of the uniformed services described in section 1074(b) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);~~

~~**(B)** an individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or 1072(2)(G));~~

~~**(C)** an individual who is--~~

~~**(i)** a dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of this title or of a member who died while on active duty for a period of more than 30 days; and~~

~~**(ii)** a member of family as defined in section 8901(5) of title 5; or~~

~~**(D)** an individual who is –~~

~~**(i)** a dependent of a living member or former member described in section 1076(b)(1) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and~~

~~**(ii)** a member of family as defined in section 8901(5) of title 5.~~

(2) Eligible beneficiaries may enroll in a Federal Employees Health Benefit plan under chapter 89 of title 5 under this section for self-only coverage or for self and family coverage which includes any dependent of the member or former member ~~who is a family member for purposes of such chapter~~.

(3) A person eligible for coverage under this subsection shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5 ~~(except as provided in paragraph (1)(C) or (1)(D))~~ as a condition for enrollment in health benefits plans offered through the Federal Employees Health Benefits program under the demonstration project.

~~**(4)** For purposes of determining whether an individual is a member of family under paragraph (5) of section 8901 of title 5 for purposes of paragraph (1)(C) or (1)(D), a member or former member described in section 1076(b) or 1076(a)(2)(B) of this title shall be deemed to be an employee under such section.~~

~~**(5)** An eligible beneficiary who is eligible to enroll in the Federal Employees Health Benefits program as an employee under chapter 89 of title 5 is not eligible to enroll in a Federal Employees Health Benefits plan under this section.~~

(c) AREA OF DEMONSTRATION PROJECT. The Secretary of Defense and the Director of the Office of Personnel Management shall jointly identify and select the geographic areas in which the demonstration project will be conducted. The Secretary and the Director shall establish at least six, but not more than ten, such demonstration areas. ~~In establishing the areas, the Secretary and Director shall include –~~

~~**(1)** an area that includes the catchment area of one or more military medical treatment facilities;~~

~~**(2)** an area that is not located in the catchment area of a military medical treatment facility;~~

~~**(3)** an area in which there is a Medicare Subvention Demonstration project area under section 1896 of title XVIII of the Social Security Act (42 U.S.C. 1395ggg); and~~

~~**(4)** not more than one area for each TRICARE region.~~

(d) DURATION OF DEMONSTRATION PROJECT.

(1) The Secretary of Defense shall conduct the demonstration project during three contract years under the Federal Employees Health Benefits program.

(2) Eligible beneficiaries shall, as provided under the agreement pursuant to subsection (a), be permitted to enroll in the demonstration project during an open enrollment period for the year ~~2000~~ 2021 (conducted in the fall of ~~1999~~ 2020). The demonstration project shall terminate on December 31, ~~2002~~ 2023.

(e) PROHIBITION AGAINST USE OF MTFS AND ENROLLMENT UNDER TRICARE. Covered beneficiaries under this chapter who are provided coverage under the demonstration project shall

not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under the TRICARE program.

(f) TERM OF ENROLLMENT IN PROJECT.

~~**(1)** Subject to paragraphs (2) and (3), the period of enrollment of an eligible beneficiary who enrolls in the demonstration project during the open enrollment period for the year 2000 shall be three years unless the beneficiary disenrolls before the termination of the project.~~

~~**(2)** A beneficiary who elects to enroll in the project, and who subsequently discontinues enrollment in the project before the end of the period described in paragraph (1), shall not be eligible to reenroll in the project.~~

~~**(3)** An~~ An eligible beneficiary enrolled in a Federal Employees Health Benefits plan under this section may change health benefits plans and coverage in the same manner as any other Federal Employees Health Benefits program beneficiary may change such plans.

~~**(g)** EFFECT OF CANCELLATION. The cancellation by an eligible beneficiary of coverage under the Federal Employee Health Benefits program shall be irrevocable during the term of the demonstration project.~~

~~**(h)**~~ (g) SEPARATE RISK POOLS; CHARGES.

(1) The Director of the Office of Personnel Management shall require health benefits plans under chapter 89 of title 5 that participate in the demonstration project to maintain a separate risk pool for purposes of establishing premium rates for eligible beneficiaries who enroll in such a plan in accordance with this section.

(2) The Director shall determine total subscription charges for self only or for family coverage for eligible beneficiaries who enroll in a health benefits plan under chapter 89 of title 5 in accordance with this section. The subscription charges shall include premium charges paid to the plan and amounts described in section 8906(c) of title 5 for administrative expenses and contingency reserves.

~~**(i)**~~ (h) GOVERNMENT CONTRIBUTIONS. The Secretary of Defense shall be responsible for the Government contribution for an eligible beneficiary who enrolls in a health benefits plan under chapter 89 of title 5 in accordance with this section, except that the amount of the contribution may not exceed the amount of the Government contribution which would be payable if the electing beneficiary were an employee (as defined for purposes of such chapter) enrolled in the same health benefits plan and level of benefits.

~~**(j)** APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.~~

~~**(1)** Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act (other than (B)(i)-(iv)), (4)] shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare + Choice [Medicare Advantage] organization in a Medicare + Choice [Medicare Advantage] plan.~~

~~**(2)** In applying paragraph (1) -~~

~~**(A)** any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to 36 months; and~~

~~**(B)** the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Defense in consultation with the Director of the Office of Personnel Management.~~

(i) HEALTH ALLOWANCE.—The Secretary of Defense may make additional payments to a beneficiary under section 1074(a) of this title as a health allowance for payment of health and medical services (including premium and cost sharing) in the demonstration project under this section.

(j) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense and the Director of the Office of Personnel and Management are authorized to establish such other terms and conditions for the operation of the demonstration authorized by this section as they determine appropriate.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

Section 801. Section 866 of the National Defense Authorization Act for Fiscal Year 2017 added a new section 1725 to title 10, United States Code, providing the authority to establish Senior Military Acquisition Advisor positions in the Defense Acquisition Corps. This proposal amends the officer eligibility from at least 30 years of active commissioned service at the time of appointment to at least 26 years. This change is necessary for both the officers and the Military Departments in order to provide ample time to plan for the appointment ahead of the mandatory retirement date.

Budget Implications: None.

Changes to Existing Law: This proposal would make the following changes to section 1725 of title 10, United States Code:

§1725. Senior Military Acquisition Advisors

(a) POSITION.-

(1) IN GENERAL.-The Secretary of Defense may establish in the Defense Acquisition Corps a position to be known as "Senior Military Acquisition Advisor".

(2) APPOINTMENT.-A Senior Military Acquisition Advisor shall be appointed by the President, by and with the advice and consent of the Senate.

(3) SCOPE OF POSITION.-An officer who is appointed as a Senior Military Acquisition Advisor-

(A) shall serve as an advisor to, and provide senior level acquisition expertise to, the service acquisition executive of that officer's military department in accordance with this section; and

(B) shall be assigned as an adjunct professor at the Defense Acquisition University.

* * * * *

(d) SELECTION AND TENURE.-

(1) IN GENERAL.-Selection of an officer for recommendation for appointment as a Senior Military Acquisition Advisor shall be made competitively, and shall be based upon demonstrated experience and expertise in acquisition.

(2) OFFICERS ELIGIBLE.-Officers shall be selected for recommendation for appointment as Senior Military Acquisition Advisors from among officers of the Defense Acquisition Corps who are serving in the grade of colonel or, in the case of the Navy, captain, and who have at least 12 years of acquisition experience. An officer selected for recommendation for appointment as a Senior Military Acquisition Advisor shall have at least ~~30 years~~ 26 years of active commissioned service at the time of appointment.

(3) TERM.-The appointment of an officer as a Senior Military Acquisition Advisor shall be for a term of not longer than five years.

* * * * *

Section 802. In section 846 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81), Congress enacted section 2216a of title 10, United States Code, that established a transfer account known as the Joint Urgent Operational Needs Fund. That Fund was to be available to the Secretary of Defense for the purpose of providing equipment, supplies, services, training, and facilities to facilitate the resolution of urgent operational needs. This transfer account would allow the Department to respond to previously unforeseen warfighter needs, which are validated by the Joint Chiefs of Staff as being joint urgent operational needs requiring immediate fulfillment.

Subsection (e) of that section provided that the authority under that section expired on September 30, 2018. This proposal would reestablish the JUONF and amend subsection (e), making the authority under section 2216a sunset on September 30, 2025.

The ready availability of these funds for future contingencies is critical to facilitating the Department's rapid response to these urgent requirements.

Budgetary Implications: This proposed change has no new budget implications. Section 2216a of title 10, United States Code, provides authority to the Secretary to use amounts in the fund that have been appropriated, transferred, or otherwise provided by law into the fund. This fund is used only for capabilities that are suitable for rapid fielding in response to urgent operational needs. This legislative proposal does not alter in any manner the amount in the fund now or at any future date. The resources reflected in the table below are funded within the FY 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Joint Urgent Operational Needs Fund	99.2	99.2	98.9	98.7	100.8	Procurement Defense Wide
Total	99.2	99.2	98.9	98.7	100.8	--

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

§2216a. Rapidly meeting urgent needs: Joint Urgent Operational Needs Fund

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the "Joint Urgent Operational Needs Fund" (in this section referred to as the "Fund").

(b) ELEMENTS.—The Fund shall consist of the following:

(1) Amounts appropriated to the Fund.

(2) Amounts transferred to the Fund.

(3) Any other amounts made available to the Fund by law.

(c) USE OF FUNDS.—(1) Amounts in the Fund shall be available to the Secretary of Defense for capabilities that are determined by the Secretary, pursuant to the review process required by section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2302 note), to be suitable for rapid fielding in response to urgent operational needs.

(2) The Secretary shall establish a merit-based process for identifying equipment, supplies, services, training, and facilities suitable for funding through the Fund.

(3) Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section pursuant to a congressional earmark, as defined in clause 9 of Rule XXI of the Rules of the House of Representatives, or a congressionally directed spending item, as defined in paragraph 5 of Rule XLIV of the Standing Rules of the Senate.

(d) TRANSFER AUTHORITY.—(1) Amounts in the Fund may be transferred by the Secretary of Defense from the Fund to any of the following accounts of the Department of Defense to accomplish the purpose stated in subsection (c):

(A) Operation and maintenance accounts.

(B) Procurement accounts.

(C) Research, development, test, and evaluation accounts.

(2) Upon determination by the Secretary that all or part of the amounts transferred from the Fund under paragraph (1) are not necessary for the purpose for which transferred, such amounts may be transferred back to the Fund.

(3) The transfer of an amount to an account under the authority in paragraph (1) shall be deemed to increase the amount authorized for such account by an amount equal to the amount so transferred.

(4) The transfer authority provided by paragraphs (1) and (2) is in addition to any other transfer authority available to the Department of Defense by law.

(e) SUNSET.—The authority to make expenditures or transfers from the Fund shall expire on September 30, ~~2018~~ 2025~~.~~

Section 803 would add a new section 2388 to title 10, United States Code, to give the Secretary of Defense the explicit authority to make life-of-type buys to prevent weapon system

materiel shortages associated with diminishing manufacturing sources and obsolescence. These supplies are projected to be unavailable from any source and a redesign of the part cannot be accomplished in time to prevent an impact to the production or maintenance schedule or would not be economically prudent. This authority would allow life-of-type buys for weapon system parts and supplies when the Department has a need to buy quantities reasonably expected to be required if (1) the original manufacturer and all alternative sources are to stop production on repair parts that are used on government weapon systems or (2) the original manufacturer is to stop production on commercial items that will then become obsolete and it is no longer cost effective for industry to produce the older technology. In addition to previous conditions, the Department must perform an analysis of alternatives before buying spares for more than two years. Without authority for life of type buys for parts and supplies experiencing diminishing manufacturing sources and obsolescence, the Military Services will experience loss of weapon system production, or post-production support capability resulting in critical warfighter readiness degradation. Adding this authority allows a Military Department or the Defense Logistics Agency to make a one-time procurement based on an analysis of alternatives and estimated life-of-system requirements to cover the time until a replacement item is available.

The Department of Defense diminishing manufacturing sources and materiel shortages policy is set forth in DoD Manual 4140.01, Volume 3, "DoD Supply Chain Materiel Management Procedures: Materiel Sourcing," which provides policy on supply chain sourcing and the acquisition process to optimize resources to meet established support strategies.

Budget Implications:

NRE RESOURCE REQUIREMENTS (Cost Avoidance)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2023**	**Appropriation From**
Air Force						4930
LOT Purchase	$27.6K	$27.6K	$27.6K	$27.6K	$27.6K	
Component Re-design			$3.4M	$3.4M	$3.4M	
Avoidance	$0	$0	$3.37M	$3.37M	$3.37M	
Army						4930
LOT Purchase	$27.6K	$27.6K	$27.6K	$27.6K	$27.6K	
Component Re-design			$3.4M	$3.4M	$3.4M	
Avoidance	$0	$0	$3.37M	$3.37M	$3.37M	
Navy						4930
LOT Purchase	$27.6K	$27.6K	$27.6K	$27.6K	$27.6K	
Component Re-design			$3.4M	$3.4M	$3.4M	
Avoidance	$0	$0	$3.37M	$3.37M	$3.37M	
Marines						4930
LOT Purchase	$27.6K	$27.6K	$27.6K	$27.6K	$27.6K	
Component Re-design			$3.4M	$3.4M	$3.4M	
Avoidance	$0	$0	$3.37M	$3.37M	$3.37M	
Total Avoidance	$0	$0	$13.48M	$13.48M	$13.48M	4930

This provision would not increase overall acquisition costs and, in the aggregate, should reduce those costs over the Future Years Defense Plan (FYDP). The near term effect would be to change how such costs are spread out or allocated across the FYDP, with some costs being shifted to the first year of acquisition. However, as this would be done across multiple programs—each starting in different years—and because the expected cost shift would be small, there would be no appreciable net change in cost allocation enterprise wide. Furthermore, this authority is provided primarily for the purposes of saving funds associated with unplanned engineering change orders and technical obsolescence. Thus, this authority promotes cost avoidance by limiting the need for out-of-cycle updates due to the issues described above. Consequently, over the FYDP, costs associated with addressing the most prevalent obsolescence issues should be substantially reduced.

Changes to Existing Law: This proposal would insert a new section in chapter 141 of title 10, United States Code, the full text of which is shown in the legislative language above.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Section 811 would further amend 10 U.S.C. § 2321 to enhance and clarify the recent amendments to the statute in section 866 of Public Law 115-232, the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (section 866). The proposed amendments would clarify that within the Department of Defense, each agency (including the military departments) may, upon a written national security interest determination by the Secretary of Defense or the Secretary of a military department, and upon notice to the contractor, use or disclose technical data during the period after the contracting officer's final decision (COFD) on the challenge and prior to the filing of an appeal or suit under the Contract Disputes Act. The proposal would effectively align the level of the authority with the authority currently identified in the Defense Federal Acquisition Regulation Supplement (DFARS), but would also allow delegation of this authority to the agency senior procurement executive (SPE).

Paragraph (i)(1) of 10 U.S.C. § 2321, as added by section 866, provides that the Secretary of Defense, or a Secretary of a military department for programs for which milestone decision authority has been delegated, may authorize use of technical data under dispute in a challenge if that Secretary determines in writing that compelling mission readiness requirements will not permit awaiting the final decision on an appeal by the agency Board of Contract Appeals or the final decision in a suit in the United States Claims Court. This authorization commences upon filing of such an appeal or suit. Paragraph (i)(1) is silent with respect to the period between the COFD on the challenge and the filing of the appeal or suit.

The proposed subparagraph (i)(1)(A) would expressly permit use of the technical data under challenge after issuance of the COFD if the Secretary of Defense or the Secretary of a military department determines in writing that it is in the national security interests of the United States to authorize release, disclosure, or use of the data before any one of the following:

(A) the filing of an appeal with an agency Board of Contract Appeals;

(B) the provision to the contracting officer of a written notice of intent to file suit in the United States Court of Federal Claims (COFC);

(C) the filing of a suit in the COFC; or

(D) the final decision by the agency Board of Contract Appeals or the COFC.

This change to the statute is necessary in order to clearly acknowledge that the Government may use or disclose the technical data immediately upon the COFD and before the filing of an appeal or dispute when determined necessary to protect national security interests.

The Government's rights established by the proposed subparagraph (i)(1)(A) are similar to the Government's rights under paragraph (g)(2) of the current DFARS clause 252.227-7037. The proposal, however, would also change the statutory standard for the written determination (established by the section 866 amendment) from "compelling mission readiness requirements" to "the national security interests of the United States." (The current DFARS standard is "urgent or compelling circumstances".) The latter standard is better established in procurement law and regulations than the current statutory standard. It is also somewhat more flexible than the "urgent or compelling circumstances" standard in the current DFARS clause, while still ensuring that exercise of the authority is essential to national security. Although no longer limiting the authority to urgent or compelling circumstances, the proposal would retain the temporal element of the determination (i.e. that national security interests warrant disclosure before one of the enumerated events), in order to ensure that the authority is exercised only when national security interests do not allow the agency to wait for the usual process.

The proposed subparagraph (i)(1)(A) would also provide that the authority (and requisite written determination) resides with the appropriate Secretary in all cases, while the proposed subparagraph (i)(1)(B) would allow this authority to be delegated only to the SPE. This is effectively the same approval level currently provided, on a nondelegable basis, in DFARS 252.227-7037(g)(2) (i.e. the head of the agency). Section 866 actually elevates the determination authority above the current DFARS level by requiring a nondelegable determination by the Secretary of Defense except in the case of programs for which milestone decision authority has been delegated to the military department. The determination authority should be the same for all contracts of a military department, including those that are not awarded as part of a defense acquisition program that has a milestone decision authority. Moreover, placing the determination authority at the secretariat level, and allowing delegation only to the SPE, will provide adequate oversight and control over use of the authority while reducing administrative burden in the context of national security needs.

The proposed subparagraph (i)(1)(C) would confirm that existing legal remedies remain available to a contractor or subcontractor in the event that the Government uses or releases the data pursuant to a national security determination and the contractor's asserted restrictions are ultimately upheld. DFARS 252.227-7037(g)(2)(iii) and (iv) currently contain a similar statement.

The proposed new paragraph (i)(2) would provide that the Government may cancel or ignore the asserted restrictions if the contractor or subcontractor does not file an appeal to a Board of Contract Appeals, provide the contracting officer with notice of intent to file suit in the COFC, or file suit in the COFC within 90 days of the issuance of the COFD. This is currently provided in DFARS 252.227-7037(g)(2)(ii) and is necessary here, in light of the section 866 amendments, to clarify that pursuant to 10 U.S.C. § 2321 the Government may move forward with use or disclosure of the technical data consistent with the COFD within a reasonable and certain time after the COFD (absent appeal or notice of intent to file suit).

Finally, the proposed amendment would replace references to the United States Claims Court with references to the current tribunal, the COFC.

Budget Implications: There are no budget implications associated with this legislative proposal.

