

1 **SEC. \_\_\_\_. BASIC ALLOWANCE FOR HOUSING FOR MEMBERS WITHOUT**  
2 **DEPENDENTS WHEN HOMEPORT CHANGE WOULD FINANCIALLY**  
3 **DISADVANTAGE MEMBER.**

4 Section 403(o) of title 37, United States Code, is amended—

- 5 (1) by inserting “(1)” before “In the case of a member who is assigned”; and  
6 (2) by adding at the end the following new paragraph:

7 “(2) In the case of a member without dependents who is assigned to a unit that undergoes  
8 a change of home port or a change of permanent duty station, the member may be treated for the  
9 purposes of this section as if the unit to which the member is assigned did not undergo such a  
10 change if the Secretary concerned determines that it would be inequitable to base the member’s  
11 entitlement to, and amount of, a basic allowance for housing on the new home port or permanent  
12 duty station.”.

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

**Section-by-Section Analysis**

This proposal would allow the Secretaries of the Military Departments discretionary authority to authorize a housing allowance based on the old homeport or permanent duty station for single members disadvantaged as a result of a unit’s change of homeport or permanent duty station. If enacted, the Secretary concerned may determine that when undergoing a change in homeport or change in permanent duty station it would be inequitable to pay a housing allowance other than based on the previous homeport or permanent duty station. Currently, members who undergo homeport changes from CONUS to OCONUS must be on board for at least 12 months after the effective date of the homeport change to warrant a fully-funded permanent change of station move. When members are in receipt of orders to return to the area of the previous homeport or permanent duty station, rather than receiving a fully-funded move under the homeport change order, this proposal would authorize the Secretary authority to approve retention of a previously-authorized housing allowance until return to the previous homeport or duty station.

During the most recent three-carrier ship swaps, housing allowances for a number of single Sailors living in commercial housing were stopped upon the effective date of the homeport shift, as all resided on ship and there is no authority to pay a housing allowance when a member without dependents is assigned to Government quarters. Some of these Sailors were already in receipt of follow-on orders back to the old homeport where they had to terminate commercial

housing leases. Under current law, these members lost their housing allowance and either had to move out of their current residence (despite returning in a few months) or pay rent/mortgage out-of-pocket. Married Sailors with dependents are afforded the opportunity to retain housing allowance at the old homeport rate. In light of the inequity between married and single members, Navy requested a waiver to pay a housing allowance to single members at the old permanent duty station or other than the permanent duty station/homeport rate. OSD denied the request due to absence of authority to approve such a waiver. The number of Sailors impacted due to the denial is unknown. Enactment of this proposal would eliminate an inequity to single Sailors with orders to return to their old permanent duty station/homeport.

This proposal considers provisions under current law of a low-cost or no-cost move, which permit a member to retain eligibility for a previously authorized housing allowance if not offered a funded permanent change of station order. This proposal would allow the Secretary concerned to treat members assigned to units that undergo a change of home port or permanent duty station in the same manner as a low-cost or no-cost move.

**Budget Implications:** Based on typical planned Organized Unit Moves (OUM) affecting roughly 450 officers and 2500 E-5 through E-9 per year, approximately 15 officers and 80 enlisted would receive this entitlement per year. E-4 and below were not included in the estimate because nearly all single junior Sailors should be berthed in barracks. The estimate assumes one-half of the crew has no dependents, one-fourth of the crew has received transfer orders (within ~9 months of transfer), and one-fourth of transfer orders are to the original Permanent Duty Station (PDS). The last two assumptions will be greatly affected by PCS funding availability and assignment detailer action. The mean duration of entitlement for Sailors affected is approximately 6 months. The majority of Sailors affected typically reside in barracks at the new PDS, thus, receiving no BAH. Therefore, the cost would be the BAH rate at the old PDS rate for 6 months, per affected Sailor. The cost estimate is based on an average of fleet homeport BAH rates for officers in pay grade O3, and enlisted in pay grade E5, in FY16. After inflation, the cost is approximately \$1.1M in FY20. 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
Navy	\$1.1	\$1.1	\$1.1	\$1.2	\$1.2	Military Personnel, Navy
Army						Army do not intend to use this authority
Air Force						Air Force do not intend to use this authority
Total	\$1.1	\$1.1	\$1.1	\$1.2	\$1.2	

**Changes to Existing Law:** This proposal would make the following changes to section 403(o) of title 37, United States Code:

**§403. Basic allowance for housing**

(a) GENERAL ENTITLEMENT.—(1) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing at the monthly rates prescribed under this section or another provision of law with regard to the

applicable component of the basic allowance for housing. The amount of the basic allowance for housing for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The basic allowance for housing may be paid in advance.

(2) A member of a uniformed service with dependents is not entitled to a basic allowance for housing as a member with dependents unless the member makes a certification to the Secretary concerned indicating the status of each dependent of the member. The certification shall be made in accordance with regulations prescribed by the Secretary of Defense.

\* \* \* \* \*

(o) TREATMENT OF LOW-COST AND NO-COST MOVES AS NOT BEING REASSIGNMENTS.—

(1) In the case of a member who is assigned to duty at a location or under circumstances that make it necessary for the member to be reassigned under the conditions of low-cost or no-cost permanent change of station or permanent change of assignment, the member may be treated for the purposes of this section as if the member were not reassigned if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the cost of housing in the area to which the member is reassigned.

(2) In the case of a member without dependents who is assigned to a unit that undergoes a change of home port or a change of permanent duty station, the member may be treated for the purposes of this section as if the unit to which the member is assigned did not undergo such a change if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the new home port or permanent duty station.

1 **SEC. \_\_\_. CONTINUATION ON ACTIVE DUTY OFFICERS IN CERTAIN MILITARY**  
2 **SPECIALTIES AND CAREER TRACKS.**

3 Section 637a(a) of title 10, United States Code, is amended by inserting “separation or”  
4 after “provided for the”.

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

**Section-by-Section Analysis**

This proposal essentially would correct a technical oversight in section 506 of the FY 2019 NDAA by amending section 637a of title 10, United States Code, to authorize the Secretary of the military department concerned to continue to complete up to 40 years of active service, certain officers serving in the pay grades of O-3 and O-4 in an occupational specialty, rating, or specialty code designated by the Secretary who are not yet retirement eligible, but who would otherwise be subject to statutory separation.

While Section 506 of Public Law 115-232 expanded applicability of the authority (previously limited to officers above pay grade O-4) to officers serving in pay grades above O-2, it retained applicability only to officers otherwise subject to statutory “retirement”. Retaining that limitation effectively precludes applicability to O-3 and O-4 who are not yet retirement eligible, but who would be otherwise subject to statutory “separation” — the very officers to which Section 506 was intended to apply. If not enacted, flexibility intended by Section 506 would be thwarted, resulting in mandatory separation of some officers in pay grades O-3 and O-4 who possess critical skills the Secretary concerned would otherwise desire to retain.

**Budget Implications:** This is a non-budgetary proposal.

**Changes to Existing Law:** This proposal would make the following changes to section 637a of title 10, United States Code:

**§637a. Continuation on active duty: officers in certain military specialties and career tracks**

(a) **IN GENERAL.**—The Secretary of the military department concerned may authorize an officer in a grade above grade O–2 to remain on active duty after the date otherwise provided for the separation or retirement of the officer in section 632, 633, 634, 635, or 636 of this title, as applicable, if the officer has a military occupational specialty, rating, or specialty code in a military specialty designated pursuant to subsection (b).

(b) **MILITARY SPECIALTIES.**—Each Secretary of a military department shall designate the military specialties in which a military occupational specialty, rating, or specialty code, as applicable, assigned to members of the armed forces under the jurisdiction of such Secretary

authorizes the members to be eligible for continuation on active duty as provided in subsection (a).

(c) DURATION OF CONTINUATION.—An officer continued on active duty pursuant to this section shall, if not earlier retired, be retired on the first day of the month after the month in which the officer completes 40 years of active service.

(d) REGULATIONS.—The Secretaries of the military departments shall carry out this section in accordance with regulations prescribed by the Secretary of Defense. The regulations shall specify the criteria to be used by the Secretaries of the military departments in designating military specialties for purposes of subsection (b).

1 **SEC. \_\_\_\_. DESIGNATION OF ADDITIONAL HIGH INCOME FOREIGN COUNTRIES**  
2 **PROHIBITED FROM RECEIVING INTERNATIONAL MILITARY**  
3 **EDUCATION AND TRAINING GRANT ASSISTANCE UNDER THE**  
4 **FOREIGN ASSISTANCE ACT OF 1961.**

5 Section 546(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2347e(b)) is amended  
6 by striking “and Spain” and inserting “Spain, Saudi Arabia, Kuwait, United Arab Emirates, and  
7 Qatar”.

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

**Section-by-Section Analysis**

This proposal would designate four additional countries as “high-income,” thereby permitted receipt of military training at an incremental rate while prohibiting receipt of assistance, on a grant basis, as part of the Foreign Military Sales (FMS) program.

The FMS program is a form of security assistance authorized by the Arms Export Control Act (AECA) (22 U.S.C. 2751 et seq.) whereby the United States Government (USG) may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the United States.

The AECA requires foreign governments pay the full cost of defense services purchased from the USG under FMS. However, the AECA, in section 21(a)(1)(C) (22 U.S.C. 2761(a)(1)(C)), provides an exception for certain countries for FMS training. Foreign countries receiving International Military Education and Training (IMET) grant assistance, or designated “high-income” countries, are charged only the additional costs incurred by the USG to provide the training, if these countries purchase training with their own national funds. This cost required to be charged by the AECA is generally referred to as the “FMS incremental rate.” Section 546 of the Foreign Assistance Act of 1961 (FAA) currently designates Austria, Finland, the Republic of Korea, Singapore, and Spain as high-income countries, ineligible to receive IMET grant assistance under Chapter 5 of the Act.

Previously, the Department of State has annually provided a small amount of IMET funds for Saudi Arabia, Kuwait, the United Arab Emirates, and Qatar in order to allow them to be charged the FMS incremental rate for training they purchase under FMS with their own national funds. This proposal is important to encourage these countries to continue to participate in training programs sponsored and provided by the USG. These countries partner with the USG in the global campaign against Al Qaeda in Iraq and Afghanistan. These countries are among the largest FMS customers and are key leaders in the Arab and Muslim worlds. This legislative

proposal will help the governments of these countries to continue to participate in training opportunities which facilitate military proficiency, increase interoperability, and strengthen our mutual strategic security partnership.

### **Country Considerations:**

**The United Arab Emirates (UAE):** The UAE continues to be among the top 5 leading importers of U.S. defense articles and training with nearly \$25B in active cases. Recent examples include: a \$2B Apache attack helicopter case with training; a \$6B PATRIOT missile case that includes training; in-country hosting of a Defense Institute for Security Cooperation Studies (DISCS) mobile training team; and a current Letter of Request for a \$100M investment in U.S. Marine Corps-provided training to support the UAE Presidential Guard (comparable to U.S. Special Forces). The UAE continues to be an active supporter and participant in coalition operations to include deployments complimenting U.S. forces in the Helmand Province of Afghanistan and cooperative training missions in Yemen. Granting this exception would deter the UAE from cooperating and seeking closer ties with potential U.S. adversaries while encouraging future investment in U.S. training, increasing interoperability across U.S. and Emirati forces, and strengthening the overall relationship between the two governments.

**The Kingdom of Saudi Arabia (KSA):** The Kingdom of Saudi Arabia (KSA) continues to be the leading importer of U.S. defense articles and training with nearly \$115B in active Foreign Military Sales cases. Recent examples include: a nearly \$30B F-15SA Fighter program with associated training; investment in a \$6B Multi-Mission Surface Combatant ship case to include training, and a \$13.5B investment in Terminal High Altitude Area Defense (THAAD) in negotiation, which includes training. The KSA continues to be an active supporter in regional stability, to include countering malign Iranian influence. KSA currently receives a nominal \$10K in IMET allocations to allow them access to training at the incremental rate; however KSA will no longer receive this allocation in fiscal year 2019. Granting this exception would help deter the KSA from cooperating and seeking closer ties with potential U.S. adversaries while encouraging future investment in U.S. training, increasing interoperability across U.S. and Saudi forces, and strengthening the overall relationship between the two governments.

**Kuwait:** Kuwait continues to be among the leading importers of U.S. defense articles and training with nearly \$15.5B in active cases. Recent examples include: a \$5B F/A-18E fighter aircraft case with associated training; investment in \$1B M1A2 tank recapitalization; and a current case-funded training program focusing on Professional Military Education. Granting this exception would deter Kuwait from cooperating and seeking closer ties with potential U.S. adversaries while encouraging future investment in U.S. training, increasing interoperability across U.S. and Kuwaiti forces, and strengthening the overall relationship between the two governments.

**Qatar:** Qatar rose from having nominal U.S. FMS cases in 2014 to become a leading importer of U.S. defense articles and training with nearly \$25B in active cases as of 2018, and another \$10B in various stages of development. Current procurements include total case values for material and training: \$9.4B for 36 F-15QA, \$7.2B PATRIOT missile case, \$2.3B for 24 AH-64E Apache attack helicopters, \$1.2B for C-17 sustainment, and several billions in various radars, munitions,

and training. Future procurements would include NASAMS, more Apaches, KC-46s, and CH-47s. Qatari C-17s are supporting coalition operations in Afghanistan and humanitarian relief efforts as crises develop. Additionally, Qatar hosts US military forces at Al Udeid Air Base and are making significant contributions to the facilities both for operational enhancements but also for the welfare of U.S. personnel deployed there. Granting this exception would deter Qatar from cooperating and seeking closer ties with potential U.S. adversaries while encouraging future investment in U.S. training, increasing interoperability across U.S. and Qatari forces, and strengthening the overall relationship between the two governments.

**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 amend section 546 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347e) as follows:

SEC. 546. PROHIBITION ON GRANT ASSISTANCE FOR CERTAIN HIGH INCOME FOREIGN COUNTRIES.

(a) IN GENERAL.—None of the funds made available for a fiscal year for assistance under this chapter may be made available for assistance on a grant basis for any of the high-income foreign countries described in subsection (b) for military education and training of military and related civilian personnel of such country.

(b) HIGH-INCOME FOREIGN COUNTRIES DESCRIBED.—The high-income foreign countries described in this subsection are Austria, Finland, the Republic of Korea, Singapore, ~~and Spain~~ Spain, Saudi Arabia, Kuwait, United Arab Emirates, and Qatar.



1 **SEC. \_\_\_\_. EXPANSION OF DIRECT HIRING AUTHORITY FOR CHILDCARE**  
2 **SERVICE PROVIDERS.**

3 Section 559 of the National Defense Authorization Act for Fiscal Year 2018 (Public  
4 Law 115-91; 10 U.S.C. 1792 note) is amended—

5 (1) in the section heading, by striking “**FOR DEPARTMENT CHILD**  
6 **DEVELOPMENT CENTERS**”;

7 (2) in subsection (a)(1), by striking “for Department of Defense child  
8 development centers” and inserting” “for the Department of Defense”; and

9 (3) in subsection (e), by striking “in child development centers”.

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

**Section-by-Section Analysis**

The current legislation limits the Department of Defense’s ability to directly hire childcare providers who perform critical childcare duties outside of the child development centers. These additional positions include Family Childcare Coordinators and School Age Childcare Coordinators whose direct contributions impact the readiness of our military workforce.

Data indicates that competing for talent with the private sector has significantly increased and includes critical occupations like childcare providers. Timely hiring of all childcare providers is critical to the overall operation of the system of the Department’s Child and Youth Programs and military readiness. To leave any of the positions vacant impacts the Department’s ability to comply with applicable laws and ensure the health and safety of the children enrolled.

This proposal provides the Department of Defense the authority to exercise personnel flexibilities by providing expanded direct hiring capability for all childcare providers, significantly reducing the time to hire individuals for these for critical positions. This authority is exercised without regard to subchapter I of chapter 33 of title 5, United States Code. Direct hiring authority expedites hiring by eliminating competitive rating and ranking and veterans' preference procedures.

While the proposed legislation is new, the direct hiring authority concept is not novel to the Department of Defense. Congress enacted several new direct and expedited hiring authorities under the National Defense Authorization Acts of 2017 and 2018 that the Department continues to utilize to the maximum extent possible. These authorities provide significant

advantages in timeliness compared to the traditional recruitment process. Direct hiring authority is a key enabler, allowing hiring officials to directly recruit and offer jobs on the spot to highly qualified childcare employees.

**Budget Implications:** This proposal would not increase current civilian allocations and all funding would remain within the confines of the fiscal year budgets. 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 amend the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91) as follows:

\* \* \* \* \*

**SEC. 559. DIRECT HIRE AUTHORITY FOR DEPARTMENT OF DEFENSE FOR  
CHILDCARE SERVICES PROVIDERS ~~FOR DEPARTMENT CHILD DEVELOPMENT  
CENTERS.~~**

(a) In General.--The Secretary of Defense may appoint, without regard to any provision of subchapter I of chapter 33 of title 5, United States Code, qualified childcare services providers in the competitive service if the Secretary determines that--

- (1) there is a critical hiring need for childcare services providers ~~for Department of Defense child development centers~~ for the Department of Defense; and
- (2) there is a shortage of childcare services providers.

(b) Regulations.--The Secretary shall carry out this section in accordance with regulations prescribed by the Secretary for purposes of this section.

(c) Deadline for Implementation.--The Secretary shall prescribe the regulations required by subsection (b), and commence implementation of subsection (a), by not later than May 1, 2018.

(d) Briefing.--Not later than 90 days after the end of each of fiscal years 2019 and 2021, the Secretary of Defense shall provide a briefing to the Committee on Armed Services of the House of Representatives, the Committee on Armed Services of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate on the use of the appointment authority provided by subsection (a).

(e) Childcare Services Provider Defined.—In this section, the term “childcare services provider” means a person who provides childcare services for dependent children of members of the Armed Forces and civilian employees of the Department of Defense ~~in child development centers~~ on Department installations.

\* \* \* \* \*

1 **SEC. \_\_. DEPARTMENT OF DEFENSE SUPPORT TO AFGHAN GOVERNMENT-LED**  
2 **RECONCILIATION AND REINTEGRATION ACTIVITIES.**

3 (a) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary  
4 of State, provide covered support to designated persons and entities and other departments and  
5 agencies of the United States Government for reconciliation and reintegration activities in  
6 accordance with this section.

7 (b) REIMBURSEMENT.—

8 (1) DESIGNATED PERSONS AND ENTITIES.—The Secretary may provide covered  
9 support to designated persons and entities under this section on a reimbursable or non-  
10 reimbursable basis.

11 (2) FEDERAL AGENCIES.—The Secretary may only provide covered support to  
12 departments and agencies of the United States Government under this section on a  
13 reimbursable basis.

14 (3) CREDITING OF RECEIPTS.—Any receipt of the United States as a result of  
15 providing covered support under this section shall be credited to the appropriation, fund,  
16 or account used in incurring the obligation.

17 (c) LOCATION.—The Secretary may only provide covered support under this section in a  
18 location outside of Afghanistan if the Secretary, with the concurrence of the Secretary of State,  
19 determines it is in the national interest of the United States.

20 (d) FUNDING.—

21 (1) SOURCE OF FUNDS.—Amounts for covered support provided under this  
22 section in a fiscal year may only be derived from amounts authorized to be appropriated  
23 for such fiscal year for the Department of Defense for Operation and Maintenance.

1 (2) LIMITATION.—Not more than \$15,000,000 may be used in each fiscal year to  
2 provide support under this section.

3 (e) RULE OF CONSTRUCTION.—Covered support provided under this section shall not be  
4 construed to be a violation of section 2339, 2339A, or 2339B of title 18, United States Code.

5 (f) DEFINITIONS.—In this section:

6 (1) COVERED SUPPORT.—The term “covered support” means logistic support,  
7 supplies, services and security, and administrative support.

8 (2) DESIGNATED PERSONS AND ENTITIES.—The term “designated persons and  
9 entities” means—

10 (A) individuals or organizations necessary to facilitate reconciliation and  
11 reintegration activities; and

12 (B) does not include departments or agencies of the United States  
13 Government.

14 (3) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES.—The term “logistic support,  
15 supplies, and services” has the meaning given the term in section 2350(1) of title 10,  
16 United States Code.

17 (4) RECONCILIATION AND REINTEGRATION ACTIVITIES.—The term “reconciliation  
18 and reintegration activities” means any activity that is intended to support, facilitate, or  
19 enable a political settlement between the Government of Afghanistan and the Taliban to  
20 end the war in Afghanistan.

21 (5) SECURITY.—The term “security” means any measure necessary to protect  
22 activities associated with reconciliation and reintegration activities from hostile acts or  
23 influences.

1 (g) SUNSET.—The authority to carry out this section shall terminate on September 30,  
2 2024.

### **Section-by-Section Analysis**

This proposal would authorize the Department of Defense (DoD), with the concurrence of the Secretary of State, to support the Government of Afghanistan-led reconciliation and reintegration activities in Afghanistan through Fiscal Year (FY) 2024. Reaching a durable political settlement with the Taliban is the primary objective of the South Asia Strategy. Since President Trump approved the South Asia Strategy in August 2017, DoD has worked closely with the Department of State, United States Agency for International Development (USAID), and the Government of Afghanistan to align military pressure with diplomatic efforts to support and facilitate reconciliation and reintegration activities. For example, in June 2018, DoD and NATO coalition partners, supported President Ghani’s Eid-al-Fitr ceasefire initiative by limiting use of force against the Taliban for a designated period of time. This ceasefire led to a steep drop in violence and led to a number of opportunities for the Government of Afghanistan to pursue longer-term initiatives to de-escalate conflict and pursue local settlements throughout the country.

As the Government of Afghanistan’s efforts to pursue reconciliation expand in scope and scale, and the U.S. Special Representative for Afghan Reconciliation takes steps to accelerate the reconciliation process, DoD has the unique ability to help facilitate local efforts in Afghanistan through the provision of transportation, security, and logistic support, supplies, and services, but requires additional authority to provide such support in time to make an impact when time sensitive opportunities arise. Afghan civilian agencies, such as the Office of the National Security Council, the High Peace Council, and some provincial and district-level government bodies, have taken the lead in negotiating local peace agreements. In some cases, these negotiations are led by non-governmental intermediaries. Often, these negotiators cannot transit to remote parts of Afghanistan in a timely manner, nor can they provide security for such engagements. DoD has the unique capability to provide such movement and security for Afghan government agencies, local government personnel, non-government entities, and other civilians, as appropriate; the authority in this proposal would provide DoD with additional flexibility to do so. In all cases, DoD efforts to support Afghan reconciliation would be coordinated with U.S. Embassy Kabul through the interagency Peace and Reconciliation Action Group.

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

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

**Budget Implications:** The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2020 President’s Budget. This proposal would be funded within the Overseas Contingency Operations (OCO) appropriations requested in the Administration's FY 2020 and subsequent requests.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Support for Afghan Reconciliation and Reintegration	\$15					Operation & Maintenance, Army Overseas Contingency Operations
Support for Afghan Reconciliation and Reintegration	\$15					Operation & Maintenance, Air Force Overseas Contingency Operations
Total	\$30					\$30

**Changes to Existing Law:** None

1 **SEC. \_\_. AUTHORITY TO ESTABLISH SYSTEMS OF CLASSIFICATION AND PAY.**

2 (a) POSITIONS IN THE DEPARTMENT OF DEFENSE CIVILIAN WORKFORCE.—

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

5 **“§1599i. Authority to establish systems of classification and pay for positions in the civilian**  
6 **workforce of the Department of Defense**

7 “(a) AUTHORITY.—(1) The Secretary of Defense, in his sole and exclusive discretion,  
8 may establish one or more systems of classification and pay for the positions described in  
9 subsection (b).

10 “(2) The authority of the Secretary under paragraph (1) shall apply—

11 “(A) notwithstanding any provision of this title or title 5 concerning the  
12 classification of positions and the determination and payment of salaries, incentives,  
13 differentials, and allowances; and

14 “(B) notwithstanding chapter 71 of title 5.

15 “(3) In exercising authority under this subsection, the Secretary may not waive—

16 “(A) any provision of chapter 55 of title 5, except that subsection (d) of section  
17 5545 of title 5, concerning hazardous duty differentials, shall be waived to the extent  
18 necessary to provide that an employee paid under a pay system established under this  
19 section retains coverage under that subsection; or

20 “(B) any provision of chapter 61, chapter 63, or subpart G of part III of title 5.

21 “(b) POSITIONS.—The positions described in this subsection are science, mathematics,  
22 engineering, technology, medical, and cyber positions held by employees within the Department

1 of Defense that the Secretary determines require the establishment of a system under subsection  
2 (a) to recruit and retain employees in support of Department of Defense missions.

3 “(c) LIMITATIONS RELATING TO PAY.—(1) The Secretary may adjust rates of pay for  
4 positions covered by systems of compensation established by the Secretary under this section—

5 “(A) based upon changes to compensation for similar positions in a labor market,  
6 as necessary to recruit new and retain current employees in support of Department of  
7 Defense missions; or

8 “(B) by the greater of—

9 “(i) the same rate, and in the same proportion, as any annual increases to  
10 rates of compensation for members of the uniformed services; or

11 “(ii) the same rate as the across-the-board annual increases for statutory  
12 pay systems under which Department of Defense employees are compensated.

13 ”(2) The rate of basic pay for any position in a pay system established under this section  
14 may not exceed the rate payable for a position at level II of the Executive Schedule.

15 “(3) The total amount in a calendar year of basic pay, allowances, differentials, bonuses,  
16 awards, and other similar cash payments paid under this title or title 5 to any employee who is  
17 paid under the authority in this section may not exceed the total annual compensation payable to  
18 the Vice President under section 104 of title 3.

19 “(d) EMPLOYEE DEFINED.—In this section, the term ‘employee’ has the meaning given  
20 that term in section 2105 of title 5.

21 “(e) REGULATIONS.—Not later than three years after the date of the enactment of this  
22 section, the Secretary, in consultation with the Director of the Office of Personnel Management,  
23 shall issue regulations to carry out this section.



1 “(f) SUNSET.—Effective December 31, 2025, the authority provided by subsection (a)  
2 shall expire.”.

3 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81  
4 of title 10, United States Code, is amended by adding at the end the following new item:

“1599i. Authority to establish systems of classification and pay for positions in the civilian workforce of the  
Department of Defense.”.

5 (b) POSITIONS IN OTHER AGENCIES.—

6 (1) IN GENERAL.—Subchapter IX of chapter 53 of title 5, United States Code, is  
7 amended—

8 (A) by amending the subchapter heading to read as follows:

9 **“SUBCHAPTER IX—SPECIAL PAY SYSTEMS”;**

10 (B) in section 5391, by inserting “(other than section 5393)” after  
11 “subchapter”; and

12 (C) by adding at the end the following new section:

13 **“§5393. Authority to establish systems of classification and pay**

14 “(a) AUTHORITY.—(1) With the concurrence of the Director of the Office of Management  
15 and Budget, the Director of the Office of Personnel Management may establish one or more  
16 systems of classification and pay for the positions described in subsection (b).

17 “(2) The authority of the Director of the Office of Personnel Management under  
18 paragraph (1) shall apply—

19 “(A) notwithstanding any provision of this title concerning the classification of  
20 positions and the determination and payment of salaries, incentives, differentials, and  
21 allowances; and

22 “(B) notwithstanding chapter 71 of this title.

1 “(3) In exercising authority under this subsection, the Director may not waive—

2 “(A) any provision of chapter 55 of this title, except that subsection (d) of section  
3 5545 of this title, concerning hazardous duty differentials, shall be waived to the extent  
4 necessary to provide that an employee paid under a pay system established under this  
5 section retains coverage under that subsection; or

6 “(B) any provision of chapter 61, chapter 63, or subpart G of part III of this title.

7 “(b) POSITIONS.—The positions described in this subsection are science, mathematics,  
8 engineering, technology, medical, and cyber positions that the Director of the Office of  
9 Personnel Management determines require the establishment of a system under subsection (a) to  
10 recruit and retain employees.

11 “(c) LIMITATIONS RELATING TO PAY.—(1) The rate of basic pay for any position in a pay  
12 system established under this section may not exceed the rate payable for a position at level II of  
13 the Executive Schedule.

14 “(2) The total amount in a calendar year of basic pay, allowances, differentials, bonuses,  
15 awards, and other similar cash payments paid under this title to any employee who is paid under  
16 the authority in this section may not exceed the total annual compensation payable to the Vice  
17 President under section 104 of title 3.

18 “(d) EMPLOYEE DEFINED.—In this section, the term ‘employee’ has the meaning given  
19 that term in section 2105 of this title.

20 “(e) REGULATIONS.—Not later than three years after the date of the enactment of this  
21 section, the Director of the Office of Personnel Management shall issue regulations to carry out  
22 this section.

1           “(f) AUTHORITY OF AGENCY HEADS.—Each agency head operating under regulations  
2 prescribed under this section may exercise sole and exclusive discretion (as allowed under the  
3 regulations) in administering a compensation system or program established under this section,  
4 notwithstanding chapter 71 of this title.

5           “(g) SUNSET.—Effective December 31, 2025, the authority provided by subsection (a)  
6 shall expire.”.

7           (2) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter  
8 53 of title 5, United States Code, is amended—

9                   (A) by striking the item relating to subchapter IX and inserting the  
10 following:

  “SUBCHAPTER IX—SPECIAL PAY SYSTEMS”; and

11                   (2) by inserting after the item relating to section 5392 the following new item:  
  “5393. Authority to establish systems of classification and pay.”.

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

### **Section-by-Section Analysis**

The Department of Defense (DoD) is in need of a reduced and simplified set of classification and compensation authorities and flexibilities that will enable it to effectively acquire, develop, compensate, retain, and reward its current and future civilian workforce. This proposal would add a new section to title 10, United States Code (U.S.C.), to provide the Secretary of Defense authority to establish a system or multiple systems of position classification and compensation for competitive service positions within the Department. By being provided this authority, the Secretary would be able to establish pay rates and aggressive compensation management policies for hard-to-recruit talent. DoD proposes a statutory exemption to chapter 71 of title 5, U.S.C., to allow for the establishment of classification and pay systems without a requirement for collective bargaining. Coupling this authority with the separately proposed direct hire authority will allow the Department to be a much stronger contender for talent.

The proposal would also authorize the Director of the Office of Personnel Management (OPM), with the concurrence of the Director of the Office of Management and Budget, and without being subject to collective bargaining, to establish one or more systems of classification and pay for the same types of positions as DoD. The Director of OPM will be required to

establish regulations under which each Federal agency head (other than the Secretary) may exercise sole and exclusive discretion in administering a compensation system or program for that agency. Other Federal agencies have a need to establish and implement flexible classification and pay systems necessary to attract and retain hard-to-recruit talent. It is intended that OPM will leverage DoD's execution and experience to extend this authority to other Federal agencies, as appropriate.

DoD is a large, complex, and highly diverse global organization, which needs a wide variety of talent to perform the work required to meet its missions. No other federal agency has as many different occupations working side-by-side nor operates under as many different pay systems. There are about 600 different occupations across the DoD enterprise operating under titles 5, 10, 20, 28, 29, 32, 33, and 38, U.S.C., numerous personnel demonstration projects, and a permanent alternative personnel system. While the General Schedule (GS) currently covers nearly two-thirds of the civilian workforce, there are a multitude of other different authorities in use for the classification of positions and compensation of employees, resulting in pay disparities for identical occupations and challenges in recruitment, recognition, and retention. At a time when private sector recruitment and compensation practices are aggressive and highly adept at targeting a talent spectrum ranging from new college graduates to seasoned professionals in various fields, DoD is finding it increasingly difficult to recruit diverse and top-tier talent efficiently and effectively. To enable a more strategic approach to the management of the Department's mission critical occupations, the Secretary needs the authority to reevaluate the way we perform position classification and therefore how we compensate our knowledge workers.

The Department has extensive experience managing targeted pay banded systems. Lessons learned from the implementation of Science and Technology Reinvention Laboratory demonstration projects will provide substantive guidance for the structure and administration of Departmental policies that would implement the authority granted by this proposal. All or most of the Department's demonstration projects have streamlined classification that combine in banded grade structures multiple General Schedule (GS) grades to form a single band or work level. In each of these systems, the GS has been collapsed from 15 grades to 3, 4, or 5 pay bands. In such organizations, by collapsing the number of discrete grades, the Department is better and more consistently able to compensate the work being performed, while meaningfully recognizing performance and contributions.

Compounding the structural problems of classification and compensation under the GS is the limited number of advancement opportunities. The positions that exist are often supervisory or managerial in nature, leaving fewer options for those exclusively interested in being technical or subject matter experts. Some employees may be interested in continuing to advance within their specific field, but, after finding few positions to promote into when seeking increased pay and responsibilities, may choose to become managers. This mismatch between talent and profession is ultimately not only bad for the person but for the organization, which should ideally seek to balance mission demands with professional interests.

The rigidity of the GS compensation structure has the most sizeable impact on the highly skilled science, technology, engineering, and math (STEM) professions, for which DoD faces the

fiercest competition. Potential candidates find compensation to be far lower than what they could earn in the private sector, and those who do choose service in DoD may become frustrated by the lack of opportunities to continue advancing in their technical field. When high-skilled workers in whom DoD has invested heavily consider other job options, available tools are insufficient. Available recruitment and retention benefits incentives are currently capped at 25% (50% with Office of Personnel Management approval) of base salary, and in many cases even this may not be enough to close the gap between the government salary and the private sector average salary. In these cases, it would be useful to have a higher limit for such incentives than can currently be approved by the Secretary.

There is likely not a one-size-fits-all solution to classify and compensate the many and various occupations in DoD. Rather, multiple pay banded structures based upon occupational family groupings might be the easiest and most appropriate way to compensate the Department's workforce, if coupled with a comprehensive compensation approach that directs the Department's use of market-based compensation data to recruit, reward, and retain the DoD civilian workforce. Notionally, the Secretary could establish different banded structures for administrative functions, financial management occupations, STEM positions, security and related occupations, and medical occupations, each with its own salary limits based upon market data and Departmental compensation approach to lag, meet, or exceed the market, depending upon the criticality of each occupational family. Additionally, the Department needs greater flexibility for the amounts and rationale provided to use recruitment and retention incentives and greater ability to recognize exceptional performance with financial rewards, in keeping with the goal of competing favorably with private sector competition for talent.