Changes to Existing Law: This proposal would make the following changes to section 2321 of title 10, United States Code:

§2321. Validation of proprietary data restrictions

(a) CONTRACTS COVERED BY SECTION.—This section applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

* * * * *

(i) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.— ~~(1) Upon filing of a suit or appeal under the contract dispute statute by a contractor or subcontractor in an agency Board of Contract Appeals or United States Claims Court related to a decision made by a contracting officer under subsection (g), the Secretary of Defense, or a Secretary of a military department for programs for which milestone decision authority has been delegated, on a nondelegable basis, may, following notice to the contractor or subcontractor, authorize use of the technical data in dispute if the Secretary determines in writing that compelling mission readiness requirements will not permit awaiting the final decision by the agency Board of Contract Appeals or the United States Claims Court.~~

(1)(A) Upon issuance of a decision by a contracting officer under subsection (g) that an asserted use or release restriction is not justified, the Secretary of Defense or the Secretary of a military department may, after providing notice to the contractor or subcontractor, authorize release, disclosure, or use of the technical data in dispute if the Secretary of Defense or the Secretary of a military department, respectively, determines in writing that it is in the national security interests of the United States to authorize such release, disclosure, or use before—

(i) the filing of an appeal with the agency Board of Contract Appeals;

(ii) the provision to the contracting officer of a written notice of intent to file suit in the United States Court of Federal Claims;

(iii) the filing of a suit in the United States Court of Federal Claims; or

(iv) the final decision by the agency Board of Contract Appeals or the United States Court of Federal Claims.

(B) The authority in subparagraph (A) may be delegated only to the senior procurement executive of the agency designated pursuant to section 1702(c) of title 41.

(C) A determination under subparagraph (A) shall not affect the right of a contractor or subcontractor to damages against the United States where an asserted use or release restriction is sustained or to pursue other relief, if any, as may be provided by law.

(2) If a contractor or subcontractor does not, not later than 90 days after the issuance of a decision under subsection (g), appeal to an agency Board of Contract Appeals, provide notice to the contracting officer of intent to file suit in the United States Court of Federal Claims, or file suit in the United States Court of Federal Claims pursuant to chapter 71 of title 41, the United States may cancel or ignore the asserted use or release restriction and the contractor or subcontractor shall be deemed to have agreed to such action by the United States.

~~(2)~~ (3) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

~~(3)~~ (4) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained-

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

* * * * *

Section 812 will allow for authorization of a permanent Department of Defense (DoD) Mentor-Protégé Program (MPP), and replaces the half-size eligibility restriction with full-size.

The Mentor Protégé Program was established November 5, 1990 (Public Law 101-510) in an effort to respond to concerns raised by DoD Prime Contractors that many Small Disadvantaged Business (SDB) lacked the technical capabilities to perform Subcontracting requirements for the Department of Defense, making it difficult for Prime Contractors to achieve their Small Disadvantage Business Subcontracting Goals. The program has been reauthorized as a pilot 9 times over the ensuing 18 years.

For the past 18 years, Mentor Protégé Program has increased the overall participation of SDBs performing as prime and subcontractor suppliers to the Department, civilian agencies, and private industry. The program is well established and known for strengthening the long-term business relationships benefitting the DoD and the critical defense industrial base.

Authorization for new DoD MPP Agreements expire September 30, 2018. Subsequently, Authorization for Direct Reimbursements or Credit toward attainment of Subcontracting Goals may not be granted for any cost incurred after September 30, 2021.

Failure to authorize a permanent Mentor Protégé Program would result in four (4) major impacts to the Department:

1) Lack of long term predictability and stability in relationships between large and small components of the critical defense industrial base;
2) Loss of valuable resources supporting major Defense Department acquisition programs;
3) A weakened defense industrial base and the Department missing its subcontracting goals due to a lack of sufficient and qualified small business suppliers;
4) Increased costs, in both acquisition and sustainment, as a result of fewer available suppliers;
5) Inability to identify and adopt potential cutting edge technologies that have the capacity to benefit the warfighter.

As such, the language below provides suggested legislative amendments to permanently reauthorize the DoD Mentor-Protégé Program.

This proposal would also repeal a past legislative effort to achieve small business size parity between protégés in the SBA and DoD Mentor Protégé Programs. Section 861 of the National Defense Authorization Act for Fiscal Year 2016, Public Law 114-92, enacted 25 NOV 2015, reduced eligibility requirements for DoD MPP protégé status by 50% for firms meeting the full, small business size standard applicable to the relevant North American Industrial Classification System (NAICS) industry code. This change was an effort to match the DoD MPP to SBA 8(a) MPP regulations effective at the time. However, 8 months later, on 25 JUL 2016, SBA issued regulations repealing the half-size restrictions for its 8(a) MPP. The SBA also adopted the full-size-standard eligibility criteria for both of its MPP programs. The half-size limitation for DoD MPP no longer effects SBA-DoD parity; rather, it impedes parity by placing DoD at severe disadvantage.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	5.50	5.50	5.50	5.60	5.60	0300D Defense Wide Programs
Navy	2.50	2.50	2.50	3.00	3.50	0300D Defense Wide Programs
Air Force	6.00	6.00	6.00	6.00	6.00	0300D Defense Wide Programs
DIA	2.50	2.50	2.50	2.70	2.80	0300D Defense Wide Programs
MDA	6.00	6.00	6.00	6.00	6.00	0300D Defense Wide Programs
NGA	2.50	2.50	2.50	2.90	2.00	0300D Defense Wide Programs
SOCOM	2.50	2.50	2.50	2.50	2.50	0300D Defense Wide Programs
DTRA	4.50	4.50	4.50	4.50	5.20	0300D Defense Wide Programs
OSD-OSBP	0.90	1.60	1.60	1.60	1.60	0300D Defense Wide Programs

Total	$32.90	$33.60	$33.60	$34.80	$35.20	Procurement, Defense Wide Programs

Changes to Existing Law: This proposal would add a new section 2339a to title 10, United States Code, consisting of the text of section 831 of the National Defense Authorization Act for the Fiscal Year 1991 (10 U.S.C. 2302 note), with amendments as follows:

~~**SEC. 831. MENTOR-PROTÉGÉ PILOT PROGRAM.**~~

§2339a. Mentor-Protégé Program

(a) ESTABLISHMENT OF ~~PILOT~~ PROGRAM.-The Secretary of Defense shall establish a ~~pilot~~ program to be known as the 'Mentor-Protege Program'.

(b) PURPOSE.-The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to-

(1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and

(2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

(c) PROGRAM PARTICIPANTS.-(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the ~~pilot~~ program by the Secretary. A business concern participating in the ~~pilot~~ program pursuant to such an approval shall be known, for the purposes of the program, as a 'mentor firm'.

(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement concurrently, and the authority to enter into agreements under subsection (e) shall only be available to such concern during the 5-year period beginning on the date such concern enters into the first such agreement. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a 'protege firm'.

(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

(d) MENTOR FIRM ELIGIBILITY.-(1) Subject to subsection (c)(1), a mentor firm may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if the mentor firm-

(A) is eligible for award of Federal contracts; and

(B) demonstrates that it-

(i) is qualified to provide assistance that will contribute to the purpose of the program;

(ii) is of good financial health and character and does not appear on a Federal list of debarred or suspended contractors; and

(iii) can impart value to a protege firm because of experience gained as a Department of Defense contractor or through knowledge of general business operations and government contracting, as demonstrated by evidence that-

(I) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

(II) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

(2) A mentor firm may not enter into an agreement with a protege firm if the Administrator of the Small Business Administration has made a determination finding affiliation between the mentor firm and the protege firm.

(3) If the Administrator of the Small Business Administration has not made such a determination and if the Secretary has reason to believe (based on the regulations promulgated by the Administrator regarding affiliation) that the mentor firm is affiliated with the protege firm, the Secretary shall request a determination regarding affiliation from the Administrator of the Small Business Administration.

(e) Mentor-Protege Agreement.-Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

(1) A developmental program for the protege firm, in such detail as may be reasonable, including-

(A) factors to assess the protege firm's developmental progress under the program;

(B) a description of the quantitative and qualitative benefits to the Department of Defense from the agreement, if applicable;

(C) goals for additional awards that [the] protege firm can compete for outside the Mentor-Protege Program; and

(D) the assistance the mentor firm will provide to the protege firm in understanding contract regulations of the Federal Government and the Department of Defense (including the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement) after award of a subcontract under this section, if applicable.

(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

(f) Forms of Assistance.-A mentor firm may provide a protege firm the following:

(1) Assistance, by using mentor firm personnel, in-

(A) general business management, including organizational management, financial management, and personnel management, marketing, and overall business planning;

(B) engineering and technical matters such as production, inventory control, and quality assurance; and

(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

(4) Advance payments under such subcontracts.

(5) Loans.

(6) Assistance obtained by the mentor firm for the protege firm from one or more of the following-

(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code;

(C) a historically Black college or university or a minority institution of higher education; or

(D) women's business centers described in section 29 of the Small Business Act (15 U.S.C. 656).

(g) Incentives for Mentor Firms.-(1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (6) of subsection (f) (except as provided in subparagraph (D)) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.

(B) The determinations made in annual performance reviews of a mentor firm's mentor-protege agreement shall be a major factor in the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.

(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protege firm may not exceed $1,000,000, except in a

case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

(D) The Secretary may not reimburse any fee assessed by the mentor firm for services provided to the protege firm pursuant to subsection (f)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protege firm.

(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to-

(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(6);

(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

(iii) two times the total amount of any other such costs.

(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if-

(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

(h) Relationship to Small Business Act.-(1) For purposes of the Small Business Act (15 U.S.C. 631 et seq.), no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any

other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

(i) Participation in Mentor-Protege Program not To Be a Condition for Award of a Contract or Subcontract.-A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

~~(j) Expiration of Authority. (1) No mentor-protege agreement may be entered into under subsection (e) after September 30, 2018.~~

~~(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2021.~~

~~(k)~~ (j) Regulations.-The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

~~(l)~~ (k) Report by Mentor Firms.-To comply with section 8(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)), each mentor firm shall submit a report to the Secretary not less than once each fiscal year that includes, for the preceding fiscal year-

(1) all technical or management assistance provided by mentor firm personnel for the purposes described in subsection (f)(1);

(2) any new awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

(3) any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

(4) the amount of any payment of progress payments or advance payments made to the protege firm for performance under any subcontract made under the Mentor-Protege Program;

(5) any loans made by [the] mentor firm to the protege firm;

(6) all Federal contracts awarded to the mentor firm and the protege firm as a joint venture, designating whether the award was a restricted competition or a full and open competition;

(7) any assistance obtained by the mentor firm for the protege firm from one or more-

(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

(C) historically Black colleges or universities or minority institutions of higher education;

(8) whether there have been any changes to the terms of the mentor-protege agreement; and

(9) a narrative describing the success assistance provided under subsection (f) has had in addressing the developmental needs of the protege firm, the impact on Department of Defense contracts, and addressing any problems encountered.

~~(m)~~ (l) Review of Report by the Office of Small Business Programs.-The Office of Small Business Programs of the Department of Defense shall review the report required by subsection (l) and, if the Office finds that the mentor-protege agreement is not furthering the purpose of the Mentor-Protege Program, decide not to approve any continuation of the agreement.

~~(n)~~ (m) Definitions.-In this section:

(1) The term 'small business concern' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term 'disadvantaged small business concern' means a firm that ~~has less than half~~ is not more than the size standard corresponding to its primary North American Industry Classification System code, is not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm, and is-

(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

(D) a qualified organization employing severely disabled individuals;

(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));

(F) a small business concern owned and controlled by service–disabled veterans (as defined in section 8(d)(3) of the Small Business Act [15 U.S.C. 637(d)(3)]); and [sic]

(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))); or

(H) a small business concern that-

(i) is a nontraditional defense contractor, as such term is defined in section 2302 of title 10, United States Code; or

(ii) currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key Department of Defense needs.

(3) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

(4) The term 'historically Black college and university' means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code.

(5) The term 'minority institution of higher education' means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

(6) The term 'subcontracting participation goal', with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code, and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(7) The term 'qualified organization employing the severely disabled' means a business entity operated on a for-profit or nonprofit basis that-

(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

(8) The term 'severely disabled individual' means an individual who is blind (as defined in section 8501 of title 41, United States Code) or a severely disabled individual (as defined in such section).

(9) The term 'affiliation', with respect to a relationship between a mentor firm and a protege firm, means a relationship described under section 121.103 of title 13, Code of Federal Regulations (or any successor regulation).

Section 813 would remove the prohibition on delegating the making of determinations that cooperative research and development agreements with allied and friendly foreign countries will result in projects that, through the application of emerging technology, will improve conventional defense capabilities. Such determinations are a necessary pre-condition to such agreements.

The law currently allows the Secretary of Defense to delegate the determinations to only the Deputy Secretary of Defense (DSD), the Under Secretary of Defense (USD) for Acquisition, Technology, and Logistics (AT&L), or the Assistant Secretary of Defense (ASD) for Research and Engineering (R&E). With the disestablishment of the USD(AT&L) and ASD(R&E), the Secretary is limited to delegating this authority to either the DSD or USD for Acquisition and Sustainment (as the successor position to the USD(AT&L)).

As the USD(R&E) possesses the relevant technological expertise and technical oversight, USD(R&E) is the appropriate official to make the determination. Removal of the prohibition would allow the Secretary to delegate to an appropriate senior official under the USD(R&E).

Budget Implications: This proposal would have no budgetary impact. The requirement to perform determinations would continue to exist but through different officials of the Department.

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

TITLE 10, UNITED STATES CODE

* * * * * * *

CHAPTER 138—Cooperative Agreements With NATO Allies And Other Countries

* * * * * * *

§2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries

(a) ***

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

~~(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering.~~

(c) ***

Section 814 would eliminate the requirement for Major Defense Acquisition Programs (MDAPs) to continue submittal of Selected Acquisition Reports (SAR) to Congress after achieving 90 percent of deliveries or expenditures against the Acquisition Objective identified in the original Acquisition Program Baseline (APB). This would abolish the continual annual reporting for select MDAPs that have surpassed their original objective, but are obligated to sustain SAR status given the recurring extension of procurements well beyond the original quantity in their first APB. Specifically, the Air Force's Joint Direct Attack Munition (JDAM) program will never achieve the current 90 percent threshold given the continual quantity increases driven by sustained warfighting demand. Continued annual reporting in JDAM's situation also offers limited value as this MDAP has no history of unit cost growth (PAUC -35.48%, APUC -25.00%) or schedule delays (deliveries regularly ahead of contract) and continually meets reliability requirements. Given its consistent performance in improving the accuracy of general purpose bombs, demand for the weapon continues to increase forcing regular procurement extensions and pushing the 90 percent threshold beyond program reach. One hundred (100) percent of the original combined Service acquisition objective of 87,496 JDAM tail kits was achieved in 2004, production Lot 7. The Air Force plans no significant system upgrades or configuration changes to the JDAM program within the foreseeable future that

would warrant interest in continued reporting, with the exception of integrating an M-Code GPS receiver when the design is developed. A change in statutory language would eliminate SAR reporting for the JDAM program. There are currently no other MDAPs that share these same procurement circumstances so only JDAM would benefit from this change in statutory language.

This proposal would have an immediate impact in providing administrative staffing relief for the Service Acquisition staffs and the Office of Secretary of Defense staff in eliminating SAR reporting for the JDAM program. Other MDAPs that may ultimately have their procurements extended beyond their original Acquisition Objective due to increased requirements would similarly benefit in the future.

Budgetary Implications: There are no budgetary implications for this proposal. The primary benefit would be administrative streamlining. Department analysis shows that JDAM SAR reporting requires 360 total hours to process each, up through USD(AT&L) review and signature. This would be a considerable process improvement for the JDAM program office, the Service Acquisition staff, and the Office of Secretary of Defense staff in eliminating SAR reporting for JDAM, and in the future for any other select MDAPs that reach the advanced stages of life-cycle, recurring procurement.

Changes to Existing Law: This proposal would amend section 2432 of title 10, United States Code, as follows:

§2432. Selected Acquisition Reports

(a) In this section:

(1) The term "program acquisition unit cost", with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) The term "procurement unit cost", with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) The term "major contract", with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished equipment contracts under the program that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(4) The term "full life-cycle cost", with respect to a major defense acquisition program, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(b)(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on current major defense acquisition programs. Except as provided in paragraphs (2) and (3), each such report shall include a status report on each defense acquisition program

that at the end of such quarter is a major defense acquisition program. Reports under this section shall be known as Selected Acquisition Reports.

(2) A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been-

(A) less than a 15 percent increase in program acquisition unit cost and current procurement unit cost for the program (or for each designated subprogram under the program); and

(B) less than a six-month delay in any program schedule milestone shown in the Selected Acquisition Report.

(3)(A) The Secretary of Defense may waive the requirement for submission of Selected Acquisition Reports for a program for a fiscal year if-

(i) the program has not entered system development and demonstration;

(ii) a reasonable cost estimate has not been established for such program; and

(iii) the system configuration for such program is not well defined.

(B) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each waiver under subparagraph (A) for a program for a fiscal year not later than 60 days before the President submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

(c)(1) Each Selected Acquisition Report for the first quarter for a fiscal year shall include-

(A) the same information, in detailed and summarized form, as is provided in reports submitted under section 2431 of this title;

(B) for each major defense acquisition program or designated major subprogram included in the report-

(i) the Baseline Estimate (as that term is defined in section 2433(a)(2) of this title), along with the associated risk and sensitivity analysis of that estimate;

(ii) the original Baseline Estimate (as that term is defined in section 2435(d)(1) of this title), along with the associated risk and sensitivity analysis of that estimate;

(iii) if the original Baseline Estimate was adjusted or revised pursuant to section 2435(d)(2) of this title, such adjusted or revised estimate, along with the associated risk and sensitivity analysis of that estimate; and

(iv) the primary risk parameters associated with the current procurement cost for the program (as that term is used in section 2432(e)(4) of this title);

(C) a summary of the history of significant developments from the date each major defense acquisition program or designated major subprogram included in the report was first included in a Selected Acquisition Report and program highlights since the last Selected Acquisition Report;

(D) the significant schedule and technical risks for each such program or subprogram, identified at each major milestone and as of the quarter for which the current report is submitted;

(E) the current program acquisition cost and program acquisition unit cost for each such program or subprogram included in the report and the history of those costs

from the December 2001 reporting period to the end of the quarter for which the current report is submitted;

(F) the current procurement unit cost for each such program or subprogram included in the report and the history of that cost from the December 2001 reporting period to the end of the quarter for which the current report is submitted;

(G) for each major defense acquisition program that receives Milestone B approval after January 1, 2019, a brief summary description of the key elements of the modular open system approach as defined in section 2446a of this title or, if a modular open system approach was not used, the rationale for not using such an approach; and

(H) such other information as the Secretary of Defense considers appropriate.

(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the information such Committees need to perform their oversight functions. Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.

(3) In addition to the material required by paragraphs (1) and (2), each Selected Acquisition Report for the first quarter of a fiscal year shall include the following:

(A) A full life-cycle cost analysis for each major defense acquisition program and each designated major subprogram included in the report that is in the system development and demonstration stage or has completed that stage. The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.

(B) If the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system.

(4) Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

(d)(1) Each Selected Acquisition Report for the second, third, and fourth quarters of a fiscal year shall include-

(A) with respect to each major defense acquisition program that was included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (e); and

(B) with respect to each major defense acquisition program that was not included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (c).

(2) Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be known as Quarterly Selected Acquisition Reports.

(e) Information to be included under this subsection in a Quarterly Selected Acquisition Report with respect to a major defense acquisition program is as follows:

(1) The quantity of items to be purchased under the program.

(2) The program acquisition cost.

(3) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(4) The current procurement cost for the program.

(5) The current procurement unit cost for the program (or for each designated major subprogram under the program).

(6) The reasons for any change in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost or in program schedule from the previous Selected Acquisition Report.

(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(8) The major contracts under the program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(9) Program highlights since the last Selected Acquisition Report.

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 30 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter.

(g) The requirements of this section with respect to a major defense acquisition program or designated major subprogram shall cease to apply—

(1) after 90 percent of the items to be delivered to the United States under the program or subprogram (shown as the total quantity of items to be purchased under the program or subprogram in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program or subprogram have been made.; or

(2) if—

(A) the procurement unit cost for a fully configured end item is less than $500,000 in fiscal year 2019 constant dollars;

(B) more than five years have passed since the full-rate production decision for the program; and

(C) the program is stable and the procurement unit cost has not increased by a percentage equal to or greater than the significant cost threshold or the critical cost threshold (as those terms are defined in section 2433 of this title).

(h)(1) Total program reporting under this section shall apply to a major defense acquisition program when funds have been appropriated for such program and the Secretary of Defense has decided to proceed to system development and demonstration of such program. Reporting may be limited to the development program as provided in paragraph (2) before a decision is made by the Secretary of Defense to proceed to system development and demonstration if the Secretary notifies the Committee on Armed Services of the Senate and the

Committee on Armed Services of the House of Representatives of the intention to submit a limited report under this subsection not less than 15 days before a report is due under this section.

(2) A limited report under this subsection shall include the following:

(A) The same information, in detail and summarized form, as is provided in reports submitted under subsections (b)(1) and (b)(3) of section 2431 of this title.

(B) Reasons for any change in the development cost and schedule.

(C) The major contracts under the development program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(D) Program highlights since the last Selected Acquisition Report.

(E) Other information as the Secretary of Defense considers appropriate.

(3) The submission requirements for a limited report under this subsection shall be the same as for quarterly Selected Acquisition Reports for total program reporting.

Section 815 is a top Acquisition and Sustainment efficiency initiative which supports the Secretary of Defense's priority on implementing Department-wide reforms and practices required to improve the lethality and readiness of our military. This authority to establish a program is focused on improving the way we do business by reducing the time required to award contracts in excess of $50,000,000. It is similar to authority the Department received in Section 830(d) "Pilot Program for Acceleration of Foreign Military Sales," National Defense Authorization Act for Fiscal Year 2017. This authority is currently enabling the Department to establish a pilot program to accelerate the contracting and pricing process of FMS by basing price reasonableness determinations on cost and pricing data for recent purchases of the same product for DoD and reducing the cost and pricing data to be submitted. This authority is expected to achieve the following efficiencies: 1) a significant reduction in time to get FMS buys on contract, and 2) reduce contractor proposal costs by allowing reasonableness based on actual DoD prices.

Without an exception to the Paperwork Reduction Act, the Department would have to submit a request to the Office of Management and Budget (OMB) to collect information from 10 or more contractors to support the congressional reporting requirement. Typically it takes approximately 6 months to obtain OMB approval. Therefore, the exception would facilitate timely reporting on the pilots.

To see if additional benefits could be achieved, the Department requests usage of this authority without the limitations enacted in section 890(b) of the FY 2019 NDAA. This would enable the Department to achieve greater efficiencies and validate such achievement over a larger number of contracts during a four year time period while supporting the Secretary's priority of improving business practices.

Budget Implications: No budgetary implications.

Changes to Existing Law: This proposal would make the following changes to section 890 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232):

SEC. 890. PILOT PROGRAM TO ACCELERATE CONTRACTING AND PRICING PROCESSES.

(a) IN GENERAL.—The Secretary of Defense shall establish a pilot program to reform and accelerate the contracting and pricing processes associated with contracts in excess of $50,000,000 by—

(1) basing price reasonableness determinations on actual cost and pricing data for purchases of the same or similar products for the Department of Defense; and

(2) reducing the cost and pricing data to be submitted in accordance with section 2306a of title 10, United States Code.

~~(b) LIMITATION.—The pilot program authorized under subsection (a) may include no more than ten contracts, and none of the selected contracts may be part of a major defense acquisition program (as that term is defined under section 2430 of title 10, United States Code).~~

(~~c~~b) REPORT.—Not later than January 30, 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the results of the pilot program authorized under subsection (a) ~~and an assessment of whether the program should be continued or expanded~~.

(c) EXCEPTION TO PAPERWORK REDUCTION ACT.—For purposes of developing and submitting the report required by subsection (b), the Department of Defense shall not be subject to the requirements of section 3506 of title 44, United States Code.

(d) SUNSET.—The authority to carry out the pilot program under this section shall expire on ~~January 2, 2021~~ January 2, 2023.

Section 816 would extend by two years the authority under section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2399), as amended by section 841(a) of the FY 2013 NDAA (Public Law 112-239; 126 Stat. 1845) section 832 of the FY 2014 NDAA (Public Law 113-66; 127 Stat. 814), section 1214 of the FY 2016 NDAA (Public Law 114-92; 129 Stat. 1045), and section 1212 of the FY 2018 (Public Law 115-91; 131 Stat. 1649). Section 801 provides the Department of Defense (DoD) with enhanced authority to acquire products and services produced in countries along a major route of supply to Afghanistan. This proposal would extend the authority under that section by two years, from December 31, 2019, to December 31, 2021.

Extension of authority under section 801 of the FY 2010 NDAA is necessitated by the ongoing and emerging U.S. mission in the region. Extension of authority under section 801 would support U.S. counterterrorism operations by promoting stability in the region through U.S.-led efforts to help the growth of the Afghan economy and countries in the Central Asia region.

This authority is an important tool for accessing the route of supply to Afghanistan by maintaining our established relationships with Northern Distribution Network (NDN) countries and with countries along distribution routes from the south. Inattention to relationships may compromise our freedom of movement in or through a region for future security efforts or

humanitarian response by U.S. Government agencies. In addition, the procurement of supplies, services, and construction material from NDN and other countries along supply routes will provide economic opportunities and bolster stability in the region.

The engagement in Afghanistan remains a top propriety for the United States Central Command (USCENTCOM). DoD conducted a successful transition from combat to stability operations, and DoD continues to help the Afghans to build and mature a capable and sustainable Afghan National Security Force (ANSF). Today, Afghans are in the lead for all security operations and they have the capability to provide for the security of their people on a daily basis. However, they do still need help with sustainment; and that includes resupply operations, particularly to remote or mountains areas. DoD will need to continuously work closely with Afghans and countries along a major route of supply to Afghanistan to enable their success and stability in the region.

Budget Implications: This proposal has no budgetary impact.

Changes to Existing Law: This proposal would make the following change to section 801 of the FY 2010 NDAA (P.L. 111-84), as most recently amended section 1214 of the FY 2018 NDAA (P.L. 115-91):

SEC. 801. TEMPORARY AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN COUNTRIES ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.

(a) IN GENERAL.—In the case of a product or service to be acquired in support of military or stability operations in Afghanistan for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

(1) competition is limited to products or services that are from one or more countries along a major route of supply to Afghanistan; or

(2) a preference is provided for products or services that are from one or more countries along a major route of supply to Afghanistan.

(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that —

(1) the product or service concerned is to be used—

(A) in the country that is the source of the product or service;

(B) in the course of efforts by the United States or NATO forces to ship goods to or from Afghanistan in support of military or stability operations in Afghanistan;

(C) by the military forces, police, or other security personnel of Afghanistan; or

(D) by the United States or coalition forces in Afghanistan if the product or service is from a country that has agreed to allow the transport of coalition personnel, equipment, and supplies;

(2) it is in the national security interest of the United States to limit competition or provide a preference as described in subsection (a) because such limitation or preference is necessary—

(A) to reduce overall United States transportation costs and risks in shipping goods in support of military or stability operations in Afghanistan;

(B) to encourage countries along a major route of supply to Afghanistan to cooperate in expanding supply routes through their territory in support of military or stability operations in Afghanistan; or

(C) to help develop more robust and enduring routes of supply to Afghanistan; and

(3) limiting competition or providing a preference as described in subsection (a) will not adversely affect—

(A) military or stability operations in Afghanistan; or

(B) the United States industrial base.

(c) PRODUCTS AND SERVICES FROM A COUNTRY ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.—For the purposes of this section:

(1) A product is from a country along a major route of supply to Afghanistan if it is mined, produced, or manufactured in a covered country.

(2) A service is from a country along a major route of supply to Afghanistan if it is performed in a covered country by citizens or permanent resident aliens of a covered country.

(d) COVERED COUNTRY DEFINED.—In this section, the term "covered country" means Georgia, Kyrgyzstan, Pakistan, Armenia, Azerbaijan, Kazakhstan, Tajikistan, Uzbekistan, or Turkmenistan.

(e) CONSTRUCTION WITH OTHER AUTHORITY.—The authority provided in subsection (a) is in addition to the authority set forth in section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 266; 10 U.S.C. 2302 note).

(f) TERMINATION OF AUTHORITY.—The Secretary of Defense may not exercise the authority provided in subsection (a) after December 31, ~~**2019**~~ **2021**.

Subtitle C—Matters relating to Small Business

Section 821 would simplify the SBIR and STTR budget calculation process and make the distribution of funds more efficient. The calculation using the current method of extramural obligations is quite complex, as there are multiple hundreds of program elements involved. This complexity makes it unwieldy to calculate the required expenditure amount, leading to the possibility of having to de-obligate funding from awarded contracts. DOD currently uses Budget Authority to calculate the required expenditure amounts for SBIR and STTR to avoid this problem, so this revision would put DOD in compliance with legislation but would make no effective change to the numbers.

Budget Implications: None.

Changes to Existing Law: This proposal would make the following changes to section 9(e)(1) of the Small Business Act (15 U.S.C. 638(e)(1)):

SEC. 9. (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

* * * * *

(e) For the purpose of this section—

(1) the term "extramural budget" means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that—

(A) for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries~~, and except that~~;

(B) for the Department of Defense, the Secretary of Defense shall determine the amount not later than 120 days after the date of the enactment of an appropriations Act or continuing resolution that appropriates funds for the Department of Defense through the end of the fiscal year concerned; and

(C) for the Department of Energy it shall not include amounts obligated for atomic energy defense programs for weapons and weapons-related activities or for naval reactor programs;

* * * * *

Section 822 would provide DOD with the flexibility to engage innovative small businesses in the SBIR and STTR programs at different technology readiness levels. This provision provides DOD the ability to shorten the development time of technologies with proven feasibility by omitting Phase I (the feasibility study) and proceed directly to prototype development. In the past, Phase Flexibility, also known as Direct to Phase II (DPII), has shortened the development time for technologies to transition to Phase III funding to as little as 18 months. For example, the Air Force used this authority to develop new technologies to leverage commercial satellite imagery and to develop new hand held devices for dismounted navigation in a GPS-degraded environment. Not having this provision available is a detriment to the DOD SBIR program.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 9(cc) of the Small Business Act (15 U.S.C. 638(cc)):

SEC. 9. (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

* * * * *

(cc) PHASE FLEXIBILITY.~~— During fiscal years 2012 through 2022, the~~ The National Institutes of Health, the Department of Defense, and the Department of Education may each provide to a small business concern an award under Phase II of the SBIR program with respect to a project, without regard to whether the small business concern was provided an award under Phase I of an SBIR program with respect to such project, if the head of the applicable agency determines that the small business concern has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided a Phase I award.

* * * * *

Section 823 makes the Administrative Funds Pilot Program under the Small Business Act permanent. It allows DOD to use a portion of SBIR and STTR funding to administer the DOD SBIR and STTR programs, implement and continue commercialization and outreach initiatives, streamline and simplify contracting and program processes and procedures, implement and continue oversight and quality control measures, and activities related to the oversight and congressional reporting including fraud, waste and abuse prevention activities. Without restoration of this provision, DOD's SBIR Program will not have the ability to conduct significant outreach activities and efficiency improvement efforts.

Budget Implications: This proposal authorizes DOD to use up to three (3) percent of allocated SBIR funding from across the Department for administrative activities as outlined in 15 USC 638(mm). The maximum amount of funding DOD SBIR would be authorized to use for these activities is estimated in the chart below. The resources required are reflected in the table below and are funded within the Fiscal Year (FY) 2020 President's Budget for the current program authorization through FY2022. This proposal would authorize the program permanently, at

which point the estimated amounts shown below for FY2023 and FY2024 would be included in the budget request.

ESTIMATED RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
SBIR Admin maximum 3% estimate	7.0	7.3	7.3	7.5	7.5	Research, Development, Test & Evaluation, Army
SBIR Admin maximum 3% estimate	9.5	9.8	9.8	10.0	10.0	Research, Development, Test & Evaluation, Navy
SBIR Admin maximum 3% estimate	11.0	11.2	11.2	11.5	11.5	Research, Development, Test & Evaluation, Air Force
SBIR Admin maximum 3% estimate	10.5	10.7	10.7	11.0	11.0	Research, Development, Test & Evaluation, Defense-Wide
Total	38	39	39	40	40	--

Changes to Existing Law: This proposal would make the following changes to section 9(mm) of the Small Business Act (15 U.S.C. 638):

SEC. 9. (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

* * * * *

(mm) ASSISTANCE FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.—

(1) IN GENERAL.—Subject to paragraph (3) ~~and until September 30, 2022~~, the Administrator shall allow each Federal agency required to conduct an SBIR program to use not more than 3 percent of the funds allocated to the SBIR program of the Federal agency for—

(A) the administration of the SBIR program or the STTR program of the Federal agency;

(B) the provision of outreach and technical assistance relating to the SBIR program or STTR program of the Federal agency, including technical assistance site visits, personnel interviews, and national conferences;

(C) the implementation of commercialization and outreach initiatives that were not in effect on the date of enactment of this subsection;

(D) carrying out the program under subsection (y);

(E) activities relating to oversight and congressional reporting, including waste, fraud, and abuse prevention activities;

(F) targeted reviews of recipients of awards under the SBIR program or STTR program of the Federal agency that the head of the Federal agency determines are at high risk for fraud, waste, or abuse to ensure compliance with requirements of the SBIR program or STTR program, respectively;

(G) the implementation of oversight and quality control measures, including verification of reports and invoices and cost reviews;

(H) carrying out subsection (dd);

(I) contract processing costs relating to the SBIR program or STTR program of the Federal agency;

(J) funding for additional personnel and assistance with application reviews; and

(K) funding for improvements that increase commonality across data systems, reduce redundancy, and improve data oversight and accuracy.

(2) OUTREACH AND TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.

(B) WAIVER.—A Federal agency may request the Administrator to waive the requirement contained in subparagraph (A). Such request shall include an explanation of why the waiver is necessary. The Administrator may grant the waiver based on a determination that the agency has demonstrated a sufficient need for the waiver, that the outreach objectives of the agency are being met, and that there is increased participation by States with respect to which a low level of SBIR awards have historically been awarded.

(3) PERFORMANCE CRITERIA.—A Federal agency may not use funds as authorized under paragraph (1) until after the effective date of performance criteria, which the Administrator shall establish, to measure any benefits of using funds as authorized under paragraph (1) and to assess continuation of the authority under paragraph (1).

(4) RULES.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall issue rules to carry out this subsection.

(5) COORDINATION WITH IG.—Each Federal agency shall coordinate the activities funded under subparagraph (E), (F), or (G) of paragraph (1) with their respective Inspectors General, when appropriate, and each Federal agency that allocates more than $50,000,000 to the SBIR program of the Federal agency for a fiscal year may share such funding with its Inspector General when the Inspector General performs such activities.

(6) REPORTING.—The Administrator shall collect data and provide to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report on the use of funds under this

subsection, including funds used to achieve the objectives of paragraph (2)(A) and any use of the waiver authority under paragraph (2)(B).

* * * * *

Subtitle D—Other Matters

Section 831 would amend section 1491 of title 28, United States Code, to impose timeliness rules at the U.S. Court of Federal Claims (COFC) that will mirror those for bid protests filed with the Government Accountability Office (GAO), thereby reducing the time to decide bid protests by avoiding unnecessarily repetitive protests.

Section 3552 of title 31, United States Code, provides statutory authority for bid protests to be decided by the Government Accountability Office (GAO) (P. L. 98–369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1199 as amended). Section 1491(b)(1) of title 28, United States Code, provided temporary concurrent federal jurisdiction between the COFC and the United States District Courts to hear pre-award or post-award bid protest matters. Section 12(d) of the Administrative Disputes Resolution Act of 1996 (P. L. 104-320; 110 Stat. 3870; 5 U.S.C. 571 note) (ADRA), contained a sunset provision that terminated District Court jurisdiction to hear such bid protests under section 1491 as of January 1, 2001, leaving all ADRA bid protest cases under the jurisdiction of the COFC. The jurisdiction of the COFC and the GAO are concurrent. As a result, a protestor may file a protest with the GAO and, if the protest is denied, file suit at the COFC.

The Federal bid protest system is fashioned around the two goals of ensuring accountability through visibility in the procurement process while expeditiously resolving bid protests. Expeditious resolution of protests is an express requirement of COFC and GAO jurisdiction. Section 3554(a)(1) of title 31, United States Code, states, "the Comptroller General shall provide for the inexpensive and expeditious resolution of protests." Section 1491(b)(3) of title 28, United States Code, states that "[i]n exercising jurisdiction . . . [the COFC] shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action."

The expeditious resolution of protests is greatly hindered by the ability of a protestor to seek redress at GAO and, faced with a negative outcome, then seek another review of the agency's actions by filing a protest with the COFC. In Axiom Resource Management, Inc. v. United States, 80 Fed. Cl. 530, 539 (2008), rev 564 F.3d 1374 (Fed. Cir. 2009), Axiom challenged an award to Lockheed Martin Federal Healthcare, Inc. ("Lockheed") to perform program management services for the Tricare Management Agency. Axiom alleged the award to Lockheed was improper because Lockheed suffered from a variety of organizational conflicts of interest ("OCIs").

These same allegations had previously been challenged at the GAO. Id. at 1377. In response to two GAO protests, the agency took corrective action to analyze the OCI allegations raised by Axiom. After performing a detailed analysis, the Contracting Officer concluded the alleged OCIs could be avoided or mitigated. The award to Lockheed stood, and Axiom filed a

third GAO protest which was denied. Axiom subsequently filed suit at the COFC where, ultimately, the award to Lockheed was set aside. Axiom Res. Mgmt., Inc. v. United States, 80 Fed. Cl. 530, 539 (2008). The COFC decision was ultimately reversed by the Federal Circuit. Axiom Resource Management, Inc v. United States, 564 F.3d 1374 (Fed. Cir. 2009). This protest litigation took nearly two years. A similar procedural history occurred in MASAI Technologies Corp. v. United States, 79 Fed. Cl. 433 (2007). In MASAI, the allegations considered by the COFC had been raised previously at the GAO resulting in corrective action by the agency two times. Id. at 436-40. Ultimately, the Contracting Officer determined the initial award was correct and GAO denied MASAI's protest. In MASAI, however, the COFC agreed with GAO's denial. The MASAI litigation took approximately fourteen months. See also Labatt Food Serv., Inc. v. United States, 577 F.3d 1375 (Fed. Cir. 2009) (one year to resolve) and Ala. Aircraft Indus., Inc.--Birmingham v. United States, 586 F.3d 1372 (Fed. Cir. 2009) (over one year to resolve). At the conclusion of the litigation, the parties in each of these cases found themselves in the same position they held when the GAO issued its decision on the merits of the protests; the agency's actions were ultimately upheld.