Ultimately, the goal should be a greatly reduced number of compensation structures and common, simplified pay setting rules for use across the enterprise, resulting in greater flexibility for the Department in recruiting, developing, retaining, and managing its talent to meet national security challenges and DoD's ever-changing mission. Adoption of this proposal will provide an opportunity for us to build successful classification and pay systems that are readily understandable and transparent, and assure that the basic concept of federal classification approach of equal pay for substantially equal work is maintained. At the same time, it would provide flexible compensation tools to promote the mission, providing managers with discretion over how the classification and compensation tools are used and common resources to implement and monitor the classification and pay policies—transparent policies that will promote flexibility and drive achievement of the Department's goals.

**Budget Implications:** This is a budgetary proposal; however, at this time, additional costs are not precisely known. The proposal would allow the Secretary to create classification and compensation that could be used instead of existing authorities that are prescribed for use across the Federal service and in the Department. In establishing new systems of classification and compensation under this authority, the DoD and any DoD Component would be compensating employees within pre-existing budget authority for civilian personnel salaries. However, depending upon how positions are classified and the level of compensation necessary to adequately recruit and retain employees in positions defined above, as required by competition for talent, individual salaries may be higher than they would otherwise be under current classification and compensation systems. The costs associated with implementation would

largely be charged to the time and talent required to develop policy and regulation, management guidelines, and training while allocated funds used in the administration and management of the new system would remain at Congressionally approved levels, but could be more effectively distributed to encourage career progression and meaningful recognition of talent throughout the Department.

While the additional costs associated with this proposal cannot be known at this time with any certitude, estimated resource requirements are shown below that are based on the assumption that the Secretary of Defense would use this authority to create new position classification and market based pay structures for STEM, cyber, and medical professions. This is generally the area where DoD is facing the most competition from the private sector due to pay disparities between the public and private sector.

In order to determine estimated resource requirements associated with a new market based pay structure for STEM, cyber, and medical professions, current DoD salary data for jobs belonging to 85 occupational series within the STEM, cyber, and medical functional area were compared with corresponding private sector salary data. Specifically, 2017 data from the Department of Labor, Bureau of Labor Statistics Occupational Employment Statistics Survey was used as the private sector comparator. An average difference between the DoD salaries and private sector salaries was calculated to determine the average market pay difference. The market pay difference was then multiplied by the estimated number of personnel affected, to produce an estimate of \$46.4M in the first fiscal year of enactment. An annual 2% inflation adjustment was used to determine estimated annual resource requirements for Fiscal Year 2021 through 2024. These amounts are reflected in the table below.

It is important to note that this estimate is a worst case scenario as it pertains to STEM, cyber, and medical professions, in that it is based on the proposition that the Department would create market-based pay structures for *all* occupational series in the STEM, cyber, and medical area. As noted, there are 85 occupational series within STEM, cyber, and medical professions that were used to create the cost estimate. Realistically, it is expected that new market-based pay structures will only be necessary for those occupational series where the Department is having the greatest challenge competing with the private sector, so the scope of application would likely be further narrowed to only those occupational series where the Department has determined, upon further in depth analysis, that there are significant recruitment and retention challenges necessitating new classification and pay structures.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army	\$20.19	\$20.59	\$21.01	\$21.43	\$21.86	Operation and Maintenance, Army
Navy	\$11.95	\$12.19	\$12.44	\$12.68	\$12.94	Operation and Maintenance, Navy
Marine Corps	\$0.858	\$0.875	\$0.892	\$0.910	\$0.928	Operation and Maintenance, Marine Corps
Air Force	\$7.97	\$8.13	\$8.30	\$8.46	\$8.63	Operation and Maintenance, Air Force

Other DoD	\$5.42	\$5.53	\$5.64	\$5.76	\$5.87	Operation and Maintenance, Other DoD
Total	\$46.41	\$47.34	\$48.29	\$49.25	\$50.24	

<b>PERSONNEL AFFECTED (END STRENGTH)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army	47,163	47,163	47,163	47,163	47,163	Operation and Maintenance, Army
Navy	27,922	27,922	27,922	27,922	27,922	Operation and Maintenance, Navy
Marine Corps	2,004	2,004	2,004	2,004	2,004	Operation and Maintenance, Marine Corps
Air Force	18,631	18,631	18,631	18,631	18,631	Operation and Maintenance, Air Force
Other DoD	12,678	12,678	12,678	12,678	12,678	Operation and Maintenance, Other DoD
Total	108,398	108,398	108,398	108,398	108,398	

**Changes to Existing Law:** This proposal would add new sections to titles 5 and 10, United States Code, as set forth above. In addition, this proposal would make the following change to title 5, United States Code:

**§5391. Definitions**

For the purposes of this subchapter (other than section 5393), “agency”, “employee”, and “position” have the meanings given them by section 5102.

1 **SEC. \_\_\_\_. EXTENSION AND MODIFICATION OF AUTHORITY TO TRAIN**  
2 **SECURITY FORCES AND ASSOCIATED SECURITY MINISTRIES OF**  
3 **FOREIGN COUNTRIES TO PROMOTE RESPECT FOR THE RULE OF**  
4 **LAW AND HUMAN RIGHTS.**

5 (a) REPEAL OF REPORTING REQUIREMENT.—Section 1206 of the Carl Levin and Howard  
6 P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 333  
7 note) is amended—

- 8 (1) by striking subsection (e); and  
9 (2) by redesignating subsections (f) and (g) as subsections (e) and (f),  
10 respectively.

11 (b) SUNSET.—Section 1206(f) of such Act (as redesignated by subsection (a)(2) of this  
12 section) is amended by striking “September 30, 2020” and inserting “September 30, 2025”.

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

**Section-by-Section Analysis**

This legislative proposal extends and modifies the authority for the Department of Defense (DoD) to authorize human rights training for security forces otherwise prohibited from receiving such training. In particular, the proposal seeks to extend this authority for another five years in order to provide human rights training to units of foreign security forces otherwise prohibited from receiving such training under any provision of law due to being implicated in committing gross violations of human rights.

In addition, this proposal deletes the requirement to submit an annual report because an annual report containing the same information is required pursuant to 10 U.S.C. 386(c)(12).

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

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
<b>DSCA Program</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Security Cooperation (SC) Account	\$1.50	\$1.20	\$1.20	\$1.20	\$1.30	Operation and Maintenance, Defense Wide (0100)



**Changes to Existing Law:** This proposal would make the following changes to section 1206 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 333 note):

**SEC. 1206. TRAINING OF SECURITY FORCES AND ASSOCIATED SECURITY MINISTRIES OF FOREIGN COUNTRIES TO PROMOTE RESPECT FOR THE RULE OF LAW AND HUMAN RIGHTS.**

(a) In General.-The Secretary of Defense is authorized to conduct human rights training of security forces and associated security ministries of foreign countries.

(b) Construction With Limitation on Use of Funds.-Human rights training authorized by this section may be conducted for security forces otherwise prohibited from receiving such training under any provision of law only if-

(1) such training is conducted in the country of origin of the security forces;

(2) such training is withheld from any individual of a unit when there is credible information that such individual has committed a gross violation of human rights or has commanded a unit that has committed a gross violation of human rights;

(3) such training may be considered a corrective step, but is not sufficient for meeting the accountability requirement under the exception established in section 362(b) of title 10, United States Code; and

(4) reasonable efforts have been made to assist the foreign country to take all necessary corrective steps regarding a gross violation of human rights with respect to the unit, including using funds authorized by this Act to provide technical assistance or other types of support for accountability.

(c) Role of the Secretary of State.-

(1) Concurrence.-Training activities may be conducted under this section only with the concurrence of the Secretary of State.

(2) Consultation.-The Secretary of Defense shall consult with the Secretary of State on the content of the training, the methods of instruction to be provided, and the intended beneficiaries of training conducted under this section.

(d) Authorized Activities.-Human rights training authorized by this section may include associated activities and expenses necessary for the conduct of training and assessments designed to further the purposes of this section, including technical assistance or other types of support for accountability.

~~(e) Annual Reports.- Not later than March 31 each year through 2020, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the use of the authority in this section during the preceding fiscal year. Each report shall include information on any human rights training (as defined in subsection (f)) or other assistance that was provided during the fiscal year to foreign security forces.~~

~~(f)~~ (e) Definitions.-In this section

(1) The term “appropriate committees of Congress” means-  
(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

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

(2) The term “human rights training” means training for the purpose of directly improving the conduct of foreign security forces to-

(A) prevent gross violations of human rights and support accountability for such violations;

(B) strengthen compliance with the laws of armed conflict and respect for civilian control over the military;

(C) promote and assist in the establishment of a military justice system and other mechanisms for accountability; and

(D) prevent the use of child soldiers.

~~(g)~~ (f) Sunset.-The authority in subsection (a) shall expire on ~~September 30, 2020~~  
September 30, 2025.

1 **SEC. \_\_. EXTENSION OF AUTHORITY TO PROVIDE VOLUNTARY SEPARATION**  
2 **INCENTIVE PAY FOR CIVILIAN EMPLOYEES OF THE**  
3 **DEPARTMENT OF DEFENSE.**

4 Section 1107 of the National Defense Authorization Act for Fiscal Year 2017 (Public  
5 Law 114–328; 5 U.S.C. 9902 note) is amended by striking “September 30, 2021” and inserting  
6 “September 30, 2022”.

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

**Section-by-Section Analysis**

This proposal would amend section 1107 of the Fiscal Year 2017 (FY17) National Defense Authorization Act (NDAA) by extending for one additional year the temporary increase in the maximum amount of separation pay the Department of Defense (DoD) is authorized for voluntary separation incentive pay (VSIP) from the current ceiling of \$25,000 to \$40,000. This increased maximum amount reflects what the VSIP amount would have been had it been adjusted for inflation from when VSIP was first authorized for DoD in 1993. The maximum payable amount has not otherwise been adjusted since VSIP was first authorized.

The Department of Defense has traditionally offered incentives such as VSIP to encourage voluntary separations as one means to minimize the impact of workforce restructuring and to avoid involuntary reductions in force (RIF). Without sufficient voluntary separations when faced with the need for workforce restructuring or reductions, the Department may impact more employees through RIF. RIFs are costly and disruptive to the mission and create negative morale in the workforce. VSIP authority is also an important workforce shaping/restructuring tool that assists the Department in recalibrating the workforce to ensure we have the right skills for emerging missions and mission growth. Indeed, this can be exercised independent of RIF planning and in the past has been effective in enabling DoD Components to shape their workforce without having to execute RIFs. Any future reductions to the DoD budget will require management to efficiently reduce the workforce while not adversely affecting the mission and the Department’s commitment to support our warfighters. Buyouts provide a less expensive, more humane, and more manageable way to efficiently reduce as well as to restructure the workforce.

**Budget Implications:** Adoption of the proposal would increase the maximum VSIP amount for the Department of Defense from \$25,000 to a maximum of \$40,000 through FY22. It will not change the severance pay formulas used to calculate the actual VSIP amount. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President’s Budget.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army			65.49			Operation and Maintenance, Army
Navy			.65			Operation and Maintenance, Navy
Navy			4.08			Navy Working Capital Fund
Navy			.21			Research, Development, Test & Evaluation, Navy
Air Force			17.81			Operation and Maintenance, Air Force
USMC			.18			Operation and Maintenance, Marine Corps
Defense Wide			12.52			Operation and Maintenance, Defense Wide
Total			100.94			

<b>NUMBER OF PERSONNEL AFFECTED</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army			4366			Operation and Maintenance, Army
Navy			43			Operation and Maintenance, Navy
Navy			272			Navy Working Capital Fund
Navy			14			Research, Development, Test, and Evaluation, Navy
Air Force			1187			Operation and Maintenance, Air Force
USMC			12			Operation and Maintenance, Marine Corps
Defense Wide			835			Operation and Maintenance, Defense Wide
Total			6729			

**Cost Methodology:** The Department of Defense anticipates significant use of VSIP in the foreseeable future as the need for reshaping the workforce continues. VSIP is used to encourage voluntary reductions that mitigate adverse effects on civilian employees and are less costly to the Department than involuntary reductions via RIF. The resource requirements listed reflect the total cost of buyouts over the fiscal year development plan, taking into account the number of employees that have historically participated in VSIP as well as Component projections of how many additional employees are expected to take VSIP at the increased amount. It assumes nearly a straight-line increase of \$15,000 per buyout, since historically 99 percent of the buyouts approved are at the maximum amount of \$25,000. This extra expenditure will be absorbed by reducing the costs associated with RIF, including severance pay, unemployment compensation, continuation of benefits, transition assistance, and various administrative costs.

**Changes to Existing Law:** This proposal would amend section 1107 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 5 U.S.C. 9902 note) as follows:

**SEC. 1107. TEMPORARY INCREASE IN MAXIMUM AMOUNT OF VOLUNTARY SEPARATION INCENTIVE PAY AUTHORIZED FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.**

During the period beginning on the date of enactment of this Act and ending on ~~September 30, 2021~~ September 30, 2022, section 9902(f)(5)(A)(ii) of title 5, United States Code, shall be applied by substituting “an amount determined by the Secretary, not to exceed \$40,000” for “\$25,000”.

1 **SEC. \_\_. FIELDING OF HOMELAND DEFENSE RADAR—HAWAII.**

2 Notwithstanding any other provision of law, funds authorized to be appropriated for  
3 fiscal years 2020 and 2021 for research, development, test, and evaluation for the Missile  
4 Defense Agency may be used for the development, construction, and fielding of the following  
5 specified portions of the military construction project for the Homeland Defense Radar—Hawaii:

6 (1) The radar foundation.

7 (2) The thermal control system for the radar.

**Section-by-Section Analysis**

The Missile Defense Agency (MDA) regularly receives direction from the Administration, the Department, or Congress to rapidly deploy ballistic missile defense capabilities by a specified deployment date. Most such deployments have required Military Construction (MILCON) activities to build the facilities to house and support the weapons system being deployed. MDA is often directed to meet firm delivery timelines established prior to having an opportunity to conduct planning, project design work, or programming.

The relief requested would, if enacted, permit MDA to use RDT&E funds for the development, construction, and fielding of the following specified portions of the military construction project for the Homeland Defense Radar—Hawaii (HDR-H): the radar foundation; and the thermal control system for the radar. Those two project components would be executed by the radar prime contractor with construction supervision performed by the United States Army Corps of Engineers, the designated military construction agent, on behalf of MDA. Military construction funds will be requested to support all other portions of the overall construction project and the military construction funds would be executed by the military construction prime contractor.

The primary consideration in seeking relief is that the directed deployment date creates significant risk because the schedule limits MDA’s opportunity to ensure the design of the radar, the radar foundation, and the thermal control facility will maximize radar performance. The requirement to deploy this radar was enacted by the Congress in Sec. 1693 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (P.L. 114-328). Sec. 1693 directed MDA to field the radar “...not later than December 31, 2021...” Subsequent to enactment, MDA informed the congressional defense committees that deployment by December 31, 2021 was not possible. In recognition, Congress has now directed that the radar and an associated in-flight interceptor communications system data terminal will be operational by not later than September 30, 2023 (see section 1687 of the John S. McCain National Defense Authorization

Act for Fiscal Year 2019 (Public Law 115–232)).

Fielding the radar not later than September 30, 2023 as directed in Sec. 1687 of the pending FY 2019 NDAA presents a schedule under which MDA would be required to prepare and submit military construction design specifications via the DD Form 1391, Military Construction Project Data, in the third quarter of FY 2019, approximately eight months prior to completion of the radar Preliminary Design Review (PDR). This is problematic in that MDA relies on having a 35% design of the facility requirements completed to inform submittal of the DD Form 1391 and the PDR for the radar which MDA will rely on for the information to inform construction of the radar foundation and thermal control facility will not occur until the second quarter of FY 2020, too late to inform the 1391 submittal if the project is to be completed on or before the directed deployment date.

Enactment of the relief sought offers two substantial advantages. First, and most important, the requested relief allow the radar prime contractor to design and execute construction of the radar, the radar foundation; and the thermal control system for the radar. The design and interfaces of both with the radar are integral to the ultimate performance of the radar and the design of both must be informed by the radar design. Stated in non-technical terms, the greater the signal strength of the radar for high performance at long distance, the greater the power consumption that will be required. And greater power consumption drives an increased need for thermal control (cooling). MDA expects to obtain significant cost savings while meeting performance requirements by providing authority to the radar prime to make technical and design trades across the three design efforts.

Second, by providing authority for the radar prime contractor to execute the design and construction of the radar, the radar foundation, and the thermal control facility, the requested relief will mitigate the schedule challenge and loss of technical trade opportunities presented if project execution responsibilities were split between the radar prime contractor and the military construction prime contractor for these three project components.

**Budget Implications:** Execution of the authority, if enacted, would result in a modest amount of funds in future budget requests would be requested in RDT&E Defense Wide rather than requested in MILCON Defense Wide.

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
MILCON	\$0	\$138.000	\$183.000	\$0	\$0	MILCON
Foundation & Thermal Control	\$40.000					RDT&E
Radar	\$113.415	\$259.479	\$220.684	\$134.772	87.135	RDT&E
Total	\$153.415	\$397.479	\$403.684	\$134.772	\$87.135	--

**Changes to Existing Law:** None

1 **SEC. \_\_\_\_.** **EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL REPORT**  
2 **ON THE ASSESSMENT OF THE EFFECTIVENESS OF ACTIVITIES OF**  
3 **THE FEDERAL VOTING ASSISTANCE PROGRAM.**

4 (a) **ELIMINATION OF REPORTS FOR NON-ELECTION YEARS.**—Section 105A(b) of the  
5 Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20308(b)) is amended, in the  
6 matter preceding paragraph (1)—

7 (1) by striking “March 31 of each year” and inserting “September 30 of each odd-  
8 numbered year”; and

9 (2) by striking “the following information” and inserting “the following  
10 information with respect to the Federal elections held during the preceding calendar  
11 year”.

12 (b) **CONFORMING AMENDMENTS.**—Such section is further amended—

13 (1) in the subsection heading, by striking “ANNUAL REPORT” and inserting  
14 “BIENNIAL REPORT”; and

15 (2) in paragraph (3), by striking “In the case of” and all that follows through “a  
16 description” and inserting “A description”.

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

**Section-by-Section Analysis**

This proposal would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to September 30 of odd-numbered years. It also would clarify that the information submitted in the report should cover the previous calendar year: the year in which the regularly scheduled elections for Federal office occurred.

The post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed, and reported by the current March 31 deadline.



Developing and publishing this report for odd-numbered calendar years, in which few Federal elections occur, does not provide sufficient information to warrant the time, effort, and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. Analysis of odd-numbered year elections leads to poor policy decisions because the analysis is based upon incomplete data and conclusions. The use of such data with respect to elections in even-numbered years may not be valid, as these elections have greater public participation and FVAP activity.

**Budget Implications:** No budgetary costs will be added by this proposal. Instead, this proposal will result in cost savings in manpower for the Department by discontinuing a requirement for administration of an annual report. The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the Fiscal Year (FY) 2020 President’s Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
FVAP Report Defense Human Resource Activity	(.08)	(.08)	(.08)	(.08)	(.08)	Operation and Maintenance, Defense Wide
Total	(.08)	(.08)	(.08)	(.08)	(.08)	

**Changes to Existing Law:** This proposal would make the following changes to section 105A of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20308):

\*\*\*\*\*

**SEC. 105A. REPORTING REQUIREMENTS.**

\*\*\*\*\*

**(b) ~~ANNUAL REPORT~~ BIENNIAL REPORT ON EFFECTIVENESS OF ACTIVITIES AND UTILIZATION OF CERTAIN PROCEDURES**

Not later than ~~March 31 of each year~~ September 30 of each odd-numbered year, the Presidential designee shall transmit to the President and to the relevant committees of Congress a report containing ~~the following information~~ the following information with respect to the Federal elections held during the preceding calendar year:

- (1) An assessment of the effectiveness of activities carried out under section 20305 of this title, including the activities and actions of the Federal Voting Assistance Program of the Department of Defense, a separate assessment of voter registration and participation by absent uniformed services voters, a separate assessment of voter registration and participation by overseas voters who are not members of the uniformed services, and a description of the cooperation between States and the Federal Government in carrying out such section.
- (2) A description of the utilization of voter registration assistance under section 1566a of title 10, which shall include the following:

(A) A description of the specific programs implemented by each military department of the Armed Forces pursuant to such section.

(B) The number of absent uniformed services voters who utilized voter registration assistance provided under such section.

(3) ~~In the case of a report submitted under this subsection in the year following a year in which a regularly scheduled general election for Federal office is held, a description~~ A description of the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to section 20304 of this title, which shall include the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons such ballots were not so delivered).

\*\*\*\*\*

1 **SEC. \_\_\_\_. FRIENDLY FOREIGN COUNTRIES: AUTHORITY TO ACCEPT**  
2 **CONTRIBUTIONS.**

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

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

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

7 “(d) AUTHORITY TO ACCEPT CONTRIBUTIONS.—

8 “(1) IN GENERAL.—The Secretary of Defense may accept and retain contributions,  
9 including assistance in-kind, from a foreign government to provide support under  
10 subsection (a).

11 “(2) USE OF FUNDS.—Any funds accepted by the Secretary may be credited to the  
12 account from which funds are made available for the provision of support under this  
13 section and may be used for such purposes until expended.”.

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

**Section-by-Section Analysis**

This proposal amends section 331 of title 10, United States Code, by adding the authority for the Secretary of Defense to accept and retain contributions, including assistance in-kind, from a foreign government to provide assistance authorized under that section. In doing so, this proposal would strengthen the Secretary of Defense’s ability to work with allies and partners towards U.S. goals. This proposal contributes to burden-sharing efforts and adds another tool for DoD to support friendly foreign countries abroad.

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

**Budget Implications:** This proposal would have no budgetary impact.

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

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

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

(b) **DESIGNATED OPERATIONS.**—

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

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

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

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

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

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

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

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

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

(2) Logistic support, supplies, and services—

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

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

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

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

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

(d) AUTHORITY TO ACCEPT CONTRIBUTIONS.—

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

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

(de) CERTIFICATION REQUIRED.—

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

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

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

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

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

(B) A list of participating countries.

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

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

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

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

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

**(gh) LIMITATIONS ON VALUE.—**

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

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

**(hi) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES DEFINED.—**In this section, the term “logistic support, supplies, and services” has the meaning given that term in section 2350(1) of this title.

1 **SEC. \_\_\_\_. FRIENDLY FOREIGN COUNTRIES: AUTHORITY TO PROVIDE**  
2 **SUPPORT FOR CONDUCT OF OPERATIONS.**

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

4 (1) in subsection (c), by adding at the end the following new paragraph:

5 “(6) Procurement of equipment for the purpose of the loan or grant of such  
6 equipment, and reimbursement for the cost of operations, to provide support to the  
7 security forces of a friendly foreign country in connection with a security operation  
8 that—

9 “(A) supports a military operation of the United States; or

10 “(B) benefits the national security interests of the United States.”; and

11 (2) in subsection (g), by adding at the end the following new paragraph:

12 “(3) The aggregate value of grant equipment and reimbursement support provided  
13 under subsection (c)(6) in any fiscal year may not exceed \$300,000,000.”.

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

**Section-by-Section Analysis**

This proposal amends 10 U.S.C. section 331 (Section 331) by adding the authority for the Secretary of Defense, with the concurrence of the Secretary of State, to provide equipment on a loan or grant basis, and reimbursement for the cost of operations, to the security forces of a friendly foreign country in connection with a security operation that supports a U.S. military operation or benefits the national security interests of the United States. In doing so, this proposal would provide a permanent, global operational support authority as a successor to section 1226 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Public Law 114-92), as most recently amended by section 1294 of the NDAA for FY 2019 (Public Law 115-232), a temporary, contingency-based authority allowing DoD to reimburse 6 specific countries for their border security operations that support U.S. military operations. Moreover, this proposal complements the President’s FY 2020 budget request, which includes a \$250 million request for counter-ISIS and al-Qa’ida border security globally, by adding the permanent authority to provide equipment on a loan or grant basis to the security forces of a friendly foreign country in connection with a security operation that supports a U.S. military operation or benefits the national security interests of the United States. Currently, DoD

provides equipment for counter-ISIS border security operations both inside Iraq and Syria and in countries adjacent to the ISIS conflict under the Counter-ISIL Train and Equip (CTEF) appropriation, another temporary authority. The Department expects Iraq and Syria train-and-equip and border security requirements to continue to be met by the CTEF appropriation in FY 2020.

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

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

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

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

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Border Security	\$250					Operation and Maintenance, Defense-wide, OCO
Total	\$250					--

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

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



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

(b) Designated Operations.—

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

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

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

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

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

(c) Types of Support Authorized.—The types of support that may be provided under the authority in subsection (a) are the following:

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

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

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

(2) Logistic support, supplies, and services—

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

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

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

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

(5) Small-scale construction to support military forces of a friendly foreign country participating in a United States-supported coalition or combined operation when the construction is directly linked to the ability of such forces to participate in such operation effectively and is limited to the geographic area where such operation is taking place. In the

case of support provided under this paragraph that results in the provision of small-scale construction above \$750,000, the notification pursuant to subsection (b)(2) shall include the location, project title, and cost of each such small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location.

(6) Procurement of equipment for the purpose of the loan or grant of such equipment, and reimbursement for the cost of operations, to provide support to the security forces of a friendly foreign country in connection with a security operation that—

(A) supports a military operation of the United States; or

(B) benefits the national security interests of the United States.

(d) Certification Required.—

(1) Operations in which the united states is not participating.—The Secretary of Defense may provide support under subsection (a) to a friendly foreign country with respect to an operation in which the United States is not participating only—

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

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

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

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

(B) A list of participating countries.

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

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

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

(e) Secretary of State Concurrence.—The provision of support under subsection (a) may be made only with the concurrence of the Secretary of State.

(f) Support Otherwise Prohibited by Law.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of support described in subsection (c) that is otherwise prohibited by any provision of law.

(g) Limitations on Value.—

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

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

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

1 **SEC. \_\_\_. EXTENSION OF GIFT AUTHORITY TO CEREMONIAL AND PARACHUTE**  
2 **DEMONSTRATION UNITS.**

3 (a) EXTENSION OF AUTHORITY.—Section 974 of title 10, United States Code, is  
4 amended—

5 (1) by amending the section designation and heading to read as follows:

6 **“§974. Military musicians and musical, ceremonial, and parachute demonstration units”;**

7 (2) in subsections (d)(1) and (d)(2), by inserting “, military ceremonial unit, or  
8 military parachute demonstration unit” after “military musical unit”; and

9 (3) by striking subsection (f) and inserting the following new subsection:

10 “(f) DEFINITIONS.—In this section:

11 “(1) The term ‘military musical unit’ means a band, ensemble, chorus, or similar  
12 musical unit of the armed forces.

13 “(2) The term ‘military ceremonial unit’ means a drill team, color guard,  
14 marching unit, firing detail, salute battery, cavalry, or other similar unit that the Secretary  
15 concerned determines is to be used to support community outreach engagements.

16 “(3) The term ‘military parachute demonstration unit’ means an existing  
17 parachute demonstration team that the Secretary concerned determines is to be used in  
18 support of community outreach engagements.”.

19 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 49 of such  
20 title is amended by striking the item relating to section 974 and inserting the following new item:

“974. Military musicians and musical, ceremonial, and parachute demonstration units.”.

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

**Section-by-Section Analysis**

Section 351 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 amended section 974 of title 10, United States Code (U.S.C.), to authorize Service Secretaries to “accept contributions of money, personal property, or services on the condition that such money, property, or services be used for the benefit of a military musical unit under the jurisdiction of the Secretary.” This proposal would extend this authority to ceremonial and parachute demonstration units that perform protocol and community outreach missions, and allow the units to accept gifts under this statute in the same manner as military musical units. Without the change, military musical, ceremonial, and parachute demonstration units may work an event side-by-side, and one may benefit from non-federal entity support and the other may not; or one may provide support and one be unable to.

It is critical that the military maintain an enduring presence in communities across America to connect the military with Americans, so that they understand and support the military mission. This is more critical than ever as fewer Americans are serving in the military, meaning there are fewer veterans in America’s communities. Some of the best tools available to connect the United States military to the public are ceremonial units such as honor guards, which are frequently requested to support all forms of events, many of which have very large audiences, such as major sporting events and large civic functions.

The FY14 NDAA amendment to section 974 has enabled military musical units to accept additional money to increase their participation in community engagements. We have found that in many cases sponsors who have offered support to military musical units under section 974 also have extended offers to pay the costs of ceremonial units at the same events. Military Services have been unable to accept the latter offers under the current statute. This legislative proposal would close that gap, extending the same authority granted for military musical units to cover the military’s other primary outreach assets, enabling the growth of mission capacity, by giving the military an added tool to respond to the increasing demand for outreach assets from communities across America.

As with the bands, contribution of money “shall be credited to the appropriation or account providing the funds” for the unit. In accordance with the law, any amount credited will be merged with amounts in the appropriation account and will be used to support events of the same purpose and subject to the same conditions and limitations.

**Budget Implications:** By extending the authorization for gift acceptance to ceremonial and parachute demonstration units, this change would have a positive effect on the budget; the change would buttress ceremonial unit performances, and extend the ability to perform to a wider audience and greater number of events. The authorization will enable the ceremonial and parachute demonstration units to support events with key audiences. The amounts in the table below represent estimates of potential gift amounts for the ceremonial units and do not necessarily represent amounts expended or saved.

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Air Force Ceremonial Unit Performance	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	Operation and Maintenance, Air Force

Army						
Navy						
Marine Corps						
Total						--

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

\* \* \* \* \*

~~§974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians~~

**§974. Military musicians and musical, ceremonial, and parachute demonstration units**

\* \* \* \* \*

(d) Private Donations.-~~(1) The Secretary concerned may accept contributions of money, personal property, or services on the condition that such money, property, or services be used for the benefit of a military musical unit, military ceremonial unit, or military parachute demonstration unit under the jurisdiction of the Secretary.~~

~~(2) Any contribution of money under paragraph (1) shall be credited to the appropriation or account providing the funds for such military musical unit, military ceremonial unit, or military parachute demonstration unit. Any amount so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.~~

~~(e) Performances at Foreign Locations.-Subsection (a) does not apply to a performance outside the United States, its commonwealths, or its possessions.~~

~~(f) Military Musical Unit Defined. In this section, the term "military musical unit" means a band, ensemble, chorus, or similar musical unit of the armed forces.~~

(f) DEFINITIONS.-In this section:

(1) The term "military musical unit" means a band, ensemble, chorus, or similar musical unit of the armed forces.

(2) The term "military ceremonial unit" means a drill team, color guard, marching unit, firing detail, salute battery, cavalry, or other similar unit that the Secretary concerned determines is to be used to support community outreach engagements.

(3) The term "military parachute demonstration unit" means an existing parachute demonstration team that the Secretary determines is to be used in support of community outreach engagements.

\* \* \* \* \*

1 **SEC. \_\_\_\_. LIMITATION ON USE OF FUNDS FOR PURCHASING GLOBAL**  
2 **POSITIONING SYSTEM USER EQUIPMENT.**

3 Section 913(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year  
4 2011 (10 U.S.C. 2281 note) is amended by inserting “or to the acquisition of Global Positioning  
5 System equipment for foreign partners in support of security cooperation programs and activities  
6 of the Department of Defense (as defined in section 301 of title 10, United States Code)” after  
7 “installed”.

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

**Section-by-Section Analysis**

This proposal would allow the Department of Defense the option to acquire Global Positioning System (GPS) receivers for foreign partners under Security Assistance or Foreign Military Sales authorizations. Section 913 of the Ike Skelton National Defense Authorization Act (NDAA) for FY 2011 (Public Law 111-383), as amended, limits the obligation and expenditure of defense appropriated funds beyond FY 2017 to purchase GPS user equipment unless the equipment is capable of receiving Military code (M-Code). The Under Secretary of Defense for Acquisition and Sustainment (A&S) currently waives this restriction, permitting the U.S. Government to acquire non-M-Code GPS systems for foreign partners. If enacted, this proposal would provide a Security Cooperation exception, allowing the DoD flexibility under such authorities to provide GPS that is not capable of receiving M-Code without pursuing a formal waiver.

Providing M-Coded user equipment to countries that have not demonstrated the ability to protect this sensitive technology would not be in the U.S. national interest. However, providing those same countries basic, non-M-Code navigation equipment may be in our interest. This proposal provides the flexibility the Department needs to handle unique requirements.

**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 913 of the National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2281 note):

SEC. 913. LIMITATION ON USE OF FUNDS FOR PURCHASING GLOBAL POSITIONING SYSTEM USER EQUIPMENT.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), none of the funds authorized to be appropriated or otherwise made available by this Act or any other Act for the Department of Defense may be obligated or expended to purchase user equipment for the Global Positioning System during fiscal years after fiscal year 2017 unless the equipment is capable of receiving the military code (commonly known as the “M code”) from the Global Positioning System.

(b) EXCEPTION.—The limitation under subsection (a) shall not apply with respect to the purchase of passenger vehicles or commercial vehicles in which Global Positioning System equipment is installed or to the acquisition of Global Positioning System equipment for foreign partners in support of security cooperation programs and activities of the Department of Defense (as defined in section 301 of title 10, United States Code).

(c) WAIVER.—The Secretary of Defense may waive the limitation under subsection (a) if the Secretary determines that—

(1) suitable user equipment capable of receiving the military code from the Global Positioning System is not available; or

(2) with respect to a purchase of user equipment, the Department of Defense does not require that user equipment to be capable of receiving the military code from the Global Positioning System.