By establishment of parallel timelines at GAO and COFC, the statutory requirement for expeditious resolution of protests is maintained, without sacrificing accountability. Regarding pre-award protests, GAO has clearly established timeliness rules.

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.(4 C.F.R. § 21.2(a)(1)).

Neither the Tucker Act nor the ADRA established a unique statute of limitations for COFC bid protests. The COFC can entertain protests "without regard to whether suit is instituted before or after the contract is awarded." 28 U.S.C. 1491(b)(1) (2006). Under section 2501 of title 28, United States Code, the statute of limitations at the COFC is six years. Several COFC decisions have considered whether or not protests based upon alleged improprieties in a solicitation are barred when filed after the solicitation closing date, with varying outcomes. See TransAtlantic Lines LLC v. United States, 68 Fed. Cl. 48, 52-53 (2005) (GAO rule that limits its advisory role cannot limit the exercise of jurisdiction of the COFC); Software Testing Solutions, Inc. v. United States, 58 Fed. Cl. 533, 535 (2003) (delay in bringing a protest may be considered in the analysis of whether injunctive relief is warranted but not basis for rejecting request); ABF Freight Sys., Inc. v. United States, 55 Fed. Cl. 392, 399-400 (2003) (quoting N.C. Div. of Servs. for the Blind v. United States, 53 Fed. Cl. 147, 165 (2002)) (GAO timeliness rule applied); Aerolease Long Beach v. United States, 31 Fed. Cl. 342, 358 (1994) (citing Logicon, Inc. v. United States, 22 Cl. Ct. 776, 789 (1991) (declining to accept the GAO bid protest timeliness regulations as always controlling).

In 2007, however, the Court of Appeals for the Federal Circuit resolved this issue when it issued its decision in Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308 (Fed. Cir. 2007). In that decision the Federal Circuit held that ". . . a party who has the opportunity to object to the

terms of a government solicitation containing a patent error and fails to do so prior to the close of the bidding process waives its ability to raise the same objection subsequently in a bid protest action in the Court of Federal Claims." Id. at 1313. Accordingly, with respect to protests based upon solicitation improprieties, the Federal Circuit has, in essence, adopted the GAO bid protest timeliness regulation.

The same cannot be said for post-award bid protests. As discussed, the COFC will consider protests filed after consideration by GAO and months after contract award. In PlanetSpace Inc. v. United States, 92 Fed. Cl. 520 (2010), the United States sought to bar the protestor's claim under the doctrine of laches since the protestor filed at the COFC three months after losing its GAO protest and seven months after contract award. The COFC held,

Even if the court . . . were to conclude that there was no reason for the delay in filing, defendant's laches argument would still fail. "When a limitation on the period for bringing suit has been set by statute, laches will generally not be invoked to shorten the statutory period." Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 988 F.2d 1157, 1161 (Fed. Cir. 1993) (citing Cornetta v. United States, 851 F.2d 1372, 1377-78 (Fed. Cir. 1988) (en banc)). This bid protest is properly before the court pursuant to 28 U.S.C. § 1491(b) and thus is governed by the Tucker Act's six-year statute of limitations set forth at 28 U.S.C. § 2501. Absent "extraordinary circumstances," this court will not invoke laches to bar an otherwise timely protest. CW Gov't Travel, Inc., 61 Fed. Cl. 559, 569 (2004) ("Had Congress wanted to set a statute of limitations on bid protest actions, it would have done so. Because Congress did not so limit the jurisdiction of this court to hear such actions, we would be reluctant to invoke laches except under extraordinary circumstances that are not present in this case."). To be sure, defendant has not cited, and the court is not aware of, a single instance in which the court invoked laches to bar a bid protest that was filed a mere three months after a failed GAO protest or a mere seven months after contract award. Id. at 531. The Court noted that should the protestor succeed on the merits of the case, the requested injunctive relief is not automatic. Thus, similar to the pre-award decision in Software Testing Solutions, supra, the delay in filing is properly considered in determining whether injunctive relief is appropriate, but does not preclude review of the underlying protest.

Despite the COFC's willingness to consider a delay in filing in fashioning its remedy, the disruption to the procurement process and associated costs and uncertainties stemming with serial protests and the lack of a reasonable statute of limitations for COFC protests outweigh any perceived benefit. For these reasons, 28 U.S.C. 1491 should be amended to impose jurisdictional limitations that parallel those imposed at GAO.

Specifically, subsection (a) of the proposal strikes any reference to the United States district courts and makes clear that only the COFC has jurisdiction to provide judicial review of bid protests. By eliminating references to the district courts, section 1491(b) is reconciled with the sunset provisions of the ADRA that ended district court bid protest jurisdiction in 2001, and with section 861 of the FY 2012 National Defense Authorization Act (P. L. 112-81) that ended district court jurisdiction over bid protests pertaining to the award of maritime contracts.

Subparagraph (a)(2)(B) of the proposal lays out the timeliness rules for bid protests by adding four new subparagraphs to section 1491(b)(1).

It would add a new subparagraph (A) which will impose time limits for bringing a pre-award bid protest before the COFC. A pre-award protest is a challenge to a solicitation before award is made. This provision requires that such protests be brought before the receipt of proposals. If an objectionable provision is introduced by an amendment to the original solicitation, any protest must be brought before the revised date for submittal of proposals as forth set in the amendment to the solicitation. This provision makes these time limits jurisdictional. The Federal Circuit's decision in Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308 (Fed. Cir. 2007) began the process of aligning COFC practice with that of the GAO in the area of pre-award timeliness. There, the Federal Circuit effectively applied the pre-award timeliness rules of the GAO to bid protests filed at the COFC by ruling that a party that failed to challenge the terms of a solicitation prior to the close of the bidding process waived its ability to do so after award. Subsequent COFC decisions emphasized that this time bar is based upon the doctrine of waiver, and is not jurisdictional. In at least one decision the COFC therefore considered untimely pre-award protest allegations in determining whether a protester possessed sufficient standing to bring a COFC protest. The above language fully aligns GAO practice with COFC practice by mirroring precisely the GAO timeliness rules at 4 C.F.R. § 21.2(a)(2), and making the bar to untimely COFC pre-award protests jurisdictional.

It would add a new subparagraph (B) to impose a time limit for bringing a post-award protest before the COFC, which is almost invariably a challenge to a contract award decision. This language is closely modeled on the GAO timeliness rules at 4 C.F.R. § 21.2(a)(2). This section imposes a 10-day time limit on bringing bid protests from when the basis of the protest was known or should have been known. It tolls that 10-day period for required debriefings in order to encourage debriefings, which are designed to avoid protests by providing information to disappointed offerors.

It would add a new subparagraph (C) to section 1491(b)(1) to ensure COFC bid protests in much the same manner as GAO. Specifically, the Federal Acquisition Regulations encourage the resolution of protests at the agency level, if possible. The GAO rules further this policy because the GAO will consider a bid protest that is filed outside the 10-day period if the protester first brings a timely protest to the agency (referred to as an "agency-level protest"). See 4 C.F.R. § 21.2(a)(3). The new subparagraph (C) will apply the same concept to COFC bid protests. Also, COFC case law has held that an offeror that fails to submit a proposal before the date set for receipt of proposals is not an interested party to protest. This provision allows a protester to pursue a pre-award, agency-level protest and still bring its protest to the COFC even if it does not submit a proposal and even if the date set for receipt of proposals elapses.

Finally it would add a new subparagraph (D) to section 1491(b)(1) that eliminates any argument that the filing of a bid protest with the GAO tolls the jurisdictional time limit for filing with the COFC.

Subsection (b) of the proposal ensures that a protestor may not receive both injunctive relief and monetary relief as they can under the current section 1491(b). As the Department of Justice has noted, a protester that receives injunctive relief is made whole relative to its

competitors. If it receives monetary relief in addition, it receives a windfall. Therefore, a protester should be entitled to injunctive relief or monetary relief, but not both.

Subsection (c) of the proposal clarifies that none of the proposed changes to 1491(b) are intended to infringe on the COFC's jurisdiction to review agency overrides of CICA stays, and to enjoin such overrides when appropriate. The 10-day new rule is iterated to clarify that the jurisdictional time limit applies to overrides.

Subsection (d) of the proposal amends section 3556 of title 31, United States Code to conform with the proposed change.

Subsection (e) provides a delayed effective date for this provision. A 180-day effective date is appropriate due to the impact on the existing rights of interested parties resulting from shortening the statute of limitations from six years to ten days. It could be prejudicial to interested parties seeking to take full advantage of their current statutory rights by providing for an effective date which cuts off those rights with a shorter notice period. Currently, interested parties have the ability to file a protest with GAO with the expectation that they can also file a protest with the COFC if unsuccessful at GAO. If a protester files its protest at the ten day limit, and GAO uses the entire 100-day statutory period to issue its protest decision, the GAO process will have taken nearly four months. An effective date of 180 days provides interested parties with a reasonable time to file with the COFC prior to the statutory change taking effect.

By harmonizing the timeliness rules between the COFC and the GAO, a protester would be forced to make a choice of forum in deciding where to bring its protest. The improvements to the protest system would be as follows: (1) the amount of time that could be consumed by protests would be reduced, (2) scarce agency procurement resources would be conserved by ensuring that two separate trial-level forums do not adjudicate the same bid protest, and (3) protesters would be assured of accountability and transparency no matter which forum they elected. This reform would largely eliminate an unintended "forum shopping" practice that has arisen under the existing bid protest system, and would materially contribute to the expeditious yet fair resolution of bid protests.

Budget Implications: No budget Implications.

Changes to Existing Law: This proposal would amend section 1491(b) of title 28, United States Code, and section 3556 of title 31, United States Code, as follows:

TITLE 28, UNITED STATES CODE

*** * * * * * ***

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any

Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) ~~Both the Unites States Court of Federal Claims and the district courts of the United States~~ The United States Court of Federal Claims shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. ~~Both the United States Court of Federal Claims and the district courts of the United States~~ The United States Court of Federal Claims shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded, but such jurisdiction is subject to the time limits as follows.

(A) A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the time set for receipt of initial proposals shall be filed before bid opening or the time set for receipt of initial proposals. In the case of a procurement where proposals are requested, alleged improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be protested not later than the next closing time for receipt of proposals following the incorporation. A protest that meets these time limitations that was previously filed with the Comptroller General may not be reviewed.

(B) A protest other than one covered by subparagraph (A) shall be filed not later than 10 days after the basis of the protest is known or should have been known (whichever is earlier), with the exception of a protest challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such a case, with respect to any protest the basis of which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

(C) If a timely agency-level protest was previously filed, any subsequent protest to the United States Court of Federal Claims that is filed within 10 days of actual or

constructive knowledge of initial adverse agency action shall be considered, if the agency-level protest was filed in accordance with subparagraphs (A) and (B), unless the contracting agency imposes a more stringent time for filing the protest, in which case the agency's time for filing shall control. In a case where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to the United States Court of Federal Claims shall be considered timely if filed within the 10-day period provided by this subparagraph, even if filed after bid opening or the closing time for receipt of proposals.

(D) Under no circumstances may the United States Court of Federal Claims consider a protest that is untimely because it was first filed with the Comptroller General.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief, except that monetary relief shall not be available if injunctive relief is or has been granted, and any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(5) The United States Court of Federal Claims shall have jurisdiction to render judgment on an action by an interested party challenging an agency's decision to override a stay of contract award or contract performance that would otherwise be required by section 3553 of title 31. Such an action shall be filed within 10 days of actual or constructive notification of the agency's written determination to proceed with the award or performance of the contract.

~~(5)~~ (6) If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A–76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

~~(6)~~ (7) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

TITLE 31, UNITED STATES CODE

* * * * * * *

§3556. Nonexclusivity of remedies~~; matters included in agency record~~

This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims instead of with the Comptroller General. ~~In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.~~

TITLE IX—[RESERVED]

TITLE X—GENERAL PROVISIONS

Section 1001 will authorize the U.S.S. John C. Stennis nuclear refueling and complex overhaul (RCOH). Authorization of the RCOH and incremental funding authority will allow the RCOH to commence on schedule in January of 2021 without regard to whether the Department of Defense is funded by a continuing resolution at that time.

Starting the RCOH on time is critical to maintaining the Optimized Fleet Response Plan (OFRP) schedule and CVN operational availability. Additionally, if the RCOH is not started on time, the program will incur additional costs associated with the schedule delay. Delays in the initiation of the CVN 74 RCOH impact the shipbuilder's workload plans and sub-optimizes shipyard use of dry dock, infrastructure, and personnel resources.

Budget Implications: The table below details resource requirements associated with this proposal based on incrementally funding CVN 74 RCOH over a three-year period (FY 20-FY22). FY 2020 AP funds however are requested to be non-AP SCN. The resources required are reflected in the table below, will be included within the Fiscal Year (FY) 2020 President's Budget, and will be handled via the appropriations process.

Incremental Funding Summary:

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation(s)**
Navy	647.9	1,875.6	1,885.0	-	-	Shipbuilding and Conversion, Navy
Total	647.9	1,875.6	1,885.0	-	-	--

Changes to Existing Law: None.

Section 1002 amends section 5062 of title 10, United States Code, to remove the requirement for the Navy to increase the number of carrier air wings (CVW) no later than October 1, 2025, and maintains the requirement to do so when additional operationally deployable aircraft carriers can fully support a 10th carrier air wing. This proposal maintains the requirement for nine CVWs to allow the Navy to match the number of fully staffed CVWs to the number of aircraft carriers (CVNs) readily available for worldwide deployment per the Global Force Management Allocation Plan (GFMAP) and CVN maintenance schedules. Although the Navy currently has 11 operational aircraft carriers as required by section 5062, at least two CVNs are regularly unavailable for worldwide deployment due to routine or scheduled maintenance or repair, including refueling and complex overhaul (44 months duration), docking planned incremental availability (16 months), or planned incremental availability (6 months). Thus, the minimum requirement for CVWs is two less than the number of CVNs, i.e. nine total CVWs.

The Navy's Annual Long-Range Plan for Construction of Naval Vessels for Fiscal Year (FY) 2019 indicates that a sustainable force structure of 12 operational CVNs (i.e. 10 deployable CVNs) will not be reached until beyond 2060, assuming a 4-year procurement and funding profile. Although the Navy is reviewing options to accelerate CVN procurement including multi-ship procurement and reducing centers (years between procurements), the Navy will not have 12 operational aircraft carriers by 2025. Should a 10th CVW be established prior to a 12th CVN, the air wing risks lack of operational tasking and stagnation of operational experience. The Navy will continue to address its progress toward a sustainable 12 CVN force structure in the Annual Long-Range Plan for Construction of Naval Vessels as required by Section 231 of Title 10, United State Code.

Budget Implications: This proposal has no budget implications.

Changes to Existing Law: This proposal would make the following changes to section 5062 of title 10, United States Code:

§5062. United States Navy: composition; functions

(a) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

(b) The naval combat forces of the Navy shall include not less than 11 operational aircraft carriers. For purposes of this subsection, an operational aircraft carrier includes an aircraft carrier that is temporarily unavailable for worldwide deployment due to routine or scheduled maintenance or repair.

(c) All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation consists of combat and service and training forces, and

includes land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the Navy, and the entire remainder of the aeronautical organization of the Navy, together with the personnel necessary therefor.

(d) The Navy shall develop aircraft, weapons, tactics, technique, organization, and equipment of naval combat and service elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

(e) The Secretary of the Navy shall ensure that—

(1) the Navy maintains a minimum of 9 carrier air wings until ~~the earlier of—~~

~~(A)~~ the date on which additional operationally deployable aircraft carriers can fully support a 10th carrier air wing <u>on a long-term sustainable basis</u>; ~~or~~

~~(B) October 1, 2025;~~

(2) after the ~~earlier of the two dates~~ <u>date</u> referred to in ~~subparagraphs (A) and (B) of~~ paragraph (1), the Navy maintains a minimum of 10 carrier air wings; and

(3) for each such carrier air wing, the Navy maintains a dedicated and fully staffed headquarters.

Section 1003. Notwithstanding the general requirement in 10 U.S.C. 8680 (prior to February 1, 2019, designated as section 7310) for all overhaul, maintenance, and repair of Navy ships, except for voyage repairs, to be performed in United States shipyards, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 included section 1025, which authorized a pilot program using three LCS vessels to perform maintenance and repair in a foreign shipyard, at a facility outside a foreign shipyard, or at any other facility convenient to the vessel. Navy requested this authority in order to maximize the time LCS vessels would be operationally available during prolonged deployments. The pilot was to be used to obtain data on use of this authority for three LCS. However, as a result of Initial Operational Test & Evaluation (IOT&E) on USS CORONADO and the extended CNO availability on USS FREEDOM, these vessels were not available for overseas deployment during the timeframe specified for the original pilot program, which prevented collection of supporting data. These events limited the data collection under the pilot program to only one LCS platform, USS FORT WORTH. Even though only one ship was available to assess the viability of the limitations proposed under the pilot program, the data obtained heavily supports making the exceptions permanent. In the NDAA for FY 2018, Congress included a provision to provide this authority under section 7310 of title 10, United States Code, through September 30, 2020. This proposal would extend the authority under that section (renumbered as section 8680 as of February 1, 2019) to permit the Navy to permanently operate under those conditions.

Accomplishing the Planned Maintenance Availabilities (PMAVs) and Repair Availabilities (RAVs) in Singapore as a Forward Operating Station (FOS) or any port within the Southeast Asia area of operations will increase the operational availability of LCS platforms in theater by eliminating the transit time required to reach a U.S. or Guam port capable of accomplishing the necessary maintenance. This would result in an increased presence in the Southeast Asia area of operations. Given the challenges of USS FORT WORTH, which was the single LCS platform available for data collection in support of the NDAA for FY 2015 LCS

sustainment pilot, data was still able to be collected, and the ship was 100% available for the first year deployed.

Although only one ship was available for data collection during the pilot program, NAVSEA observed cost savings realized by implementing the limited exception allowing foreign contractors to perform corrosion control and preservation requirements in lieu of sending fly away teams of U.S.-based contracted painters. During the pilot program, foreign contracted labor accomplished work meeting NAVSEA Standard requirements with a cost avoidance of 38% to 92% per corrosion control event. Although lower foreign labor rates contributed to the reduced cost of accomplishing preservation and corrosion control on LCS extended deployments, eliminating transportation, lodging, and per diem costs associated with assembling fly away teams of U.S. contractor paint and preservation teams yielded a majority of the savings.

Teams traveling from the U.S. to the deployed ship and waiting for a ship's availability, and personnel may not be available on site when unscheduled windows of opportunity for maintenance arise. Therefore, outsourcing routine corrosion control has no negative impact to the U.S. shipyard industrial base, but has a positive impact on operational availability of each ship. Allowing foreign contractors to perform corrosion control precludes sending overtasked U.S. contractor workforce overseas, preventing them from completing CONUS workload.

An assessed value of the pilot program hinges not on dollars saved, which could prove significant over time with multiple ships in theater, but on the operational availability of a ship requiring equally high material readiness. The ability to accomplish PMAVs and RAVs by FOS and local support increased the operational availability of LCS platforms in theater by eliminating the transit time required to reach a U.S. port capable of accomplishing the necessary maintenance. It also allows the FOS to take advantage of unplanned windows of opportunity to either accomplish deferred maintenance or new maintenance requirements based on a revision of any system's planned maintenance system (PMS) protocol. Logically, this increases the opportunities to perform planned maintenance, improves turnover time, and therefore increases ships' deployed presence in the Southeast Asia (or any) area of operations.

Based on positive results of this pilot, the Navy seeks permanent authority (1) to utilize United States Government or contracted personnel to complete corrective and preventive maintenance, or repair while LCS's are deployed and (2) to have foreign contractor's complete facilities maintenance, to include preservation and corrosion control requirements, while the ships are deployed. Such maintenance or repair shall be performed in a foreign shipyard, at a facility outside of a foreign shipyard, or at any other facility convenient to the vessel.

Budget Implications: The net result will be the ability to accomplish more maintenance within the current program requirement by allocating more funds for accomplishment of actual repair work and fewer funds for indirect travel and per diem requirements. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

ESTIMATED NUMBER OF LCS DEPLOYED

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024

Deployed Littoral Combat Ships	3	5	7	9	10

ESTIMATED COST AVOIDANCE FOR DEPLOYED LCS (O&M,N)

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation(s)
Navy	($24.81)	($25.31)	($29.50)	($37.61)	($40.90)	Operation and Maintenance, Navy

Changes to Existing Law: This proposal would make the following changes to section 8680 of title 10, United States Code (previously designated as section 7310 of such title):

§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 preservation or corrosion control efforts and cleaning services.

~~(D) This paragraph shall expire on September 30, 2020.~~

* * * * *

Section 1004 would specify that, as is the case for non-military or non-recreational vessels, discharges incidental to the normal operation of vessels of the Armed Forces regulated under the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) are not to be regulated under the Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901 et seq.) or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.). This would avoid potential confusion about whether such

incidental discharges should be subject to duplicative regulation under the SWDA or CERCLA. As a matter of practice, this proposal reflects the views of the United States (U.S.) Environmental Protection Agency (EPA) and the Department of Defense (DoD) for how these three Acts should be interpreted and implemented.

Section 312(n) of the Clean Water Act (Uniform National Discharge Standards for Vessels of the Armed Forces) provides for regulation of any discharge that is incidental to the normal operation of a vessel of the Armed Forces. Section 312(n) provides for a regulatory program based on criteria that are intended to be as protective as the technology-based criteria used to develop the Vessel General Permit section 402 of the Clean Water Act, which applies to discharges incidental to the normal operation of non-military, non-recreational vessels. Both the SWDA and CERCLA include exclusions for discharges incidental to the normal operation of non-military, non-recreational vessels that are regulated under section 402 of the Clean Water Act. Neither statute, however, references the equivalent discharges from vessels of the Armed Forces which are regulated under 312(n) of the Clean Water Act. Both the SWDA and CERCLA were enacted prior to the CWA amendments establishing the Uniform National Discharge Standards (UNDS) for vessels of the Armed Forces, which did not include conforming amendments in the other statutes. Nonetheless, as the laws are currently written, it could appear that Congress may have inadvertently treated Armed Forces vessels and non-military vessels differently under the SWDA and CERCLA. In practice, EPA has not sought to treat Armed Forces vessels differently with respect to CWA section 312(n) discharges. This proposal would align the statutes with the historic treatment of Armed Forces vessels in practice to make clear that discharges incidental to the normal operation of a military vessel, like those from a non-military, non-recreational vessel, are to be regulated under the Clean Water Act.

The Solid Waste Disposal Act does not regulate point source discharges which are already regulated under section 402 of the Clean Water Act via the National Pollutant Discharge Elimination System (NPDES) program. This is reflected by the fact that the definition of "solid waste" under subsection 1004(27) of the SWDA does not include these discharges:

> The term "solid waste" . . . does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].

The NPDES program requires municipal, industrial, and commercial facilities that discharge wastewater from a point source (discrete conveyance such as a pipe, ditch, or channel) to obtain a permit before discharging into the waters of the United States. The definition of "solid waste" under the SWDA recognizes that the most appropriate regulatory framework for regulating NPDES discharges is the Clean Water Act and that regulation under the SWDA of discharges subject to a NPDES permit would be duplicative and therefore unnecessary.

A point source discharge incidental to the normal operation of a non-military, non-

recreational vessel that is regulated under a NPDES permit is therefore not subject to regulation under the SWDA. This proposal would specify that, as is the case for non-military, non-recreational vessels, the definition of "solid waste" under the SWDA similarly does not include any discharge incidental to the normal operation of a vessel of the Armed Forces, when these discharges are regulated under section 312(n) of the Clean Water Act.

Under CERCLA, section 103 (42 U.S.C. 9603) requires that the person in charge of a vessel or facility immediately notify the National Response Center whenever a reportable quantity or more of a CERCLA hazardous substance is released in any 24-hour period, unless the release is "federally permitted." Section 103 imposes penalties for the failure to comply with this notice requirement. Section 101(10) of CERCLA currently excludes eleven "federally permitted releases" from the section 103 notification requirements, to include several discharges regulated under section 402 of the Clean Water Act.[1]

This proposal would modify section 312(n)(6)(B) of the FWPCA (33 U.S.C. 1322(n)(6)(B)), to specify that, when in compliance with section 312(n)(4), "discharges incidental to the normal operation of a vessel of the Armed Forces" are excluded from the definition of "solid waste" under subsection 1004(27) of the SWDA (42 U.S.C. 6903(27)) and "a discharge incidental to the normal operation of a vessel of the Armed Forces in compliance with the regulations" is added to the definition of "Federally permitted release" under section 101(10) of the CERCLA (42 U.S.C. 9601(10)), thereby treating such discharges comparably to the same or similar discharges from non-military, non-recreational vessels. This change is consistent with current practice and how DoD and EPA have historically implemented the FWPCA, SWDA, and CERCLA.

Budget Implications: This proposal is a non-budgetary proposal.

Changes to Existing Law:

(1) This proposal would make the following changes to 33 U.S.C. 1322(n):

****

(6) Effect on other laws

(A) Prohibition on regulation by States or political subdivisions of States.

[1] Discharges currently enumerated as Federally permitted releases under CERCLA which are regulated instead under the Clean Water Act are as follows: (1) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); (2) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; (3) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; and (4) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act (33 U.S.C. 1317(b), (c)) and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act (33 U.S.C. 1342).

****

(B) Federal laws. This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel. When conducted in compliance with regulations promulgated pursuant to paragraph (4), any discharge incidental to the normal operation of a vessel of the Armed Forces is considered a federally permitted release within the meaning of paragraph (10) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(10)), and is excluded from the definition of solid waste under paragraph (27) of section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).

Section 1005 is critical to support the safeguarding of personnel and resources located outside of the perimeter of Marine Corps Installations National Capital Region - Marine Corps Base Quantico and the Military District of Washington – Fort Belvoir, and would allow the Department of Navy (DON) and the Department of the Army (DA) to use their funds to procure contract security-guard services for locations open to the public 364 days a year, occupied by Department of Defense (DoD) personnel, and not currently provided sufficient security by DoD or Federal Protective Service law enforcement or security personnel.

Recent events have indicated a need for provision of on-site protection for smaller DoD activities. Violence has gradually crept into conventionally civil and secure settings. The Holocaust Museum shooting of 2009, the shooting of the National Museum of the Marine Corps' building in 2010, the Jewish Museum of Belgium shooting in 2014, the public assassination of a Russian ambassador at a museum in Turkey in 2016, and the Chattanooga shootings at military recruiting stations in 2015 all illustrate the need for protection at these types of facilities. The National Museum of the Marine Corps, a stand-alone facility on a 135 acre campus which opened to the public in 2006, and the National Museum of the United States Army, a stand-alone facility on an 84 acre campus which will be open to the public in 2020, are located in areas readily accessible to the public where DoD service members and civilian employees are able to interact more readily with the public to best perform their functions. The National Museum of the Marine Corps usually has limited numbers of DoD personnel working within the facility, and it is not occupied around the clock. The National Museum of the United States Army will also have limited DoD personnel working within the facility when it opens to the public in 2020. Additionally, the personnel working in these spaces are not trained or equipped to perform security functions. Assigning such personnel secondary duties to provide dedicated on-site security would detract from performance of their primary assigned functions. Marine Corps Installations National Capital Region - Marine Corps Base Quantico security is understaffed and is unable to provide sufficient security support to the off-installation facility. The Military District of Washington – Fort Belvoir similarly lacks adequate staff to provide sufficient security support to the National Museum of the United States Army located outside the secure perimeter of the installation.

Budget Implications: The assignment of security personnel to a particular facility is a matter for the discretion of the Secretary of Defense. The funding profile below reflects the projected resource requirement for the current National Museum of the Marine Corps and National

Museum of the United States Army unarmed security/alarm monitors, which is not anticipated to change if the contractors are armed. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation(s)**
National Museum of the Marine Corps Armed Security	$2.47	$2.62	$2.78	$2.94	$3.03	Operation and Maintenance, Marine Corps
National Museum of the United States Army	$2.33	$2.39	$2.48	$2.55	$2.61	Operation and Maintenance, Army
Total	$4.80	$5.01	$5.26	$5.49	$5.64	

Changes to Existing Law: This proposal would make the following change to 10 U.S.C. 2465(b):

10 U.S.C. 2465

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:

(1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.

(2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of firefighting functions if the contract is—

(A) for a period of one year or less; and

(B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(5) A contract for the performance of on-site armed security guard functions to be performed—

(A) at the Marine Corps Heritage Center at Marine Corps Base Quantico, including the National Museum of the Marine Corps; or

(B) at the Heritage Center for the National Museum of the United States Army at Fort Belvoir, Virginia.

****

Section 1006 would authorize the Secretary of Defense to exclude advance billings for declared disasters or major emergencies from the advance billing $1 billion limitation.

The current law includes a permanent cap of $1 Billion in total for all Working Capital Fund billings in any fiscal year across the Department of Defense (DOD). DLA supports other federal agencies, particular the Federal Emergency Management Agency (FEMA), through interagency agreements that permit FEMA to place reimbursable orders with DLA for support in its disaster response missions. (Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§5121—5206, FEMA is responsible for coordinating Federal government response to support state, local, tribal, and territorial efforts under the National Response Framework.)

In past years, Congress has waived or modified the advance billing limitation to accommodate DLA's efforts in supporting federal disaster relief efforts. This was most recently done in Public Law 115-72, enacted on October 26, 2017, Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017. In that law, section 310 read " Notwithstanding section 2208(l)(3) of title 10, United States Code, during fiscal year 2018, the dollar limitation on advance billing of a customer of a working-capital fund in such section shall not apply with respect to the advance billing of the Federal Emergency Management Agency. In the preceding sentence, the term 'advance billing' has the meaning given the term in section 2208(l)(4) of title 10, United States Code".

Section (l)(3) of 10 U.S.C. 2208 was previously modified in Public Law 109-234, title I, §1206, enacted June 15, 2006, in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Hurricane Recovery, 2006. Section 1206 provided "Notwithstanding 10 U.S.C. 2208(l), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed $1,200,000,000: *Provided,* That the amounts made available pursuant to this section are designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.".

In 2005, Public Law 109-13, div. A, Title I, §1005, enacted May 11, 2005, in the Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief Act, provided " For fiscal year 2005, the limitation under paragraph (3) of section 2208(l) of title 10, United States Code, on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year shall be applied by substituting ''$1,500,000,000'' for ''$1,000,000,000''.

Support to these relief efforts continue to increase and are outside normal operating requests and are not included in cyclic budget requirements. Working Capital Funds must maintain sufficient cash balances to execute their primary mission of warfighter support and set aside a reserve for price fluctuations in petroleum prices. The availability of cash depends on outcomes from the budget cycle (workload, costs, rate setting); supporting unforeseen world events that are not part of the budget directly impacts the agency's ability to do so and the timing of disbursements to vendors and collections from customers. Therefore, DLA is requesting the

law include permanent authority to advance bill for support to humanitarian assistance and disaster relief efforts up to the amount of the orders received. Implementing this change will improve cash solvency while ensuring DLA's primary mission of warfighter support is not adversely impacted and enable DLA to support humanitarian assistance and disaster relief efforts.

Budget Implications: The resources required are reflected in the table below and are included in the Fiscal Year (FY) 2020 President's Budget. Note: After querying DOD Components, only the DLA DWCF is impacted by this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Labor	.03	.03	.03	.03	.03	Working Capital Fund, Defense-wide
Total	.03	.03	.03	.03	.03	

Changes to Existing Law: This proposal would amend section 2208 of title 10, United States Code, as follows:

§ 2208 Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to-

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of-

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

(2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and

the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if-

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than $500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than $250,000 for procurements at all other facilities:

(A) An unspecified minor military construction project under section 2805(c) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)-

(A) during a period of war or national emergency; or;

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed $1,000,000,000. <u>The dollar limitation in the preceding sentence on advance billing of a customer of a working-capital fund shall not apply to advance billing for humanitarian assistance or for relief efforts following a declaration of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).</u>

(4) In this subsection:

(A) The term "advance billing", with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term "customer" means a requisitioning component or agency.

(m) Capital Asset Subaccounts.-Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) Separate Accounting, Reporting, and Auditing of Funds and Activities.-The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) Charges for Goods and Services Provided Through the Fund.-(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) Procedures For Accumulation of Funds.-The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) Annual Reports and Budget.-The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) Notification of Transfers.-(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) Limitation on Cessation or Suspension of Distribution of Funds for Certain Workload.-(1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized-

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if-

(A) the working-capital fund is insolvent; or

(B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of Defense from furlough due to absence of or inadequate funding.

(t) Market Fluctuation Account.-(1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to $1,000,000,000, to remain available without fiscal year limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

Section 1007 would amend section 406 of title 39, United States Code, by giving the Secretary of Defense the explicit authority to expend Department of Defense appropriated funds to provide military postal service support to United States citizens living in overseas locations and employed by the North Atlantic Treaty Organization (NATO), that provide functions that support the Armed Forces of the United States. The support would only be provided when the Secretary has determined in writing that it is in the best interests of the United States, to do so, when host nation authorization or agreements allow for the benefit, and when it will not require the Department of Defense to obligate and expend appropriated funds to increase significantly the operating costs of a military post office to provide this support to this category of United States citizens.

Since section 406, title 39 of the United States Code is silent on this issue, which has caused inconsistent authorization of military postal support for employees of organizations consisting of a mixture of U.S. Government and U.S. citizen direct-hire personnel. The Department of Defense has granted and rescinded military postal privileges for NATO direct-hire personnel, who are U.S. citizens, multiple times due to differing interpretations of existing law. The purpose of this legislative change proposal is to remove any ambiguity concerning the authority of the Secretary of Defense to authorize and provide the requisite funding for this service to U.S. citizens who are not employed by the Department of Defense, but who are employed by NATO in overseas locations and provide support to the U.S. Armed Forces. The

proposed amendment is drafted to enable the Secretary to maintain the flexibility to provide this support at the military postal facility in the cognizant location overseas only when the Secretary determines that it is within DoD's best interests and it has been determined appropriate to expend DoD appropriated funds to do so.

The Department of Defense postal policy is set forth in DoD Instruction 4525.09, "Military Postal Service," and DoD Manual 4525.06 "DoD Postal Manual" which provide policy on military postal service patrons and shall be updated as appropriate to provide specific guidance concerning extending the privilege to U.S. citizens who are living and working overseas and are direct hires of NATO.

Budget Implications: The resources required are reflected in the table below and are included in the Fiscal Year (FY) 2020 President's Budget. Although it is difficult to calculate an exact cost without knowing the total number of potential new Armed Forces post office patrons, it is reasonable to assume that the number should be in the hundreds in comparison to the tens of thousands of total worldwide Military Postal users. This assumption is based upon the fact these new users of the military post office would have to –

1. Request permission to use the military postal system.
2. Obtain a written determination of the Secretary of Defense that it is in the best interest of the Department of Defense to grant such privileges; and .
3. Be co-located with an existing Armed Forces Post Office.

Given the above, we believe it is appropriate to use **.5%** of FY17* SDT mail expenditures as an approximation of the budgetary effect of this proposal. The FY17 SDT mail expenditures, as reported by the Military Postal Service Agency, was approximately $143, so the effect of this proposal is roughly $710K per year. Using historical percentages of 56% (Army), 23% (Air Force), and 21% (Navy) yields the following estimated resource requirements:

RESOURCE REQUIREMENTS ($Millions)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	.400	.400	.400	.400	.400	Operation and Maintenance, Army
Air Force	.160	.160	.160	.160	.160	Operation and Maintenance, Air Force
Navy/Marine Corps	.150	.150	.150	.150	.150	Operation and Maintenance, Navy
Total	.710	.710	.710	.710	.710	

**FY16 was chosen as it not only represents recent expenditure history, but is also less skewed by deployment activities than prior years.*

Changes to Existing Law: This proposal would amend section 406 of title 39, United States Code, as follows:

§406. **Postal services at Armed Forces installations**

(a) The Postal Service may establish branch post offices at camps, posts, bases, or stations of the Armed Forces and at defense or other strategic installations.

(b) The Secretaries of Defense and Transportation shall make arrangements with the Postal Service to perform postal services through personnel designated by them at or through branch post offices established under subsection (a) of this section.

(c) The Secretary of Defense may authorize the use of Armed Forces post offices in overseas locations by United States citizens who are employed by the North Atlantic Treaty Organization when such citizens perform functions in support of the Armed Forces of the United States and when the Secretary makes a written determination that it is in the best interests of the Department of Defense and that such a grant is otherwise authorized by applicable host nation law or agreement. No funds may be obligated or expended to establish, maintain, or expand an Armed Forces post office solely for this purpose.

Section 1008 would repeal section 44310(b) of title 49, United States Code, to make permanent the authority of the Secretary of Transportation to provide aviation insurance and reinsurance upon the request of another United States Government agency. This authority has been extended by Congress on multiple occasions since the current aviation insurance program's inception in 1958, usually in five year increments. It is currently due to expire on December 31, 2019. However, on several occasions this authority has lapsed, or come very close to lapsing, placing at risk the ability of the Department of Defense (DoD) to obtain contract air services in time of war or other contingency. Insurance issued under the authority of chapter 443, of title 10, United States Code, is essential during activation of the Civil Reserve Air Fleet, as well as other contingencies in which commercial insurance is either unavailable, or is not available at reasonable prices, in order to meet national defense needs. The lack of insurance in such circumstances would cripple DoD's ability to transport personnel and materiel in a timely manner, substantially impeding the effectiveness of the response to a contingency or natural disaster.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

This program has resulted in average outlays of $2.9 million annually since 2006.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Air Force	$2.90	$2.90	$2.90	$2.90	$2.90	Operation & Maintenance, Air Force
Army does not intend to use this authority.						
Navy does not intend to use this authority.						
Total	$2.90	$2.90	$2.90	$2.90	$2.90	--

Cost Methodology: Pursuant to a 2013 agreement between the Secretary of Defense and the Secretary of Transportation, countersigned by the President, and as required by 49 U.S.C. 44305(b), DoD must indemnify the Federal Aviation Administration (FAA) for all claims paid under insurance policies issued by the FAA at DoD's request. The source of funds to pay such

claims is specified in section 9514(b) of title 10, United States Code, as "any funds available to the Department of Defense for operation and maintenance…". It is impossible to predict when such claims may arise, as well as the amount of such claims. From Fiscal Year (FY) 2006 through FY 2017, in excess of $35 million has been paid to the FAA by DoD for 35 claims related to operations in Afghanistan, an average of $2.9 million per year. However, between the program's inception in 1958 and 2006, there were no major claims. In addition, the cost avoidance to DoD by providing insurance under this authority rather than reimbursing air carriers for unreasonably priced commercial insurance is similarly difficult to quantify, but may in some instances more than offset the amount paid in claims. Due to the nature of this program, outlays are only made as a result of a claim, so an historical average is used in the budget estimation.