(d) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The Secretary of Defense may not delegate the authority to make a waiver under subsection (c) to an official below the level of the Secretaries of the military departments or the Under Secretary of Defense for Acquisition, Technology, and Logistics.

1 **SEC. \_\_. AUTHORITY OF PROMOTION BOARDS TO RECOMMEND THAT**  
2 **OFFICERS OF PARTICULAR MERIT BE PLACED HIGHER ON**  
3 **PROMOTION LIST.**

4 (a) ROPMA BOARDS.—Section 14108 of title 10, United States Code, is amended by  
5 adding at the end the following new subsection:

6 “(f) HIGHER PLACEMENT OF OFFICERS OF PARTICULAR MERIT ON PROMOTION LIST.—

7 (1) In selecting the officers to be recommended for promotion, a promotion board may,  
8 when authorized by the Secretary of the military department concerned, recommend officers  
9 of particular merit, from among those officers selected for promotion, to be placed higher on  
10 the promotion list established by the Secretary under section 14308(a) of this title.

11 “(2) An officer may be recommended to be placed higher on a promotion list under  
12 paragraph (1) only if the officer receives the recommendation of at least a majority of the  
13 members of the board, unless the Secretary concerned establishes an alternative  
14 requirement. Any such alternative requirement shall be furnished to the board as part of the  
15 guidelines furnished to the board under section 14107 of this title.

16 “(3) For the officers recommended to be placed higher on a promotion list under  
17 paragraph (1), the board shall recommend the order in which those officers should be placed  
18 on the list.”.

19 (b) PROMOTION BOARD REPORTS RECOMMENDING OFFICERS OF PARTICULAR MERIT  
20 TO BE PLACED HIGHER ON PROMOTION LIST.—Section 14109 of such title is amended by  
21 adding at the end the following new subsection:

22 “(d) REPORTING ON OFFICERS RECOMMENDED FOR HIGHER PLACEMENT ON  
23 PROMOTION LIST.—A selection board convened under section 14101(a) of this title shall,



1 when authorized under section 14108(f) of this title, include in its report to the Secretary  
2 concerned the names of those officers recommended by the board to be placed higher on the  
3 promotion list and the order in which the board recommends that those officers should be  
4 placed on the list.”.

5 (c) OFFICERS OF PARTICULAR MERIT APPEARING HIGHER ON PROMOTION LIST.—  
6 Section 14308(a) of such title is amended in the first sentence by adding at the end: “or  
7 based on particular merit, as determined by the promotion board”.

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

### **Section-by-Section Analysis**

This proposal would amend sections 14108, 14109, and 14308 of title 10, United States Code, to allow for reserve component promotion selection boards to recommend placing an officer on the reserve active-status list higher on a promotion list based on particular merit, if at least a majority of the promotion selection board members so recommend. This would not limit the number of officers that could be moved, and the authority is purely discretionary. Services would be free to retain current lineal list policies, move up to 100%, or use some other construct approved by the Secretary of the military department for reordering the lineal standing of selected officers on the reserve active-status list. For example, a Service would have flexibility to first group officers on the promotion list based on particular merit, as recommended by at least a majority of the promotion selection board members or as authorized by the Secretary of the military department, and then to order each group of officers based on seniority.

This authority is identical to that provided for the active component in the amendments made by section 504 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232). As such, it will equalize this talent management tool for the Total Force.

By enabling a reserve promotion selection board to place high-level performers higher on a promotion list, the Services will be better able to reward and encourage superior performance in the reserves. This proposal would not be mandatory, but would provide Secretaries of the military Departments greater flexibility in managing reserve talent within their Services.

**Budget Implications:** There are no budget implications to this proposal. Any use of this authority would be conducted within the military departments existing budgetary authorities and therefore would not increase Federal outlays.

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

\* \* \* \* \*

**§ 14108. Recommendations by promotion boards**

(a) RECOMMENDATION OF BEST QUALIFIED OFFICERS.—A promotion board convened under section 14101(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board considers best qualified for promotion within each competitive category considered by the board or, in the case of a vacancy promotion board, among those officers considered to fill a vacancy. In determining those officers who are best qualified for promotion, the board shall give due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 14107 of this title ).

(b) ACTIONS REQUIRED.—A promotion board convened under section 14101(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board;

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 14107 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable.

(c) BOARD RECOMMENDATION REQUIRED FOR PROMOTION.—Except as otherwise provided by law, an officer on the reserve active-status list may not be promoted to a higher grade under chapter 1405 of this title unless the officer is considered and recommended for promotion to that grade by a promotion board convened under section 14101(a) of this title (or by a special selection board convened under section 14502 of this title).

(d) DISCLOSURE OF BOARD RECOMMENDATIONS.—The recommendations of a promotion board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 14109 of this title , is signed by each member of the board.

(e) PROHIBITION OF COERCION AND UNAUTHORIZED INFLUENCE OF ACTIONS OF BOARD MEMBERS.—The Secretary convening a promotion board under section 14101(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a promotion board or any member of a promotion board in the formulation of the board's recommendations.

(f) HIGHER PLACEMENT OF OFFICERS OF PARTICULAR MERIT ON PROMOTION LIST.—

(1) In selecting the officers to be recommended for promotion, a promotion board may, when authorized by the Secretary of the military department concerned, recommend that officers of particular merit, from among those officers selected for promotion, be placed higher on the promotion list established by the Secretary under section 14308(a) of this title.

(2) An officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the officer receives the recommendation of at least a majority of the members of the board, unless the Secretary concerned establishes an alternative requirement. Any such alternative requirement shall be furnished to the board as part of the guidelines furnished to the board under section 14107 of this title.

(3) For the officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend the order in which those officers should be placed on the list.

**§ 14109. Reports of promotion boards: in general**

(a) REPORT OF OFFICERS RECOMMENDED FOR PROMOTION.—Each promotion board convened under section 14101(a) of this title shall submit to the Secretary of the military department concerned a report in writing containing a list of the names of the officers recommended by the board for promotion. The report shall be signed by each member of the board.

(b) CERTIFICATION.—Each report under subsection (a) shall include a certification—

(1) that the board has carefully considered the record of each officer whose name was furnished to the board; and

(2) that, in the case of a promotion board convened under section 14101(a) of this title, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 14107 of this title) among those officers whose names were furnished to the selection board.

(c) SHOW-CAUSE RECOMMENDATIONS.—(1) A promotion board convened under section 14101(a) of this title shall include in its report to the Secretary concerned the name of any reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required to show cause for retention in an active status.

(2) If such a report names an officer as having a record which indicates that the officer should be required to show cause for retention, the Secretary concerned may provide for the review of the record of that officer as provided under regulations prescribed under section 14902 of this title.

(d) REPORTING ON OFFICERS RECOMMENDED FOR HIGHER PLACEMENT ON PROMOTION LIST.—A promotion board convened under section 14101(a) of this title shall, when authorized under section 14108(f) of this title, include in its report to the Secretary concerned the names of those officers recommended by the board to be placed higher on the promotion list and the order in which the board recommends that those officers should be placed on the list.

\* \* \* \* \*

### **§ 14308. Promotions: how made**

(a) PROMOTION LIST.—When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list or based on particular merit, as determined by the promotion board. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(b) PROMOTION; HOW MADE; ORDER.—(1) Officers on a promotion list for a competitive category shall be promoted in the manner specified in section 12203 of this title.

(2) Officers on a promotion list for a competitive category shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary of the military department concerned. Except as provided in section 14311, 14312, or 14502(e) of this title or in subsection (d) or (e), promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted.

(3) Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary of the military department concerned.

(4)(A) Officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned. Such promotions shall be in the manner specified in section 12203 of this title.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter and chapter 1403 of this title.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the reserve active-status list in a grade who the Secretary of the military department concerned determines—

- (i) are fully qualified for promotion to the next higher grade; and
- (ii) would be eligible for consideration for promotion to the next higher grade by a

selection board convened under section 14101(a) of this title upon the convening of such a board.

(E) If the Secretary of the military department concerned determines that one or more officers or former officers were not placed on an all-fully-qualified-list under this paragraph because of administrative error, the Secretary may prepare a supplemental all-fully-qualified-officers list containing the names of any such officers for approval in accordance with this paragraph.

(c) DATE OF RANK.—(1) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title.

(2) The date of rank of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made under section 741(d)(4) of this title in the date of rank of an officer appointed to a higher grade under section 624(a) of this title. In any use of the authority under the preceding sentence, subparagraph (C)(ii) of such section shall be applied by substituting "reserve active-status list" for "active-duty list".

(3) Except as provided in paragraph (2) or as otherwise specifically authorized by law, a reserve officer is not entitled to additional pay or allowances if the effective date of the officer's promotion is adjusted to reflect a date earlier than the actual date of the officer's promotion.

(d) OFFICERS WITH RUNNING MATES.—An officer to whom a running mate system applies under section 14306 of this title and who is selected for promotion is eligible for promotion to the grade for which selected when the officer who is that officer's running mate becomes eligible for promotion under chapter 36 of this title. The effective date of the promotion of that officer shall be the same as that of the officer's running mate in the grade to which the running mate is promoted.

(e) ARMY RESERVE AND AIR FORCE RESERVE PROMOTIONS TO FILL VACANCIES.—Subject to this section and to section 14311(e) of this title, and under regulations prescribed by the Secretary of the military department concerned—

(1) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) of this title or a board convened under section 14502 or chapter 36 of this title may be promoted at any time to fill a vacancy in a position to which the officer is assigned; and

(2) an officer in a grade below colonel in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a vacancy promotion board convened under section 14101(a) of this title may be promoted at any time to fill the vacancy for which the officer was selected.

(f) EFFECTIVE DATE OF PROMOTION AFTER FEDERAL RECOGNITION.—The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(g) ARMY AND AIR FORCE GENERAL OFFICER PROMOTIONS.—A reserve officer of the Army or the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Army Reserve or the Air Force Reserve, as the case may be, in that grade.

\* \* \* \* \*

1 **SEC. \_\_. MISSION TRAINING THROUGH DISTRIBUTED SIMULATION.**

2 (a) AUTHORITY.—Section 346 of title 10, United States Code, is amended—

3 (1) by striking the section designation and heading and inserting the following:

4 **“§346. Mission training of U.S. and foreign forces through distributed simulation and**  
5 **networked technology”;** and

6 (2) in subsection (a)—

7 (A) in the subsection heading, by inserting “TRAINING AND” before  
8 DISTRIBUTION AUTHORIZED”;

9 (B) in the matter preceding paragraph (1), by striking “interoperability”  
10 and inserting “interoperability and integration”;

11 (C) in paragraph (1), by inserting “persistent advanced networked training  
12 and exercise activities, also referred to as mission training through distributed  
13 simulation, and other” before “electronically-distributed learning content”; and

14 (D) in paragraph (2), by striking “computer software” and inserting  
15 “hardware and software”; and

16 (3) in subsection (c)—

17 (A) in the matter preceding paragraph (1), by striking “shall include” and  
18 inserting “may include”; and

19 (B) by adding at the end the following:

20 “(3) Advanced distributed network training events and computer-assisted  
21 exercises.”.

1 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of  
2 chapter 16 of such title is amended by striking the item relating to section 346 and inserting the  
3 following:

“346. Mission training of U.S. and foreign forces through distributed simulation and networked technology.”.

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

### **Section-by-Section Analysis**

**Description:** This proposal would authorize the Secretary of Defense to utilize mission training through distributed simulation (MTDS) activities to provide military education and training to friendly foreign forces and to enhance interoperability and integration between the armed forces and military forces of friendly foreign countries. MTDS seeks to incorporate live friendly foreign forces into this virtual training environment in lieu of simulated or contractor representation of those forces to enhance interoperability and encourage and further strategic partnerships with key allies and partners. The primary focus of the training is on increasing interoperability and integration between the armed forces and military forces of friendly foreign countries, while also increasing U.S., partner, and allied combat proficiency. MTDS promotes increased capacity, capabilities, integration, and interoperability with coalition and partner nations.

The modification to this authority is consistent with the consolidation of security cooperation authorities into chapter 16 of title, 10 U.S. Code (title 10). These modifications also are consistent with updates to existing authorities accounting for emergent technological capabilities and requirements for high-end systems training activities with partners and allies seeking to increase interoperability and to familiarize themselves with systems procured from the United States. These changes modernize section 346 of title 10 to account for emergent requirements not captured by the original authority.

This authority is necessary because training is recognized as a defense service, and direct or incidental training will be provided by U.S. forces to military forces of friendly foreign countries during this type of activity. These training and exercise events will normally be executed during U.S. forces’ combat readiness training events. MTDS, in effect, broadens the training audience available through networked activities, thus increasing the fidelity and depth of training for U.S. and friendly foreign forces. Allowing for this type of virtual integration may also reduce the cost of training and exercises by bringing dissimilar forces together in distributed events, requiring fewer travel expenses and reducing the wear and tear on actual weapon systems. Conducting this type of training through MTDS will be even more critical for training and exercise support as we, and our allies and partners, increasingly rely on advanced weapons systems like the F-35 fighter. At least 50 percent of the training for the F-35 can only be conducted in advanced networked environments.

**History:** U.S. Air Forces in Europe (USAFE) has temporarily executed MTDS activities under authority granted in section 350 of title 10, U.S.C. (Inter-European Air Forces Academy – IEAFA), as part of a “Simulation and Exercise Management Training Activity.” The primary



purpose of section 350 is for training of foreign nations’ forces in professional military education and technical skills training activities, not persistent advanced networked training and exercises focused mainly on U.S. forces.

Existing security cooperation authorities, such as sections 312 and 321 of title 10, allow for training with allies and partners but are constrained by restrictions on paying incremental expenses for non-“developing” countries. Section 333 of title 10 also has a broad training authority but it is tied to institutional capacity-building requirements, which are unnecessary for these kinds of partners. Section 346 of title 10 closely mirrors the intent of MTDS, both for facilitating high-end partners and allowing the payment of incremental expenses; however, to be used effectively, Section 346 must be modified to account for the emergent requirements of MTDS.

**Discussion:** As MTDS activities and emerging technologies supporting synthetic and blended live, virtual, and constructive (LVC) environments continue to expand rapidly, more training and exercises will be conducted in these environments. For many weapon systems, outside of actual combat, MTDS provides the only environment to conduct training in anti-access/area-denial (A2/AD) operations. By supporting the inclusion of friendly foreign forces into the virtual training, we will be providing U.S. forces more realistic training on interoperability and will be doing it in a cost-effective manner—obviating the need either to: 1) program simulated allied or partnered forces into the scenario; or 2) conduct the training in the real-world environment, when possible. The scale, rapidity, and importance of this type of training activity with friendly foreign forces necessitates a flexible global authority, as well as specified authorization to allow for the inclusion of the types of partner activities that MTDS requires.

**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
Air Force	15.0	15.0	15.0	15.0	15.0	Operation and Maintenance
Total	15.0	15.0	15.0	15.0	15.0	Operation and Maintenance

**Changes to Existing Law:** As set forth in the legislative text above, this proposal would amend section 346 of title 10, United States Code.

~~§346. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces~~

§346. Mission training of U.S. and foreign forces through distributed simulation and networked technology

(a) Training and Distribution Authorized.-To enhance ~~interoperability~~ interoperability and integration between the armed forces and military forces of friendly foreign countries, the Secretary of Defense, with the concurrence of the Secretary of State, may-

(1) provide to personnel referred to in subsection (b) persistent advanced networked training and exercise activities, also referred to as mission training through distributed simulation, and other electronically distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including ~~computer software~~ hardware and software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) Authorized Recipients.-The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) Education and Training.-Any education and training provided under subsection (a) ~~shall include~~ may include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(3) Advanced distributed network training events and computer-assisted exercises.

(d) Applicability of Export Control Regimes.-The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the transfer of military technology to foreign countries.

(e) Guidance on Utilization of Authority.-

(1) Guidance required.-The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) Modification.-If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

1 **SEC. \_\_\_\_ . AUTHORITY TO DISPOSE OF AND ACQUIRE MATERIALS FOR THE**  
2 **NATIONAL DEFENSE STOCKPILE.**

3 (a) DISPOSAL AUTHORITY.--Pursuant to section 5(b) of the Strategic and Critical  
4 Materials Stock Piling Act (50 U.S.C. 98d(b)), the National Defense Stockpile Manager may  
5 dispose of the following materials contained in the National Defense Stockpile in the following  
6 quantities:

- 7 (1) 765 short tons of chromium metal.
- 8 (2) 666,792 pounds of cobalt.

9 (b) ACQUISITION AUTHORITY.—Using funds available in the National Defense  
10 Stockpile Transaction Fund, the National Defense Stockpile Manager may acquire the  
11 following materials determined to be strategic and critical materials required to meet the  
12 defense, industrial, and essential civilian needs of the United States:

- 13 (1) Aerospace-grade rayon.
- 14 (2) Electrolytic manganese metal.
- 15 (3) Pitch-based carbon fiber.
- 16 (4) Rare earth cerium compounds.
- 17 (5) Rare earth lanthanum compounds.

18 (c) AMOUNT OF AUTHORITY.—The National Defense Stockpile Manager may use up to  
19 \$37,420,000 in the National Defense Stockpile Transaction Fund for acquisition of the materials  
20 specified in subsection (b).

21 (d) FISCAL YEAR LIMITATION.—The authority under subsection (b) is available for  
22 purchases during fiscal year 2020 through fiscal year 2024.

**Section-by-Section Analysis**

This proposal would authorize acquisition of certain materials for the National Defense Stockpile (NDS) under the Strategic and Critical Materials Stock Piling Act (Act).

## **DISPOSAL**

Subsection (a) of this proposal would authorize the National Defense Stockpile Manager to dispose of materials that have been determined, based upon the analysis required by the Act to be excess to Stockpile requirements.

## **ACQUISITION**

Subsection (b) of this proposal would provide authority under section 5(a)(1) of the Act (50 U.S.C. 98d(a)(1)) to acquire strategic and critical materials for the Stockpile.

The materials for which acquisition authority is requested have been identified as necessary to meet the military, industrial, and essential civilian needs of the United States through a rigorous analytical requirements determination processes and are identified in the 2017 and 2019 Biennial Report to the Congress on Stockpile Requirements (Report). The Report is prepared pursuant to the Act, which applies a rigorous analytical process to identify strategic and critical materials required to sustain the United States during various military conflict scenarios developed by the Under Secretary of Defense for Policy. A discussion of the materials follows.

Aerospace-grade rayon. Aerospace-grade rayon is a material with very low thermal conductivity, high-strength, and low erosion at high temperatures. Due to these properties, Aerospace-grade rayon is used as a precursor for carbon-cloth reinforcement in phenolic composites. These rayon based carbon-cloth phenolic (CCP) composites are utilized as ablative insulators space and missile systems.

Electrolytic manganese metal. EMM is a strategic and critical material, used in numerous defense programs as it is a common additive in high strength steels and other alloys. More than 98% of global EMM production occurs in China. There is no domestic EMM production. It is estimated in the Report that in the event of a base case scenario there would be a shortfall of EMM. EMM acquisition was previously authorized by Congress but NDS inventories are still well below projected shortfalls.

Pitch-based carbon fiber. High-performance, aerospace-grade carbon fibers are those fibers, which exhibit high or ultra-high performance parameters. The important performance parameters include elastic modulus, tensile strength, thermal conductivity, thermal stability (coefficient of thermal expansion), and vibration damping. The parameters of high-performance, aerospace-grade carbon fibers exceed those of standard and intermediate grade fibers.

Rare earth cerium compounds. Virtually every integrated circuit chip fabricated today requires multiple steps of polishing with sophisticated formulations of slurries containing cerium in a process known as Chemical Mechanical Planarization (CMP). These next-generation slurries are engineered with nanoparticles of cerium through large scale synthesis of spherical shaped cerium oxide (CeO<sub>2</sub>). In the transportation fuels sector consumption of additive catalysts from oil refineries is growing in order to reduce sulfur

oxide (SOx) and nitrogen oxide (NOx) emissions and to eliminate metal elements in the crude that have deleterious effects in the process of producing petrochemical distillates. The production of cerium-based cover glass for solar panels is critical for ultraviolet (UV) radiation on geostationary and non-geostationary space satellites.

Rare earth lanthanum compounds. Lanthanum is critical to the production of certain petroleum products which, in turn, are essential to the national economy. The use of lanthanum as a component of fluid cracking catalysts (FCC) used in refining is tantamount for maintaining the supply chains for transportation fuels across the country. Crude oil is transported through a network of supply lines to refineries and then delivered back as finished transportation fuels to regional distribution centers to service business and avionic hubs. The civilian economy and the military are dependent on a continuous, reliable supply of transportation fuel from this supply chain.

**Budgetary Implications:** The National Defense Stockpile Transaction Fund (T-Fund) has a projected FY 2018 ending unobligated balance of \$220 million. Budgeted costs for Stockpile operations and acquisitions are estimated to average \$91.4 million per annum for fiscal years 2020 - 2024. . In lieu of an appropriation, the proposed disposal authorities will generate revenue and serve as the financing source to fund these acquisitions, provided that the revenues generated from these disposals are retained in the T-Fund. The table below details resource requirements associated with this proposal. The resources reflected in the table below are in the Agency's PBR 2020 submission.

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total	Appropriation
<b>FY 2020 Budget</b>	<b>104.31</b>	<b>98.34</b>	<b>84.16</b>	<b>84.86</b>	<b>85.25</b>	<b>\$456.92</b>	T-Fund
<b>Proposed Acquisitions (\$Millions)</b>							
Material	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total	Appropriation
Aero-space grade rayon	\$1.53	\$1.53	\$1.53	\$0.00	\$0.00	<b>\$4.60</b>	T-Fund
Electrolytic manganese metal	\$4.50	\$4.50	\$0.00	\$0.00	\$0.00	<b>\$9.00</b>	T-Fund
Pitch-based carbon fibers	\$0.57	\$0.57	\$0.57	\$0.57	\$0.57	<b>\$2.84</b>	T-Fund
Rare earth cerium compounds	\$3.79	\$3.79	\$3.79	\$0.00	\$0.00	<b>\$11.36</b>	T-Fund
Rare earth lanthanum compounds	\$3.21	\$3.21	\$3.21	\$0.00	\$0.00	<b>\$9.62</b>	T-Fund
<b>Acquisition Sub-Total</b>	<b>\$13.59</b>	<b>\$13.59</b>	<b>\$9.09</b>	<b>\$0.57</b>	<b>\$0.57</b>	<b>\$37.42</b>	T-Fund
<b>Proposed Disposals (\$Millions)</b>							
Material	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total	Appropriation
Chromium Metal	\$2.19	\$2.19	\$2.19	\$2.19	\$2.19	<b>\$10.95</b>	T-Fund
Cobalt	\$5.29	\$5.29	\$5.29	\$5.29	\$5.29	<b>\$26.47</b>	T-Fund
<b>Revenue Sub-Total</b>	<b>\$7.48</b>	<b>\$7.48</b>	<b>\$7.48</b>	<b>\$7.48</b>	<b>\$37.42</b>	<b>\$37.42</b>	<b>T-Fund</b>
<b>Net Revenue (\$Millions)</b>							
<b>Net Total Revenue</b>	<b>-\$6.1</b>	<b>-\$6.1</b>	<b>-\$1.6</b>	<b>\$6.9</b>	<b>\$6.9</b>	<b>\$0</b>	<b>T-Fund</b>

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

1 **SEC. \_\_. CONGRESSIONAL NOMINATIONS FOR SENIOR RESERVE OFFICER**  
2 **TRAINING CORPS SCHOLARSHIPS.**

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

5 “(k) Any candidate not nominated under paragraphs (3) through (10) of subsection  
6 (a) may be considered by the Secretary of the Army in order of merit for appointment as a  
7 Senior Reserve Officers’ Training Corps cadet under section 2107 of this title.”.

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

**Section-by-Section Analysis**

This proposal would allow the Secretary of the Army to consider any candidate not nominated by Members of Congress (or officials from U.S. Territories) for appointment as a Senior Reserve Officer Training Corps (ROTC) cadet under section 2107 of title 10, United States Code (10 USC 2107).

Each year there are approximately 100,000 college-bound high school seniors who are eligible for military service and propensed toward officership. Approximately two-thirds of these students will graduate and immediately enroll as full-time students pursuing 4-year baccalaureate degrees.

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

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

At the same time, under 10 USC 7442, Members of Congress currently nominate high school students from public and private high schools for appointment to the United States Military Academy (USMA). Successful candidates, 17 to 23 years of age, receive a funded college education, are commissioned as second lieutenants, and remain in the military for at least

5 years after graduation. However, the number of applicants for congressional nominations exceeds the number of cadets that USMA can admit. Many of these high quality students become disillusioned because they are unaware of other options for military service as a commissioned officer.

Amending 10 USC 7442 to allow Members of Congress (and certain other U.S. officials) to nominate candidates not selected for appointment to USMA to the Secretary of the Army for consideration or selection as cadets under 10 USC 2107 will provide an alternative avenue for those high quality applicants to receive a funded education and commission as officers in the Army. This amendment will limit the perception that they are excluded from Army service just because they were not nominated to USMA. Further, it will serve as another method of educating the public about the other paths to officership. Finally, because the authority will now be in statute it will expand the actions that Members of Congress may take to aid high quality constituents gain an education and serve their country.

**Budget Implications:** This proposal would not directly affect the manpower requirements at U.S. Army Cadet Command (USACC) headquarters. The increased number of nominations would create an additional processing requirements workload at the USACC headquarters equaling approximately one-half a work year (full-time equivalent) but will not create an additional manpower requirement (the additional workload to process scholarship applications should be offset by a reduction in recruiting efforts). The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President’s Budget.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army	\$0.06	0.06	0.06	0.07	0.07	Operation and Maintenance, Army
Total	\$0.06	0.06	0.06	0.07	0.07	

<b>PERSONNEL AFFECTED (Full Time Equivalents)</b>					
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Army	.5	.5	.5	.5	.5
Total	.5	.5	.5	.5	.5

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

**§7442. Cadets: appointment; numbers, territorial distribution**

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

- (1) 65 cadets selected in order of merit as established by competitive examinations from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as

defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Army.

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

(k) Any candidate not nominated under paragraphs (3) through (10) of subsection (a) may be considered by the Secretary of the Army in order of merit for appointment as a Senior Reserve Officers' Training Corps cadet under section 2107 of this title.



1 **SEC. \_\_\_\_. AMENDMENT TO PUBLIC-PRIVATE TALENT EXCHANGE.**

2 (a) IN GENERAL.—Section 1599g of title 10, United States Code, is amended by striking  
3 subsections (e)(2)(A) and (h)(1).

4 (b) CONFORMING AMENDMENTS.—Section 1599g of such title is further amended—

5 (1) in subsection (e)(2), by redesignating subparagraphs (B) and (C) as  
6 subparagraphs (A) and (B), respectively; and

7 (2) in subsection (h), by redesignating paragraphs (2) and (3) as paragraphs (1),  
8 and (2), respectively.

**Section-by-Section Analysis**

This proposal recommends removing the prohibition on backfilling government personnel participating in exchange assignments, and removes the small business participation requirement. This proposal will enhance DoD’s ability to expand the use of exchange assignments, key talent management tools, and to strengthen acquisition workforce capability. The current restriction on backfilling government personnel is a barrier to expanding exchanges which strengthen breadth and depth of experience and enable government personnel to return to their organization and implement innovative knowledge and best practices. The small business participation requirement is impractical in that small businesses are reluctant to participate in exchange programs because of the organizational and financial impact due to their size.

**Budget Implications:** No significant budgetary impact.

**Changes to Existing Law:** This proposal would make the following changes to section 1599g of title 10, United States Code:

**§1599g. Public-private talent exchange**

(a) Assignment Authority.-Under regulations prescribed by the Secretary of Defense, the Secretary may, with the agreement of a private-sector organization and the consent of the employee, arrange for the temporary assignment of an employee to such private-sector organization, or from such private-sector organization to a Department of Defense organization under this section.

(b) Agreements.- (1) The Secretary of Defense shall provide for a written agreement among the Department of Defense, the private-sector organization, and the employee concerned regarding the terms and conditions of the employee's assignment under this section. The agreement-

(A) shall require that the employee of the Department of Defense, upon completion of the assignment, will serve in the Department of Defense, or elsewhere in the civil service if approved by the Secretary, for a period equal to twice the length of the assignment;

(B) shall provide that if the employee of the Department of Defense or of the private-sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason, as determined by the Secretary of Defense; and

(C) shall contain language ensuring that such employee of the Department does not improperly use pre-decisional or draft deliberative information that such employee may be privy to or aware of related to Department programming, budgeting, resourcing, acquisition, or procurement for the benefit or advantage of the private-sector organization.

(2) An amount for which an employee is liable under paragraph (1) shall be treated as a debt due the United States.

(3) The Secretary may waive, in whole or in part, collection of a debt described in paragraph (2) based on a determination that the collection would be against equity and good conscience and not in the best interests of the United States, after taking into account any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

(c) Termination.-An assignment under this section may, at any time and for any reason, be terminated by the Department of Defense or the private-sector organization concerned.

(d) Duration.-<sup>(1)</sup> An assignment under this section shall be for a period of not less than three months and not more than two years, renewable up to a total of four years. No employee of the Department of Defense may be assigned under this section for more than a total of 4 years inclusive of all such assignments.

<sup>(2)</sup> An assignment under this section may be for a period in excess of two years, but not more than four years, if the Secretary determines that such assignment is necessary to meet critical mission or program requirements.

(e) Status of Federal Employees Assigned to Private-sector Organizations.—<sup>(1)</sup> An employee of the Department of Defense who is assigned to a private-sector organization under this section shall be considered, during the period of assignment, to be on detail to a regular work assignment in the Department for all purposes. The written agreement established under subsection (b)<sup>(1)</sup> shall address the specific terms and conditions related to the employee's continued status as a Federal employee.

<sup>(2)</sup> In establishing a temporary assignment of an employee of the Department of Defense to a private-sector organization, the Secretary of Defense shall—

~~(A) ensure that the normal duties and functions of such employee can be reasonably performed by other employees of the Department of Defense without the transfer or reassignment of other personnel of the Department of Defense, including members of the armed forces;~~

(A~~B~~) ensure that the normal duties and functions of such employees are not, as a result of and during the course of such temporary assignment, performed or augmented by contractor personnel in violation of the provisions of section 2461 of this title; and

(B~~C~~) certify that the temporary assignment of such employee shall not have an adverse or negative impact on mission attainment, warfighter support, or organizational capabilities associated with the assignment.

(f) Terms and Conditions for Private-sector Employees.—An employee of a private-sector organization who is assigned to a Department of Defense organization under this section—

(1) shall continue to receive pay and benefits from the private-sector organization from which such employee is assigned and shall not receive pay or benefits from the Department of Defense, except as provided in paragraph (2);

(2) is deemed to be an employee of the Department of Defense for the purposes of—

(A) chapters 73 and 81 of title 5;

(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(C) sections 1343, 1344, and 1349(b) of title 31;

(D) the Federal Tort Claims Act and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978; and

(F) chapter 21 of title 41;

(3) shall not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private-sector organization from which such employee is assigned;

(4) may perform work that is considered inherently governmental in nature only when requested in writing by the Secretary of Defense; and

(5) may not be used to circumvent the provision of section 2461 of this title nor to circumvent any limitation or restriction on the size of the Department's workforce.

(g) Prohibition Against Charging Certain Costs to the Federal Government.—A private-sector organization may not charge the Department or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department organization under this section for the period of the assignment.

(h) Considerations.—In carrying out this section, the Secretary of Defense—

~~(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are from small business concerns (as defined by section 3703(e)(2)(A) of title 5);~~

(12) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees; and

(23) shall take into consideration, where applicable, areas of particular private sector expertise, such as cybersecurity.

1 **SEC. \_\_. QUARTERLY REPORTS ON USE OF FUNDS FOR SECURITY**  
2 **COOPERATION.**

3 Section 381(b) of title 10, United States Code, is amended by striking “30 days” and  
4 inserting “60 days”.

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

**Section-by-Section Analysis**

This proposal would increase the time required to complete the quarterly report by 30 additional days. Increasing the amount of time available will allow the data to be collected, analyzed, developed and coordinated in a realistic timeframe. The 381 report incorporates execution data related to programs and activities funded from DSCA’s Operation and Maintenance, Defense-wide and Overseas, Humanitarian, Disaster, and Civic Aid accounts, as well as consolidated data provided from the U.S. Geographic Combatant Commands and U.S. Services. The data required is both quantitative and qualitative to depict security cooperation funds by region, budget category, as well as notable accomplishments. Therefore, this complexity requires contextual inputs and coordination down to the implementation level resulting in a lengthy process.

Furthermore, the official end of month position of funds provided by Defense Finance and Accounting Service (DFAS) is published after the 20<sup>th</sup> of the month. Given these restraints, DSCA cannot comply with the 30 day deadline. Therefore we request the deadline to be no later than 60 days after the end of each calendar quarter to ensure a timely and accurate report.

**Budget Implications:** This proposal has no budgetary impact.

**Changes to Existing Law:** This proposal would make the following changes to section 381 of title 10, United States Code:

**§381. Consolidated budget**

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

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

1           **TITLE \_\_\_—RESERVE COMPONENT DUTY CONSOLIDATION**

2   **SEC. \_\_\_. CONSOLIDATION OF AUTHORITIES TO ORDER RESERVE**

3                   **COMPONENT MEMBERS TO PERFORM DUTY.**

4           (a) RESERVE DUTY AND ASSIGNMENTS.—Chapter 1209 of title 10, United States Code, is  
5 amended to read as follows:

6                   **“CHAPTER 1209—RESERVE DUTY AND ASSIGNMENTS**

“Subchapter	Sec.
“I. Administration of Reserve Duty.....	12311
“II. Duty and Assignments: Authorities.....	12341
“III. Duty and Assignments: Purposes.....	12351

7                   **“SUBCHAPTER I—ADMINISTRATION OF RESERVE DUTY**

- “Sec.
- “12311. Authority of President to suspend certain laws relating to promotion, retirement, and separation.
- “12312. Use during expansion of armed forces.
- “12313. Release from active duty.
- “12314. Active duty: duties; funding.
- “12315. Active duty agreements.
- “12316. Officers: grades in which ordered to active duty.
- “12317. Kinds of duty.
- “12318. Retention after becoming qualified for retired pay.
- “12319. Duty with or without pay.
- “12320. Payment of certain members while on duty.
- “12321. Theological students: limitations.
- “12322. Reserve Officer Training Corps units: limitation on number of reserve component members assigned.
- “12323 Policies and procedures.

8   **“§12311. Authority of President to suspend certain laws relating to promotion, retirement,**  
9                   **and separation**

10           “(a) IN GENERAL.—Notwithstanding any other provision of law, during any period a  
11 member of a reserve component is serving on active duty pursuant to section 12341 of this title,  
12 the President may suspend any provision of law relating to promotion, retirement, or separation  
13 applicable to any member of the armed forces who the President determines is essential to the  
14 national security of the United States.

1           “(b) TERMINATION OF SUSPENSION.—A suspension made under subsection (a) shall  
2 terminate on the earlier of—

3                   “(1) the release from active duty of a member of a reserve component ordered to  
4 active duty under the authority of section 12341 of this title; or

5                   “(2) at such time as the President determines the circumstances which required the  
6 action of ordering the member to active duty no longer exist.

7           “(c) 90-DAY EXTENSION OF SEPARATION OR RETIREMENT DATE.—Upon the termination  
8 of a suspension made under subsection (a) of a provision of law otherwise requiring the  
9 separation or retirement of an officer on active duty because of age, length of service or length of  
10 service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up  
11 to 90 days the otherwise required separation or retirement date of any officer covered by the  
12 suspended provision whose separation or retirement date, but for the suspension, would have  
13 been before the date of the termination of the suspension or within 90 days after the date of such  
14 termination.

15   **“§12312. Use during expansion of armed forces**

16           “(a) OFFICERS NOT ASSIGNED TO A UNIT.—When an expansion of the active armed forces  
17 requires that an officer of a reserve component who is not a member of a unit organized to serve  
18 as such be ordered as an individual to active duty under section 12341 of this title without the  
19 officers’ consent, the services of qualified and available reserve officers in all grades shall be  
20 used, so far as practicable, according to the needs of the branches, grades, or specialties  
21 concerned.

1           “(b) STANDBY RESERVE.—(1) A unit and member in the Standby Reserve may be ordered  
2 to active duty only as provided in section 12341 of this title, but subject to the limitations in  
3 paragraph (2).

4           “(2) In time of emergency—

5                   “(A) a unit in the Standby Reserve organized to serve as a unit and a  
6 member of the Standby Reserve may be ordered to active duty under section  
7 12341 of this title, without the member’s consent, but only for a purpose  
8 described in section 12351(a)(1) of this title.

9                   “(B) no unit in the Standby Reserve organized to serve as a unit and no  
10 member of the Standby Reserve may be ordered to active duty under section  
11 12341 of this title, for a purpose described in section 12351(a)(1) of this title,  
12 unless the Secretary concerned, with the approval of the Secretary of Defense in  
13 the case of a Secretary of a military department, determines that there are not  
14 enough of the required kinds of units in the Ready Reserve that are readily  
15 available; and

16                   “(C) notwithstanding the authority to order a member to active duty under  
17 section 12341 of this title for a purpose described in section 12351(a)(1) of this  
18 title, no member in the Standby Reserve may be ordered to active duty under  
19 section 12341 of this title as an individual without the member’s consent, unless  
20 the Secretary concerned, with the approval of the Secretary of Defense in the case  
21 of a Secretary of a military department, determines that there are not enough  
22 qualified members in the Ready Reserve in the required category who are readily  
23 available.



1           “(c) RETIRED RESERVE.—(1) A member in the Retired Reserve may, if qualified, be  
2 ordered to active duty under section 12341 of this title, without the member’s consent, but only  
3 for the purpose provided in section 12351(a)(1) of this title.

4           “(2) A member of the Retired Reserve (other than a member transferred to the Retired  
5 Reserve under section 12641(b) of this title) who is ordered to active duty or other appropriate  
6 duty in a retired status may be credited under chapter 1223 of this title with service performed  
7 pursuant to such order.

8           “(3) A member of the Retired Reserve is not eligible for promotion (or for consideration  
9 for promotion) as a member of a reserve component.

10 **“§12313. Release from active duty**

11           “(a) IN GENERAL.—Except as otherwise provided in this title, an authority designated by  
12 the Secretary concerned may at any time release from active duty a member of a reserve  
13 component under the jurisdiction of the Secretary concerned.

14           “(b) WAR OR NATIONAL EMERGENCY.—(1) In time of war or of national emergency  
15 declared by Congress or the President after January 1, 1953, a member of a reserve component  
16 may be released from active duty (other than for training) only if—

17                   “(A) a board of officers convened at the member’s request by an authority  
18 designated by the Secretary concerned recommends the release and the recommendation  
19 is approved;

20                   “(B) the member does not request that a board be convened; or

21                   “(C) the member’s release is otherwise authorized by law.

22           “(2) This subsection does not apply to an armed force during a period of demobilization  
23 or reduction in strength of that armed force.

1 **“§12314. Active duty: duties; funding**

2 “(a) IN GENERAL.—During a period that a member of a reserve component is serving on  
3 active duty pursuant to an order under section 12341 of this title for a purpose described in  
4 paragraph (2) or (3) of section 12351(b) of this title, the member may perform duties in  
5 connection with either such paragraphs.

6 “(b) PAY AND ALLOWANCES.—Funds available for the pay and allowances of a member  
7 of a reserve component who is on active duty for the purpose described in section 12352(f) of  
8 this title shall be available for the pay and allowances of a member who performs duties in  
9 connection with a purpose described in section 12351 of this title.

10 **“§12315. Active duty agreements**

11 “(a) WRITTEN AGREEMENT.—To provide a definite term of active duty (other than for  
12 training) under section 12342 of this title for a member of a reserve component with the  
13 member’s consent, an authority designated by the Secretary concerned may make a standard  
14 written agreement with any member of a reserve component under the jurisdiction of the  
15 Secretary concerned requiring the member to serve for a period of active duty (other than for  
16 training) of not more than five years. When such an agreement expires, a new one may be made.  
17 This subsection shall not apply in time of war declared by Congress.

18 “(b) MINIMUM TERM.—An agreement may not be made under subsection (a) unless the  
19 specified period of duty is at least 12 months longer than any period of active duty that the  
20 member is otherwise required to perform.

21 “(c) UNIFORMITY; STANDARDS AND POLICIES.—Agreements made under subsection (a)  
22 shall be uniform, so far as practicable, and are subject to such standards and policies as may be  
23 prescribed by the Secretary of Defense for the armed forces under the Secretary of Defense’s

1 jurisdiction or by the Secretary of Homeland Security for the Coast Guard when it is not  
2 operating as a service in the Navy.

3 “(d) WAR OR NATIONAL EMERGENCY.—If an agreement made under subsection (a)  
4 expires during a war or during a national emergency declared by Congress or the President after  
5 January 1, 1953, the member concerned may be kept on active duty, without the member’s  
6 consent, as otherwise prescribed by law.

7 “(e) EARLY RELEASE.—(1) Each agreement made under subsection (a) shall provide that  
8 the member may not be released from active duty without the member’s consent during the  
9 period of the agreement—

10 “(A) because of a reduction in the actual personnel strength of the armed force  
11 concerned, unless the release is in accordance with the recommendation of a board of  
12 officers appointed by an authority designated by the Secretary concerned to determine the  
13 members to be released from active duty under regulations prescribed by the Secretary;  
14 or

15 “(B) for any other reason, without an opportunity to be heard by a board of  
16 officers before the release, unless the member is—

17 “(i) dismissed or discharged under the sentence of a court-martial;

18 “(ii) released because of an unexplained absence without leave for at least  
19 three months;

20 “(iii) released because the member is convicted and sentenced to  
21 confinement in a Federal or State penitentiary or correctional institution and the  
22 sentence has become final; or

1                   “(iv) released because the member has been considered at least twice and  
2                   has not been recommended for promotion to the next higher grade or because the  
3                   member is considered as having failed of selection for promotion to the next  
4                   higher grade and has not been recommended for promotion to that grade, under  
5                   conditions that would require the release or separation of a reserve component  
6                   officer who is not serving under such agreement.

7                   “(2) A member who is released from active duty without the member’s consent before the  
8                   end of the member’s agreement made under subsection (a) is entitled to an amount computed by  
9                   multiplying the number of years and fractions of a year of the member’s unexpired period of  
10                  service under the agreement by the sum of one month's basic pay, special pay, and allowances to  
11                  which the member is entitled on the day of the member’s release. The amount to which a  
12                  member is entitled under this paragraph is in addition to any pay and allowances to which the  
13                  member is otherwise entitled. For the purposes of this paragraph, a fraction of a month of 15  
14                  days or more is counted as a whole month, and a fraction of a month of less than 15 days is  
15                  disregarded. This paragraph shall not apply to a member if the member is—

16                  “(A) released for a reason described in clauses (i), (ii) or (iii) of paragraph (1)(B);

17                  “(B) released because of a physical disability resulting from the member’s  
18                  intentional misconduct or willful neglect;

19                  “(C) eligible for retired pay, separation pay, or severance pay under another  
20                  provision of law;

21                  “(D) placed on a temporary disability retired list; or

22                  “(E) released to accept an appointment, or to be enlisted, in a regular component  
23                  of an armed force.

1 **“§12316. Officers: grade in which ordered to active duty**

2 “An officer of a reserve component who is ordered to active duty or full-time National  
3 Guard duty shall be ordered to active duty or full-time National Guard duty in the officer’s  
4 reserve grade, except that such an officer who is credited with service under section 12207 of  
5 this title, is ordered to active duty, and placed on the active-duty list, may be ordered to active  
6 duty in a reserve grade and with a date of rank and position on the active-duty list determined  
7 under regulations prescribed by the Secretary of Defense based upon the amount of service  
8 credited.

9 **“§12317. Kinds of duty**

10 “Notwithstanding any other provision of law, a member of a reserve component who is  
11 on active duty other than for training may, under regulations prescribed by the Secretary  
12 concerned, be detailed or assigned to any duty authorized by law for a member of the regular  
13 component of the armed force concerned.

14 **“§12318. Retention after becoming qualified for retired pay**

15 “Any person who has qualified for retired pay under chapter 1223 of this title may, with  
16 the person’s consent and by order of an authority designated by the Secretary concerned, be  
17 retained on active duty, or in service in a reserve component other than that listed in section  
18 12732(b) of this title. A member so retained shall be credited with that duty or service for all  
19 purposes.

20 **“§12319. Duty with or without pay**

21 “(a) IN GENERAL.—Subject to other provisions of this title, any member of a reserve  
22 component may be ordered to active duty or other duty—

23 “(1) with the pay and allowances provided by law; or

1                   “(2) with the member’s consent, without pay.

2                   “(b) DUTY WITHOUT PAY.—Duty without pay described in subsection (a)(2) shall be  
3 considered for all purposes (other than pay) as if the duty without pay were duty with pay.

4                   “(c) PAY AND ALLOWANCES FOR RESERVE COMPONENT MEMBERS RETAINED ON ACTIVE  
5 DUTY.—A member of a reserve component who is retained on active duty after the member’s  
6 term of service expires is entitled to pay and allowances while on that duty, except that the pay  
7 and allowances may be forfeited—

8                   “(1) under the approved sentence of a court-martial;

9                   “(2) by non-judicial punishment by a commanding officer; or

10                   “(3) when the member is otherwise in a non-pay status.

11                   **“§12320. Payment of certain members while on duty**

12                   “(a) IN GENERAL.—Except as provided by subsection (b), a member of a reserve  
13 component who because of the member’s earlier military service is entitled to a pension, retired  
14 or retainer pay, or disability compensation, and who performs duty for which the member is  
15 entitled to compensation, may elect to receive for that duty either—

16                   “(1) the payments to which the member is entitled because of the member’s  
17 earlier military service; or

18                   “(2) if the member specifically waives those payments, the pay and allowances  
19 authorized by law for the duty that the member is performing.

20                   “(b) PAYMENTS.—Unless the payments described in subsection (a)(1) are greater than the  
21 compensation described in subsection (a)(2), a member of a reserve component who because of  
22 the member’s earlier military service is entitled to a pension, retired or retainer pay, or disability  
23 compensation, and who upon being ordered to active duty for a period of more than 30 days in

1 time of war or national emergency is found physically qualified to perform that duty, ceases to  
2 be entitled to the payments because of the member’s earlier military service until the period of  
3 active duty ends. While on that active duty, the member is entitled to the compensation described  
4 in subsection (a)(2). Other rights and benefits of the member or the member’s dependents are  
5 unaffected by this subsection.

6 **“§12321. Theological students: limitations**

7 “A member of a reserve component may not be required to serve on active duty, or to  
8 participate in reserve component duty under section 12343 of this title or section 543 of title 32,  
9 while preparing for the ministry in a recognized theological or divinity school.

10 **“§12322. Reserve Officer Training Corps units: limitation on number of reserve  
11 component members assigned**

12 “The number of members of the reserve components serving on active duty or full-time  
13 National Guard duty for the purpose of organizing, administering, recruiting, instructing, or  
14 training the reserve components, who are assigned to duty with a unit of the Reserve Officer  
15 Training Corps program, may not exceed 275.

16 **“§12323. Policies and procedures**

17 “(a) IN GENERAL.—The Secretary of Defense, and the Secretary of Homeland Security in  
18 the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe such  
19 policies and procedures for the reserve components of the armed forces under their respective  
20 jurisdictions as the Secretary of Defense and the Secretary of Homeland Security, respectively,  
21 consider necessary to carry out this chapter.

22 “(b) ARMY NATIONAL GUARD AND AIR NATIONAL GUARD.—A member of the Army  
23 National Guard of the United States or the Air National Guard of the United States who consents

1 to an order to active duty under section 12341 or 12342 of this title may not be ordered to active  
2 duty without the consent of the Governor or other appropriate authority of the State concerned.  
3 The consent of a Governor or other appropriate authority described in the preceding sentence  
4 may not be withheld (in whole or in part) with regard to active duty outside the United States, the  
5 Commonwealth of Puerto Rico, the District of Columbia, a territory of the United States, or a  
6 possession of the United States because of any objection to the location, purpose, type, or  
7 schedule of such active duty.

8 “(c) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—In determining  
9 which units or members of the reserve components will be ordered to active duty under section  
10 12341 of this title without the consent of the members for any purpose described in section  
11 12351 of this title, the Secretary of Defense shall prescribe such policies and procedures as the  
12 Secretary determines necessary to carry out this subsection. Such policies and procedures shall  
13 take into consideration—

14 “(1) the length and nature of previous service, to ensure such sharing of exposure  
15 to hazards as national security and military requirements will reasonably allow;

16 “(2) the frequency of assignments during service career;

17 “(3) family responsibilities; and

18 “(4) employment necessary to maintain the national health, safety, or interest.

19 “(d) ADVANCE NOTICE.—The period of time allowed between the date a reserve  
20 component member is alerted to an order to active duty under section 12341 of this title without  
21 the consent of the member, and the date when the member is required to enter upon that duty,  
22 shall be determined by the Secretary concerned based upon military requirements at the time the  
23 Secretary makes the determination.



1           “(e) CONTINUOUS PERIOD OF DUTY.—(1) When the authority or purpose for a member of  
2 a reserve component to serve on active duty or full-time National Guard duty changes with no  
3 break in service—

4                   “(A) the order to active duty shall be amended to cite the new authority or  
5 purpose and the applicable funding; and

6                   “(B) the member shall remain on the same order to duty.

7           “(2) If a member is released from active duty or full-time National Guard duty and  
8 subsequently ordered to active duty or full-time National Guard duty with a break in service of  
9 24 hours or fewer, the period of service shall be treated as continuous Federal service for the  
10 purposes of pay and benefits, unless otherwise specified in law.

11           “(f) DOCUMENTATION OF MANPOWER AND APPROPRIATIONS.— To account for manpower  
12 utilization and expenditure of appropriations—

13                   “(1) each order to active duty described in this chapter shall cite the authority and  
14 the purpose of the order to duty, and each amendment to such order shall cite the new  
15 authority or purpose of the duty if the authority or purpose changes; and

16                   “(2) the purpose of the reserve component duty described in this chapter and the  
17 associated funding shall be documented.

18           **“SUBCHAPTER II—DUTY AND ASSIGNMENTS: AUTHORITIES**

“Sec.

“12341. Category I: active duty.

“12342. Category II: active duty.

“12343. Category III: reserve component duty.

“12344. Category IV: remote assignments.

19           **“§12341. Category I: active duty**

20           “(a) IN GENERAL.—(1) Under regulations prescribed by the Secretary of Defense, and the  
21 Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a

1 service in the Navy, an authority designated by the Secretary concerned may order a member of  
2 a reserve component under the jurisdiction of the Secretary concerned to active duty or retain the  
3 member on active duty—

4 “(A) when Congress—

5 “(i) declares war or a national emergency; or

6 “(ii) in order to maintain a balanced force, determines that more units or  
7 members of the reserve components are needed for the national security than are  
8 in the regular components;

9 “(B) when the President—

10 “(i) determines it is necessary to call the militia into Federal service  
11 pursuant to section 1235(b)(1);

12 “(ii) declares a national emergency; or

13 “(iii) other than in time of war or national emergency, determines it is  
14 necessary to augment the active force for any named operational mission or  
15 support the response to certain emergencies;

16 “(C) when the Secretary of Defense responds to the request from a Governor to  
17 provide Federal assistance;

18 “(D) when the Secretary concerned—

19 “(i) determines a member is missing or a captive;

20 “(ii) determines it is necessary to augment the active force for preplanned  
21 missions in support of combatant commands; or

22 “(iii) applies the special rule for call-up related activities described in  
23 section 12351(e) of this title; or

1 “(E) when otherwise authorized by law to support a contingency operation.

2 “(2) A member in the Standby Reserve on the inactive status list who is ordered to active  
3 duty under this section is subject to the limitations described in section 10153 of this title.

4 “(b) MEMBER CONSENT.—(1) A member of a reserve component may, with or without  
5 the consent of the member, be ordered to active duty under this section.

6 “(2) A member of a reserve component ordered to active duty, without the consent of the  
7 member, shall not be retained on active duty beyond the duration described in section 12351 of  
8 this title, if any, for the purpose of that duty.

9 “(3) Any reserve component member may, with the consent of the member, be ordered to  
10 active duty under this section and shall not be subject to any duration and strength limitations  
11 described in section 12351 of this title, if any, for the purpose of that duty.

12 **“§12342. Category II: active duty**

13 “(a) IN GENERAL.—(1) Under regulations prescribed by the Secretary of Defense, and the  
14 Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a  
15 service in the Navy, an authority designated by the Secretary concerned may order any member  
16 of a reserve component under the jurisdiction of the Secretary concerned to active duty or retain  
17 the member on active duty for a purpose described in section 12352 of this title.

18 “(2) A member in the Standby Reserve on the inactive status list who is ordered to active  
19 duty is subject to the limitations imposed under section 10153 of this title.

20 “(b) MEMBER CONSENT.—The consent of a member of a reserve component is required  
21 for an order to active duty under this section, except—

22 “(1) when the member is made the subject of proceedings described in section  
23 12352(a) of this title;

1           “(2) when the member is placed in a missing status described in section 12352(b)  
2 of this title; or

3           “(3) for required training described in section 12352(c) of this title.

4           “(c) CATEGORY I OPERATION OR MISSION EXCLUSION.—Except as provided in section  
5 12351(e) of this title, a member of a reserve component shall not be ordered to or retained on  
6 active duty under this section if that duty is in support of an operation or mission for which any  
7 member of a reserve component is ordered to active duty under section 12341 of this title for  
8 such operation or mission.

9           **“§12343. Category III: reserve component duty**

10           “(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense and the  
11 Secretary of Homeland Security, in the case of the Coast Guard when it is not operating as a  
12 service in the Navy, an authority designated by the Secretary concerned—

13           “(1) may require or authorize a member of the Army Reserve, Navy Reserve,  
14 Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve, under the jurisdiction  
15 of the Secretary concerned, to perform reserve component duty for a purpose described in  
16 section 12353 of this title; and

17           “(2) may require a member of a reserve component to perform reserve component  
18 duty for the purpose described in section 12353(b) of this title.

19           “(b) MEMBER CONSENT.—(1) A member described in subsection (a) shall, without the  
20 consent of the member, be required to perform reserve component duty under this section for—

21           “(A) required training described in section 12353(a) of this title; or

22           “(B) muster described in section 12353(b) of this title.

1           “(2) A member described in subsection (a) may, with the consent of the member, be  
2 authorized to perform reserve component duty under this section for—

3                   “(A) additional training described in section 12353(c) of this title; or

4                   “(B) support activities or requirements described in section 12353(d) of this title.

5           “(c) PERIOD OF SERVICE.—(1) Each period of reserve component duty performed under  
6 this section shall be for a duration of not fewer than two hours.

7           “(2) Not more than two periods of reserve component duty shall be performed under this  
8 section in a calendar day.

9           “(d) HOSTILE FIRE OR IMMINENT DANGER AREAS.—A member described in subsection (a)  
10 shall not perform reserve component duty under this section if the location of that duty is in a  
11 designated hostile fire or an imminent danger area.

12           “(e) CATEGORY I OPERATION OR MISSION EXCLUSION.—A member described in  
13 subsection (a) shall not perform reserve component duty under this section if that duty is in  
14 support of an operation or mission for which any member of a reserve component is ordered to  
15 active duty under section 12341 of this title for such operation or mission.

16 **“§12344. Category IV: remote assignments**

17           “(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense and the  
18 Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a  
19 service in the Navy, an authority designated by the Secretary concerned, at the discretion of that  
20 authority, may assign a member of the Ready Reserve or a member of the Standby Reserve on  
21 the active status list—

22                   “(1) pre-approved work described in section 12354(a)(1) of this title; or

1                   “(2) a pre-approved course of instruction described in section 12354(a)(2) of this  
2                   title.

3                   “(b) INDIVIDUALLY ASSIGNED.—Work or a course of instruction assigned under this  
4                   section shall be specifically and individually assigned to a member described in subsection (a).

5                   “(c) DIRECT MILITARY CONTROL NOT REQUIRED.—(1) Work or a course of instruction  
6                   assigned under this section shall not require direct military control of the member or the presence  
7                   of a supervisor or instructor.

8                   “(2) Work or a course of instruction assigned under this section may be performed at a  
9                   time and location determined by the member, subject to any completion deadline or other  
10                  applicable requirement established by the Secretary concerned.

11                  “(d) ELECTRONIC BASED METHODOLOGY.—A course of instruction assigned under  
12                  subsection (a)(2) may be completed by an electronic-based distributed learning methodology or  
13                  other means approved by the Secretary concerned.

14                  “(e) FEDERAL STATUS.—A member of the Army National Guard or Air National Guard  
15                  may only perform work or a course of instruction assigned under this section when the work or  
16                  course is assigned by the Secretary of the Army or the Secretary of the Air Force, respectively, to  
17                  the member in the member’s status as a member of the Army National Guard of the United  
18                  States or Air National Guard of the Unites States, respectively.

19                  **“SUBCHAPTER III—DUTY AND ASSIGNMENTS: PURPOSES**

“Sec.

“12351. Category I: active duty purposes.

“12352. Category II: active duty purposes.

“12353. Category III: reserve component duty purposes.

“12354. Category IV: remote assignment purposes.

20                  **“§12351. Category I: active duty purposes**

1           “(a) CONGRESSIONAL DECLARATION OF WAR OR NATIONAL EMERGENCY.—(1)(A) Any  
2 unit or any member not assigned to a unit organized to serve as a unit of a reserve component  
3 under the jurisdiction of the Secretary concerned may be ordered to active duty under section  
4 12341 of this title.

5           “(B)(i) A member ordered to active duty pursuant to clause (i) of section 12341(a)(1)(A)  
6 of this title, without the consent of the member, shall serve no longer than the duration of the war  
7 or national emergency and for six months thereafter.

8           “(ii) A member ordered to active duty pursuant to clause (ii) of section 12341(a)(1)(A) of  
9 this title, without the consent of the member, shall be retained on active duty as long as so  
10 needed.

11           “(2) So far as practicable, during any expansion of the active armed forces that requires  
12 that a reserve component unit or member be ordered to active duty for a purpose described in this  
13 subsection, a member of a unit organized and trained to serve as a unit who is ordered to that  
14 duty without the member’s consent shall be so ordered with the member’s unit. However, a  
15 member of that unit may be reassigned after being so ordered to active duty.

16           “(3) A member on an inactive status list or in a retired status may not, without the consent  
17 of the member, be ordered to active duty under section 12341 of this title for a purpose described  
18 in this subsection unless the Secretary concerned, with the approval of the Secretary of Defense  
19 in the case of the Secretary of a military department, determines that there are not enough  
20 qualified members of a reserve component in an active status or in the inactive National Guard in  
21 the required category who are readily available.

22           “(b) PRESIDENTIAL CALL-UP.—

1           “(1) INSURRECTION.—(A)(i) The militia of any State (other than the State  
2 requesting assistance under subclause (I) of this clause) may be called into Federal  
3 service under section 12341 of this title for use with such of the armed forces as the  
4 President determines necessary—

5                   “(I) when there is an insurrection in any State against the State’s  
6 government, upon the request of the State’s legislature, or of the State’s Governor  
7 if the legislature cannot be convened, and in the number requested by that State;

8                   “(II) when the President considers that unlawful obstructions,  
9 combinations, or assemblages, or rebellion against the authority of the United  
10 States make it impracticable to enforce the laws of the United States in any State  
11 by the ordinary course of judicial proceedings or to suppress the rebellion; or

12                   “(III) when the President determines it is necessary to suppress, in a State,  
13 any insurrection, domestic violence, unlawful combination, or conspiracy, if the  
14 insurrection, domestic violence, unlawful combination, or conspiracy—

15                           “(aa) so hinders the execution of the laws of that State, and of the  
16 United States within the State, that any part or class of its people is  
17 deprived of a right, privilege, immunity, or protection named in the  
18 Constitution and secured by law, and the constituted authorities of that  
19 State are unable, fail, or refuse to protect that right, privilege, or immunity,  
20 or to give that protection; or

21                           “(bb) opposes or obstructs the execution of the laws of the United  
22 States or impedes the course of justice under those laws.



1           “(ii) In any situation covered by clause (i)(III)(aa), the State shall be considered to  
2 have denied the equal protection of the laws secured by the Constitution.

3           “(iii) When the President considers it necessary to use the militia or the armed  
4 forces under this subparagraph, the President shall, by proclamation, immediately order  
5 the insurgents to disperse and retire peaceably to their abodes within a limited time.

6           “(B)(i) A member or unit of the National Guard of any State, in such numbers as  
7 the President considers necessary, may be called into Federal service under section 12341  
8 of this title when—

9                   “(I) the United States, the Commonwealth of Puerto Rico, the District of  
10 Columbia, a territory of the United States, or a possession of the United States are  
11 invaded or is in danger of invasion by a foreign nation;

12                   “(II) there is a rebellion or danger of a rebellion against the authority of  
13 the Government of the United States; or

14                   “(III) the President is unable with the regular forces to execute the laws of  
15 the United States.

16           “(ii) When the President calls a member or unit of the National Guard of any State  
17 into Federal service pursuant to clause (i), orders shall be issued through the Governor of  
18 the State, or in the case of the District of Columbia through the commanding general of  
19 the National Guard of the District of Columbia.

20           “(C) In this paragraph the term ‘State’ means any State of the United States, the  
21 District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin  
22 Islands, and Guam.

1           “(D)(i) The repeal of the provisions described in clause (ii) and the replacement of  
2 those provisions with this paragraph shall not be construed as an expansion or limitation  
3 of the authorities granted under those provisions. The intent of such repeal and  
4 replacement is to reorganize the provisions described in clause (ii) in order to reduce the  
5 number of authorities for ordering members of the reserve components and militia to duty  
6 and to align those authorities with identified benefits.

7           “(ii) The provisions described in this clause are the following provisions of law as  
8 in effect on the day before the effective date of this section:

9                   “(I) Chapter 13 of this title (commonly known as the ‘Insurrection Act’).

10                   “(II) Section 12406 of this title.

11           “(2) READY RESERVE MOBILIZATION.—(A) Any unit, or any member not assigned  
12 to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of the  
13 Secretary concerned may be ordered to active duty under section 12341 of this title.

14           “(B) A member ordered to active duty for the purpose of this paragraph, without  
15 the consent of the member, shall serve for not more than 24 consecutive months.

16           “(C) Not more than 1,000,000 members of the Ready Reserve may be on active  
17 duty at any one time, without the consent of the member, for the purpose of this  
18 paragraph.

19           “(3) FORCE AUGMENTATION.—(A) Any unit, or any member not assigned to a  
20 unit organized to serve as a unit, of the Selected Reserve (as described in section  
21 10143(a) of this title), or any member in the Individual Ready Reserve mobilization  
22 category (as described in section 10144(b) of this title) and designated as essential under

1 regulations prescribed by the Secretary concerned, may be ordered to active duty under  
2 section 12341 of this title.

3 “(B) For purposes of clause (iii) of section 12341(a)(1)(B), the term ‘certain  
4 emergencies’ means those emergencies involving—

5 “(i) a use or threatened use of a weapon of mass destruction (as defined in  
6 section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996  
7 (50 U.S.C. 2302)); or

8 “(ii) a terrorist attack or threatened terrorist attack in the United States that  
9 results, or could result, in significant loss of life or property.

10 “(C) No reserve component unit or member may be ordered to active duty for the  
11 purpose of this paragraph to provide—

12 “(i) the assistance referred to in clause (i) of section 12351(a)(1)(B) of this  
13 title; or

14 “(ii) assistance to the Federal Government or a State in time of a serious  
15 natural or manmade disaster, accident, or catastrophe, except as provided in  
16 subparagraph (B).

17 “(D) No reserve component unit or member may be ordered to active duty for the  
18 purpose of this paragraph to provide assistance referred to in subparagraph (B) unless the  
19 President determines that the requirements for responding to an emergency referred to in  
20 that subparagraph have exceeded, or will exceed, the response capabilities of local, State,  
21 and Federal civilian agencies.

22 “(E) Not more than 200,000 members of the Selected Reserve and Individual  
23 Ready Reserve, of whom not more than 30,000 members of the Individual Ready

1 Reserve, may be on active duty for the purpose of this paragraph, without the consent of  
2 the members, at any one time.

3 “(F) A member of a reserve component ordered to active duty for the purpose of  
4 this paragraph, without the consent of the member, shall serve for not more than 365  
5 consecutive days.

6 “(G) Whenever the President authorizes the Secretary of Defense or the Secretary  
7 of Homeland Security to order any unit or member of the Selected Reserve or Individual  
8 Ready Reserve to active duty for the purpose of this paragraph, the President shall, within  
9 24 hours after exercising such authority, submit to Congress a report, in writing, setting  
10 forth the circumstances necessitating the action taken under this paragraph and describing  
11 the anticipated use of the units or members.

12 “(H) Whenever any unit of the Selected Reserve or any member of the Selected  
13 Reserve not assigned to a unit organized to serve as a unit, or any member of the  
14 Individual Ready Reserve, is ordered to active duty for the purpose of this paragraph, the  
15 service of all units or members so ordered to active duty may be terminated by—

16 “(i) order of the President; or

17 “(ii) law.

18 “(I) Nothing contained in this paragraph shall be construed as amending or  
19 limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541  
20 et seq.).

21 “(J) In this paragraph the term ‘State’ means any State of the United States, the  
22 District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin  
23 Islands, and Guam.

1 “(c) SECRETARY OF DEFENSE ACTIVATION FOR A MAJOR DISASTER OR EMERGENCY.—(1)

2 Any unit, or any member not assigned to a unit organized to serve as a unit, of the Army  
3 Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve may be ordered to active  
4 duty under of section 12341 of this title to provide Federal assistance in responding to—

5 “(A) a major disaster or emergency (as those terms are defined in section 102 of  
6 the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122));  
7 or

8 “(B) an emergency involving a manmade disaster, a serious natural or manmade  
9 accident or catastrophe, or an act of terrorism (as that term is defined in section 2(18) of  
10 the Homeland Security Act of 2002 (6 U.S.C. 101(18))).

11 “(2) A member described in paragraph (1) ordered to active duty for the purpose of this  
12 subsection, without the consent of the member, shall serve on active duty for the purpose of this  
13 subsection for a continuous period of not more than 120 days.

14 “(3) Whenever any unit or member not assigned to a unit is ordered to active duty for the  
15 purpose of this subsection, the service of all units or members so ordered to active duty may be  
16 terminated by—

17 “(A) order of the Secretary of Defense; or

18 “(B) law.

19 “(d) SECRETARY CONCERNED DETERMINATION OF OPERATIONAL AND SUPPORT  
20 REQUIREMENTS.—

21 “(1) MISSING OR CAPTIVE.—(A)(i) A member of a reserve component may,  
22 without the consent of the member, be ordered to or retained on active duty under section  
23 12341 of this title if the Secretary concerned determines that the member is in a missing

1 status which occurs as the result of a hostile action and is related to the member's military  
2 status.

3 “(ii) A member of a reserve component who was in a missing status may not be  
4 retained on active duty for more than 30 days after the member’s missing status is  
5 terminated, notwithstanding any previous maximum period of service prescribed for the  
6 purpose the member was ordered to active duty.

7 “(B) In this paragraph the term ‘missing status’ means a status described in  
8 section 551(2) of title 37.

9 “(2) PRE-PLANNED MISSION SUPPORT.—(A)(i) Any member or unit of the Selected  
10 Reserve may be ordered to active duty under section 12341 of this title when the  
11 Secretary of a military department determines that it is necessary to augment the active  
12 forces for a preplanned mission in support of a combatant command.