Changes to Existing Law: This proposal would make the following changes to section 44310 of title 49, United States Code:

§ 44310. Ending effective date

~~(a) IN GENERAL.—~~The authority of the Secretary of Transportation to provide insurance and reinsurance under any provision of this chapter other than section 44305 is not effective after December 11, 2014.

~~(b) INSURANCE OF UNITED STATES GOVERNMENT PROPERTY.—The authority of the Secretary of Transportation to provide insurance and reinsurance for a department, agency, or instrumentality of the United States Government under section 44305 is not effective after December 31, 2019.~~

Section 1010 would increase the minimum interest penalty threshold a business concern is entitled to under section 3902 of title 31, United States Code, from $1.00 to $20.00 when a business concern is in business with the Department of Defense (DoD). The threshold would remain at $1.00 for all other Federal agencies.

Section 3902 of such title provides that an agency acquiring property or services from a business concern, who does not pay the concern for each complete delivered item by the required payment date, shall pay an interest penalty to the business concern. Section 3902(c)(1) of such title states that "a business concern shall be entitled to an interest penalty of $1.00 or more which is owed such business concern under this section, and such penalty shall be paid without regard to whether the business concern has requested payment of such penalty." Interest payments under the $1.00 (or proposed DoD $20.00) threshold will not be made; furthermore, the disbursing office should decline any requests for such payments whether or not the total interest applicable to multiple bills exceeds the $1.00 (or proposed DoD $20.00) threshold.

The application of the interest threshold of $1.00 was enacted into law under the Prompt Payment Act Amendments of 1988 (Prompt Payment Act). This outdated threshold continues to be cost prohibitive for DoD and industry alike, costing more to process an interest payment than the actual value of the payment itself, while consuming valuable taxpayer resources and budgetary dollars in the process. Implementation of an increased threshold fulfills the need to reduce the volume, costs, and resources associated with processing and accounting for small

dollar interest penalty payments. It is time to consider raising the minimum interest payment threshold to a more meaningful value that considers the cost and effort of producing such a payment and one that allows the Department to reduce costs not only in interest charges, but also additional processing fees.

Existence of the interest penalty serves as an incentive for the Government to pay in a timely manner and offset the harm experienced by contractors when payments are made late. When the $1 threshold was originally established, inefficient paper processes often resulted in poor payment timeliness and excessive costs incurred by the contractor community. Changing the threshold would have no negative impact on the Department's commitment to making timely payments as an interest threshold of $1.00 provides little value in ensuring payments are made in a timely manner. While we are pursuing this cost saving legislative initiative, the Department continuously strives to identify the root causes of late payments and implement corrective actions. During Fiscal Year 2017, for invoices governed by the Prompt Payment Act, the Defense Finance and Accounting Service paid 90% of invoices and 92% of dollars within the established timeframes, absent an interest penalty. Additionally, the Prompt Payment Act does not apply to all invoice types such as financing payments for example; however, these payments are historically made within 14 days even though a penalty does not exist. There are numerous other accountability measures that incentivize prompt payment of contract invoices that are more encompassing and more effective than a $1 interest penalty. The dollar value of interest payments under the current threshold are low and therefore do little to incentivize timely payment as compared to the larger Defense budget.

In Fiscal Year 2017, the Defense Finance and Accounting Service (DFAS) processed over 273,000 lines of interest penalty payments totaling over $10 million of interest in legacy and Enterprise Resource Planning (ERP) entitlement systems. These are interest payments due by the government to vendors for contract payments that were not made timely in accordance with the Department of Defense Financial Management Regulation, Volume 10, Chapter 7, Prompt Payment Act. Analysis of the Fiscal Year 2017 disbursement data identified over 190,000 lines of interest penalty payments processed between the current $1.00 threshold and the proposed $20.00 threshold, totaling $700,000. This equates to 70% of the interest payment volume and only 7% of the interest penalty dollars. The $20 figure was developed based on an analysis of the cost associated with processing interest penalty payments across the Department of Defense and industry alike with additional consideration that the proposal impacts a significant enough number of interest payments, while impacting a relatively small dollar amount.

DFAS has worked in collaboration with the Aerospace Industries Association (AIA), who also agrees that raising the interest threshold can save both the government and industry money in posting and processing costs. Based on analysis performed by AIA, utilizing an industry wide average cost per hour of $58 for accounts receivable personnel combined with a process review estimating 20 minutes per interest transaction, it is estimated to cost contractors about $20 per payment. This cost includes labor and overhead required to evaluate, process, apply, and account for Prompt Payment Act interest disbursements. While the interest penalty serves as an overarching incentive for the Government to pay its suppliers timely, the cost of doing so at the current threshold greatly exceeds the benefit due to the contractor.

Budget Implications: The resources impacted by this proposal are reflected in the table below and are accounted for within the Fiscal Year (FY) 2020 President's Budget. The Department of Defense incurs $370,000 of operating costs associated with processing low dollar interest payments under the proposed $20.00 threshold. Additionally, there are substantial indirect costs associated with accounting for interest payments, such as posting in the accounting system. DFAS currently estimates $500,000 to upgrade entitlement systems based on the proposed interest threshold. The projected resource savings is based on the estimated decrease in interest penalty transactions that will be processed compared to the volume of transactions that would have been processed had the threshold remained at $1.00. Cost per transaction is based upon the DFAS Fiscal Year 2018 average cost per work-year. Resource requirements for the Military Services, Defense Logistics Agency, and other Defense Agencies represent the decrease in interest dollars paid if the threshold were increased to $20.00 within the Department of Defense. The combined savings to the Government would be $1,070,000 annually after accounting for needed entitlement system upgrades to change the interest threshold. The table below details the reduction in resource requirements for the Department associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
DFAS	$0.13	($0.37)	($0.37)	($0.37)	($0.37)	Defense Wide Working Capital Fund
Army	($0.12)	($0.12)	($0.12)	($0.12)	($0.12)	Operation & Maintenance, Army
Navy	($0.07)	($0.07)	($0.07)	($0.07)	($0.07)	Operation & Maintenance, Navy
Marine Corps	($0.01)	($0.01)	($0.01)	($0.01)	($0.01)	Operation & Maintenance, Marine Corps
Air Force	($0.06)	($0.06)	($0.06)	($0.06)	($0.06)	Operation & Maintenance, Air Force
DLA	($0.35)	($0.35)	($0.35)	($0.35)	($0.35)	Defense Wide Working Capital Fund
Defense Agencies	($0.09)	($0.09)	($0.09)	($0.09)	($0.09)	Defense Wide Working Capital Fund
Total	($0.57)	($1.07)	($1.07)	($1.07)	($1.07)	--

Changes to Existing Law: This proposal would make the following changes to section 3902 of title 31, United States Code:

§3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 7109(a)(1) and (b) of title 41, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty.

(b) The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(c)(1) A business concern shall be entitled to an interest penalty of $1.00 or more which is owed such business concern under this section, and such penalty shall be paid without regard to whether the business concern has requested payment of such penalty.

(2) Each payment subject to this chapter for which a late payment interest penalty is required to be paid shall be accompanied by a notice stating the amount of the interest penalty included in such payment and the rate by which, and period for which, such penalty was computed.

(3) If a business concern-

(A) is owed an interest penalty by an agency;

(B) is not paid the interest penalty in a payment made to the business concern by the agency on or after the date on which the interest penalty becomes due;

(C) is not paid the interest penalty by the agency within 10 days after the date on which such payment is made; and

(D) makes a written demand, not later than 40 days after the date on which such payment is made, that the agency pay such a penalty,

such business concern shall be entitled to an amount equal to the sum of the late payment interest penalty to which the contractor is entitled and an additional penalty equal to a percentage of such late payment interest penalty specified by regulation by the Director of the Office of Management and Budget, subject to such maximum as may be specified in such regulations.

(4) In the case of payments due from the Department of Defense, paragraph (1) shall be applied by substituting "$20.00" for "$1.00".

* * * * *

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would enact one change to the existing statutes. The proposal would authorize the Secretaries of the Army and the Navy the same flexibility in prescribing work schedules for civilian faculty at the Army War College, the United States Army Command and General Staff College, the Army University, the Naval War College and the Marine Corps University as now exists for the United States Military Academy and the United States Naval Academy. The proposed subsection (c) replicates exactly the language found in subsection (c) of section 6952 of title 10, United States Code, referring to professors, instructors and lecturers at the Naval Academy. The added flexibility will enable the respective Secretary, or the Secretary's delegate, to accommodate the highly cyclical academic workload at the Naval War College and the Marine Corps University, as well as at the Army War College, the United States Army Command and General Staff College and the Army University in the same manner as it may now be accommodated at the Naval Academy. The variable teaching requirements of the academic year and the irregular demands of scholarly research are not easily addressed by the timekeeping model applicable to the General Schedule workforce. The proposal would enable the respective Secretary to apply timekeeping procedures at the included institutions that will permit civilian faculty members the latitude to accomplish their academic mission while properly accounting for their public duties. The goal of this proposal is to make the civilian faculty work experience as similar to that at a civilian academic institution as possible. Faculty at civilian institutions receive an annual salary. They are required to be present for scheduled classroom instruction and office hours with students. They are free to accomplish curriculum development,

assigned research and personal research scholarship without reference to a tour of duty schedule. Alternative work schedules authorized by the Office of Personnel Management under the authority of section 6133 of title 5, United States Code, do not permit this flexibility because they all require a specific tour of duty. This proposal would give the military departments the same authority to manage civilian faculty schedules as now available to the Superintendent of the United States Naval Academy. This authority could be used to place civilian faculty on a straight-salary pay system. Civilian faculty would report leave to a timekeeper. Supervisors would certify that faculty members were in good standing and entitled to pay for the current pay period.

This proposal would affect approximately 275 civilian faculty members at the Naval War College and the Marine Corps University, and approximately 50 civilian faculty members at the Army War College, the United States Army Command and General Staff College, and the Army University.

Budget Implications: This authority only applies to civilian faculty at the Naval War College, the Marine Corps University, the Army War College, the United States Army Command and General Staff College, and the Army University. It is not applicable to the United States Air Force or other institutions. As the proposal only authorizes flexibility in the work schedule, without any change in full-time equivalents, no additional budget authority is required, beyond that which is already funded within the existing budget. Work schedules implemented under this proposal would not authorize overtime or compensatory time. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Naval War College	$39.16	$39.99	$40.83	$41.68	$42.56	Operation and Maintenance, Navy
Marine Corps University	$9.32	$9.45	$9.58	$9.71	$10.00	Operation and Maintenance, Marine Corps
Army War College	$0.88	$0.89	$0.91	$0.93	$0.95	Operations and Maintenance, Army
Army University (includes Command and General Staff College)	$3.55	$3.57	$3.65	$3.73	$3.81	Operations and Maintenance, Army
Total	$52.91	$53.90	$54.97	$56.05	$57.32	

Changes to Existing Law: This proposal would make the following changes to sections 7371 and 8748 of title 10, United States Code:

§7371. Army War College, ~~and~~ United States Army Command and General Staff College, and Army University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College, ~~or~~ the United States Army Command and General Staff College, or the Army University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on November 29, 1989.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.~~

(c) WORK SCHEDULE.—The Secretary of the Army may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(d) AGENCY RIGHTS.—Notwithstanding chapter 71 of title 5, the authority conferred by this section shall be exercised at the sole and exclusive discretion of the Secretary of the Army, or the Secretary's designee.

* * * * *

§8748. Naval War College and Marine Corps University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.~~

(c) WORK SCHEDULE.—The Secretary of the Navy may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed

under this section the work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(d) AGENCY RIGHTS.—Notwithstanding chapter 71 of title 5, the authority conferred by this section shall be exercised at the sole and exclusive discretion of the Secretary of the Navy.

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Section 1201 would amend section 1207 subsection (e) to extend the duration of this authority an additional 5 years. Section 1207 will expire at the end of fiscal year 2019 unless this proposal is adopted. Section 1207 provides statutory authority for the Secretary of Defense, with the concurrence of the Secretary of State, to enter into arrangements to use acquisition and cross servicing agreements to loan personnel protection and personnel survivability equipment to coalition forces for their use in coalition operations with the United States as part of a contingency operation or a peacekeeping operation under the United Nations Charter or another international agreement. This authority is currently being used to loan personnel protection and personnel survivability equipment to coalition forces operating with U.S. forces in Afghanistan.

Budget Implications: The proposal has no budgetary impact.

Changes to Existing Law: This proposal would amend section 1207 of Public Law 113-291 (10 U.S.C. 2342 note) as follows:

SEC. 1207. CROSS SERVICING AGREEMENTS FOR LOAN OF PERSONNEL PROTECTION AND PERSONNEL SURVIVABILITY EQUIPMENT IN **COALITION OPERATIONS.**

(a) In GENERAL.-The Secretary of Defense may, with the concurrence of the Secretary of State, enter into an arrangement, under an agreement concluded pursuant to section 2342 of title 10, United States Code, under which the United States agrees to loan personnel protection and personnel survivability equipment for the use of such equipment by military forces of a nation participating in the following:

(1) A coalition operation with the United States as part of a contingency operation.

(2) A coalition operation with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.

(3) Training of such forces in connection with the deployment of such forces to be deployed to an operation described in paragraph (1) or (2).

(b) LIMITATIONS.-

(1) LOAN ONLY OF EQUIPMENT FOR WHICH US FORCES HAVE NO UNFULFILLED REQUIREMENTS.-Equipment may be loaned to the military forces of a nation under the authority of this section only upon a determination by the Secretary of Defense that the United States forces in the coalition operation concerned have no unfulfilled requirements for such equipment.

(2) SCOPE OF USE OF LOANED EQUIPMENT. Equipment loaned to the military forces of a nation under the authority of this section may be used by those forces only for personnel protection or to aid in the personnel survivability of those forces and only in-

(A) a coalition operation with the United States described in paragraph (1) or (2) of subsection (a); or

(B) training described in paragraph (3) of subsection (a).

(3) DURATION OF USE OF LOANED EQUIPMIENT.-Equipment loaned to the military forces of a nation under the authority of this section may be used by the military forces of that nation not longer than the duration of that country's participation in the coalition operation concerned.

(4) NOTICE AND WAIT ON LOAN OF EQUIPMENT FOR TRAINING .- Equipment may not be loaned under subsection (a) in connection with training described in paragraph (3) of that subsection until 15 days after the date on which the Secretary of Defense submits to the appropriate committees of Congress written notice on the loan of such equipment for such

(c) WAIVER OF REIMBURSEMENT IN CASE OF LOSS OF EQUIPMENT IN COMBAT.-

(1) IN GENERAL.-In the case of equipment loaned under the authority of this section that is damaged or destroyed as a result of combat operations during coalition operations while held by forces to which loaned under this section, the Secretary of Defense may, with respect to such equipment, waive any other requirement under applicable law for-

(A) reimbursement;

(B) replacement-in-kind; or

(C) exchange of supplies or services of an equal value.

(2) BASIS FOR WAIVER.-Any waiver under this subsection may be made only if the Secretary determines that the waiver is in the national security interest of the United States.

(3) WAIVER ON A CASE-BY-CASE BASIS.-Any waiver under this subsection may be made only on a case-by-case basis.

(d) DEFINITIONS.-In this section:

(1) The term "appropriate committees of Congress"means-

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on Foreign .Affairs of the House of Representatives.

(2) The term "personnel protection and personnel survivability equipment" means items enumerated in categories I, II, III, VII, X, XI and XIII of the United States Munitions List under section 38(a)(l) of the Arms Export Control Act (22 U.S.C. 2778(a)(l) that the Secretary of Defense designates as available for loan under this section.

(e) EXPIRATION OF ATHORITY.-The authority in subsection (a) shall expire on September 30, ~~2019~~2024.

Section 1202 would extend through December 31, 2020 the authorization for the Commanders' Emergency Response Program (CERP) in Afghanistan under section 1201 of the National Defense Authorization Act for Fiscal Year 2012 and would authorize $5,000,000 for that program for use during calendar year 2020. CERP remains an important tool for military commanders for battle damage, condolence payments, and for small-scale projects that enhance local conditions and contribute to force protection. CERP is essential for commanders in Afghanistan.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Commanders' Emergency Response Program	$5					Operation and Maintenance, Army OCO
Total						--

Changes to Existing Law: This proposal would make the following changes to section 1201 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81); most recently, Section 1224 of the FY2019 National Defense Authorization Act (Public Law 115-232):

SEC. 1201. COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN.

(a) AUTHORITY.—During the period beginning on October 1, 2016, and ending on ~~December 31, 2019~~ December 31, 2020, from funds made available to the Department of Defense for operation and maintenance, not to exceed $5,000,000 may be used by the Secretary of Defense in such period to provide funds for the Commanders' Emergency Response Program in Afghanistan.

(b) SEMI-ANNUAL REPORTS.—

(1) SEMI-ANNUAL REPORTS.—Not later than 45 days after the end of each half fiscal year of fiscal years 2017 through ~~2019~~ 2020, the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that half fiscal year that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes of the program under subsection (a).

(2) FORM.—Each report required under paragraph (1) shall be submitted, at a minimum, in a searchable electronic format that enables the congressional defense committees to sort the report by amount expended, location of each project, type of project, or any other field of data that is included in the report.

(c) SUBMISSION OF GUIDANCE.—

(1) INITIAL SUBMISSION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of the guidance issued by the Secretary to the Armed Forces concerning the allocation of funds through the Commanders' Emergency Response Program in Afghanistan.

(2) MODIFICATIONS.—If the guidance in effect for the purpose stated in paragraph (1) is modified, the Secretary shall submit to the congressional defense committees a copy of the modification not later than 15 days after the date on which the Secretary makes the modification.

(d) WAIVER AUTHORITY.—For purposes of exercising the authority provided by this section or any other provision of law making funding available for the Commanders' Emergency Response Program in Afghanistan, the Secretary of Defense may waive any provision of law not contained in this section that would (but for the waiver) prohibit, restrict, limit, or otherwise constrain the exercise of that authority.

(e) RESTRICTION ON AMOUNT OF PAYMENTS.—Funds made available under this section for the Commanders' Emergency Response Program in Afghanistan may not be obligated or expended to carry out any project if the total amount of funds made available for the purpose of carrying out the project, including any ancillary or related elements of the project, exceeds $500,000.