13 “(ii) A member ordered to active duty for the purpose of this paragraph, without  
14 the consent of the member, shall serve on active duty for not more than 365 consecutive  
15 days.

16 “(B) A member or unit may, without the consent of the member, be ordered to  
17 active duty for the purpose of this paragraph, but only if—

18 “(i) the manpower and associated costs of such active duty are specifically  
19 included and identified in the defense budget materials (as defined in section  
20 231(f)(2) of this title) for the fiscal year or years in which such units are  
21 anticipated to be ordered to active duty;

22 “(ii) the budget information on such costs includes a description of the  
23 mission for which such units are anticipated to be ordered to active duty and the

1           anticipated length of time of the order of such units to active duty on a voluntary  
2           or an involuntary basis; and

3           “(iii) the Secretary of the military department concerned submits to Congress a  
4           report, in writing, setting forth the circumstances necessitating the action taken under this  
5           paragraph and describing the anticipated use of such units of the Selected Reserve  
6           ordered to active duty.

7           “(C)(i) Each reserve component shall have not more than 10 percent of its  
8           authorized end strength for the selected reserve on active duty under this section, without  
9           the consent of the member, at any one time.

10          “(ii) Upon determination that such an action is in the national interest—

11                 “(I) the Secretary of a military department may increase the maximum  
12                 strength authorized in clause (i) for a reserve component by a number equal to not  
13                 more than 2 percent of the authorized end strength for the selected reserve for that  
14                 reserve component; and

15                 “(II) the Secretary of Defense may increase the maximum strength  
16                 authorized in clause (i) for a reserve component by a number equal to not more  
17                 than 3 percent of the authorized end strength for the selected reserve of that  
18                 reserve component.

19          “(iii) Any increase under subclause (I) of clause (ii) of the maximum strength for  
20          a reserve component for a fiscal year shall be counted as part of the increase for that  
21          reserve component for that fiscal year authorized under subclause (II) of clause (ii).

22          “(D) The service of all members and units of the Selected Reserve ordered to  
23          active duty for the purpose of this paragraph may be terminated by—

1                   “(i) order of the Secretary of the military department concerned; or

2                   “(ii) law.

3                   “(E) Nothing contained in this paragraph shall be construed as amending or  
4                   limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541  
5                   et seq.).

6                   “(e) SPECIAL RULE REGARDING CALL-UP RELATED ACTIVITIES—(1) A member of a  
7                   reserve component may be ordered to or retained on active duty under clause (iii) of section  
8                   12341(a)(1)(D) of this title, but only if that duty is—

9                   “(A) to complete training under subsection (c) or (d)(1) of section 12352 of this  
10                  title that is required to prepare the member for a purpose described in subsection (a), (b),  
11                  (c) or (d) of this section;

12                  “(B) to complete activities approved by the Secretary concerned under paragraph  
13                  (5) of subsection 12352(e) of this title that are required to prepare the member for a  
14                  purpose described in this section;

15                  “(C) for medical or dental care under paragraph (2) of section 12352(e) of this  
16                  title to meet the deployment readiness standards for an operation or mission described in  
17                  this section;

18                  “(D) for medical evaluation, treatment, or rehabilitation under paragraph (2) of  
19                  section 12352(e) of this title for an injury, illness, or disease incurred or aggravated in the  
20                  line of duty while on active duty under section 12341 of this title or on full-time National  
21                  Guard duty under section 541 of title 32;

22                  “(E) to undergo medical evaluation under paragraph (3) of section 12352(e) of  
23                  this title for disability separation or retirement under chapter 61 of this title, for an injury,



1 illness, or disease incurred or aggravated in the line of duty while on active duty under  
2 section 12341 of this title or on full-time National Guard duty under section 541 of title  
3 32; or

4 “(F) to participate in post-deployment and reintegration activities approved by the  
5 Secretary concerned under paragraph (5) of section 12352(e) of this title following duty  
6 performed under section 12341 of this title.

7 “(2) A member of a reserve component on active duty under section 12342 of this title  
8 who is performing Active Guard and Reserve functions described in section 12352(f)(1) of this  
9 title may be ordered to active duty under section 12341 of this title, while retaining the member’s  
10 status as an Active Guard and Reserve, to support an operation or mission described in section  
11 12351 of this title.

12 **“§12352. Category II: active duty purposes**

13 “(a) DISCIPLINARY PROCEEDINGS.—A member of a reserve component may, without the  
14 consent of the member, be ordered to active duty under section 12342 of this title when the  
15 member is made the subject of proceedings under section 815 (article 15) or section 830 (article  
16 30) of this title, as provided in subsection (d) of section 802 (article 2) of this title.

17 “(b) MISSING.—(1) A member of a reserve component may, without the consent of the  
18 member, be ordered to or retained on active duty under section 12342 of this title if the Secretary  
19 places the member in a missing status.

20 “(2) A member of a reserve component in a missing status may not be retained on active  
21 duty for more than 30 days after the member’s missing status is terminated.

22 “(3) In this subsection the term ‘missing status’ means a status described in subparagraph  
23 (A) of section 551(2) of title 37.

1           “(c) REQUIRED TRAINING.—(1) Except as provided in regulations prescribed by the  
2 Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard  
3 when it is not operating as a service in the Navy, a member of the Ready Reserve of the Army  
4 Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve  
5 (except a person who is enlisted, inducted, or appointed in an armed force under section 513 or  
6 10145(b) of this title) may be ordered to active duty under section 12342 of this title for not less  
7 than 14 days of training (exclusive of travel time) during each year.

8           “(2) A member described in paragraph (1) who has served on active duty for one year or  
9 longer may not be required to perform a period of active duty for training required under  
10 paragraph (1) if the first day of that period falls during the last 120 days of the member's required  
11 membership in the Ready Reserve.

12           “(d) ADDITIONAL TRAINING AND SUPPORT.—At any time, a member of a reserve  
13 component may, with the consent of the member, be ordered to or retained on active duty under  
14 section 12342 of this title—

15                   “(1) for additional training, as determined by the Secretary concerned; or

16                   “(2) to provide operational support, as determined by the Secretary concerned.

17           “(e) OTHER ACTIVITIES OR REQUIREMENTS.—At any time, a member of a reserve  
18 component may, with the consent of the member, be ordered to or retained on active duty under  
19 section 12342 of this title—

20                   “(1) to prepare for or perform funeral honor functions at the funeral of veterans as  
21 described in section 1491 of this title;

22                   “(2) to receive medical or dental care authorized by the Secretary concerned;

23                   “(3) to undergo medical evaluation for disability or for other similar purposes;

1           “(4) to participate in a Department of Defense health care study, which may  
2 include an associated medical evaluation for the member; or

3           “(5) to perform an activity or requirement approved by the Secretary concerned.

4           “(f) ACTIVE GUARD AND RESERVE.—(1) A member of a reserve component may, with the  
5 consent of the member, be ordered to active duty under section 12342 of this title to perform the  
6 Active Guard and Reserve functions of organizing, administering, recruiting, instructing, or  
7 training the reserve components.

8           “(2) Subject to regulations prescribed by the Secretary concerned, a member performing  
9 Active Guard and Reserve functions pursuant to paragraph (1) may perform the following  
10 additional activities to the extent that the performance of those additional activities do not  
11 interfere with the performance of the member's primary Active Guard and Reserve functions  
12 described in such paragraph:

13           “(A) Supporting operations or missions assigned in whole or in part to the reserve  
14 components.

15           “(B) Supporting operations or missions performed or to be performed by—

16           “(i) a unit composed of elements from more than one component of the  
17 same armed force; or

18           “(ii) a joint forces unit that includes—

19           “(I) one or more reserve component units; or

20           “(II) a member of a reserve component whose reserve component  
21 assignment is in a position in an element of the joint forces unit.

1           “(C) Advising the Secretary of Defense, the Secretaries of the military  
2 departments, the Joint Chiefs of Staff, or the commanders of the combatant commands  
3 regarding reserve component matters.

4           “(D) Instructing or training in the United States, the Commonwealth of Puerto  
5 Rico, the District of Columbia, a territory of the United States, or a possession of the  
6 United States, of—

7                   “(i) members of the armed forces on active duty;

8                   “(ii) members of foreign military forces (under the same authorities and  
9 restrictions applicable to members of the armed forces on active duty providing  
10 such instruction or training);

11                   “(iii) Department of Defense contractor personnel; or

12                   “(iv) Department of Defense civilian employees.

13           “(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (C), a member  
14 performing Active Guard and Reserve functions pursuant to paragraph (1) may perform  
15 functions in support of emergency preparedness programs to prepare for, or to respond to, any  
16 emergency involving any of the following:

17                   “(i) The use or threatened use of a weapon of mass destruction (as defined in  
18 section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50  
19 U.S.C. 2302) in the United States.

20                   “(ii) A terrorist attack or threatened terrorist attack in the United States that  
21 results, or could result, in catastrophic loss of life or property.

1           “(iii) The intentional or unintentional release of nuclear, biological, radiological,  
2           or toxic or poisonous chemical, materials in the United States that results, or could result,  
3           in catastrophic loss of life or property.

4           “(iv) A natural or manmade disaster in the United States that results, or could  
5           result, in catastrophic loss of life or property.

6           “(B) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related  
7           expenses for a member described in paragraph (1) who is performing functions described in  
8           subparagraph (A) shall be paid from the appropriation that is available to pay such costs for other  
9           members of the reserve component of that member who are performing functions described in  
10          paragraph (1).

11          “(C) A member described in paragraph (1) may perform functions described in  
12          subparagraph (A) only while assigned to a reserve component weapons of mass destruction civil  
13          support team.

14          “(D) A member described in paragraph (1) who is performing functions described in  
15          subparagraph (A) shall be counted against the annual end strength authorizations required by  
16          sections 115(a)(1)(B) and 115(a)(2) of this title.

17          “(E) The justification material for the defense budget request for a fiscal year shall  
18          identify the number and component of the members described in paragraph (1) who are  
19          programmed to be performing functions described in subparagraph (A) during that fiscal year.

20          “(F) A reserve component weapons of mass destruction civil support team, and any  
21          member described in paragraph (1) who is assigned to such a team, may not be used to respond  
22          to an emergency described in subparagraph (A) until the Secretary of Defense certifies to the  
23          Committee on Armed Services of the Senate and the Committee on Armed Services of the House

1 of Representatives that that team, or that member, possesses the requisite skills, training, and  
2 equipment to be proficient in all mission requirements.

3 “(G) If the Secretary of Defense submits to Congress any request for the enactment of  
4 legislation to modify the requirements of subparagraphs (A) or (C), the Secretary shall provide  
5 with the request—

6 “(i) a justification for each such requested modification; and

7 “(ii) the Secretary's plan for sustaining the qualifications of the personnel and  
8 teams described in subparagraph (C).

9 “(H) In this subsection, the term ‘United States’ includes the Commonwealth of Puerto  
10 Rico, Guam, and the United States Virgin Islands.

11 “(4) A member described in paragraph (1) shall serve in the member's reserve grade and  
12 while so serving continue to be eligible for promotion as a member of a reserve component, if  
13 otherwise qualified.

14 “(5) A member described in paragraph (1) may be provided training that is consistent  
15 with training provided to other members on active duty, as the Secretary concerned determines  
16 appropriate.

17 “(g) SEXUAL ASSAULT LINE OF DUTY DETERMINATION.—(1) In the case of a reserve or  
18 National Guard member who is the alleged victim of sexual assault committed while on active  
19 duty or full-time National Guard duty and who is expected to be released from active duty or  
20 full-time National Guard duty before the determination is made regarding whether the member  
21 was assaulted while in the line of duty (in this section referred to as a ‘line of duty  
22 determination’), upon the request of the member, the member may, with the consent of the  
23 member, be ordered to or retained on active duty under section 12342 of this title or full-time

1 National Guard duty under section 542 of title 32 until completion of the line of duty  
2 determination. A member eligible for continuation on active duty or full-time National Guard  
3 duty under this paragraph shall be informed as soon as practicable after the alleged assault of the  
4 option to request continuation on active duty or full-time National Guard duty under this  
5 paragraph.

6 “(2) In the case of a reserve or National Guard member neither on active duty nor on full-  
7 time National Guard duty who is the alleged victim of a sexual assault that occurred while the  
8 member was on active duty or full-time National Guard duty and when the line of duty  
9 determination is not completed, upon the request of the member, the member may be ordered to  
10 active duty under section 12342 of this title or full-time National Guard duty under section 542  
11 of title 32 for such time as necessary for completion of the line of duty determination.

12 “(3) The Secretaries of the military departments shall prescribe regulations to carry out  
13 this subsection, subject to guidelines prescribed by the Secretary of Defense. The guidelines of  
14 the Secretary of Defense shall provide that—

15 “(A) a request submitted by a member described in paragraph (1) or (2) to  
16 continue on active duty or full-time National Guard duty, or to be ordered to active duty  
17 or full-time National Guard duty, shall be decided within 30 days from the date of the  
18 request; and

19 “(B) if the request is denied, the member may appeal to the first general officer or  
20 flag officer in the chain of command of the member, and in the case of such an appeal, a  
21 decision on the appeal shall be made within 15 days from the date of the appeal.

22 “§12353. Category III: reserve component duty purposes

1           “(a) REQUIRED TRAINING.—Except as provided in regulations prescribed by the Secretary  
2 of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is  
3 not operating as a service in the Navy, a member of the Ready Reserve of the Army Reserve,  
4 Navy Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve (except a  
5 person who is enlisted, inducted, or appointed in an armed force under any provision of law other  
6 than section 513 or 10145(b) of this title) shall during each fiscal year—

7                   “(1) participate, without the consent of the member, in at least 48 periods of  
8 reserve component duty under section 12343 of this title; or

9                   “(2) perform such other equivalent training as the Secretary concerned may  
10 prescribe.

11           “(b) MUSTER.—(1) Subject to the requirements and limitations described in paragraph  
12 (2), a member of the Ready Reserve may, without the consent of the member, be required to  
13 muster under section 12343 of this title one time each year.

14           “(2) The requirements and limitations described in paragraph (1) are as follows:

15                   “(A) The period which the member may be required to devote to muster under  
16 this subsection, including round-trip travel to and from the location of that muster, may  
17 not total more than one day each calendar year.

18                   “(B) Except as provided in subparagraph (D), muster (and travel directly to and  
19 from muster) under this subsection shall be treated the same as any other reserve  
20 component duty (and travel directly to and from that duty) for the purposes of this title  
21 and the provisions of title 37 (other than section 206(a) of title 37) and title 38, including  
22 provisions relating to the determination of eligibility for and the receipt of benefits and



1 entitlements provided under those titles for members performing reserve component duty  
2 and for the dependents and survivors of the members.

3 “(C) In lieu of compensation under section 206(a) of title 37, the Secretary  
4 concerned shall pay an allowance in accordance with section 433 of title 37 to a member  
5 of the Ready Reserve who is not a member of the National Guard or of the Selected  
6 Reserve.

7 “(D) Muster under this subsection shall not be credited in determining entitlement  
8 to, or in computing, retired pay under chapter 1223 of this title.

9 “(c) ADDITIONAL TRAINING.—A member of the Army Reserve, Navy Reserve, Marine  
10 Corps Reserve, Air Force Reserve, or Coast Guard Reserve may, with the consent of the  
11 member, participate in additional training periods, including additional flight training periods,  
12 under section 12343 of this title.

13 “(d) SUPPORT ACTIVITIES OR REQUIREMENTS.—(1) A member of the Army Reserve,  
14 Navy Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve may, with the  
15 consent of the member, perform reserve component duty under section 12343 of this title—

16 “(A) to participate in operational support requirements, including administrative  
17 functions to prepare for unit training or funeral honors functions at the funeral of a  
18 veteran as described in section 1491 of this title; or

19 “(B) to carry out an activity or requirement approved by the Secretary concerned.

20 “(2) A member described in paragraph (1) who is performing funeral honors functions  
21 described in paragraph (1)(A)—

22 “(A) may be paid—

23 “(i) an allowance under section 495 of title 37; or

1 “(ii) compensation under section 206 of title 37;

2 “(B) shall be reimbursed for travel and transportation expenses incurred in  
3 conjunction with such duty as authorized under section 495 of title 37 if such duty is  
4 performed at a location 50 miles or more from the member’s residence; and

5 “(C) shall receive retirement points under section 12732(a)(2)(B) of this title.

6 **“§12354. Category IV: remote assignment purposes**

7 “(a) WORK OR A COURSE OF INSTRUCTION RELATED TO READINESS.—A member of the  
8 Ready Reserve or a member of the Standby Reserve on the active status list may, with the  
9 consent of the member, be assigned—

10 “(1) pre-approved work assigned under section 12344 of this title that is directly  
11 related to the readiness of the member or the readiness of the member’s unit; or

12 “(2) a pre-approved course of instruction assigned under section 12344 of this title  
13 that completes a career advancement requirement or improves the military readiness of  
14 the member.

15 “(b) COMPENSATION.—(1) At a rate and under terms determined by the Secretary of  
16 Defense and only upon successful completion of pre-approved work or a course of instruction  
17 described in subsection (a), the Secretary concerned may, at the discretion of the Secretary  
18 concerned, authorize a member described in subsection (a) to be—

19 “(A) awarded retirement points under section 12732(a)(2)(E) of this title; or

20 “(B)(i) paid compensation under section 206 of title 37, at a rate of compensation  
21 not to exceed the rate otherwise applicable to the member paid under subsection (a) of  
22 section 206 of title 37; and

23 “(ii) awarded retirement points under section 12732(a)(2)(E) of this title.

1           “(2) A member of the Individual Ready Reserve who performs screening conducted  
2 through electronic means may be paid a stipend in accordance with section 433a of title 37, in  
3 lieu of compensation under paragraph (1).

4           “(c) EXCLUSION FROM CERTAIN BENEFITS AND PROTECTIONS.—A member described in  
5 subsection (a) who performs pre-approved work or undertakes a pre-approved course of  
6 instruction pursuant to this section shall not—

7                   “(1) be subject to chapter 47 of this title (Uniform Code of Military Justice); or

8                   “(2) be entitled to any of the pay, benefits, rights, privileges, or immunities  
9 provided a member on active duty or performing reserve component duty, except as  
10 provided in subsection (b).”.

11           (b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle E of title  
12 10, United States Code, and at the beginning of part II of such subtitle, are amended by striking  
13 the item related to chapter 1209 and inserting the following:

                  “1209. Reserve Duty and Assignments.....12311”.

14 **SEC. \_\_\_\_ . DEFINITION OF CONTINGENCY OPERATION.**

15           Paragraph (13) of section 101(a) of title 10, is amended—

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

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

18                   “(B)(i) results in a member of a reserve component being called or ordered to  
19 active duty—

20                           “(I) under section 12341 of this title; or

21                           “(II) under section 3713 of title 14; or

22                   “(ii) results in a member of the Army National Guard of the United States or the  
23 Air National Guard of the United States in the member's status as a member of the

1 National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District  
2 of Columbia being called or ordered to full-time National Guard duty under section 541  
3 of title 32; or

4 “(C) results in a retired member being ordered to active duty under section 688 of  
5 this title for an operation described in subparagraph (A).”.

6 **SEC. \_\_\_\_ . COAST GUARD RESERVE.**

7 Section 3713 of title 14, United States Code, is amended—

8 (1) in subsection (a), by striking “in any 2-year period”; and

9 (2) by striking subsection (e).

10 **SEC. \_\_\_\_ . NATIONAL GUARD.**

11 (a) NATIONAL GUARD DUTY.—Chapter 5 of title 32, United States Code, is amended to  
12 read as follows:

13 **“CHAPTER 5—NATIONAL GUARD DUTY**

“Subchapter	Sec.
“I. Administration of Duty.....	511
“II. Duty Authorities.....	541
“III. Duty Purposes.....	551

**“SUBCHAPTER I—ADMINISTRATION OF DUTY**

“Sec.

“511. Training generally.

“512. Assignment and detail of members of the Regular Army or Regular Air Force for instruction of National Guard.

“513. Instruction in firing; supply of ammunition.

“514. Assistance for certain youth and charitable organizations.

“515. National Guard Youth Challenge Program of opportunities for civilian youth.

“516. Policies and procedures.

“517. Definition of reserve component duty.

14 **“§511. Training generally**

15 “(a) DISCIPLINE OF THE NATIONAL GUARD.— The discipline, including training, of—

16 “(1) the Army National Guard shall conform to that of the Army; and

1           “(2) the Air National Guard shall conform to that of the Air Force.

2           “(b) CONDUCT OF TRAINING.—The training of the National Guard shall be conducted by  
3 the several States of the United States, the Commonwealth of Puerto Rico, the District of  
4 Columbia, Guam, and the United States Virgin Islands in conformity with this title.

5           **“§512. Assignment and detail of members of Regular Army or Regular Air Force for**  
6           **instruction of National Guard**

7           “(a) IN GENERAL.—(1) The President shall assign for instruction of the National Guard  
8 such members of the Regular Army or the Regular Air Force as the President considers  
9 necessary.

10           “(2) The Secretary of the Army may detail members of the Regular Army to attend  
11 training, maneuvers, rifle proficiency, or other exercises for field instruction of the Army  
12 National Guard.

13           “(3) The Secretary of the Air Force may detail members of the Regular Air Force to  
14 attend training or exercises for field instruction of the Air National Guard.

15           “(b) INSTRUCTION.—Members so detailed shall instruct the members of the National  
16 Guard at the exercise, as directed by the Secretary of the Army or Secretary of the Air Force, or  
17 as requested by the Governor or commanding officer of the National Guard there assembled.

18           **“§513. Instruction in firing; supply of ammunition**

19           “Ammunition for instruction in firing and for target practice may be furnished, in such  
20 amounts as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as  
21 the case may be, to units of the National Guard encamped at a post, camp, or air base. The  
22 instruction shall be under the direction of a commissioned officer selected for that purpose by the  
23 proper military commander.

1 **“§514. Assistance for certain youth and charitable organizations**

2 “(a) AUTHORITY TO PROVIDE SERVICES.—Members and units of the National Guard may  
3 provide the services described in subsection (b) to an eligible organization in conjunction with  
4 training required under this chapter in any case in which—

5 “(1) the provision of such services does not adversely affect the quality of that  
6 training or otherwise interfere with the ability of a member or unit of the National Guard  
7 to perform the military functions of the member or unit;

8 “(2) the services to be provided are not commercially available, or any  
9 commercial entity that would otherwise provide such services has approved, in writing,  
10 the provision of such services by the National Guard;

11 “(3) the provision of such services will enhance the military skills of the National  
12 Guard personnel providing such services; and

13 “(4) the provision of the services will not result in a significant increase in the  
14 cost of the training.

15 “(b) AUTHORIZED SERVICES.—The services authorized to be provided under subsection  
16 (a) are as follows:

17 “(1) Ground transportation.

18 “(2) Air transportation in support of Special Olympics.

19 “(3) Administrative support services.

20 “(4) Technical training services.

21 “(5) Emergency medical assistance and services.

22 “(6) Communications services.

1           “(c) OTHER AUTHORIZED ASSISTANCE.—Facilities and equipment of the National Guard,  
2 including military property of the United States issued to the National Guard and General  
3 Services Administration vehicles leased to the National Guard or to the Department of Defense,  
4 may be used in connection with providing services to any eligible organization under this  
5 section.

6           “(d) ELIGIBLE ORGANIZATIONS.—The organizations eligible to receive services under this  
7 section are as follows:

- 8                   “(1) The Boy Scouts of America.
- 9                   “(2) The Girl Scouts of America.
- 10                  “(3) The Boys Clubs of America.
- 11                  “(4) The Girls Clubs of America.
- 12                  “(5) The Young Men's Christian Association.
- 13                  “(6) The Young Women's Christian Association.
- 14                  “(7) The Civil Air Patrol.
- 15                  “(8) The United States Olympic Committee.
- 16                  “(9) The Special Olympics.
- 17                  “(10) The Campfire Boys.
- 18                  “(11) The Campfire Girls.
- 19                  “(12) The 4–H Club.
- 20                  “(13) The Police Athletic League.
- 21                  “(14) Any other youth or charitable organization designated by the Secretary of  
22 Defense.

23 **“§515. National Guard Youth Challenge Program of opportunities for civilian youth**

1           “(a) PROGRAM AUTHORITY AND PURPOSE.—The Secretary of Defense may use the  
2 National Guard to conduct a civilian youth opportunities program, to be known as the ‘National  
3 Guard Youth Challenge Program’, which shall consist of at least a 22-week residential program  
4 and a 12-month post-residential mentoring period. The Program shall seek to improve life skills  
5 and employment potential of participants by providing military-based training and supervised  
6 work experience, together with the core program components of assisting participants to receive  
7 a high school diploma or its equivalent, leadership development, promoting fellowship and  
8 community service, developing life coping skills and job skills, improving physical fitness, and  
9 improving health and hygiene.

10           “(b) CONDUCT OF THE PROGRAM.—(1) The Secretary of Defense shall provide for the  
11 conduct of the Program in such States as the Secretary considers to be appropriate.

12           “(2) The Secretary shall carry out the Program using—

13                   “(A) funds appropriated directly to the Secretary of Defense for the Program; and

14                   “(B) nondefense funds made available or transferred to the Secretary of Defense  
15 by other Federal agencies to support the Program.

16           “(3) The Secretary of Defense shall remain the executive agent to carry out the Program  
17 regardless of the source of funds for the Program or any transfer of jurisdiction over the Program  
18 within the executive branch. As provided in subsection (a), the Secretary may use the National  
19 Guard to conduct the Program.

20           “(c) PROGRAM AGREEMENTS.—(1) To carry out the Program in a State, the Secretary of  
21 Defense shall enter into an agreement with the Governor of the State or, in the case of the  
22 District of Columbia, with the commanding general of the District of Columbia National Guard,



1 under which the Governor or the commanding general will establish, organize, and administer  
2 the Program in the State.

3 “(2) The agreement may provide for the Secretary to provide funds to the State for  
4 civilian personnel costs attributable to the use of civilian employees of the National Guard in the  
5 conduct of the Program.

6 “(d) MATCHING FUNDS REQUIRED.—(1) The amount of assistance provided by the  
7 Secretary of Defense to a State program of the Program for a fiscal year under this section may  
8 not exceed 75 percent of the costs of operating the State program during that fiscal year.

9 “(2) The limitation in paragraph (1) may not be construed as a limitation on the amount  
10 of assistance that may be provided to a State program of the Program for a fiscal year from  
11 sources other than the Department of Defense.

12 “(e) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—A school dropout from secondary  
13 school shall be eligible to participate in the Program. The Secretary of Defense shall prescribe  
14 the standards and procedures for selecting participants from among school dropouts.

15 “(f) AUTHORIZED BENEFITS FOR PARTICIPANTS.—(1) To the extent provided in an  
16 agreement entered into in accordance with subsection (c) and subject to the approval of the  
17 Secretary of Defense, a person selected for training in the Program may receive the following  
18 benefits in connection with that training:

19 “(A) Allowances for travel expenses, personal expenses, and other expenses.

20 “(B) Quarters.

21 “(C) Subsistence.

22 “(D) Transportation.

23 “(E) Equipment.

1           “(F) Clothing.

2           “(G) Recreational services and supplies.

3           “(H) Other services.

4           “(I) Subject to paragraph (2), a temporary stipend upon the successful completion  
5 of the training, as characterized in accordance with procedures provided in the agreement.

6           “(2) In the case of a person selected for training in the Program who afterwards becomes  
7 a member of the National Civilian Community Corps under subtitle E of title I of the National  
8 and Community Service Act of 1990 (42 U.S.C. 12611 et seq.), the person may not receive a  
9 temporary stipend under paragraph (1)(I) while the person is a member of that Corps. The person  
10 may receive the temporary stipend after completing service in that Corps unless the person elects  
11 to receive benefits provided under subsection (f) or (g) of section 158 of such Act (42 U.S.C.  
12 12618).

13           “(g) PROGRAM PERSONNEL.—(1) Members of the National Guard of a State in which the  
14 Program is conducted may serve on full-time National Guard duty for the purpose of providing  
15 command, administrative, training, or supporting services for the Program. For the performance  
16 of those services, any such personnel may be ordered to duty under section 542 of this title for  
17 not longer than the period of the Program.

18           “(2) A Governor participating in the Program and the commanding general of the District  
19 of Columbia National Guard (if the District of Columbia National Guard is participating in the  
20 Program) may procure by contract the temporary full-time services of such civilian personnel as  
21 may be necessary to augment National Guard personnel in carrying out the Program in that State.

1           “(3) Civilian employees of the National Guard performing services for the Program and  
2 contractor personnel performing such services may be required, when appropriate to achieve the  
3 purposes of the Program, to be members of the National Guard and to wear the military uniform.

4           “(h) EQUIPMENT AND FACILITIES.—(1) Equipment and facilities of the National Guard,  
5 including military property of the United States issued to the National Guard, may be used in  
6 carrying out the Program.

7           “(2) Activities under the Program shall be considered noncombat activities of the  
8 National Guard for purposes of section 710 of this title.

9           “(i) STATUS OF PARTICIPANTS.—(1) A person receiving training under the Program shall  
10 be considered an employee of the United States for the purposes of the following provisions of  
11 law:

12                   “(A) Subchapter I of chapter 81 of title 5 (relating to compensation of Federal  
13 employees for work injuries).

14                   “(B) Section 1346(b) and chapter 171 of title 28 and any other provision of law  
15 relating to the liability of the United States for tortious conduct of employees of the  
16 United States.

17           “(2) In the application of the provisions of law referred to in paragraph (1)(A) to a person  
18 referred to in paragraph (1)—

19                   “(A) the person shall not be considered to be in the performance of duty while the  
20 person is not at the assigned location of training or other activity or duty authorized in  
21 accordance with a Program agreement referred to in subsection (c), except when the  
22 person is traveling to or from that location or is on pass from that training or other  
23 activity or duty;

1           “(B) the person's monthly rate of pay shall be deemed to be the minimum rate of  
2 pay provided for grade GS–2 of the General Schedule under section 5332 of title 5; and

3           “(C) the entitlement of a person to receive compensation for a disability shall  
4 begin on the day following the date on which the person's participation in the Program is  
5 terminated.

6           “(3) A person referred to in paragraph (1) may not be considered an employee of the  
7 United States for any purpose other than a purpose set forth in that paragraph.

8           “(j) SUPPLEMENTAL RESOURCES.—To carry out the Program in a State, the Governor of  
9 the State or, in the case of the District of Columbia, the commanding general of the District of  
10 Columbia National Guard may supplement funds made available under the Program out of other  
11 resources (including gifts) available to the Governor or the commanding general. The Governor  
12 or the commanding general may accept, use, and dispose of gifts or donations of money, other  
13 property, or services for the Program.

14           “(k) REPORT.—Not later than 90 days after the end of each fiscal year, the Secretary of  
15 Defense shall submit to Congress a report on the design, conduct, and effectiveness of the  
16 Program during the preceding fiscal year. In preparing the report, the Secretary shall coordinate  
17 with the Governor of each State in which the Program is carried out and, if the Program is  
18 carried out in the District of Columbia, with the commanding general of the District of Columbia  
19 National Guard.

20           “(l) DEFINITIONS.—In this section:

21           “(1) The term ‘State’ includes the Commonwealth of Puerto Rico, the District of  
22 Columbia, a territory of the United States, and a possession of the United States.

1           “(2) The term ‘school dropout’ means an individual who is no longer attending  
2 any school and who has not received a secondary school diploma or a certificate from a  
3 program of equivalency for such a diploma.

4           “(3) The term ‘Program’ means the National Guard Youth Challenge Program  
5 carried out pursuant to this section.

6           “(m) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out  
7 the Program. The regulations shall address at a minimum the following:

8           “(1) The terms to be included in the Program agreements required by subsection  
9 (c).

10           “(2) The qualifications for persons to participate in the Program, as required by  
11 subsection (e).

12           “(3) The benefits authorized for Program participants, as required by subsection  
13 (f).

14           “(4) The status of National Guard personnel assigned to duty in support of the  
15 Program under subsection (g).

16           “(5) The conditions for the use of National Guard equipment and facilities to  
17 carry out the Program, as required by subsection (h).

18           “(6) The status of Program participants, as described in subsection (i).

19           “(7) The procedures to be used by the Secretary when communicating with States  
20 about the Program.

21   **“§516. Policies and procedures**

22           “(a) IN General.—The Secretary of Defense shall prescribe such policies and procedures  
23 as the Secretary considers necessary to carry out this chapter.

1           “(b) BOUNDARY RESTRICTIONS.—(1) Except as provided in paragraph (2) or (3), full-time  
2 National Guard duty and reserve component duty described in this chapter may not be  
3 performed—

4           “(A) on land outside the United States, the Commonwealth of Puerto Rico, the  
5 District of Columbia, a territory of the United States, or a possession of the United States;

6           “(B) on water outside the territorial sea of the United States, the Commonwealth  
7 of Puerto Rico, a territory of the United States, or a possession of the United States; or

8           “(C) in international airspace outside the United States, the Commonwealth of  
9 Puerto Rico, a territory of the United States, or a possession of the United States.

10          “(2) While on full-time National Guard duty or performing reserve component duty, a  
11 member may transit land, water, or airspace described in paragraph (1) in properly sanctioned  
12 modes of transportation between or among the United States, the Commonwealth of Puerto Rico,  
13 a territory of the United States, or a possession of the United States.

14          “(3) The President may waive a limitation set forth in paragraph (1) if the President  
15 determines, on a non-delegable basis, that the waiver is required to achieve a national defense  
16 requirement of the United States, the Commonwealth of Puerto Rico, Guam, or the United States  
17 Virgin Islands.

18          “(c) CONSIDERATIONS FOR INVOLUNTARY ORDER TO FULL-TIME NATIONAL GUARD  
19 DUTY.—In determining which units or members of the National Guard will be ordered to full-  
20 time National Guard duty under section 541 of this title without the consent of the members for a  
21 purpose described in section 551 of this title, appropriate consideration shall be given to—

22           “(1) the length and nature of previous service, to ensure such sharing of exposure  
23 to hazards as national security and military requirements will reasonably allow;

1           “(2) the frequency of assignments during service career;

2           “(3) family responsibilities; and

3           “(4) employment necessary to maintain the national health, safety, or interest.