(f) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept cash contributions from any person, foreign government, or international organization to provide funds for the Commanders' Emergency Response Program in Afghanistan during the period beginning on October 1, 2016, and ending on ~~December 31, 2019~~ December 31, 2020. Funds received by the Secretary may be credited to the operation and maintenance account from which funds are made available to provide such funds, and may be used for such purpose until expended in addition to the funds specified in subsection (a).

(g) NOTIFICATION.—Not less than 15 days before obligating or expending funds made available under this section for the Commanders' Emergency Response Program in Afghanistan for a project in Afghanistan with a total anticipated cost of $500,000 or more, the Secretary of Defense shall submit to the congressional defense committees a written notice containing the following information:

(1) The location, nature, and purpose of the proposed project, including how the project is intended to directly benefit the security or stability of the people of Afghanistan.

(2) The budget and implementation timeline for the proposed project, including any other funding under the Commanders' Emergency Response Program in Afghanistan that has been or is anticipated to be contributed to the completion of the project.

(3) A plan for the sustainment of the proposed project, including any written agreement with either the Government of Afghanistan, an entiry owned or controlled by the Government of Afghanistan, a department or agency of the United States Government other than the Department of Defense, or a third party contributor to finance the

sustainment of the activities and maintenance of any equipment or facilities to be provided through the proposed project.

(h) COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN DEFINED.—In this section, the term "Commanders' Emergency Response Program in Afghanistan" means the program that--

(1) authorizes United States military commanders in Afghanistan to carry out small-scale projects designed to meet urgent humanitarian relief requirements or urgent reconstruction requirements within their areas of responsibility; and

(2) provides an immediate and direct benefit to the people of Afghanistan.

(~~i~~) CONFORMING AMENDMENT.—Section 1202 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3455), as most recently amended by section 1212of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4389), is hereby repealed.

Section 1203 would allow funds to be made available for foreign assistance to reimburse the pay and allowances of reserve component personnel (i.e., National Guard and non-National Guard Reserve personnel) while they are training foreign forces as part of foreign assistance activities at the request of the Secretary of State. The National Guard and Reserves, unlike U.S. active duty forces, have no authority to fund the cost of pay and allowances when on active duty in support of foreign assistance activities. The consequence of this lack of funds is that the National Guard and Reserves are not available to conduct such training for Foreign Military Financing (FMF)-funded cases.

Allowing the Department of State to fund National Guard and Reserve pay and allowances would provide more flexible and cost-effective options to the Department of State in conducting many funded training programs. Currently, when active-duty military personnel are not available to conduct training under an FMF-funded case, the training is contracted out to private contractors at a significant cost – typically at least 50 percent more than active-duty personnel. Moreover, relying on contract support precludes the establishment of a lasting relationship between U.S. and foreign partner forces. The National Guard and Reserves have considerable experience conducting training as part of security assistance programs, as they provide support regularly under traditional FMS cases that are funded by the FMS customer.

If this proposal is enacted, the Department of State and the Department of Defense (DoD) would develop standards to govern its use. In particular, Department of State and DoD intend to limit its use to only those circumstances where 1) active-duty military are not available to conduct the required training and/or 2) it is otherwise in the interest of foreign policy for National Guard or Reserve personnel to provide the training. The latter circumstance is likely to arise where a National Guard or Reserve unit has an ongoing relationship with a particular foreign security force.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget. This proposal authorizes the use of funds for a purpose that is not currently authorized by law. This proposal does not require any

additional funding and would be funded within existing resources. The resource requirements in the table below are reflective of projections for National Guard personnel that could be used rather than contractors. The projections are based on review of historical requirements from fiscal year (FY) 2017, FY 2018, and FY 2019.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Defense Security Cooperation Agency	$3.14	$3.20	$3.26	$3.33	$3.40	Foreign Military Financing-(FMF) 1082 – Pay & Allowances
Total	$3.14	$3.20	$3.26	$3.33	$3.40	--

Changes to Existing Law: This proposal would amend section 503 of the Foreign Assistance Act of 1961 (22 U.S.C. 2311) as follows:

SEC. 503. GENERAL AUTHORITY.—(a)**(1)** The President is authorized to furnish military assistance, on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance, by—

(~~1~~**A**) acquiring from any source and providing (by loan or grant) any defense article or defense service;

(~~2~~**B**) assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a non-combatant nature; or

(~~3~~**C**) transferring such of the funds appropriated or otherwise made available under this chapter as the President may determine for assistance to a recipient country, to the account in which funds for the procurement of defense articles and defense services under section 21 and section 22 of the Arms Export Control Act have been deposited for such recipient, to be merged with such deposited funds, and to be used solely to meet obligations of the recipient for payment for sales under that Act.

(2) Sales ~~which~~ that are wholly paid from funds transferred under ~~paragraph (3)~~ paragraph (1)(C) or from funds made available on a non-repayable basis under section 23 of the Arms Export Control Act shall be priced to exclude the costs of salaries of members of the Armed Forces of the ~~United States (other than the Coast Guard).~~ United States other than members of—

(A) the Coast Guard; and

(B) the reserve components of the Army, Navy, Air Force, and Marine Corps who are ordered to active duty pursuant to chapter 1209 of title 10, of United States Code, and at the request of the Secretary of State.

* * * * *

Section 1204. The United States has a vital national security interest in promoting stability in certain fragile and conflict-affected areas in order to guard against threats that

emanate from State weakness, political subversion, or collapse. Stabilization activities are also required to translate combat success into lasting strategic gains. This proposal would establish an authority for the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the U.S. Agency for International Development (USAID) Administrator and the Director of the Office of Management and Budget (OMB), to support designated U.S. Government stabilization efforts by providing logistic support, supplies, and services, and training (as defined in the requested authority) to other U.S. departments and agencies. It would also allow the Secretary of Defense to conduct transitional stabilization activities in the national security interest of the United States only with the concurrence of the Secretary of State and in consultation with the USAID Administrator and the Director of OMB.

This proposal is consistent with the recommendations of the Stabilization Assistance Review (SAR), jointly written and approved by the Department of State (DOS), USAID, and DoD. Stabilization requires an integrated civilian-military approach, and this proposal provides authority for DoD to perform its supporting role in stabilization. The Department of State is the overall lead federal agency for U.S. stabilization efforts; USAID is the lead implementing agency for non-security U.S. stabilization assistance; and DoD is a supporting element, providing requisite security and reinforcing civilian efforts where appropriate. Stabilization activities may include efforts to establish civil security, provide access to dispute resolution mechanisms, deliver targeted basic services, and establish a foundation for the voluntary return of displaced people.

DOS and USAID stabilization efforts can be constrained or delayed in less-permissive operating environments, and current DoD authorities are either geographically restrictive or too narrow to address immediate stabilization requirements. DoD's humanitarian assistance authorities address the humanitarian needs of civilian populations, but cannot fund crucial stabilization activities such as minor repairs to electrical, water or sewage lines, supporting local councils or removing rubble so that long-term development efforts can begin. This proposal fills a mission-critical gap by establishing a specific authority for DoD to support other U.S. department and agency stabilization efforts and to conduct transitional, small-scale stabilization activities that pave the way for DOS and USAID stabilization efforts. If authorized, DoD will establish a Defense Support to Stabilization program, capitalizing on already established interagency coordination mechanisms, such as the Overseas Humanitarian Assistance Shared Information System for formal project tracking and approval.

Subject to the concurrence, consultation and designation requirements under subsections (a) and (b), this proposal would authorize DoD to provide responsive and agile logistic support to other U.S. departments' and agencies' stabilization activities under subsection (c). Such support might include training, transportation, medical care, and other enabling and life support services (as defined in the legislation) on a reimbursable or non-reimbursable basis. Subject to the concurrence, consultation and designation requirements under subsections (a) and (b), this proposal would also authorize DoD to execute transitional, small-scale stabilization activities in the national security interest of the United States under subsection (d). DoD would be able to provide up to an annual total of $25,000,000 divided between (1) non-reimbursable and (2) funding for DoD activities, including program management, under this authority. This proposal

does not restrict reimbursable activities.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget. This proposal requests to establish the "Department of Defense Support to Stabilization in the National Security Interest of the United States" authority.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Funds available - base	$25	$25	0	0	0	Operation and Maintenance, Defense-wide
Total	$25	$25	0	0	0	--

Changes to Existing Law: None.

Section 1205 would extend section 1202 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 (Public Law 115-91), adding an additional four years to prevent a gap in the authority. Extension of the authority in the FY2020 cycle would ensure that Combatant Commanders can continue to support ongoing operations with 1202 authority. This will ensure that U.S. Special Operations Forces (USSOF) have the uninterrupted ability to leverage select national and irregular forces in support of U.S. irregular warfare operations and activities.

Subsection (a) of section 1202 limits the Department of Defense to a three-year program (FY2018 through FY2020). This 3-year period – shortened considerably to complete Congressionally-mandated administrative requirements and gain approval of funding – does not allow adequate time to establish programs and achieve lasting effects. Application of 1202 is critical in geographic havens where peer and near-peer adversaries have expanded their reach, USSOF has limited access, and host nations are financially, politically, or militarily unable to confront the burgeoning threat effectively. In this challenging operating environment, the Combatant Commands and USSOF must plan carefully and execute deliberately to achieve the desired effects at a level below armed conflict. Without the extension, USSOF's ability to fulfill irregular warfare gaps in most campaign plans will remain unaddressed.

Because section 1202 is set to expire at the end of FY2020, an extension must be in place in the FY2020 NDAA legislation or there will be a gap in the authority. The Department of Defense cannot wait until FY2021 legislation as that NDAA may not be enacted on or before 1 October 2020.

By extending the authority for four years in the FY2020 NDAA, the Combatant Commanders can exercise a measure of strategic patience, moving forward in a deliberate manner with confidence that the continuity and longevity of 1202 is adequate to achieve lasting effects while mitigating risk to the mission and to friendly forces. USSOF will be afforded the opportunity to apply this critical resource towards the establishment and eventual exploitation of relationships with select national and irregular forces, groups and individuals that support U.S.

Irregular Warfare objectives. These foreign forces will facilitate our overarching efforts to deter and disrupt the malign influence of revanchist, peer competitors that threatens allied sovereignty, undermines U.S. leadership, and threatens U.S. foreign policy objectives.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
SOCOM	10.0	10.0	10.0	10.0	10.0	Operation & Maintenance, Defense-wide
Total	10.0	10.0	10.0	10.0	10.0	--

The table above details resource requirements associated with this proposal based on the classified concept of operations.

Changes to Existing Law: This section would make the following changes to section 1202 of the National Defense Authorization Act for FY 2018:

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 during each of fiscal years 2018 through ~~2020~~ 2024 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.

* * * * *

TITLE XIII—[RESERVED]

TITLE XIV—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

Section 1401 would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President's Budget for fiscal year 2020.

Section 1402 would authorize appropriations for the Joint Urgent Operational Needs Fund in the amount equal to the budget authority requested in the President's Budget for fiscal year 2020.

Section 1403 would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2020.

Section 1404 would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount equal to the budget authority requested in the President's Budget for fiscal year 2020.

Section 1405 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President's Budget for fiscal year 2020.

Section 1406 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President's Budget for fiscal year 2020.

Subtitle B—Other Matters

Section 1411, within the funds authorized for operation and maintenance under section 1406, would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

Section 1412 would authorize appropriations for fiscal year 2020 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President's Budget for fiscal year 2020.

TITLE XVI—STRATEGIC PROGRAMS, CYBER, AND INTELLIGENCE MATTERS

Subtitle A—Space Activities

Section 1601 would extend the authority to carry out the backup Global Positioning System capability demonstration by an additional 18 months. It would also extend the report submission an additional 18 months. The extension is required because the demonstrations will not be completed until August 2020. Once the demonstration is completed an evaluation will begin to interpret the results of the demonstration and submit the report based on those results.

Budget Implications: The proposal would be an 18-month implementation extension that allows Research, Development, Test, and Evaluation funds already authorized and appropriated to the Department of Defense in FY18 to be used by the Department of Homeland Security and the Department of Transportation to carry out this demonstration and complete the final report. It requires no additional appropriation of funds over the FYDP and results in no savings. It is merely an extension of a current, expiring directive authority.

Changes to Existing Law: This proposal would make the following changes to section 1606 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1725)

SEC. 1606. DEMOSTRATION OF BACKUP AND COMPLEMENTARY POSITION, NAVIGATION, AND TIMING CAPABILTIES OF GLOBAL POSITIONING SYSTEM

(a) PLAN.—During fiscal year 2018, the Secretary of Defense, the Secretary of Transportation, and the Secretary of Homeland Security (referred to in this section as the ''Secretaries'') shall jointly develop a plan for carrying out a backup GPS capability demonstration. The plan shall—

(1) be based on the results of the study conducted under section 1618 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2595); and

(2) include the activities that the Secretaries determine necessary to carry out such demonstration.

(b) BRIEFING.—Not later than 120 days after the date of the enactment of this Act, the Secretaries shall provide to the appropriate congressional committees a briefing on the plan developed under subsection (a). The briefing shall include—

(1) identification of the sectors that would be expected to participate in the backup GPS capability demonstration de- scribed in the plan;

(2) an estimate of the costs of implementing the demonstration in each sector identified in paragraph (1); and

(3) an explanation of the extent to which the demonstration may be carried out with the funds appropriated for such purpose.

(c) IMPLEMENTATION.—

(1) IN GENERAL.—Subject to the availability of appropriations and beginning not earlier than the day after the date on which the briefing is provided under subsection (b), the Secretaries shall jointly initiate the backup GPS capability demonstration to the extent described under subsection (b)(3).

(2) TERMINATION.—The authority to carry out the backup GPS capability demonstration under paragraph (1) shall terminate on ~~the date that is 18 months after the date of the enactment of this Act~~ December 31, 2020.

(d) REPORT.—Not later than ~~18 months after the date of the enactment of this Act~~ December 31, 2020, the Secretaries shall submit to the appropriate congressional committees a report on the backup GPS capability demonstration carried out under subsection (c) that includes—

(1) a description of the opportunities and challenges learned from such demonstration; and

(2) a description of the next actions the Secretaries determine appropriate to backup and complement the positioning, navigation, and timing capabilities of the Global Positioning System for national security and critical infrastructure, including, at a minimum, the timeline and funding required to issue a request for proposals for such capabilities.

(e) NSPD–39.—

(1) JOINT FUNDING.—The costs to carry out this section shall be consistent with the responsibilities established in National Security Presidential Directive 39 titled "U.S. Space- Based Positioning, Navigation, and Timing Policy".

(2) CONSTRUCTION.—Nothing in this section may be construed to modify the roles or responsibilities established in such National Security Presidential Directive 39.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section for fiscal year 2018 not more than $10,000,000 for the Department of Defense, as specified in the funding tables in division D.

(g) DEFINITIONS.—In this section:

(1) The term "appropriate congressional committees" means—

(A) the congressional defense committees;

(B) the Committee on Science, Space, and Technology, the Committee on Transportation and Infrastructure, and the Committee on Homeland Security of the House of Representatives; and

(C) the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate.

(2) The term "backup GPS capability demonstration" means a proof-of-concept demonstration of capabilities to backup and complement the positioning, navigation, and timing capabilities of the Global Positioning System for national security and critical infrastructure.

Subtitle B—Defense Intelligence and Intelligence-Related Activities

Section 1611. The Department of Defense will provide a classified analysis and justification.

Budget Implications: The Department of Defense will provide classified budget implications.

Changes to Existing Law: This proposal would make the following changes to section 1603 of title 10, United States Code:

§1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.—(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 594l(a) of title 5 or for employees whose rates of basic pay are fixed by statute.

(c) ADDITIONAL ALLOWANCES AND BENEFITS FOR EMPLOYEES OF THE DEFENSE CLANDESTINE SERVICE.—In addition to the authority to provide compensation under subsection (a), the Secretary of Defense may provide an employee in a defense intelligence position who is assigned to the Defense Clandestine Service allowances and benefits under paragraph (1) of section 9904 of title 5 without regard to the limitations in that section—

(1) that the employee be assigned to activities outside the United States; or

(2) that the activities to which the employee is assigned be in support of Department of Defense activities abroad.

Section 1612 would repeal section 426 of title 10, United States Code, establishing the "Intelligence, Surveillance, and Reconnaissance Integration Council." In 2018, the Department of Defense established a "Defense Intelligence and Security Integration Council," or DISIC. The DISIC, chaired by the Under Secretary of Defense for Intelligence and including the leadership of the defense intelligence enterprise, conducts recurring executive-level reviews to inform and make decisions regarding, and improve integration and coordination across, defense intelligence and security matters. The DISIC fulfills the purpose of the ISR Integration Council established by section 426.

Budget Implications: There are no implications in the FY 2020 President's Budget.

Changes to Existing Law: This proposal would repeal section 426 of title 10, United States Code:

~~**§426. Integration of Department of Defense intelligence, surveillance, and reconnaissance capabilities**~~

~~(a) ISR INTEGRATION COUNCIL.—(1) The Under Secretary of Defense for Intelligence shall establish an Intelligence, Surveillance, and Reconnaissance Integration Council—~~

~~(A) to assist the Under Secretary with respect to matters relating to the integration of intelligence, surveillance, and reconnaissance capabilities, and coordination of related developmental activities, of the military departments, intelligence agencies of the Department of Defense, and relevant combatant commands; and~~

~~(B) otherwise to provide a means to facilitate the integration of such capabilities and the coordination of such developmental activities.~~

~~(2) The Council shall be composed of—~~

~~(A) the senior intelligence officers of the armed forces and the United States Special Operations Command;~~

~~(B) the Director of Operations of the Joint Staff; and~~

~~(C) the directors of the intelligence agencies of the Department of Defense.~~

~~(3) The Under Secretary of Defense for Intelligence shall invite the participation of the Director of National Intelligence (or that Director's representative) in the proceedings of the Council.~~

~~(4) Each Secretary of a military department may designate an officer or employee of such military department to attend the proceedings of the Council as a representative of such military department.~~

~~(b) ISR INTEGRATION ROADMAP.—(1) The Under Secretary of Defense for Intelligence shall develop a comprehensive plan, to be known as the "Defense Intelligence, Surveillance, and Reconnaissance Integration Roadmap", to guide the development and integration of the Department of Defense intelligence, surveillance, and reconnaissance capabilities for the 15-year period of fiscal years 2004 through 2018.~~

~~(2) The Under Secretary shall develop the Defense Intelligence, Surveillance, and Reconnaissance Integration Roadmap in consultation with the Intelligence, Surveillance, and Reconnaissance Integration Council and the Director of National Intelligence.~~

Section 1613 would amend the title of Under Secretary of Defense for Intelligence (USD(I)) to the Under Secretary of Defense for Intelligence and Security. This modification accurately reflects the role of the USD(I) as the Secretary of Defense's Principal Staff Assistant for both intelligence and security matters. For example, in June, 2018, the Deputy Secretary of Defense designated the USD(I) as the Principal Staff Assistant and advisor to the Secretary and Deputy Secretary of Defense for implementing section 2672 of Title 10, United States Code, regarding the protection of DoD buldings, grounds, property, and persons. This change to the title of the position would be consistent with the above responsibilities, as well as those responsibilities assigned by Congress in Section 137 of title 10 as revised by the National Defense Authorization Act for Fiscal Year 2019. Lastly, this change inform and clarify that the Under Secretary is responsible not only for intelligence matters, but for security matters as well.

Budget Implications: There are no implications in the FY 2020 President's Budget.