4           “(d) ADVANCE NOTICE.—The period of time allowed between the date a member of the  
5 National Guard is alerted of an order to full-time National Guard duty under section 541 of this  
6 title without the consent of the member, and the date when the member is required to enter upon  
7 that duty, shall be determined by the Secretary of the Army or Secretary of the Air Force, as the  
8 case may be, based upon military requirements at that time.

9           “(e) CONTINUOUS PERIOD OF DUTY.—(1) When the authority or purpose for a member to  
10 serve on full-time National Guard duty changes with no break in service—

11           “(A) the order to full-time National Guard duty shall be amended to cite the new  
12 authority or purpose and the applicable funding; and

13           “(B) the member shall remain on the same order to full-time National Guard duty.

14           “(2) If a member is released from full-time National Guard duty and subsequently  
15 ordered to active duty or full-time National Guard duty with a break in service of 24 hours or  
16 fewer, the period of service shall be treated as continuous Federal service for the purposes of pay  
17 and benefits, unless otherwise specified in law.

18           “(f) DOCUMENTATION OF MANPOWER AND APPROPRIATIONS.—To account for manpower  
19 utilization and expenditure of appropriations—

20           “(1) each order to full-time National Guard duty described in this chapter shall  
21 cite the authority and the purpose of the order to duty, and each amendment to such order  
22 shall cite the new authority or purpose of the duty if the authority or purpose changes;  
23 and

1           “(2) the purpose of reserve component duty described in this chapter and the  
2 associated funding shall be documented.

3           “(g) DUTY WITHOUT PAY.—(1) Subject to other provisions of this title, any member of  
4 the National Guard may be ordered to full-time National Guard duty—

5                   “(A) with the pay and allowances provided by law; or

6                   “(B) with the member’s consent, without pay.

7           “(2) An order to full-time National Guard duty described in subchapter II of this title  
8 without pay shall be considered for all purposes (other than pay) as if it were an order to full-  
9 time National Guard duty with pay.

10           “(3) A member of the National Guard who is retained on full-time National Guard duty  
11 after the member’s term of service expires is entitled to pay and allowances while on that duty,  
12 except that the pay and allowances may be forfeited—

13                   “(A) under the approved sentence of a court-martial;

14                   “(B) by non-judicial punishment by a commanding officer; or

15                   “(C) when the member is otherwise in a non-pay status.

16           “(h) FUNDING.—Amounts necessary for the pay, subsistence, transportation, and other  
17 proper expenses of any part of the National Guard of a State, the Commonwealth of Puerto Rico,  
18 the District of Columbia, Guam, or the United States Virgin Islands participating in an exercise  
19 under section 552(b)(1) of this title may be set aside from funds allocated to it from  
20 appropriations for field instruction.

21           “(i) PAYMENT RULE.—Members of the National Guard participating in an exercise under  
22 section 552(b)(1) of this title may, after being mustered, be paid for the period beginning with



1 the date of leaving home and ending with the date of return, as determined in advance. If  
2 otherwise correct, such a payment passes to the credit of the disbursing officer.

3 “(j) ORDER TO DUTY.—A unit or member of the Army National Guard or Air National  
4 Guard is ordered to duty under this title by the Governor of a State or territory, the Governor of  
5 the Commonwealth of Puerto Rico, or the commanding general of the District of Columbia  
6 National Guard, or their designated authority, as applicable, for purposes authorized by the  
7 Secretary of Defense.

8 **“§517. Definition of reserve component duty**

9 “In this chapter, the term ‘reserve component duty’ has the meaning given that term in  
10 section 101(d)(7) of title 10.

11 **“SUBCHAPTER II—DUTY AUTHORITIES**

“Sec.

“541. Category I: full-time National Guard duty.

“542. Category II: full-time National Guard duty.

“543. Category III: reserve component duty.

12 **“§541. Category I: full-time National Guard duty**

13 “(a) IN GENERAL.—Under regulations prescribed by the Secretary of the Army or  
14 Secretary of the Air Force, as the case may be, which shall conform to regulations prescribed by  
15 the Secretary of Defense, a member of the National Guard may be ordered to or retained on full-  
16 time National Guard duty for a purpose described in section 551 of this title.

17 “(b) MEMBER CONSENT.—(1) A member of the National Guard may, with or without the  
18 consent of the member, be ordered to full-time National Guard duty under this section.

19 “(2) A member of the National Guard ordered to full-time National Guard duty, without  
20 the consent of the member, shall not be retained on full-time National Guard duty beyond the  
21 duration described in section 551 of this title, if any, for the purpose of that duty.

1           “(3) A member of the National Guard may, with the consent of the member, be ordered to  
2 full-time National Guard duty and shall not be subject to any duration limitation described in  
3 section 551 of this title for the purpose of that duty.

4 **“§542. Category II: full-time National Guard duty**

5           “(a) IN GENERAL.—Under regulations prescribed by the Secretary of the Army or  
6 Secretary of the Air Force, as the case may be, which shall conform to regulations prescribed by  
7 the Secretary of Defense, a member of the National Guard may be ordered to or retained on full-  
8 time National Guard duty for a purpose described in section 552 of this title.

9           “(b) MEMBER CONSENT.—Member consent is required for an order to full-time National  
10 Guard duty under this section except for required training described in section 552(a) of this title.

11           “(c) CATEGORY I OPERATION OR MISSION EXCLUSION.—Except as provided in section  
12 551(c) of this title, a member of the National Guard shall not be ordered to or retained on full-  
13 time National Guard duty under this section if that duty is in support of an operation or mission  
14 for which members have been ordered—

15                   “(1) to active duty under section 12341 of title 10; or

16                   “(2) to full-time National Guard duty under section 541 of this title.

17 **“§543. Category III: reserve component duty**

18           “(a) IN GENERAL.—Under regulations prescribed by the Secretary of the Army or the  
19 Secretary of the Air Force, as the case may be, which shall conform to regulations prescribed by  
20 the Secretary of Defense, a member of the National Guard may be required, or otherwise  
21 authorized, to perform reserve component duty for a purpose described in section 553 of this  
22 title.

1           “(b) MEMBER CONSENT.—(1) A member of the National Guard may, without the consent  
2 of the member, be required to perform reserve component duty under this section for required  
3 training described in section 553(a) of this title.

4           “(2) A member of the National Guard may, with the consent of the member, be  
5 authorized to perform reserve component duty under this section for—

6                   “(A) additional training described in section 553(b) of this title; or

7                   “(B) support activities or requirements described in section 553(c) of this title.

8           “(c) PERIOD OF SERVICE.—(1) Each period of reserve component duty performed under  
9 this section shall be for a duration of not fewer than two hours.

10           “(2) Not more than two periods of reserve component duty under this section shall be  
11 performed in a calendar day.

12           “(d) HOSTILE FIRE OR IMMINENT DANGER AREAS.—A member of the National Guard  
13 shall not be permitted to perform reserve component duty under this section if the location of  
14 such duty is in a designated hostile fire or an imminent danger area.

15           “(e) CATEGORY I MISSION EXCLUSION.—A member of the National Guard shall not  
16 perform reserve component duty under this section if that duty is in support of an operation or  
17 mission for which members are ordered—

18                   “(1) to active duty under section 12341 of title 10 for such operation or mission;

19           or

20                   “(2) to full-time National Guard duty under section 541 of this title.

21                                   **“SUBCHAPTER III—DUTY PURPOSES**

“Sec.

“551. Category I: full-time National Guard duty purposes.

“552. Category II: full-time National Guard duty purposes.

“553. Category III: reserve component duty purposes.

1 **“§551. Category I: full-time National Guard duty purposes**

2 “(a) PRESIDENT OR SECRETARY OF DEFENSE REQUEST.—A member of the National Guard  
3 may be ordered to full-time National Guard duty under section 541 of this title to support  
4 operations or missions that are undertaken by the member's unit at the request of the President or  
5 Secretary of Defense.

6 “(b) HOMELAND DEFENSE ACTIVITIES.—(1) A member of the National Guard may be  
7 ordered to full-time National Guard duty under section 541 of this title to perform homeland  
8 defense activities as that term is defined in section 901(1) of this title and described in section  
9 904 of this title.

10 “(2)(A) A member of the National Guard may ordered to or retained on full-time  
11 National Guard duty for the purpose of this subsection, without the consent of the member, for a  
12 period of not more than 180 days, except that the Governor of the State may, with the  
13 concurrence of the Secretary of Defense, extend the 180-day period one time for an additional 90  
14 days to meet extraordinary circumstances.

15 “(B) In this paragraph the term ‘State’ means each of the several States, the District of  
16 Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

17 “(c) SPECIAL RULE REGARDING CALL-UP RELATED ACTIVITIES—(1) A member of the  
18 National Guard may be ordered to or retained on full-time National Guard duty under section  
19 541 of this title, but only if that duty is—

20 “(A) to complete training under subsection (a) or (b)(1) of section 552 of this title  
21 that is required to prepare the member for a purpose described in subsection (a) or (b) of  
22 this section or in subsection (a), (b), or (d)(2) of section 12351 of title 10;

1           “(B) to complete activities approved by the Secretary concerned under paragraph  
2 (7) of section 552(c) of this title that are required to prepare the member for a purpose  
3 described in subsection (a) or (b) of this section or in subsection (a), (b), or (d)(2) of  
4 section 12351 of title 10;

5           “(C) for medical or dental care under paragraph (5) of section 552(c) of this title  
6 to meet the deployment readiness standards for an operation or mission described in  
7 subsection (a) or (b) of this section or in subsection (a), (b), or (d)(2) of section 12351 of  
8 title 10;

9           “(D) for medical evaluation, treatment, or rehabilitation under paragraph (5) of  
10 section 552(c) of this title for an injury, illness, or disease incurred or aggravated in the  
11 line of duty while on full-time National Guard duty under section 541 of this title;

12           “(E) to undergo medical evaluation under paragraph (6) of section 552(c) of this  
13 title for disability separation or retirement under chapter 61 of this title, for an injury,  
14 illness, or disease incurred or aggravated in the line of duty while on full-time National  
15 Guard duty under section 541 of this title; or

16           “(F) to participate in post-deployment and reintegration activities approved by the  
17 Secretary of Defense under paragraph (7) of section 552(c) of this title following duty  
18 performed under section 541 of this title or section 12341 of title 10.

19           “(2) A member on full-time National Guard duty under section 542 of this title who is  
20 performing Active Guard and Reserve functions described in section 552(d)(1) of this title may  
21 be ordered to full-time National Guard duty under section 541 of this title, while retaining the  
22 member’s status as an Active Guard and Reserve pursuant to section 552(d) of this title, to  
23 support an operation or mission described in subsection (a) or (b) of this section.

1 **“§552. Category II: full-time National Guard duty purposes**

2 “(a) REQUIRED TRAINING.—(1) Under regulations to be prescribed by the Secretary of the  
3 Army or the Secretary of the Air Force, as the case may be, each unit of the National Guard,  
4 unless excused by the Secretary concerned, shall assemble for training for not less than 15 days  
5 each year.

6 “(2) A member of the National Guard who has served on active duty for one year or  
7 longer shall not be required to participate in training required under paragraph (1) if the first day  
8 of such training falls during the last 120 days of the member's required membership in the  
9 National Guard.

10 “(b) ADDITIONAL TRAINING AND TRAINING SUPPORT.—At any time, a member of the  
11 National Guard may, with the consent of the member, be ordered to or retained on full-time  
12 National Guard duty under section 542 of this title—

13 “(1) for additional training, including—

14 “(A) participation in training, maneuvers, rifle proficiency, or any other  
15 exercise for field instruction, independently of or in conjunction with the Army or  
16 the Air Force;

17 “(B) participation in a joint exercise with the Army or the Air Force for  
18 instruction to prepare the National Guard for response to a civil emergency or  
19 disaster;

20 “(C) attendance at a school conducted by the Army or the Air Force, as  
21 appropriate;

22 “(D) conducting or attending a school conducted by the National Guard;

23 “(E) participation in a small arms competition;

1 “(F) in the case of the Army National Guard—

2 “(i) attendance at any service school, except the United States  
3 Military Academy, to pursue a regular course of study at the school; or

4 “(ii) attaching to an organization of the branch of the Army  
5 corresponding to the organization of the Army National Guard to which  
6 the member belongs, for routine practical instruction at or near an Army  
7 post during training, maneuvers, rifle proficiency, or any other exercise for  
8 field instruction; or

9 “(G) in the case of the Air National Guard—

10 “(i) attendance at any service school, except the United States Air  
11 Force Academy, to pursue a regular course of study at the school; or

12 “(ii) attaching to an organization of the Air Force corresponding to  
13 the organization of the Air National Guard to which the member belongs,  
14 for routine practical instruction at an air base during field training or any  
15 other outdoor exercise; or

16 “(2) to support a training operation or training mission assigned in whole or in  
17 part to the National Guard by the Secretary of the Army or the Secretary of the Air Force,  
18 as the case may be, but only to the extent that such training operation or training mission  
19 is solely to instruct active duty military, foreign military (under the same authorities and  
20 restrictions applicable to active duty troops), Department of Defense contractor  
21 personnel, or Department of Defense civilian employees.

1           “(c) OTHER ACTIVITIES OR REQUIREMENTS.—At any time, a member of the National  
2 Guard may, with the consent of the member, be ordered to or retained on full-time National  
3 Guard duty under section 542 of this title—

4                   “(1) to carry out drug interdiction and counter-drug activities, to the extent that  
5 those activities are in accordance with the State drug interdiction and counter-drug  
6 activities plan referred to in subsection (c) of section 112 of this title;

7                   “(2) to provide command, administrative, training, or support services for the  
8 National Guard Youth Challenge Program as provided in subsection (g) of section 515 of  
9 this title;

10                  “(3) to prepare for or perform funeral honors functions at the funeral of veterans  
11 as described in section 1491 of title 10, which shall be treated as a Federal function for  
12 which appropriated funds may be used;

13                  “(4) to provide operational support authorized by the Secretary of Defense;

14                  “(5) to receive authorized medical or dental care;

15                  “(6) to undergo medical evaluation for disability or for other similar purposes; or

16                  “(7) to perform an activity or requirement authorized by the Secretary of Defense.

17           “(d) ACTIVE GUARD AND RESERVE.—(1) The Governor of a State, the Commonwealth of  
18 Puerto Rico, Guam, or the United States Virgin Islands, or the commanding general of the  
19 District of Columbia National Guard may, with the consent of the member, order a member of  
20 the National Guard to full-time National Guard duty under section 542 of this title, to perform  
21 the Active Guard and Reserve functions of organizing, administering, recruiting, instructing, or  
22 training the reserve components. Subject to regulations prescribed by the Secretary of Defense, a



1 member performing Active Guard and Reserve functions described in the preceding sentence  
2 may support an operation or mission described in subsection (a) or (b) of section 551 of this title.

3 “(2) Subject to regulations prescribed by the Secretary of the Army or the Secretary of  
4 the Air Force, as the case may be, a member performing Active Guard and Reserve functions  
5 pursuant to paragraph (1) of this subsection may carry out the additional activities described in  
6 paragraph (2) of section 552(b) of this title to the extent that the performance of those activities  
7 does not interfere with the performance of the member's primary Active Guard and Reserve  
8 functions described in paragraph (1) of this subsection.

9 “(3) A member performing Active Guard and Reserve functions pursuant to paragraph  
10 (1) of this subsection may perform functions in support of emergency preparedness programs  
11 described in paragraph (3) of section 12352(f) of title 10, subject to the requirements, limitations,  
12 and restrictions provided in such paragraph (3). A member on full-time National Guard duty who  
13 is performing functions in support of emergency preparedness described in the preceding  
14 sentence shall be counted against the annual end strength authorizations described in paragraphs  
15 (1)(B) and (2) of section 115(a) of title 10.

16 **“§553. Category III: reserve component duty purposes**

17 “(a) REQUIRED TRAINING.—(1) Under regulations to be prescribed by the Secretary of the  
18 Army or the Secretary of the Air Force, as the case may be, each unit of the National Guard,  
19 unless excused by the Secretary concerned, shall assemble for reserve component duty at least 48  
20 times each year.

21 “(2) A member of the National Guard who has served on active duty for one year or  
22 longer shall not be required to participate in training required under paragraph (1) if the first day

1 of such training falls during the last 120 days of the member’s required membership in the  
2 National Guard.

3 “(3) An assembly for reserve component duty may consist of a single ordered formation  
4 of a unit, or, when authorized by the Secretary concerned, a series of ordered formations of parts  
5 of those organizations, except that, to have a series of formations credited as an assembly, all  
6 parts of the unit must be included in the series within 90 consecutive days.

7 “(4) The total attendance at the series of formations constituting an assembly shall be  
8 counted as the attendance at that assembly for the required period. No member may be counted  
9 more than once or receive credit for more than one required period of attendance, regardless of  
10 the number of formations the member attends during the series constituting the assembly for the  
11 required period.

12 “(5) No organization may receive credit for an assembly unless—

13 “(A) the number of members present equals or exceeds the minimum number  
14 prescribed by the President;

15 “(B) the period of military duty for which a member is credited is at least one and  
16 one-half hours; and

17 “(C) the training is of the type prescribed by the Secretary concerned.

18 “(6) An appropriately rated member of the National Guard who performs an aerial flight  
19 under competent orders may receive credit for attending an assembly for the purposes of this  
20 section, if the flight prevented the member from attending a regularly scheduled assembly.

21 “(b) ADDITIONAL TRAINING.—A member of the National Guard may, with the consent of  
22 the member, perform reserve component duty under section 543 of this title, to participate in

1 additional training periods, including additional flight training periods, under section 543 of this  
2 title.

3 “(c) SUPPORT ACTIVITIES OR REQUIREMENTS.—(1) A member of the National Guard may,  
4 with the consent of the member, perform reserve component duty under section 543 of this  
5 title—

6 “(A) to provide administrative support to prepare for unit training;

7 “(B) to prepare for or perform funeral honors functions at the funeral of a veteran  
8 as described in section 1491 of title 10; or

9 “(C) to carry out an activity or requirement approved by the Secretary of Defense.

10 “(2) A member performing funeral honors functions under paragraph (1)(B)—

11 “(A) may be paid—

12 “(i) an allowance under section 495 of title 37; or

13 “(ii) compensation under section 206 of title 37;

14 “(B) shall be reimbursed for travel and transportation expenses incurred in  
15 conjunction with such duty as authorized under section 495 of title 37 if such duty is  
16 performed at a location 50 miles or more from the member’s residence; and

17 “(C) shall receive retirement points under section 12732(a)(2)(B) of title 10.”.

18 (b) CLERICAL AMENDMENT.—The table of chapters at the beginning of title 32, United  
19 States Code, is amended by striking the item related to chapter 5 and inserting the following:

“5. National Guard Duty.....501”.

20 **SEC. \_\_. ALIGNMENT OF BENEFITS.**

21 (a) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

22 (1) in the matter preceding paragraph (1) of section 5538(a)—

1 (A) by inserting “or full-time National Guard duty” after “perform active  
2 duty”;

3 (B) by striking “under section 12304b of title 10 or a provision of law  
4 referred to in section 101(a)(13)(B) of title 10” and inserting “or full-time  
5 National Guard duty in support of a contingency operation (as that term is defined  
6 in section 101(a)(13) of title 10)”; and

7 (C) by striking “serving on active duty” and inserting “serving on such  
8 duty”;

9 (2) in item (bb) of section 5742(b)(2)(B)(ii)(I), by striking “(as defined in section  
10 101(13) of title 10)” and inserting “(as that term is defined in section 101(a)(13) of title  
11 10)”;

12 (3) in section 6323—

13 (A) in paragraph (1) of subsection (a), by striking “inactive duty training  
14 (as defined in section 101 of title 37), funeral honors duty (as described in section  
15 12503 of title 10 and section 115 of title 32), or engaging in field or coast defense  
16 training under sections 502–505 of title 32” and inserting “full-time National  
17 Guard duty, or reserve component duty (as that term is defined in section  
18 101(d)(7) of title 10)” after “active duty,”;

19 (B) in paragraph (2) of subsection (b)—

20 (i) in subparagraph (A)—

21 (I) in the matter preceding clause (i), by striking the em  
22 dash and inserting “, full-time military service for his State, the

1 District of Columbia, the Commonwealth of Puerto Rico, or a  
2 territory of the United States; or”; and

3 (II) by striking clauses (i) and (ii); and

4 (ii) in subparagraph (B), by striking “in support of a contingency  
5 operation as defined in section 101(a)(13) of title 10” and inserting “or  
6 full-time National Guard duty in support of a contingency operation (as  
7 that term is defined in section 101(a)(13) of title 10)”;

8 (C) in paragraph (1) of subsection (d), by striking “section 12315 of title  
9 10, under section 12301(b) or 12301(d)” and inserting “section 12319 of title 10,  
10 under section 12341 or 12342”;

11 (4) in section 6381—

12 (A) in subparagraph (B) of paragraph (7), by striking “under a provision of  
13 law referred to in section 101(a)(13)(B) of title 10, United States Code” and  
14 inserting “or full-time National Guard duty in support of a contingency operation  
15 (as that term is defined in section 101(a)(13) of title 10)”;

16 (B) in subparagraphs (A) and (B) of paragraph (11), by inserting “or full-  
17 time National Guard duty” after “active duty” each place it appears;

18 (5) in subsection (a) of section 8102a, by striking “in a contingency operation”  
19 and inserting “in support of a contingency operation (as that term is defined in section  
20 101(a)(13) of title 10)”;

21 (6) in section 8905a—

22 (A) in paragraph (3) of subsection (b)—

1 (i) in subparagraph (C), by striking “in support of a contingency  
2 operation (as defined in section 101(a)(13) of title 10)” and inserting “or  
3 full-time National Guard duty in support of a contingency operation (as  
4 that term is defined in section 101(a)(13) of title 10)”;

5 (ii) in subparagraphs (D) and (E), by inserting “or full-time  
6 National Guard duty” after “active duty” each place it appears; and

7 (B) in subparagraph (C) of subsection (e)(1), by inserting “or full-time  
8 National Guard duty” after “active duty”;

9 (7) in subparagraph (B) of section 8906(e)(3)—

10 (A) in clause (iii), by striking “in support of a contingency operation (as  
11 defined in section 101(a)(13) of title 10)” and inserting “or full-time National  
12 Guard duty in support of a contingency operation (as that term is defined in  
13 section 101(a)(13) of title 10)”;

14 (B) in clauses (iv) and (v), by inserting “or full-time National Guard duty”  
15 after “active duty”; and

16 (8) in subparagraph (B) of section 9903(d)(2), by striking “as defined” and  
17 inserting “as that term is defined”.

18 (b) CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Subsection (a) of section  
19 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982(a)) is amended—

20 (1) in paragraph (1), by striking “section 688, 12301(a), 12301(g), 12302, 12304,  
21 12306, or 12406, or chapter 13 of title 10, United States Code,” and inserting “section  
22 688 of title 10, United States Code, section 12341 of such title for a purpose specified in  
23 subsection (a), (b), or (d)(1) of section 12351 of such title,”; and

1 (2) in paragraph (2), by striking “section 502(f) of title 32” and inserting “section  
2 541 of title 32”.

3 (c) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended—

4 (1) in section 701—

5 (A) in the matter following paragraph (4) of subsection (a), by striking  
6 “section 316, 502, 503, 504, or 505” and inserting “section 541 or 542”;

7 (B) in paragraph (2) of subsection (f)—

8 (i) by striking “in a duty assignment” and inserting “or full-time  
9 National Guard duty”; and

10 (ii) by striking “such service on active duty” and inserting “such  
11 duty”; and

12 (C) in paragraph (2) of subsection (i)—

13 (i) in subparagraph (A), by inserting “, other than a member of a  
14 reserve component” after “active duty”;

15 (ii) in subparagraph (B), by striking “active Guard and Reserve  
16 duty” and inserting “Active Guard and Reserve functions pursuant to  
17 section 12352(f) of this title or section 552(d) of title 32”; and

18 (iii) in subparagraph (C), by striking “an active duty recall or  
19 mobilization order” and inserting “a call or order to active duty under  
20 section 12341 of this title, or a member of the National Guard subject to a  
21 call or order to full-time National Guard duty under section 541 of title  
22 32,”;

1 (2) in subparagraph (B) of section 704(c)(1), by striking “in a contingency  
2 operation” and inserting “in support of a contingency operation”;

3 (3) in paragraph (1) of section 709a(a), by striking “in a contingency operation”  
4 and inserting “in support of a contingency operation”;

5 (4) in section 1035—

6 (A) in subsection (b)—

7 (i) by inserting “during” before “the Persian”; and

8 (ii) by inserting “while serving on active duty or full-time National  
9 Guard duty in support of” after “Gulf conflict, or”; and

10 (B) in subsection (f), by inserting “while on active duty” after “its  
11 possessions”;

12 (5) in paragraph (4) of section 1044(a)—

13 (A) by striking “under a call or order to active duty for more than 30 days  
14 issued under a mobilization authority (as determined by the Secretary)” and  
15 inserting “or full-time National Guard duty for a period of more than 30 days in  
16 support of a contingency operation”; and

17 (B) by striking “served on active duty” and all that follows through the  
18 period and inserting “served on such duty.”;

19 (6) in subsection (d) of section 1074—

20 (A) by striking paragraph (2); and

21 (B) in paragraph (1)—

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



1 (I) by striking “a delayed-effective-date active-duty order”  
2 and inserting “an order to report for active duty or full-time  
3 National Guard duty in support of a contingency operation”; and

4 (II) by striking “on active duty” and inserting “on such  
5 duty”;

6 (ii) in subparagraph (B), by striking “active duty” and inserting  
7 “such duty”;

8 (iii) by striking “(1) For the purposes” and inserting “For the  
9 purposes”; and

10 (iv) by redesignating subparagraphs (A) and (B), as amended by  
11 clauses (i) and (ii), as paragraphs (1) and (2), respectively;

12 (7) in section 1074a—

13 (A) in subsection (a)—

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

15 (I) in subparagraph (A), by inserting “or” after the  
16 semicolon;

17 (II) in subparagraph (B), by striking “inactive-duty training;  
18 or” and inserting “reserve component duty.”; and

19 (III) by striking subparagraph (C);

20 (ii) in paragraph (3), by striking “inactive-duty training” and  
21 inserting “reserve component duty” each place it appears; and

22 (iii) by striking paragraph (4);

1 (B) in the matter preceding subparagraph (A) of subsection (d)(1), by  
2 striking “mobilization” and inserting “reporting for active duty or full-time  
3 National Guard duty in support of a contingency operation”; and

4 (C) in paragraph (1) of subsection (h)—

5 (i) by striking “inactive-duty training” and inserting “reserve  
6 component duty”; and

7 (ii) by striking “unit training assemblies” and inserting “periods of  
8 such duty”;

9 (8) in section 1074f—

10 (A) in subsection (a), by striking “as part of a contingency operation” and  
11 inserting “in support of a contingency operation”; and

12 (B) in the matter preceding clause (i) of subsection (d)(2)(E), by striking  
13 “or contingency operations” and inserting “or in support of a contingency  
14 operation”; and

15 (C) in each of paragraphs (1), (2)(A), and (3) of subsection (f), by  
16 inserting “in support of a” before “contingency operation”;

17 (9) in subparagraph (A) of section 1074m(a)(2), by striking “in a contingency  
18 operation” inserting “in support of the contingency operation”;

19 (10) in paragraph (2) of section 1145(a)—

20 (A) in subparagraph (B), by striking “to which” and all that follows  
21 through the period and inserting “or full-time National Guard duty which was in  
22 support of a contingency operation for a period of more than 30 days.”;

1 (B) in subparagraph (C), by striking “section 12305” and inserting  
2 “section 12311”; and

3 (C) in subparagraph (F), by inserting “, or a member performing Active  
4 Guard and Reserve functions who separates from active duty or full-time National  
5 Guard duty and agrees to remain in the Selected Reserve of the Ready Reserve of  
6 a reserve component” after “a reserve component”;

7 (11) in section 1175a(j)—

8 (A) in paragraph (2)—

9 (i) by striking “involuntarily”; and

10 (ii) by striking “in accordance with section 12301(a), 12301(b),  
11 12301(g), 12302, 12303, 12304, 12304a, or 12304b of this title or section  
12 502(f)(1)(A) of title 32” and inserting “in support of a contingency  
13 operation”; and

14 (B) in paragraph (3)—

15 (i) by striking “or full-time National Guard duty in accordance  
16 with section 101(d)(1), 101(d)(2), 101(d)(5), 12301(d)” and inserting  
17 “under section 12342 of this title”; and

18 (ii) by striking “12319, or 12503 of this title, or section 114, 115,  
19 or 502(f)(1)(B)” and inserting “or full-time National Guard duty under  
20 section 542”;

21 (12) in the matter preceding subparagraph (A) of section 1218(d)(1), by striking  
22 “mobilization and deployment” and inserting “deployment in support of a contingency  
23 operation”;

1 (13) in subsection (a) of section 1482a, by inserting “support of” after “an armed  
2 force in”;

3 (14) in paragraph (2) of section 1552(i), by inserting “in support of a” after  
4 “during a war or”;

5 (15) in paragraph (2) of section 1553(f), by inserting “in support of a” after  
6 “during a war or”;

7 (16) in subsection (b) of section 1788, by striking “in connection with” and  
8 inserting “in support of”;

9 (17) in section 12408—

10 (A) in subsection (a), by striking “called into Federal service under section  
11 12301(a), 12302, or 12304 of this title” and inserting “called or ordered to active  
12 duty in support of a contingency operation”; and

13 (B) in subsection (b), by striking “is mustered out of Federal service” and  
14 inserting “is released from duty described in subsection (a)”;

15 (18) in subsection (b) of section 12686—

16 (A) in the first sentence, by striking “section 12301 of this title” and all  
17 that follows through “that order.” and inserting “section 12342 of this title, or to  
18 full-time National Guard duty (other than for training) under section 542 of title  
19 32, pursuant to an order to such duty that specifies a period of less than 180 days  
20 and who (but for this subsection) would be covered by subsection (a), the  
21 Secretary concerned may require as a condition of that order that the member  
22 waive the applicability of subsection (a) to the member for the period of such duty  
23 covered by that order.”; and

1 (B) in the second sentence, by striking “before the period of active duty  
2 begins” and inserting “before the period of such duty begins”;

3 (19) in paragraph (2) of section 12731(f), by striking subparagraph (B) and  
4 inserting the following:

5 “(B) Active service described in this paragraph is service on active duty or full-time  
6 National Guard duty in support of a contingency operation.”;

7 (20) in paragraph (2) of section 12732(a)—

8 (A) by striking subparagraph (A) and inserting the following:

9 “(A) One point for each day of active service.”;

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

11 “(B) One point for each period of reserve component duty performed by the member  
12 under section 12343 of this title or section 543 of title 32.”;

13 (C) by striking subparagraph (E) and inserting the following:

14 “(E) Points credited, as determined by the Secretary concerned, in accordance with  
15 section 12354(b) of this title, for completion of pre-approved work or completion of a pre-  
16 approved course of instruction assigned under section 12344 of this title.”; and

17 (D) in the matter following subparagraph (E), by striking “clauses (A),  
18 (B), (C), (D), and (E)” and inserting “subparagraphs (A), (B), (C), and (D)”;

19 (21) in section 12733—

20 (A) by striking paragraph (2);

21 (B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3),  
22 and (4), respectively; and

1 (C) in the matter preceding subparagraph (A) of paragraph (2), as  
2 redesignated by subparagraph (B), by striking “under clause” and inserting “under  
3 subparagraph”;

4 (22) in section 14317—

5 (A) in paragraph (1) of subsection (d)—

6 (i) in subparagraph (A)—

7 (I) by inserting “or full-time National Guard duty” after  
8 “active duty” the first place it appears; and

9 (II) by striking “unit is ordered to active duty” and inserting  
10 “unit is ordered to such duty”; and

11 (ii) in subparagraph (B) by inserting “or full-time National Guard  
12 duty” after “active duty”; and

13 (B) in subsection (e)—

14 (i) in the matter preceding subparagraph (A) of paragraph (1)—

15 (I) by inserting “component” after “reserve”; and

16 (II) by inserting “or full-time National Guard duty” after  
17 “ordered to active duty”; and

18 (ii) in each of paragraphs (1)(B) and (2), by inserting “or full-time  
19 National Guard duty” after “active duty”;

20 (23) in clause (i) of section 16131(c)(3)(B), by striking “section 12301(a),  
21 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of this title” and inserting “section  
22 12341 of this title for a purpose specified in subsection (a), (b)(2), (b)(3), (c), or (d) of  
23 section 12351 of this title, or section 12342 of this title”;

1 (24) in paragraph (4) of section 16133(b)—

2 (A) in the matter preceding subparagraph (A), by striking “pursuant to an  
3 order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302,  
4 12304, 12304a, or 12304b of this title” and inserting “or full-time National Guard  
5 duty in support of a contingency operation”; and

6 (B) in subparagraphs (A) and (B), by striking “duty” each place it appears;

7 (25) in clause (i) of section 16162(d)(2)(B), by striking “under section 12301(a),  
8 12301(d), 12301(g), 12302, or 12304 of this title” and inserting “or full-time National  
9 Guard duty in support of a contingency operation”; and

10 (26) in subsection (a) of section 16163—

11 (A) in the matter preceding paragraph (1), by striking “, if the member—”  
12 and inserting “if the member served on active duty or full-time National Guard  
13 duty in support of a contingency operation for 90 consecutive days or more.”; and

14 (B) by striking paragraphs (1) and (2).

15 (d) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004.—Subsection (a) of  
16 section 344 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-  
17 136, as amended; 10 U.S.C. Chapter 53, front matter note) is amended—

18 (1) in paragraph (1), by striking “direct”; and

19 (2) in paragraph (2)—

20 (A) by striking “directly supporting” and inserting “serving in support of”;  
21 and

22 (B) by striking “direct”.