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

TITLE 5, UNITED STATES CODE

§5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * *

Under Secretary of Defense for Intelligence <u>and Security</u>.

* * * * *

§5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * *

Deputy Under Secretary of Defense for Intelligence and Security.

* * * * *

TITLE 10, UNITED STATES CODE

§131. Office of the Secretary of Defense

(a) There is in the Department of Defense an Office of the Secretary of Defense. The function of the Office is to assist the Secretary of Defense in carrying out the Secretary's duties and responsibilities and to carry out such other duties as may be prescribed by law.

(b) The Office of the Secretary of Defense is composed of the following:
(1) The Deputy Secretary of Defense.
(2) The Chief Management Officer of the Department of Defense.
(3) The Under Secretaries of Defense, as follows:
(A) The Under Secretary of Defense for Research and Engineering.
(B) The Under Secretary of Defense for Acquisition and Sustainment.
(C) The Under Secretary of Defense for Policy.
(D) The Under Secretary of Defense (Comptroller).
(E) The Under Secretary of Defense for Personnel and Readiness.
(F) The Under Secretary of Defense for Intelligence and Security.

* * * * *

§ 137. Under Secretary of Defense of Intelligence and Security

(a) There is an Under Secretary of Defense for Intelligence and Security, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence and Security shall—

(1) have responsibility for the overall direction and supervision for policy, program planning and execution, and use of resources, for the activities of the Department of Defense that are part of the Military Intelligence Program;

(2) execute the functions for the National Intelligence Program of the Department of Defense under section 105 of the National Security Act of 1947 (50 U.S.C. 3038), as delegated by the Secretary of Defense;

(3) have responsibility for the overall direction and supervision for policy, program planning and execution, and use of resources, for personnel security, physical security, industrial security, and the protection of classified information and controlled unclassified information, related activities of the Department of Defense; and

(4) perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence and security.

(c) The Under Secretary of Defense for Intelligence and Security takes precedence in the Department of Defense after the Under Secretary of Defense for Personnel and Readiness.

§137a. Deputy Under Secretaries of Defense

(a)(1) There are six Deputy Under Secretaries of Defense.

* * * * *

(c)(1) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Research and Engineering.

* * * * *

(6) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Intelligence and Security, who shall be appointed from among persons who have extensive expertise in intelligence matters.

* * * * *

§139a. Director of Cost Assessment and Program Evaluation

(a) APPOINTMENT.—There is a Director of Cost Assessment and Program Evaluation in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate.

* * * * *

(d) RESPONSIBILITIES.—The Director of Cost Assessment and Program Evaluation shall serve as the principal official within the senior management of the Department of Defense for the following:

* * * * *

(6) Assessments of special access and compartmented intelligence programs, in coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Intelligence and Security and in accordance with applicable policies.

* * * * *

§139b. Special Operations Policy and Oversight Council

(a) IN GENERAL.—In order to fulfill the responsibilities specified in section 138(b)(4) 1 of this title, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, or the designee of the Assistant Secretary, shall establish and lead a team to be known as the "Special Operations Policy and Oversight Council" (in this section referred to as the "Council").

* * * * *

(c) MEMBERSHIP.—The Council shall include the following:

(1) The Assistant Secretary, who shall act as leader of the Council.

(2) Appropriate senior representatives of each of the following:

* * * * *

(E) The Under Secretary of Defense for Intelligence and Security.

* * * * *

§181. Joint Requirements Oversight Council

(a) IN GENERAL.—There is a Joint Requirements Oversight Council in the Department of Defense.

* * * * *

(d) ADVISORS.—

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

(A) The Under Secretary of Defense for Policy.

(B) The Under Secretary of Defense for Intelligence and Security.

* * * * *

§393. Reporting on penetrations of networks and information systems of certain contractors

(a) PROCEDURES FOR REPORTING PENETRATIONS.—The Secretary of Defense shall establish procedures that require each cleared defense contractor to report to a component of the Department of Defense designated by the Secretary for purposes of such procedures when a network or information system of such contractor that meets the criteria established pursuant to subsection (b) is successfully penetrated.

(b) NETWORKS AND INFORMATION SYSTEMS SUBJECT TO REPORTING.—

(1) CRITERIA.—The Secretary of Defense shall designate a senior official to, in consultation with the officials specified in paragraph (2), establish criteria for covered networks to be subject to the procedures for reporting system penetrations under subsection (a).

(2) OFFICIALS.—The officials specified in this subsection are the following:

(A) The Under Secretary of Defense for Policy.

(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(C) The Under Secretary of Defense for Intelligence and Security.

(D) The Chief Information Officer of the Department of Defense.

(E) The Commander of the United States Cyber Command.

* * * * *

§426. Integration of Department of Defense intelligence, surveillance, and reconnaissance capabilities

(a) ISR INTEGRATION COUNCIL.—(1) The Under Secretary of Defense for Intelligence and Security shall establish an Intelligence, Surveillance, and Reconnaissance Integration Council—

(A) to assist the Under Secretary with respect to matters relating to the integration of intelligence, surveillance, and reconnaissance capabilities, and coordination of related developmental activities, of the military departments, intelligence agencies of the Department of Defense, and relevant combatant commands; and

(B) otherwise to provide a means to facilitate the integration of such capabilities and the coordination of such developmental activities.

(2) The Council shall be composed of—

(A) the senior intelligence officers of the armed forces and the United States Special Operations Command;

(B) the Director of Operations of the Joint Staff; and

(C) the directors of the intelligence agencies of the Department of Defense.

(3) The Under Secretary of Defense for Intelligence and Security shall invite the participation of the Director of National Intelligence (or that Director's representative) in the proceedings of the Council.

(4) Each Secretary of a military department may designate an officer or employee of such military department to attend the proceedings of the Council as a representative of such military department.

(b) ISR INTEGRATION ROADMAP.—(1) The Under Secretary of Defense for Intelligence and Security shall develop a comprehensive plan, to be known as the "Defense Intelligence, Surveillance, and Reconnaissance Integration Roadmap", to guide the development and integration of the Department of Defense intelligence, surveillance, and reconnaissance capabilities for the 15-year period of fiscal years 2004 through 2018.

(2) The Under Secretary shall develop the Defense Intelligence, Surveillance, and Reconnaissance Integration Roadmap in consultation with the Intelligence, Surveillance, and Reconnaissance Integration Council and the Director of National Intelligence.

* * * * *

§430. Tactical Exploitation of National Capabilities Executive Agent

(a) DESIGNATION.—The Under Secretary of Defense for Intelligence and Security shall designate a civilian employee of the Department or a member of the armed forces to serve as the Tactical Exploitation of National Capabilities Executive Agent.

(b) DUTIES.—The Executive Agent designated under subsection (a) shall—

(1) report directly to the Under Secretary of Defense for Intelligence and Security;

(2) work with the combatant commands, military departments, and the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)) to—

(A) develop methods to increase warfighter effectiveness through the exploitation of national capabilities; and

(B) promote cross-domain integration of such capabilities into military operations, training, intelligence, surveillance, and reconnaissance activities.

Subtitle C—Cyberspace-Related Matters

Section 1621 would allow the Secretaries of military departments to use money appropriated for Operation and Maintenance (O&M) to develop cyber operations-peculiar capabilities up to $3,000,000. The Department of Defense (DoD) could use its O&M funds for rapid creation, testing, fielding, and operation of cyber capabilities that would be developed and used within the one year appropriation period.

Cyberspace threats are a continuing concern for the DoD. While the services are working to develop agile teams to respond to cyberspace threats and opportunities, cyber capability development is hamstrung by an acquisition funding process that is often incompatible with real-time operations and innovation. Cyber threats and opportunities must be addressed quickly; however, to address these threats, current law often requires coordinated use of up to three different types of funding: Research Development Testing and Evaluation (RDT&E), O&M, and Procurement. Additionally, the appropriate type of funds for any given project is not always

clear, and coordinated use of multiple types of funds can lead to bureaucratic requirements and reviews that ultimately hamper cyber capability development within operationally relevant timeframes.

Cyber operations-peculiar capabilities are often urgently needed in hours to days for both offensive and defensive purposes. These types of capabilities can be fleeting in nature and often do not have a useful lifecycle of more than a few months after creation. Due to their short life-cycle and operational nature, funding these types of cyber capabilities with O&M funds could be determined to be appropriate. Additionally, using O&M funds increases operational flexibility and reduces planning and budgeting overhead.

Because creation of these types of cyber capabilities can include generation of new applications and tools, the use of RDT&E funding could be determined to be more appropriate in some situations. Unfortunately, the planning and programming timeline for RDT&E funds can make use of RDT&E funds to develop and field a new capability in days or weeks impossible. Moreover, operational units requiring rapid cyber capability development generally have primarily O&M funds available and must coordinate with research labs for developmental work. Such coordination takes time and may delay operations.

Finally, if a cyber operations-peculiar capability is considered to be an investment, then the use of procurement funds is required. Generally, capabilities expected to last more than a year and cost in excess of $250,000 are considered "investments" and funded with procurement funds. Investments are the costs that result in the acquisition of or additions to end items. However, unlike traditional investment items, low-cost cyber capabilities are often created and become obsolete within a one-year period. They may or may not require maintenance and they are often not incorporated into a weapon system. For all these reasons, low-cost cyber capabilities are more properly accounted as O&M expenses.

Contributing to the difficulty of determining appropriate funds for cyber-capability development is a fundamental terminology difference between fiscal law and cyberspace operations. For fiscal law purposes, "development" is the "systematic use of the knowledge and understanding gained from research, for the production of useful materials, devices, systems, or methods, including the design and development of prototypes and processes." However, software developers call all creation of code "development" whether it falls within the fiscal law definition or not. This terminology difference often creates confusion and complicates the fiscal analysis necessary to determine proper funds for cyber operations-peculiar capability development.

The fiscal gray area between situations where it is appropriate to use different types of funds causes delays and places artificial limitations on cyber operators' ability to quickly meet cyber needs. For example, current Air Force real-time operations and innovation guidance permits the use of O&M funds in certain situations where a capability "enhances and/or is linked to an existing operational system, platform[,] or capability." This limitation is intended solely to ensure that spending of O&M funds is appropriate as the modifications are considered maintenance of an existing system. Artificial limitations such as this reduce otherwise responsive

and creative efforts to address real-world threats or to develop exploits of adversary vulnerabilities.

Moreover, the DoD has recently increased its use of Other Transaction Authorities (OTA) to acquire innovative technologies from non-traditional sources. Through OTA agreements, the DoD has been able to acquire innovative technologies in a fraction of the time generally necessary for traditional government acquisitions. However, the services do not agree whether and in what circumstances O&M can be used to fund activities under OTA agreements. For these reasons, operational commanders are often not able to use OTA agreements for rapid prototyping efforts with immediate operational benefits. This proposal would permit use of O&M to fund OTA agreements for cyber operations-peculiar capabilities up to $3,000,000.

Current law also creates an environment where development is halted before a capability is ready for transition to an operational user. For example, where a DoD laboratory has completed a prototype but there is no existing acquisition program available to fund the final stages of development and transition. This problem is known colloquially as the "valley of death." For small-scale cyber capabilities, often the technology could be transitioned directly from the developing DoD laboratory to the warfighter in the field if operational commanders were able to dedicate O&M funds to the final testing and transition of the capability. Accordingly, while there are many contributing factors to the technology transition problem, permitting operational commanders to dedicate O&M funds to transition promising low-cost cyber operations-peculiar capabilities needed for a rapid response would be beneficial.

This proposal would address the above concerns by permitting the use of O&M funds for the development of cyber operations-peculiar capabilities up to $3,000,000. The language of this proposal is based on a similar exception permitting the use of O&M funds for minor military construction projects under section 2805(c) of title 10, United States Code. Additionally, this proposal would increase efficiency by decreasing complex funding coordination between units and decreasing artificial limitations on cyberspace innovation. Permitting the use of O&M funds for low-cost cyber capabilities would increase operational flexibility as commanders could more efficiently re-prioritize funding as needs or opportunities arise and provide operational commanders the ability to commit O&M funds to promising technologies.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	3	3	3	3	3	Operation and Maintenance, Army
Air Force	3	3	3	3	3	Operations and Maintenance, Air Force (non USCYBERCOM)
Navy	3	3	3	3	3	Operation and Maintenance, Navy
Marine Corps	3	3	3	3	3	Operation and Maintenance, Navy (Marine Corps)
Total	12	12	12	12	12	--

Changes to Existing Law: This proposal would add a new section to chapter 134 of title 10, United States Code, the full text of which is shown in the legislative language above.

TITLE XVII—SPACE FORCE

This legislative proposal, if enacted into law as part of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020, would establish a new Armed Force, to be known as the "U.S. Space Force", within the Department of the Air Force. No new U.S. Armed Force has been established since 1947 when both the U.S. Air Force and the Department of the Air Force were established. The world has changed significantly in the more than 70 years since that time.

Competitor nations, namely China and Russia, are challenging U.S. power, influence, and interests, threatening our freedom of action in every domain including space. Potential adversaries recognize our dependence on space to project military power and are fielding capabilities to erode our military advantage. To ensure unfettered access to and freedom to operate in space, and to prepare for a contested space domain, we must strategically adapt to the changing character of war.

The new U.S Space Force would be the sixth branch of the Armed Forces, and would be responsible for: (1) providing for freedom of operations in, from, and to the space domain for the United States; (2) providing independent military options for joint and national leadership; and (3) enabling the lethality and effectiveness of the joint force. It would include both combat and combat-support functions to enable prompt and sustained offensive and defensive space operations and joint operations in all domains.

The legislative proposal is intended to be included in the NDAA for FY 2020 as a new title identified as "Title XVII – Space Force." Subtitle A (Sections 1701 – 1707) of the legislative proposal, title XVII, would consist of several new substantive provisions of law to be added to title 10, United States Code (U.S.C.), while subtitle B (Sections 1711 – 1721) would make various technical and conforming changes to various sections of existing law in title 10 and other relevant titles of the U.S.C. that are simply a necessary consequence of establishing a new Armed Force, as described below:

Subtitle A—United States Space Force

Section 1701 would add a new chapter 909 to the existing subtitle D of title 10, United States Code (U.S.C.), which covers the Department of the Air Force, to establish the U.S. Space Force as an Armed Force within the Department of the Air Force. The new chapter 909 would consist of sections 9091 through 9095 of title 10, and would provide for a Chief of Staff of the Space Force, a Vice Chief of Staff of the Space Force, and a Space Staff made up of these officials as well as other offices established by the Secretary of the Air Force as necessary and appropriate.

The specific sections of title 10, U.S.C., which would be added as part of the new chapter 909, are further described as follows:

§9091. Establishment of the Space Force

This section would establish the U.S. Space Force and provide its functions within the Department of the Air Force. It would describe the composition of the U.S. Space Force as consisting of Regular and associated Reserve components, and all U.S. Space Force units and organizations.

§9092. The Space Staff: function, composition

This section would establish a Space Staff consisting of a Chief of Staff of the Space Force, a Vice Chief of Staff of the Space Force, and other such officials as may be established by law or otherwise assigned. It would describe the duties of the Space Staff, Chief of Staff, and Vice Chief of Staff and their relationship to the Secretary of the Air Force.

§9093. The Space Staff: general duties

This section would establish the duties and authorities of the Space Staff, including the organizing, training, and equipping of the Space Force as a part of the Department of the Air Force, and as a force provider to the combatant commands, as well as the preparation and execution of U.S. Space Force policies and plans.

§9094. Chief of Staff of the Space Force

This section would establish the position of the Chief of Staff of the Space Force in the grade of general to perform duties as prescribed, including to preside over the Space Staff. It would provide that the Chief of Staff of the Space Force would also perform the duties of a member of the Joint Chiefs of Staff.

§9095. Vice Chief of Staff of the Space Force

This section would establish the position of the Vice Chief of Staff of the Space Force in the grade of general with the authorities and duties with respect to the Space Force as the Chief of Staff of the Space Force may delegate or prescribe, with the approval of the Secretary of the Air Force. It would provide for the orderly succession of duties in the event the Chief of Staff or Vice Chief of Staff is absent or disabled or if their positions become vacant.

Section 1702 would amend the existing section 9015 of title 10, U.S.C., which provides for a single Under Secretary of the Air Force, by authorizing two Under Secretaries of the Air Force, one of whom would be a new Under Secretary of the Air Force for Space to be known as the Under Secretary for Space. This new Under Secretary would be a Presidentially appointed, Senate-confirmed official within the Secretariat of the Department of the Air Force. This official would be responsible for working with other Department of the Air Force officials, as well as other Department of Defense officials, for the overall supervision of space matters. This section

also would amend section 9013 of title 10, U.S.C., to reflect there being two Under Secretaries in the Secretariat of the Department of the Air Force, and would designate the Under Secretary of the Air Force as the first assistant to the Secretary of the Air Force.

Section 1703 would amend chapter 5 of title 10, U.S.C., by prescribing that the Chief of Staff of the Space Force would be a member of the Joint Chiefs of Staff, equivalent to the uniformed leaders of the other Armed Forces, as well as acknowledging that U.S. Space Force personnel may be part of the Joint Staff on the same basis as members of the other Armed Forces.

Section 1704 would amend the existing chapter covering civilian personnel in the Department of the Air Force, chapter 947 of title 10, U.S.C., to provide greater flexibility for the Department on personnel matters such as recruiting, hiring, and pay for the civilian employees of the Department of the Air Force assigned to, or who support, the U.S. Space Force or U.S. Space Command, similar to those flexibilities and enhanced authorities that exist in other title 10 personnel systems such as the Defense Civilian Intelligence Personnel System.

Section 1705 would amend the existing chapter 937 of title 10, U.S.C., that covers decorations and awards available for all Department of the Air Force personnel, by adding a new section 9287 of title 10, U.S.C., authorizing the Secretary of the Air Force to approve new decorations and awards for U.S. Space Force personnel, as appropriate.

Section 1706 would repeal the requirement with regard to the tenure and authorities of the Commander of Air Force Space Command. This section would also add a new section 9531 to title 10, U.S.C., to maintain the role of the Department of the Air Force with respect to the procurement of commercial satellite communications services for the Department of Defense, by assigning this responsibility to the Secretary of the Air Force.

Section 1707 would provide several special temporary authorities for the Secretary of Defense to transfer personnel, property, other resources, and programs from any Department of Defense component to the Department of the Air Force and the new U.S. Space Force during a five-year transition period, with an additional two-year optional extension. This section would also suspend manpower limitations identified elsewhere in law, during the transition period.

Subtitle B—Conforming Amendments

Sections 1711-1721 make the necessary conforming amendments to specific provisions of existing law, in the relevant titles of the United States Code enacted as positive law, including titles 5, 10, 14, 18, 31, 37, 38, 41, and 51, such as updating the definition of an "Armed Force" to include the U.S. Space Force, and adding the phrase "Space Force" to any section of existing law that currently lists the "Army, Navy, Air Force, and Marine Corps." Section 1721 is a general savings provision to allow the Secretary of Defense and the Secretary of the Air Force to exercise the same authorities they hold under other provisions of law with respect to the Air Force, to be exercised also with respect to the Space Force, or to allow members of the Space Force to be treated the same as other armed forces members under other provisions of law that were not specifically amended to reference Space Force members.

DIVISION B—[RESERVED]