1 (e) TITLE 11, UNITED STATES CODE.—Paragraph (2) of section 707(b) of title 11, United  
2 States Code, is amended—

3 (1) in clause (i) of subparagraph (B), by inserting “or full-time National Guard  
4 duty” after “active duty”; and

5 (2) in subparagraph (D)—

6 (A) in clause (i), by striking subclause (II) and inserting the following:

7 “(II) on full-time National Guard duty (as defined in section 101(19) of  
8 title 32); or”;

9 (B) in clause (ii), by striking subclause (II) and inserting the following:

10 “(II) on, and during the 540-day period beginning immediately after the  
11 debtor is released from, a period of full-time National Guard duty (as defined in  
12 section 101(19) of title 32) of not less than 90 days;”; and

13 (C) in the matter following subclause (II) of clause (ii), as amended by  
14 subparagraph (B), by striking “was called to such active duty or performed such  
15 homeland defense activity” and inserting “was called or ordered to active duty or  
16 full-time National Guard duty in support of a contingency operation (as that term  
17 is defined in section 101(a)(13) of title 10)”.

18 (f) TITLE 14, UNITED STATES CODE.—Subsection (a) of section 2508 of title 14, United  
19 States Code, is amended by inserting “(as that term is defined in section 101(a)(13) of title 10)”  
20 after “contingency operation”.

21 (g) SMALL BUSINESS ACT.—The Small Business Act (15 U.S.C. 631 et seq.) is  
22 amended—

23 (1) in section 3(q)(5)(A)(i) (15 U.S.C. 632(q)(5)(A)(i))—



1 (A) in subclause (I), by striking “under a provision of law specified in  
2 section 101(a)(13)(B) of title 10, United States Code,” and inserting “or full-time  
3 National Guard duty in support of a contingency operation (as that term is defined  
4 in section 101(a)(13) of title 10, United States Code)”; and

5 (B) in subclause (II), by striking “active duty pursuant to a call or order to  
6 active duty under a provision of law referred to in subclause (I)” and inserting  
7 “duty pursuant to a call or order to active duty or full-time National Guard duty in  
8 support of a contingency operation (as that term is defined in section 101(a)(13)  
9 of title 10, United States Code)”; and

10 (2) in clause (iii) of section 7(n)(1)(C) (15 U.S.C. 636(n)(1)(C)), by striking “a  
11 contingency operation, as defined in section 101(a) of title 10, United States Code,” and  
12 inserting “active duty or full-time National Guard duty in support of a contingency  
13 operation (as that term is defined in section 101(a)(13) of title 10, United States Code)”.

14 (h) **MILITARY RESERVIST AND VETERAN SMALL BUSINESS REAUTHORIZATION AND**  
15 **OPPORTUNITY ACT OF 2008.**—Paragraph (2) of section 3 of the Military Reservist and Veteran  
16 Small Business Reauthorization and Opportunity Act of 2008 (15 U.S.C. 636 note; Public Law  
17 101-186) is amended by inserting “, and such term includes full-time National Guard duty” after  
18 “United States Code”.

19 (i) **FAIR CREDIT REPORTING ACT.**—Subparagraph (A) of section 603(q)(1) of the Fair  
20 Credit Reporting Act (15 U.S.C. 1681a(q)(1)(A)) is amended by striking “or is a reservist  
21 performing duty under a call or order to active duty under a provision of law referred to” and  
22 inserting “or is a member described in subparagraph (B) or (C) of section 101(a)(13) of title 10,

1 United States Code, on active duty or full-time National Guard duty in support of a contingency  
2 operation as that term is defined”.

3 (j) TITLE 18, UNITED STATES CODE.—Subsection (h) of section 209 of title 18, United  
4 States Code, is amended—

5 (1) by striking “a member of the reserve components of the armed forces on  
6 active duty pursuant to a call or order to active duty under a provision of law referred to  
7 in section 101(a)(13) of title 10” inserting “a member of the armed forces described in  
8 section 101(a)(13)(B) of title 10, on active duty or full-time National Guard duty in  
9 support of a contingency operation (as that term is defined in section 101(a)(13) of title  
10 10)”;

11 (2) by inserting “or full-time National Guard duty” after “active duty” each place  
12 it appears.

13 (k) DEFENSE DEPENDENTS’ EDUCATION ACT OF 1978.—Paragraph (2) of section 1404(c)  
14 of the Defense Dependents’ Education Act of 1978 (20 U.S.C. 923(c)(2)) is amended—

15 (1) in clause (i) of subparagraph (B), by striking “section 12301 or 12302 of title  
16 10, United States Code,” and inserting “section 12341 of title 10, United States Code, for  
17 a purpose specified in subsection (a), (b)(2), (d)(1) of section 12351 of such title, or  
18 section 12342 of such title”;

19 (2) in clause (i) of subparagraph (C), by striking “section 12301 or 12302 of title  
20 10, United States Code,” and inserting “section 12341 of title 10, United States Code, for  
21 a purpose specified in subsection (a), (b)(2) or (d)(1) of section 12351 of such title, or  
22 section 12342 of such title”.

1 (l) HIGHER EDUCATION ACT OF 1965.—The Higher Education Act of 1965 (20 U.S.C.  
2 1001 et seq.) is amended—

3 (1) in subsection (d) of section 481 (20 U.S.C. 1088(d))—

4 (A) in subparagraph (A) of paragraph (4), by striking “section 12301(a),  
5 12301(g), 12302, 12304, or 12306 of title 10, United States Code,” and inserting  
6 “section 12341 of title 10, United States Code, for a purpose specified in  
7 subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title”; and

8 (B) in paragraph (5), by striking “section 502(f) of title 32” and inserting  
9 “section 541 of title 32”; and

10 (2) in section 484C (20 U.S.C. 1091c)—

11 (A) in subsection (a), by inserting “or full-time National Guard duty” after  
12 “active duty” the second place it appears; and

13 (B) in subparagraph (C) of subsection (c)(3), by striking clauses (i), (ii),  
14 and (iii) and inserting the following:

15 “(i) order to or retained on active duty or full-time National Guard  
16 duty in support of a contingency operation (as that term is defined in  
17 section 101(a)(13) of title 10, United States Code);

18 “(ii) ordered to or retained on active duty under section 2127,  
19 2128, 2308, 2309, or 2314 of title 14, United States Code;

20 “(iii) retained on active duty pursuant to section 123, 671a, 671b,  
21 or 12311 of title 10, United States Code, because of a war or national  
22 emergency declared by the President or Congress, as determined by the  
23 Secretary concerned; or”;

1 (B) in clause (iv), by striking “; or” and inserting a period; and

2 (C) by striking clause (v).

3 (m) HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS ACT OF 2003.—Section 5  
4 of the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098ee) is  
5 amended—

6 (1) in subparagraph (A) of paragraph (5), by striking “under section 12301(a),  
7 12301(g), 12302, 12304, or 12306 of title 10, United States Code,” and inserting “under  
8 section 12341 of title 10, United States Code, for a purpose specified in subsection (a),  
9 (b)(2), (b)(3), or (d)(1) of section 12351 of such title”; and

10 (2) in paragraph (6), by striking “section 502(f) of title 32” and inserting “section  
11 541 of title 32”.

12 (n) FAMILY AND MEDICAL LEAVE ACT OF 1993.—Subparagraph (B) of section 101(14) of  
13 the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(14)(B)) is amended by striking  
14 “duty during the deployment of the member with the Armed Forces” and all that follows through  
15 the period and inserting “duty during the period the member is deployed to a foreign country in  
16 support of a contingency operation (as that term is defined in section 101(a)(13) of title 10,  
17 United States Code).”.

18 (o) WORKFORCE INNOVATION AND OPPORTUNITY ACT.—Clause (ii) of section 3(16)(A)  
19 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(16)(A)(ii)) is amended—

20 (1) by inserting “or full-time National Guard duty (as defined in section 101(d)(5)  
21 of title 10, United States Code)” after “active duty (as defined in section 101(d)(1) of title  
22 10, United States Code)”;

1           (2) by striking “pursuant to a provision of law referred to in section 101(a)(13)(B)  
2 of title 10, United States Code,” and inserting “or full-time National Guard duty in  
3 support of a contingency operation (as that term is defined in section 101(a)(13) of title  
4 10, United States Code),”.

5           (p) TITLE 37, UNITED STATES CODE.—(1) The following provisions of title 37, United  
6 States Code, are each amended by inserting “(as that term is defined in section 101(a)(13) of  
7 title 10)” after “contingency operation” the first place it appears (other than in a heading):

8           (A) Subsection (a) of section 303b.

9           (B) Paragraph (1) of section 306(d).

10          (C) Subparagraph (B) of section 403b(f)(2).

11          (D) Clause (i) of section 436(a)(2)(C).

12          (E) The matter preceding subparagraph (A) of section 437(a)(2).

13          (F) The matter preceding paragraph (1) of section 474b(b).

14          (G) Paragraph (2) of section 481b(b).

15          (H) Subparagraph (A) of section 501(b)(5).

16          (2) Title 37, United States Code, is amended further—

17               (A) in section 206—

18                       (i) in subsection (d)—

19                               (I) in paragraph (1)—

20                                       (aa) by striking “work or study” and inserting “work or a  
21                                       course of instruction”;

1 (bb) by striking “or by a member of the National Guard  
2 while not in Federal service in connection with correspondence  
3 courses of a uniformed service”; and

4 (cc) by adding at the end the following new sentence: “A  
5 member of the National Guard may not be compensated under this  
6 section in connection with work or a course of instruction  
7 performed as a member of the Army National Guard or Air  
8 National Guard, as the case may be.”;

9 (II) by striking paragraph (2) and inserting the following:

10 “(2) A member of the Ready Reserve or a member of the Standby Reserve on the active  
11 status list may be paid compensation under this section at a rate and under terms determined by  
12 the Secretary of Defense, but not to exceed the rate otherwise applicable to the member under  
13 subsection (a), upon the member's successful completion of work or a course of instruction  
14 specifically and individually assigned to the member under section 12344 of title 10 for a  
15 purpose specified in section 12354 of such title.”; and

16 (III) in subparagraphs (A) and (B) of paragraph (3), by striking  
17 “work or study” each place it appears and inserting “work or course of  
18 instruction”; and

19 (ii) in subsection (e), by striking “of equivalent training” and all that  
20 follows through the period and inserting “of reserve component duty that are  
21 performed in lieu of the regularly scheduled required periods of reserve  
22 component duty prescribed by the Secretary concerned for the member under

1 section 12353(a) of title 10 or section 553(a) of title 32, as the case may be,  
2 during that fiscal year.”;

3 (B) in subparagraph (A) of section 316(d)(1), by striking “in connection with a  
4 contingency operation” and inserting “in support of a contingency operation (as that term  
5 is defined in section 101(a)(13) of title 10)”;

6 (C) in subsection (g) of section 403—

7 (i) in paragraph (1), in the matter preceding subparagraph (A), by inserting  
8 “(as that term is defined in section 101(a)(13) of title 10)” after “contingency  
9 operation” each place it appears;

10 (ii) in paragraph (5) by inserting by inserting “(as that term is defined in  
11 section 101(a)(13) of title 10)” after “contingency operation”;

12 (iii) in subparagraph (A) of paragraph (6) by striking “who performs  
13 active Guard and Reserve duty (as defined in section 101(d)(6) of title 10)” and  
14 inserting “performing Active Guard and Reserve functions (as that term is defined  
15 in section 101(c)(8) of title 10)”;

16 (iv) in subparagraph (B) of paragraph (6) by striking “mobilized for  
17 service on active duty other than active Guard and Reserve duty” and inserting  
18 “called or ordered to active duty in support of a contingency operation (as that  
19 term is defined in section 101(a)(13) of title 10) other than a member on active  
20 duty performing Active Guard and Reserve functions (as that term is defined in  
21 section 101(c)(8) of title 10)”;

22 (v) in subparagraph (C)(i) of paragraph (6), by striking “from active Guard  
23 and Reserve duty to other active duty and back to active Guard and Reserve duty”

1 and inserting “from performing Active Guard and Reserve functions to other  
2 active duty and back to performing Active Guard and Reserve functions”; and  
3 (D) in clause (ii) of section 436(a)(2)(C)—

4 (i) by striking “under section 12304b of title 10 or a provision of law  
5 referred to in section 101(a)(13)(B) of title 10” and inserting “in support of a  
6 contingency operation (as that term is defined in section 101(a)(13) of title 10)”;  
7 and

8 (ii) by striking “for a period of more than 30 days under a call or order  
9 issued under such a provision of law” and inserting “in support of a contingency  
10 operation (as that term is defined in section 101(a)(13) of title 10) for a period of  
11 more than 30 days”.

12 (q) TITLE 38, UNITED STATES CODE.—(1) The following provisions of title 38, United  
13 States Code, are each amended by striking “section 688, 12301(a), 12301(d), 12301(g), 12302,  
14 or 12304 of title 10” and inserting “ section 688 of title 10, section 12341 of such title for a  
15 purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or  
16 section 12342 of such title”:

17 (A) Subparagraph (A) of section 3013(f)(2).

18 (B) Clause (i) of section 3231(a)(5)(B).

19 (2) Title 38, United States Code, is amended further—

20 (A) in paragraph (3) of section 3011(d), by striking “section 12301, 12302, 12304,  
21 12306, or 12307 of title 10 for a period of less than 2 years” and inserting “section 12341  
22 of title 10 for a period of less than 2 years for a purpose specified in subsection (a),



1 (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of such title for a  
2 period of less than 2 years”;

3 (B) in subsection (f) of section 3103—

4 (i) by striking “section 688, 12301(a), 12301(d), 12301(g), 12302, 12304,  
5 12304a, or 12304b of title 10” and inserting “or full-time National Guard duty in  
6 support of a contingency operation (as that term is defined in section 101(a)(13)  
7 of title 10)”;

8 (ii) by striking “such active duty service” and inserting “such duty”;

9 (C) in section 3105—

10 (i) in clause (ii) of subsection (d)(2)(A), by inserting “or full-time National  
11 Guard duty” after “active duty”; and

12 (ii) in paragraph (2) of section (e), by striking “section 688, 12301(a),  
13 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of title 10” and inserting  
14 “or full-time National Guard duty in support of a contingency operation (as that  
15 term is defined in section 101(a)(13) of title 10)”;

16 (D) in paragraph (1) of section 3301—

17 (i) in subparagraph (B), by striking “section 688, 12301(a), 12301(d),  
18 12301(g), 12301(h), 12302, 12304, 12304a, or 12304b of title 10 or section 712 of  
19 title 14” and inserting “section 688 of title 10, section 12341 of such title for a  
20 purpose specified in subsection (a), (b)(2), (b)(3), (c), or (d) of section 12351 of  
21 such title, section 12342 of such title, or section 3713 of title 14”;

22 (ii) in clause (ii) of subparagraph (C), by striking “section 502(f) of title  
23 32” and inserting “section 541 of title 32”;

1 (E) in clause (i) of section 3312(c)(2)(A) by striking “section 688, 12301(a),  
2 12301(d), 12301(g), 12302, or 12304 of title 10” and inserting “section 688 of title 10,  
3 section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), or  
4 (d)(1) of section 12351 of such title, or section 12342 of such title”;

5 (F) in clause (i) of section 3511(a)(2)(B)—

6 (i) by striking “section 688, 12301(a), 12301(d), 12301(g), 12302, or  
7 12304 of title 10” and inserting “section 688 of title 10, section 12341 of such title  
8 for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351  
9 of such title, or section 12342 of such title”; and

10 (ii) by striking “section 502(f) of title 32” and inserting “section 541 of  
11 title 32”;

12 (G) in subsection (h) of section 3512—

13 (i) by striking “section 688, 12301(a), 12301(d), 12301(g), 12302, or  
14 12304 of title 10” and inserting “section 688 of title 10, section 12341 of such title  
15 for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351  
16 of such title, or section 12342 of such title”; and

17 (ii) by striking “section 502(f) of title 32” and inserting “section 541 of  
18 title 32”;

19 (H) in subparagraph (C) of section 4211(4), by striking “section 12301(a), (d), or  
20 (g), 12302, or 12304 of title 10” and inserting “section 12341 of title 10 for a purpose  
21 specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or  
22 section 12342 of such title”; and

23 (I) in subsection (c) of section 4312—

1 (i) in paragraph (3) by striking “section 10147 of title 10, under section  
2 502(a) or 503 of title 32,” and inserting “section 12352(c) or 12353(a) of title 10,  
3 or section 552(a) or 553(a) of title 32,”; and

4 (ii) in paragraph (4)—

5 (I) by striking subparagraphs (A), (B), (C), (E), and (F) and

6 inserting the following:

7 “(A) ordered to or retained on active duty or full-time National Guard duty in  
8 support of a contingency operation (as that term is defined in section 101(a)(13) of title  
9 10);

10 “(B) ordered to or retained on active duty under section 2127, 2128, 2308, 2309,  
11 or 2314 of title 14;

12 “(C) retained on active duty pursuant to section 123, 671a, 671b, or 12311 of title  
13 10, because of a war or national emergency declared by the President or the Congress;”;

14 (II) in subparagraph (D), by inserting “or” after the semicolon; and

15 (III) by adding at the end the following new subparagraph:

16 “(E) ordered to full-time National Guard duty in support, as determined by the  
17 Secretary of Defense, of a critical mission or requirement of the uniformed services.”.

18 (r) SOCIAL SECURITY ACT.—Subparagraph (B) of section 1631(j)(1) of the Social  
19 Security Act (42 U.S.C. 1383(j)(1)(B)) is amended by striking “section 12301(d) or 12302 of  
20 title 10, United States Code, or section 502(f) of title 32, United States Code)” and inserting  
21 “section 12341 or 12342 of title 10, United States Code, or to full-time National Guard Duty  
22 pursuant to section 541 or 542 of title 32, United States Code)”.

1 (s) SERVICEMEMBERS CIVIL RELIEF ACT.—The Servicemembers Civil Relief Act (50  
2 U.S.C. 3901 et seq.) is amended—

3 (1) in subparagraph (A) of section 101(2) (50 U.S.C. 3911(2)(A)), by striking  
4 clause (ii) and inserting the following:

5 “(ii) in the case of a member of the National Guard, service under a call or  
6 order to full-time National Guard duty as that term is defined in section 101(d)(5)  
7 of title 10, United States Code;” and

8 (2) in section 703 (50 U.S.C. 4023)—

9 (A) in paragraph (1) of subsection (a), by striking “(other than for  
10 training)” and all that follows before the semicolon and inserting “or full-time  
11 National Guard duty in support of a contingency operation (as that term is defined  
12 in section 101(a)(13) of title 10, United States Code”;

13 (B) in the matter preceding subparagraph (A) of subsection (a)(2) and in  
14 subsections (a)(2)(B), (b)(4), and (c)(2) by inserting “or full-time National Guard  
15 duty” after “active duty”; and

16 (C) in subsection (i)—

17 (i) by redesignating paragraphs (2) and (3) as paragraphs (3) and

18 (4), respectively; and

19 (ii) by inserting after paragraph (1) the following new paragraph:

20 “(2) FULL-TIME NATIONAL GUARD DUTY.—The term ‘full-time National Guard  
21 duty’ has the meaning given that term in section 101(d)(5) of title 10, United States  
22 Code.”.

1 (t) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006.—Paragraph (2) of  
2 section 690(b) of the National Defense Authorization Act for Fiscal Year 2006 (50 U.S.C.  
3 3916(b)) is amended by striking “and when the member is mobilized” and all that follows  
4 through the period and inserting “and when the member is—

5 “(A) called or ordered to active duty or full-time National Guard duty in  
6 support of a contingency operation (as that term is defined in section 101(a)(13)  
7 of title 10, United States Code); or

8 “(B) otherwise individually called or ordered to active duty or full-time  
9 National Guard duty for a period of more than one year.”.

10 **SEC. \_\_\_\_ . ALIGNMENT OF SURVIVOR BENEFITS.**

11 (a) DEATH WHILE PERFORMING RESERVE COMPONENT DUTY.—The following provisions  
12 of law are each amended by inserting “or reserve component duty” after “active duty” each place  
13 it appears:

14 (1) Clause (i) of section 3330d(a)(6)(B) of title 5, United States Code.

15 (2) Paragraph (3) of section 1782(a) of title 10, United States Code.

16 (3) Section 2148 of title 10, United States Code.

17 (5) Heading of subsection (l) of section 403 of title 37, United States Code.

18 (6) Paragraph (1) of section 403(l) of title 37, United States Code.

19 (b) DEATH WHILE PERFORMING FULL-TIME NATIONAL GUARD DUTY OR RESERVE  
20 COMPONENT DUTY.—The following provisions are each amended by inserting “, full-time  
21 National Guard duty, or reserve component duty” after “active duty” each place it appears:

22 (1) Subsection (m) of section 7 of title 4, United States Code.

1 (2) Subclause (V) of section (7)(a)(31)(G)(iii) of the Small Business Act (15  
2 U.S.C. 636(a)(31)(G)(iii)(V)).

3 (4) Subparagraphs (B) and (C) of section 2306(b)(2) of title 38, United States  
4 Code.

5 (c) POSTHUMOUS CITIZENSHIP OR NATURALIZATION OF SURVIVING NEXT OF KIN.—The  
6 Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

7 (1) in the table of contents at the beginning of such Act, in the item relating to  
8 section 329A, by striking “while on active duty service” and inserting “during military  
9 service”;

10 (2) in subsection (d) of section 319 (8 U.S.C. 1430(d)), by striking “in an active  
11 duty status” and inserting “while on active duty, full-time National Guard duty, or reserve  
12 component duty”; and

13 (3) in section 329A (8 U.S.C. 1440-1)—

14 (A) in the section heading, by striking “while on active duty service” and  
15 inserting “during military service”; and

16 (B) in paragraph (1) of subsection (b), by striking “in an active-duty  
17 status” and inserting “while on active duty, full-time National Guard duty, or  
18 reserve component duty”.

19 (d) PHARMACY BENEFITS.—Subparagraph (C) of section 1074g(a)(6) of title 10, United  
20 States Code, is amended by inserting “or reserve component duty” after “active duty”.

21 (e) DENTAL INSURANCE PLAN.—Paragraph (5) of section 1076c(b) of title 10, United  
22 States Code, is amended—

23 (1) in subparagraph (B), by striking “; or” and inserting a semicolon;

1 (2) by redesignating subparagraph (C) as subparagraph (D); and

2 (3) by inserting after subparagraph (B), as amended by paragraph (1), the  
3 following new subparagraph:

4 “(C) who is described in section 1448(f)(1) of this title; or”.

5 (f) PAYMENT OF UNUSED ACCRUED LEAVE.—Paragraph (1) of section 501(d) of title 37,  
6 United States Code, is amended by inserting “or reserve component duty” after “active duty”  
7 each place it appears.

8 (g) TERMINATION OF LEASES OF PREMISES.—Paragraph (3) of section 305(a) of the  
9 Servicemembers Civil Relief Act (50 U.S.C. 3955(a)) is amended by striking “full-time National  
10 Guard duty, active Guard and Reserve duty, or inactive duty training” and inserting “active duty,  
11 full-time National Guard duty, or reserve component duty”.

12 **SEC. \_\_\_. ALIGNMENT OF NATIONAL GUARD BENEFITS.**

13 (a) IN GENERAL.—The following provisions of law are each amended by inserting “or  
14 full-time National Guard duty” after “active duty” each place it appears:

15 (1) The heading of subsection (e) of section 638b of title 10, United States Code.

16 (2) Paragraph (1) of section 638b(e) of title 10, United States Code.

17 (3) The item relating to section 12737 in the table of sections at the beginning of  
18 chapter 1223 of title 10, United States Code.

19 (4) The heading of section 12737 of title 10, United States Code.

20 (5) Section 12737 of title 10, United States Code.

21 (6) Subparagraph (A) of section 7(n)(1) of the Small Business Act (15 U.S.C.  
22 636(n)(1)).

23 (7) Subclause (II) of section 3679(c)(2)(B)(ii) of title 38, United States Code.

1 (8) Subsection (a) of section 3681 of title 38, United States Code.

2 (9) Subparagraph (A) of section 3684(a)(3) of title 38, United States Code.

3 (10) Paragraphs (2) and (3) of section 3697A(b) of title 38, United States Code.

4 (11) The heading of paragraph (2) of section 207(b) of the Servicemembers Civil  
5 Relief Act (50 U.S.C. 3937(b)).

6 (b) ADDITIONAL AMENDMENTS.—

7 (1) Title 10, United States Code, is amended in paragraph (1) of section 101(d),  
8 by striking “Such term does not” and inserting “Except for purposes of chapters 40, 53,  
9 54, 55, 56, 58, 59, 61, 63, 65, 69, 71, 73, 75, 76, 77, 79, 88, 101, 1217, and 1608 of this  
10 title, such term does not”.

11 (2) Paragraph (12) of section 101 of title 32, United States Code, is amended by  
12 striking “It does not include” and inserting “Except for purposes of chapters 40, 53, 54,  
13 55, 56, 58, 59, 61, 63, 65, 69, 71, 73, 75, 76, 77, 79, 88, 101, 1217, and 1608 of title 10, it  
14 does not include”.

15 (3) Title 38, United States Code, is amended—

16 (A) in paragraph (7) of section 3002—

17 (i) by striking “full-time National Guard duty first performed” and  
18 inserting “full-time National Guard duty—  
19 “(A) first performed”;

20 (ii) by striking the period at the end of subparagraph (A), as so  
21 designated, and inserting “; and”; and

22 (iii) by adding at the end the following new subparagraph:



1 “(B) first performed after the date of the enactment of this subparagraph by a  
2 member of the Army National Guard or Air National Guard under section 541 or 542 of  
3 title 32.”; and

4 (B) in subsection (b) of section 3694—

5 (i) by striking “from active duty service” and inserting “from  
6 active duty or full-time National Guard duty”; and

7 (ii) by striking “period of active duty service” and inserting “period  
8 of such duty”.

9 **SEC. \_\_\_\_ . REPEALS.**

10 The following provisions of law are repealed:

- 11 (1) Chapter 13 of title 10, United States Code.  
12 (2) Section 10147 of title 10, United States Code.  
13 (3) Section 10148 of title 10, United States Code.  
14 (4) Section 12406 of title 10, United States Code.  
15 (5) Section 12503 of title 10, United States Code.  
16 (6) Section 12552 of title 10, United States Code.  
17 (7) Section 114 of title 32, United States Code.  
18 (8) Section 115 of title 32, United States Code.  
19 (9) Section 328 of title 32, United States Code.

20 **SEC. \_\_\_\_ . CONFORMING AMENDMENTS.**

21 (a) TITLE 5, UNITED STATES CODE.—Subsection (d) of section 5517 of title 5, United  
22 States Code, is amended—

1 (1) in paragraph (1), by striking “section 502 of title 32” and inserting “section  
2 541 or 542 of title 32”; and

3 (2) by striking paragraph (2) and inserting the following new paragraph:

4 “(2) participation in training as a member of the Ready Reserve pursuant to—

5 “(A) subsection (c) or (d) of section 12352 of title 10 or subsection (a) or  
6 (c) of section 12353 of such title; or

7 “(B) subsection (a) or (b)(1) of section 552 of title 32 or subsection (a) or  
8 (c) of section 553 of such title.”.

9 (b) HOMELAND SECURITY ACT OF 2002.—Paragraph (5) of section 886(a) of the  
10 Homeland Security Act of 2002 (6 U.S.C. 466(a)) is amended by striking “including chapter 15  
11 of title 10, United States Code” and inserting “including calling the militia of any State into  
12 Federal service under section 12341(a)(1)(B)(i) of title 10, United States Code, in response to an  
13 insurrection pursuant to section 12351(b)(1)(A) of such title”.

14 (c) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended—

15 (1) in the table of chapters at the beginning of subtitle A, and at the beginning of  
16 part I of subtitle A, by repealing the item relating to chapter 13;

17 (2) in section 101—

18 (A) in paragraph (16) of subsection (b), by striking “pursuant to section  
19 12301(d) of this title” and all that follows through the period at the end and  
20 inserting “pursuant to section 12342 of this title, or a member of the Army  
21 National Guard or Air National Guard who is on full-time National Guard duty  
22 pursuant to section 542 of title 32 and is performing Active Guard and Reserve  
23 functions.”;

1 (B) in subsection (c), by adding at the end the following new paragraph:

2 “(8)(A) The term ‘Active Guard and Reserve functions’ means active duty  
3 performed by a member of a reserve component pursuant to section 12352(f) of this title,  
4 or full-time National Guard duty performed by a member of the Army National Guard of  
5 the United States or the Air National Guard of the United States in the member's status as  
6 a member of the National Guard of a State or territory, the Commonwealth of Puerto  
7 Rico, or the District of Columbia pursuant to section 552(d) of title 32, for a period of  
8 180 consecutive days or more for the purpose of organizing, administering, recruiting,  
9 instructing, or training the reserve components.

10 “(B) Such term does not include the following:

11 “(i) Duty performed as a member of the Reserve Forces Policy Board  
12 provided for under section 10301 of this title.

13 “(ii) Duty as a property and fiscal officer under section 708 of title 32.

14 “(iii) Duty performed for the purpose of interdiction and counter-drug  
15 activities for which funds have been provided under section 112 of title 32.

16 “(iv) Duty performed as a general or flag officer.

17 “(v) Service as a State director of the Selective Service System under  
18 section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).”;

19 and

20 (C) in subsection (d)—

21 (i) in paragraph (5)—

22 (I) by striking “inactive duty” and inserting “reserve  
23 component duty”; and

1 (II) by striking “section 316, 502, 503, 504, or 505 of title  
2 32” and inserting “section 541 or 542 of title 32”; and  
3 (ii) by repealing paragraph (6);  
4 (iii) by striking paragraph (7) and inserting the following new  
5 paragraph:  
6 “(7) The term ‘reserve component duty’ means—  
7 “(A)(i) training prescribed for a member of a reserve component under  
8 section 12353(a) or 12353(c) of this title; or  
9 “(ii) training prescribed for a member of the Army National Guard of the  
10 United States or the Air National Guard of the United States in the member's  
11 status as a member of the National Guard of a State or territory, the  
12 Commonwealth of Puerto Rico, or the District of Columbia by the Secretary of  
13 the Army or Secretary of the Air Force under section 553(a) or 553(b) of title 32;  
14 “(B) muster pursuant to section 12353(b) of this title; or  
15 “(C) support activities or requirements performed by a member on a  
16 voluntary basis in connection with the prescribed training, maintenance, or  
17 support activities of the unit to which the member is assigned that are—  
18 “(i) authorized for a member of a reserve component pursuant to  
19 section 12353(d) of this title; or  
20 “(ii) authorized for a member of the Army National Guard or Air  
21 National Guard pursuant to section 553(c) of title 32.”; and  
22 (iv) by adding at the end the following new paragraph:  
23 “(8) The term ‘remote assignment’ means—

1                   “(A) pre-approved work that is specifically and individually assigned to a  
2 member of the Ready Reserve or Standby Reserve in an active status pursuant to  
3 paragraph (1) of section 12344(a) of this title; or

4                   “(B) a pre-approved course of instruction that is specifically and  
5 individually assigned to a member of the Ready Reserve or Standby Reserve in an  
6 active status pursuant to paragraph (2) of section 12344(a) of this title.”;  
7 (3) in section 115—

8                   (A) in subsection (b)—

9                   (i) in the subsection heading, by inserting “OR FULL-TIME  
10 NATIONAL GUARD DUTY” after “ACTIVE DUTY”;

11                   (ii) in paragraph (1)—

12                   (I) in subparagraph (A)—

13                   (aa) by striking “section 12301(d) of this title” and  
14 inserting “section 12342 of this title”; and

15                   (bb) by inserting “pursuant to section 12352(d)(2)  
16 of this title” after “operational support”;

17                   (II) in subparagraph (B)—

18                   (aa) by striking “section 502(f)(1)(B) of title 32”  
19 and inserting “section 542 of title 32”; and

20                   (bb) by inserting “pursuant to section 542(c)(4) of  
21 title 32” after “operational support”;

22                   (III) in subparagraph (C), by striking “section 12301(d) of  
23 this title or full-time National Guard duty under section

1 502(f)(1)(B) of title 32” and inserting “section 12342 of this title or  
2 full-time National Guard duty under section 542 of title 32”;

3 (IV) in subparagraph (D)—

4 (aa) by striking “sections 12301(g) of this title while  
5 in a captive status” and inserting “section 12341 of this title  
6 while in a missing or captive status pursuant to section  
7 12351(d)(1) of this title, or under section 12342 of this title  
8 while in a missing status pursuant to section 12352(b) of  
9 this title”; and

10 (bb) by striking “or” at the end; and

11 (V) by striking subparagraph (E) and inserting the

12 following new subparagraphs:

13 “(E) active duty or retained on active duty for the purpose of medical care or  
14 treatment under—

15 “(i) section 12341 of this title pursuant to subparagraph (D) or (E) of  
16 section 12351(e)(1) of this title; or

17 “(ii) section 12342 of this title pursuant to paragraph (2) or (3) of section  
18 12351(e) of this title; or

19 “(F) full-time National Guard duty or retained on full-time National Guard duty  
20 for the purpose of medical evaluation or treatment under—

21 “(i) section 541 of title 32 pursuant to subparagraph (D) or (E) of section  
22 551(c)(1) of such title; or

1                   “(ii) section 542 of title 32 pursuant to paragraph (5) or (6) of section  
2                   552(c) of such title.”;

3                   (iii) in subparagraph (B) of paragraph (3), by striking “paragraphs  
4                   (1) through (8)” and inserting “paragraphs (1) and (2)”;

5                   (iv) in subparagraph (B) of paragraph (4), by inserting “or full-time  
6                   National Guard duty” after “active duty”;

7                   (B) in paragraph (4) of subsection (f), by inserting “or full-time National  
8                   Guard duty” after “active duty”; and

9                   (C) in subsection (i)—

10                  (i) in paragraph (1), by striking “section 12301(a) of this title” and  
11                  inserting “section 12341 of this title”;

12                  (ii) by striking paragraphs (2) through (6);

13                  (iii) by redesignating paragraphs (7) through (12) as paragraphs (2)  
14                  through (7), respectively;

15                  (iv) in paragraph (2), as so redesignated, by striking “section  
16                  502(f)(1)(A) of title 32” and inserting “section 541 of title 32”;

17                  (v) in paragraph (7), as so redesignated, by striking “section 509 of  
18                  title 32” and inserting “section 515 of title 32”; and

19                  (vi) by striking paragraph (13);

20                  (4) in subsections (b)(1) and (c) of section 277, by striking “section 502(f) of title  
21                  32” and inserting “section 541 of title 32”;

22                  (5) in paragraph (1) of section 386(c), by striking “Sections 246, 251, 252, 253,  
23                  321,” and inserting “Sections 311, 321, 331, 332, 333,”;

1 (6) in paragraph (3) of section 511(d), in the first sentence, by striking “section  
2 10147(a)(1) of this title or section 502(a) of title 32.” and inserting “section 12352(c) of  
3 this title or section 552(a) of title 32.”;

4 (7) in section 672, by striking “section 12301” and inserting “section 12311”;

5 (8) in subsection (b) of section 688—

6 (A) by striking paragraph (2); and

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

8 (9) in subsection (a) of section 688a, in the first sentence, by inserting “, other  
9 than a member of the retired reserve,” after “retired member”;

10 (10) in subsection (a) of section 710, by striking “and members on Active Guard  
11 and Reserve duty of the armed forces” and inserting “of the armed forces and members of  
12 a reserve component of the armed forces performing Active Guard and Reserve functions  
13 pursuant to section 12352(f) of this title or 552(d) of title 32”;

14 (11) in paragraph (1) of section 802(d), by inserting “under section 12342 of this  
15 title” after “ordered to active duty involuntarily”;

16 (12) in subparagraph (B) of section 987(i)(1), by striking “on active Guard and  
17 Reserve Duty.” and inserting “on active duty or full-time National Guard duty  
18 performing Active Guard and Reserve functions.”;

19 (13) in subsection (a) of section 1054, by striking “section 316, 502, 503, 504, or  
20 505 of title 32” and inserting “section 541 or 542 of title 32”;

21 (14) in paragraphs (1) and (2) of section 1061(b), by striking “, active duty for  
22 training, or inactive-duty training” and inserting “or reserve component duty”;

23 (15) in paragraph (2) of section 1076(a)—



1 (A) in clause (i) of subparagraph (B), by striking “on active duty for  
2 training, or on inactive-duty training;” and inserting “or on reserve component  
3 duty;”;

4 (B) in clause (ii) of subparagraph (B), by striking “active duty for training,  
5 or inactive-duty training” and inserting “or reserve component duty”;

6 (C) in subparagraph (C), by striking “inactive-duty training” each place it  
7 appears and inserting “reserve component duty”; and

8 (D) by striking subparagraph (E);

9 (16) in subsection (a) of section 1076f, by striking “section 502(f) of title 32” and  
10 inserting “section 541 of title 32”;

11 (17) in subparagraph (B) of section 1078a(b)(1), by striking “(except in the case  
12 of a member discharged or released from full-time National Guard duty)”;

13 (18) in subparagraph (B) of section 1086(c)(2)—

14 (A) in clause (i), by striking “, on active duty for training, or on inactive  
15 duty training” and inserting “or on reserve component duty”; and

16 (B) in clause (ii), by striking “, active duty for training, or inactive duty  
17 training” and inserting “or reserve component duty”;

18 (19) in subsection (a) of section 1089, by striking “section 316, 502, 503, 504, or  
19 505 of title 32” and inserting “section 541 or 542 of title 32”;

20 (20) in paragraph (6) of section 1092(a)—

21 (A) by striking “mobilized”; and

1 (B) by inserting “have been called or ordered to active duty or full-time  
2 National Guard duty in support of a contingency operation and” after “armed  
3 forces who”;

4 (21) in subparagraph (B) of section 1094(d)(3), by striking “section 502(f) of title  
5 32” and inserting “section 541 or 542 of title 32”;

6 (22) in subclause (II) of section 1154(d)(1)(B)(i), by striking “active duty service”  
7 and inserting “active service”;

8 (23) in paragraph (2) of section 1201(c), by striking “(other than for training  
9 under section 10148(a) of this title)”;

10 (24) in section 1204—

11 (A) in the section heading, by striking “**inactive-duty training**” and  
12 inserting “**reserve component duty**”;

13 (B) in paragraph (2)—

14 (i) subparagraphs (A)(i), (A)(iii), (B)(i), and (B)(iii), by striking  
15 “inactive-duty training” each place it appears and inserting “reserve  
16 component duty”;

17 (ii) in clause (iii) of subparagraph (A), by striking the semicolon at  
18 the end and inserting “; or”;

19 (iii) in clause (iii) of subparagraph (B), by striking “or” at the end;

20 and

21 (iv) by striking subparagraph (C));

22 (25) in section 1206—

1 (A) in the section heading, by striking “**inactive-duty training**” and  
2 inserting “**reserve component duty**”;

3 (B) in paragraph (2), by striking “in line of duty—” and all that follows  
4 through subparagraph (B) and inserting “in the line of duty while—

5 “(A) performing active duty or reserve component duty;

6 “(B) traveling directly to or from the place at which such duty is  
7 performed; or

8 “(C) remaining overnight immediately before the commencement of  
9 reserve component duty, or while remaining overnight between successive  
10 periods of reserve component duty, at or in the vicinity of the site of the reserve  
11 component duty, if the site is outside reasonable commuting distance of the  
12 member’s residence;” and

13 (C) in paragraph (5), by striking “inactive-duty training” and inserting  
14 “reserve component duty”;

15 (26) in subparagraph (C) of section 1208(a)(2), by striking “sections 502, 503,  
16 504, and 505 of title 32” and inserting “sections 541 and 542 of title 32”;

17 (27) in subparagraph (B) of section 1448(f)(1), by striking “during inactive-duty  
18 training” and inserting “while performing reserve component duty”;

19 (28) in section 1475—

20 (A) in the section heading, by striking “**inactive duty training**” and  
21 inserting “**reserve component duty**”; and

22 (B) in subsection (a), by striking paragraphs (2) and (3) and inserting the  
23 following new paragraphs:

1           “(2) a member of a reserve component or a member of the National Guard who  
2 dies while performing reserve component duty;

3           “(3) any member of a reserve component or any member of the National Guard  
4 who, when authorized or required by an authority designated by the Secretary concerned,  
5 assumed an obligation to perform active duty for training or reserve component duty, and  
6 who dies while traveling directly to or from that duty, or while staying at the member’s  
7 residence, when so authorized by proper authority, during the period of reserve  
8 component duty or between successive days of reserve component duty;”;

9           (29) in subsection (a) of section 1476—

10           (A) in paragraph (1) by striking subparagraph (B) and inserting the  
11 following new subparagraph:

12           “(B) reserve component duty.”; and

13           (B) in subparagraph (A) of paragraph (2) by striking “inactive-duty  
14 training” and inserting “reserve component duty”;

15           (30) in subsection (a) of section 1478—

16           (A) in paragraphs (3) and (4), by striking “inactive duty training” each  
17 place it appears and inserting “reserve component duty”;

18           (B) in paragraph (5), in the first sentence, by striking “annual training  
19 duty” and inserting “active duty for the purpose of required training as specified  
20 in section 12352(c) of this title, or full-time National Guard duty for the purpose  
21 of required training as specified in section 552(a) of title 32;”;

22           (C) in paragraph (8)—

1 (i) by striking “inactive duty training” and inserting “reserve  
2 component duty”;

3 (ii) by inserting “under section 204 of title 37, or compensation  
4 under section 206 of title 37,” after “basic pay”; and

5 (iii) by striking “or training”; and

6 (D) in paragraph (9), by striking “inactive duty training” each place it  
7 appears and inserting “reserve component duty”;

8 (31) in paragraph (2) of section 1481(a)—

9 (A) in subparagraphs (B), (C), (D), and (F), by striking “inactive-duty  
10 training” each place it appears and inserting “reserve component duty”;

11 (B) in subparagraph (E)—

12 (i) by striking “inactive duty training” and inserting “reserve  
13 component duty”; and

14 (ii) by striking the semicolon at the end and inserting “; or”;

15 (C) in subparagraph (F), by striking “; or” at the end and inserting a  
16 period; and

17 (D) by striking subparagraph (G);

18 (32) in paragraph (2) of section 2012(e), by striking “section 508 of title 32” and  
19 inserting “section 514 of title 32”;

20 (33) in subparagraph (A) of section 2601(b)(1), by striking “section 502(f) of title  
21 32” and inserting “section 541 or 542 of title 32”;

22 (34) in paragraph (3) of section 8146(c), by striking “training, or drilling” and  
23 inserting “or training”;

1 (35) in the table of sections at the beginning of chapter 1005, by repealing the  
2 items relating sections 10147 and 10148;

3 (36) in subsection (c) of section 10141, in the first sentence, by striking “the  
4 number and duration of drills” and inserting “the number and duration of required periods  
5 of reserve component duty”;

6 (37) in subsection (a) of section 10142, by striking “sections 12301 and 12302 of  
7 this title” and inserting “sections 12341 and 12342 of this title”;

8 (38) in subsection (a) of section 10143, by striking “section 10147(a)(1) of this  
9 title or section 502(a) of title 32,” and inserting “sections 12352(c) or 12353(a) of title 10  
10 or section 552(a) or 553(a) of title 32”;

11 (39) in paragraph (1) of section 10144(b), in the matter preceding subparagraph  
12 (A), by striking “section 12304 of this title” and inserting “section 12341 of this title for  
13 the purpose specified in section 12351(b)(3) of this title”;

14 (40) in section 10151, by striking “sections 12301 and 12306 of this title” and  
15 inserting “section 12341 of this title for the purpose specified in section 12351(a) of this  
16 title”;

17 (41) in subsection (b) of section 10207—

18 (A) by striking “the mobilization resulting from”; and

19 (B) by inserting “or full-time National Guard duty” after “active duty”;

20 (42) in paragraphs (1)(A) and (2)(A) of section 10215(a), by striking “section  
21 12301(d) of this title” and inserting “section 12342 of this title”;

22 (43) in paragraph (1) of section 10508(b), by striking “or section 328 of title 32,”  
23 and inserting “or section 12342 of this title,”;

1 (44) in paragraph (9) of section 10541(b), by striking “sections 251, 252, 253,  
2 12304(b), and 12406 of this title” and inserting “sections 12351(b)(1) and 12351(b)(3)(B)  
3 of this title”;

4 (45) in section 12011—

5 (A) in paragraphs (1) and (2) of subsection (a), by striking “full-time  
6 reserve component duty” each place it appears and inserting “covered duty for the  
7 purposes specified in subsection (e)”;

8 (B) in subsections (b) and (d), by striking “full-time reserve component  
9 duty” each place it appears and inserting “covered duty”; and

10 (C) by striking subsection (e) and inserting the following new subsection:

11 “(e) COVERED DUTY DEFINED.—In this section, the term ‘covered duty’ means  
12 service on active duty under section 12342 of this title, and full-time National Guard duty  
13 under section 542 of title 32, for the following purposes:

14 “(1) Active duty described in section 10211, 10302, 10303, 10304, 10305,  
15 12352(f), or 12402 of this title.

16 “(2) Full-time National Guard duty described in section 552(b)(2), 552(c)(1),  
17 552(c)(3), or 552(d) of title 32.

18 “(3) Active duty for the purpose described in section 708 of title 32.”;

19 (46) in section 12012—

20 (A) in subsection (a)—

21 (i) by striking “full-time reserve component duty” and inserting

22 “covered duty”; and

1 (ii) by striking “section 10211 or 12310, or full-time National  
2 Guard duty under the authority of section 502(f) of title 32 (other than for  
3 training) in connection with organizing, administering, recruiting,  
4 instructing, or training the reserve components or the National Guard” and  
5 inserting “section 12342 of this title, for the purpose described in section  
6 10211 or 12352(f) of this title, or full-time National Guard duty under  
7 section 542 of title 32, for the purpose described in section 552(d) of title  
8 32.”;

9 (B) in subsection (b), by striking “full-time reserve component duty” each  
10 place it appears and inserting “covered duty”; and

11 (C) by striking subsection (e) and inserting the following:

12 “(e) COVERED DUTY DEFINED.—In this section, the term ‘covered duty’ means duty for  
13 the purposes described in section 12011(e) of this title.”;

14 (47) in the table of sections at the beginning of chapter 1211, by repealing the  
15 item relating to section 12406;

16 (48) in subsection (a) of section 12402—

17 (A) by striking “The President may, with their consent, order” and  
18 inserting “Pursuant to section 10508 of this title.”; and

19 (B) by striking “to active duty in the National Guard Bureau” and inserting  
20 “may, with their consent, be ordered to active duty under section 12342 of this  
21 title for duty in the National Guard Bureau”;

22 (49) in the table of sections at the beginning of chapter 1213, by repealing the  
23 item relating to section 12503;



1 (50) in the table of sections at the beginning of chapter 1215, by repealing the  
2 item relating to section 12552;

3 (51) in table of sections at the beginning of chapter 1217, by striking the items  
4 relating to sections 12603 and 12604 and inserting the following:

“12603. Attend reserve component duty commercial travel at Federal supply schedule rates.

“12604. Billeting in Department of Defense facilities: Reserves attending reserve component duty.”;

5 (52) in paragraph (3) of subsections (a) and (b) of section 12602—

6 (A) by striking “inactive-duty training” each place it appears and inserting  
7 “reserve component duty”; and

8 (B) by striking “section 502 of title 32” and inserting “section 543(a) of  
9 title 32”;

10 (53) in section 12603—

11 (A) in the section heading, by striking “**Attendance at inactive-duty**  
12 **training assemblies**” and inserting “**Attend reserve component duty**”; and

13 (B) in subsection (a), by striking “inactive duty training” and inserting  
14 “reserve component duty”; and

15 (54) in section 18505—

16 (A) in the section heading, by striking “**inactive-duty training**” and  
17 inserting “**reserve component duty**”; and

18 (B) in subsection (a)—

19 (i) by striking “inactive-duty training” each place it appears and  
20 inserting “reserve component duty”; and

21 (ii) by striking “unit training assembly” and inserting “unit training  
22 location”.

1 (d) EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR DEFENSE AND FOR THE  
2 RECONSTRUCTION OF IRAQ AND AFGHANISTAN, 2004.—Paragraphs (7) and (8) of section 1120(b)  
3 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of  
4 Iraq and Afghanistan, 2004 (Public Law 108-106; 10 U.S.C. 113 note) are amended by striking  
5 “section 12304 of title 10, United States Code” and inserting “section 12341 of title 10, United  
6 States Code, for the purpose prescribed in section 12351(b)(3) of such title”.

7 (e) DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005.—Paragraphs (7) and (8) of  
8 section 9010(b) of the Department of Defense Appropriations Act, 2005 (Public Law 108-287;  
9 10 U.S.C. 113 note) are amended by striking “section 12302 of title 10, United States Code” and  
10 inserting “section 12341 of title 10, United States Code, for the purpose prescribed in section  
11 12351(b)(2) of such title”.

12 (f) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1987.—Paragraph (1) of  
13 section 403(b) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-  
14 661; 10 U.S.C. 521 note) is amended—

15 (1) by striking subparagraph (B) and inserting the following new subparagraph:

16 “(B) on active duty—

17 “(i) under section 12341 of title 10, United States Code, for the  
18 purpose prescribed in section 12351(a) of such title; or

19 “(ii) under section 12342 of title 10, United States Code, for a  
20 purpose prescribed in section 10211, 10302, 10303, 10304, 10305, or  
21 12402 of such title or section 708 of title 32, United States Code;”;

22 (2) in subparagraph (C), by striking “section 12301(d) of title 10, United States  
23 Code,” and inserting “section 12342 of title 10, United States Code,”;

1 (3) in subparagraph (D), by striking “to pursue special work” and inserting “under  
2 section 12342 of title 10, United States Code, to provide operational support”; and

3 (4) in subparagraph (E), by striking “section 12304 of title 10, United States  
4 Code” and inserting “section 12341 of title 10, United States Code, for the purpose  
5 prescribed in section 12351(b)(3) of such title”.

6 (g) DUNCAN HUNTER NATIONAL DEFENSE AUTHORIZATION ACT OF 2009.—Section 533  
7 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417; 10  
8 U.S.C. prec. 701) is amended—

9 (1) in paragraph (1) of subsection (a), by striking “members on active Guard and  
10 Reserve duty of the Armed Forces” and inserting “members on active duty performing  
11 Active Guard and Reserve functions”;

12 (2) in paragraph (2) of subsection (b) —

13 (A) in the paragraph heading, by inserting “COMPONENT” after “RESERVE”;

14 and

15 (B) by striking “Reserve” and inserting “reserve component”;

16 (3) in paragraph (2) of subsection (c), by striking “inactive duty training” and  
17 inserting “reserve component duty”;

18 (4) in subparagraph (D) of subsection (i)(4), by striking “inactive duty training”  
19 each place it appears and inserting “reserve component duty”; and

20 (5) by striking subsection (j) and inserting the following new subsection:

21 “(j) DEFINITIONS.—In this section:

22 “(1) The term ‘Active Guard and Reserve functions’ has the meaning given that  
23 term in section 101(c)(8) of title 10, United States Code.

1           “(2) The term ‘active duty’ includes full-time National Guard duty.”.

2           (h) Title 14, UNITED STATES CODE.—Title 14, United States Code, is amended—

3                 (1) in subsection (a) of section 2102, by striking “section 12311 of title 10” and  
4           inserting “section 12315 of title 10”; and

5                 (2) in paragraph (1) of section 3713(c), by striking “training requirement of  
6           section 10147 of title 10” and inserting “training requirements prescribed in section  
7           12352(c) of title 10”.

8           (i) SMALL BUSINESS ACT.—Subsection (n) of section 7 of the Small Business Act (15  
9           U.S.C. 636) is amended, in the subsection heading, by striking “ACTIVE DUTY” and inserting  
10          “ELIGIBLE”.

11          (j) TRADE ACT OF 1974.—Paragraph (2) of section 233(i) of the Trade Act of 1974 (19  
12          U.S.C. 2293(i)) is amended by striking “the worker—” and all that follows through the period at  
13          the end and inserting “the worker serves on active duty or full-time National Guard duty for a  
14          period of more than 30 days under a call or order to active duty or full-time National Guard duty  
15          of more than 30 days.”.

16          (k) TITLE 28, UNITED STATES CODE.—Section 2671 of title 28, United States Code, is  
17          amended by striking “section 115, 316, 502, 503, 504, or 505 of title 32” and inserting “section  
18          541 or 542 of title 32”.

19          (l) TITLE 32, UNITED STATES CODE.—Title 32, United States Code, is amended—

20                 (1) in the table of sections at the beginning of chapter 1, by repealing the items  
21           relating to sections 114 and 115;

22                 (2) in section 101—

23                         (A) in paragraph (19)—

1 (i) by striking “inactive duty” and inserting “reserve component  
2 duty”; and  
3 (ii) by striking “section 316, 502, 503, 504, or 505 of this title” and  
4 inserting “section 541 or 542 of this title”; and  
5 (B) by adding at the end the following new paragraph:  
6 “(20) ‘Reserve component duty’ has the meaning given that term in section  
7 101(d)(7) of title 10.”;  
8 (3) in subsection (c) of section 107, by striking “section 12402 of title 10” and  
9 inserting “section 12342 of title 10 for duty in the National Guard Bureau”;  
10 (4) in section 112—  
11 (A) in subsection (b)—  
12 (i) in paragraph (1), by striking “section 502(f) of this title” and  
13 inserting “section 542 of this title”;  
14 (ii) in subparagraph (A) of paragraph (2)—  
15 (I) by striking “under section 502(a) of this title”; and  
16 inserting “pursuant to sections 552(a) and 553(a) of this title”; and  
17 (II) by striking “under section 502(a)(1)” and inserting  
18 “pursuant to section 553(a)”; and  
19 (iii) in the matter preceding subparagraph (A) of paragraph (3), by  
20 striking “section 508 of this title” and inserting “section 514 of this title”;  
21 and  
22 (B) in subparagraph (A) of subsection (e)(1), by striking “section 502(f) of  
23 this title” and inserting “section 542 of this title”;

1 (5) in the table of sections at the beginning of chapter 3, by repealing the item  
2 relating to section 328;

3 (6) in paragraph (2) of section 709(g), by striking “who is performing active  
4 Guard and Reserve Duty (as that term is defined in section 101(d)(6) of title 10)” and  
5 inserting “who is on active duty or full-time National Guard duty to perform Active  
6 Guard and Reserve functions (as that term is defined in section 101(c)(8) of title 10)”;

7 (7) in paragraph (3) of section 715(a), by striking “section 316, 502, 503, 504, or  
8 505 of this title” and inserting “section 541 or 542 of this title”;

9 (8) in the table of sections at the beginning of chapter 9, by striking the item  
10 relating to section 904 and inserting the following new item:

“904. Homeland defense activities.”; and

11 (9) in section 904—

12 (A) in the section heading, by striking “**duty**” and inserting “**activities**”;

13 (B) in subsection (a), by striking “considered to be full-time National  
14 Guard duty under section 502(f) of this title” and inserting “performed as full-  
15 time National Guard duty under section 541 of this title”;

16 (C) in subsection (b), in the first sentence, by striking “duty under this  
17 chapter” and inserting “activities under this chapter”; and

18 (D) by striking subsection (c) and inserting the following new subsection:

19 “(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard  
20 performing activities under this chapter shall, in addition to performing such activities,  
21 participate in the training required pursuant to sections 552(a) and 553(a) of this title. The  
22 pay, allowances, and other benefits of the member while participating in the training shall  
23 be the same as those to which the member is entitled while performing such activities.

1 The member is not entitled to additional pay, allowances, or other benefits for  
2 participation in training required pursuant to section 553(a) of this title.”.

3 (m) TITLE 37, UNITED STATES CODE.—Title 37, United States Code, is amended—

4 (1) in section 101—

5 (A) by striking paragraph (22) and inserting the following new paragraph:

6 “(22) The term ‘reserve component duty’ has the meaning given that term in  
7 paragraph (7) of section 101(d) of title 10.”; and

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

9 “(27) The term ‘remote assignment’ has the meaning given that term in paragraph  
10 (8) of section 101(d) of title 10.”;

11 (2) in section 204—

12 (A) by striking subsection (a) and inserting the following new subsection:

13 “(a) A member of a uniformed service who is on active duty is entitled to the basic pay of  
14 the pay grade to which assigned or distributed, in accordance with their years of service  
15 computed under section 205 of this title.”;

16 (B) by repealing subsection (c); and

17 (C) in subsections (g) and (h)—

18 (i) in paragraph (1)—

19 (I) in subparagraph (B), by striking “inactive-duty training”  
20 and all that follows to through the semicolon and inserting “reserve  
21 component duty;”;

22 (II) in subparagraph (C), by striking the semicolon at the  
23 end and inserting “; or”;

1 (III) in subparagraph (D)—

2 (aa) by striking “inactive-duty training” each place  
3 it appears and inserting “reserve component duty”; and

4 (bb) by striking “; or” at the end and inserting a  
5 period; and

6 (IV) by striking subparagraph (E); and

7 (ii) by adding at the end the following new paragraph:

8 “(3) A member of a reserve component of a uniformed service is not entitled to  
9 compensation under this subsection for—

10 “(A) work or a course of instruction undertaken pursuant to section 12344 of title  
11 10; or

12 “(B) attendance in an inactive status at an educational institution under the  
13 sponsorship of an armed force or the Public Health Service.”;

14 (3) in section 206—

15 (A) in the section heading, by striking “**inactive-duty training**” and  
16 inserting “**reserve component duty**”;

17 (B) in subparagraphs (A)(ii) and (C) of subsection (a)(3), by striking  
18 “inactive-duty training” each place it appears and inserting “reserve component  
19 duty”; and

20 (C) in subsection (b)—

21 (i) in paragraph (1), by striking “an assembly for drill or other  
22 equivalent period of training, instruction, duty, or appropriate duties” and  
23 inserting “a period of reserve component duty”; and



1 (ii) in paragraphs (2) and (3), by striking “assemblies or periods of  
2 other equivalent training, instruction, duty, or appropriate duties” and  
3 inserting “reserve component duty periods required under section  
4 12352(a) of title 10, or under section 553(a) of title 32,”;

5 (4) in subsection (b) of section 302f—

6 (A) in paragraph (2), by striking “under section 12305 of title 10, or is  
7 recalled to active duty under section 688 of title 10 for a period of more than 30  
8 days” and inserting “pursuant to section 12311 of title 10”; and

9 (B) in subparagraph (A) of paragraph (3), by striking “section 12305 of  
10 title 10” and inserting “section 12311 of title 10”;

11 (5) in section 305b—

12 (A) in subsection (c), in the subsection heading, by striking “INACTIVE  
13 DUTY TRAINING” and inserting “RESERVE COMPONENT DUTY”; and

14 (B) in subsection (e), by striking “section 12310(c) of title 10” and  
15 inserting “section 12352(f)(3) of title 10”;

16 (6) in clause (ii) of section 308(a)(1)(C), by striking “performing active Guard  
17 and Reserve duty (as defined in section 101(d)(6) of title 10)” and inserting “on active  
18 duty performing Active Guard and Reserve functions (as that term is defined in section  
19 101(c)(8) of title 10)”;

20 (7) in subsection (b) of section 356—

21 (A) in the second sentence, by striking “performing active Guard and  
22 Reserve duty (as defined in section 101(d)(6) of title 10)” and inserting “on active

1 duty performing Active Guard and Reserve functions (as that term is defined in  
2 section 101(c)(8) of title 10”); and

3 (B) in the third sentence, by striking “not performing active Guard or  
4 Reserve duty” and inserting “not on active duty performing Active Guard and  
5 Reserve functions”;

6 (8) in the table of sections at the beginning of chapter 7, by striking the item  
7 relating to section 433 and inserting the following new item:

“433. Allowance for participating in Ready Reserve muster.”;

8 (9) in section 433—

9 (A) in the section heading, by striking “**muster duty**” and inserting  
10 “**participating in Ready Reserve muster**”;

11 (B) in subsection (a), by striking “muster duty performed pursuant to  
12 section 12319 of title 10” and inserting “participating in muster pursuant to  
13 section 12353(b) of title 10”; and

14 (C) in subsection (d), by striking “inactive-duty training” and inserting  
15 “reserve component duty”;

16 (10) in subsection (a) of section 433a, by striking “under section 12319 of title  
17 10” and inserting “pursuant to section 12353(b) of title 10”;

18 (11) in table of sections at the beginning of chapter 8—

19 (A) by striking the item relating to section 478a and inserting the  
20 following new item:

“478a. Travel and transportation allowances: reserve component duty outside of normal commuting distances.”;  
and

1 (B) by striking the item relating to section 495 and inserting the following  
2 new item:

“495. Funeral honors: allowance.”;

3 (12) in section 452(b)—

4 (A) in paragraph (9), by striking “inactive-duty training” and inserting  
5 “reserve component duty”; and

6 (B) in paragraph (10), by striking “duty”;

7 (13) in section 474—

8 (A) in paragraph (5) of subsection (a), by striking “paid drills” and  
9 inserting “paid periods of reserve component duty”; and

10 (B) in paragraph (1) of subsection (i), in the first sentence, by striking  
11 “inactive-duty training” and inserting “reserve component duty”;

12 (14) in section 495—

13 (A) in the section heading, by striking “**duty**”; and

14 (B) in paragraph (1) of subsection (a), by striking “funeral honors duty  
15 pursuant to section 12503 of title 10 or section 115 of title 32” and inserting  
16 “reserve component duty pursuant to section 12353(d)(2)(A)(i) of title 10 or  
17 section 553(c)(2)(A)(i) of title 32 to provide honors at the funeral of a veteran”;

18 (15) in table of sections at the beginning of chapter 17, by striking the item  
19 relating to section 910 and inserting the following new item:

“910. Replacement of lost income: reserve component members subject to extended and frequent active duty in support of a contingency operation.”;

20 (16) in subsection (a) of section 909, by striking “under section 123 or 12305 of  
21 title 10” and inserting “under section 123 or 12311 of title 10”; and

1 (17) in section 910—

2 (A) by striking the section designation and heading and inserting the  
3 following:

4 **“§910. Replacement of lost income: reserve component members subject to extended and**  
5 **frequent active duty in support of a contingency operation”;**

6 (B) in subsection (b)—

7 (i) in paragraph (1)—

8 (I) in the matter preceding subparagraph (A), by striking  
9 “under an involuntary mobilization order” and inserting “in  
10 support of a contingency operation (as that term is defined in  
11 section 101(a)(13) of title 10)”;

12 (II) in subparagraphs (A) and (B), by striking “under an  
13 involuntary mobilization order” and inserting “in support of a  
14 contingency operation”; and

15 (III) in subparagraph (C)—

16 (aa) by striking “involuntarily mobilized for service  
17 on active duty” and inserting “ordered to active duty in  
18 support of a contingency operation”; and

19 (bb) by striking “a previous period of active duty”  
20 and inserting “a previous period of active duty in support of  
21 a contingency operation”;

22 (ii) in paragraph (2)—

1 (I) in subparagraph (A), by striking “involuntarily  
2 mobilized” and inserting “ordered to active duty in support of a  
3 contingency operation”; and

4 (II) in subparagraph (B), by striking “under subparagraph  
5 (A) or (B) of section 12301(h)(1) of title 10” and inserting “under  
6 section 12341 of title 10 for a purpose specified in subparagraph  
7 (D) or (E) of section 12351(e)(1) of title 10 or under section 541 of  
8 title 32 for a purpose specified in subparagraph (D) or (E) of  
9 section 551(c)(1) of title 32”; and

10 (C) in paragraph (1) of subsection (e), by striking “mobilization” and  
11 inserting “order to active duty in support of a contingency operation (as that term  
12 is defined in section 101(a)(13) of title 10)”; and

13 (18) by striking subsection (c) of section 1002 and inserting the following new  
14 subsection:

15 “(c) This section does not authorize compensation for work or study in connection with  
16 correspondence courses of an armed force—

17 “(1) performed by a member of a reserve component other than that authorized by  
18 the Secretary concerned under section 12354(b) of title 10; or

19 “(2) performed by a member of the Army National Guard of the United States or  
20 the Air National Guard of the United States in the member’s status as a member of the  
21 National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District  
22 of Columbia.”.

23 (n) TITLE 38, UNITED STATES CODE.—Title 38, United States Code, is amended—

1 (1) in section 101—

2 (A) in subparagraph (C) of paragraph (22), by striking “full-time duty  
3 under section 316, 502, 503, 504, or 505 of title 32” and inserting “full-time  
4 National Guard duty under section 541 or 542 of title 32”;

5 (B) in paragraph (23)—

6 (i) in the matter preceding subparagraph (A), by striking “inactive  
7 duty training” and inserting “reserve component duty”;

8 (ii) in subparagraph (A), by striking “section 206 of title 37 or any  
9 other provision of law” and inserting “section 12343 of title 10”; and

10 (iii) in the matter following subparagraph (C)—

11 (I) in the first sentence, by striking “sections 316, 502, 503,  
12 504, or 505 of title 32” and inserting “section 543 of title 32”; and

13 (II) in the second sentence—

14 (aa) by striking “or (iii)” and inserting “(iii)”; and

15 (bb) by striking the period at the end and inserting  
16 “, or (iv) work or a course of instruction assigned under  
17 section 12344 of title 10.”; and

18 (C) in paragraph (24)(C), in the matter preceding clause (i), by striking  
19 “inactive duty training” and inserting “reserve component duty”;

20 (2) in section 1965—

21 (A) in subparagraph (D) of paragraph (2), by striking “sections 316, 502,  
22 503, 504, or 505 of title 32, United States Code” and inserting “section 542 of title  
23 32, for a purpose specified in subsection (a) or (b)(1) of section 552 of such title”;

1 (B) by striking paragraphs (3) and (4) and inserting the following new  
2 paragraphs:

3 “(3) The term ‘reserve component duty’ means—

4 “(A) in the case of a member of a reserve component or a member of the  
5 National Guard, duty described in section 101(d)(7) of title 10, which duty is  
6 scheduled in advance by competent authority to begin at a specific time and place;  
7 and

8 “(B) in the case of a commissioned officer of the Reserve corps of the  
9 Public Health Service, duty prescribed or authorized (other than full-time duty),  
10 which duty is scheduled in advance by competent authority to begin at a specific  
11 time and place.

12 “(4)(A) The terms ‘active duty for training’ and ‘reserve component duty’ do not  
13 include duty performed as a temporary member of the Coast Guard Reserve.

14 “(B) The term ‘reserve component duty’ does not include—

15 “(i) work or study performed in connection with correspondence courses;

16 “(ii) work or a course of instruction assigned under section 12344 of title  
17 10; or

18 “(iii) attendance at an educational institution in an inactive status.”; and

19 (D) in paragraph (5)—

20 (i) in subparagraphs (A) and (B), by striking “inactive duty  
21 training” and inserting “reserve component duty”; and

22 (ii) in subparagraph (C), by striking “as defined in section  
23 12304(i)(1)” and inserting “as described in section 10144(b)(1)”;

1 (3) in section 4303—

2 (A) in paragraph (13)—

3 (i) by striking “and includes active duty, active duty for training,  
4 initial active duty for training, inactive duty training, full-time National  
5 Guard duty,” and inserting “and includes active duty, active duty for the  
6 purpose of training, initial active duty for training, reserve component  
7 duty, full-time National Guard duty, full-time National Guard duty for the  
8 purpose of training,”;

9 (ii) by inserting “and” after “fitness of the person to perform any  
10 such duty,”; and

11 (iii) by striking “, and a period for which a person is absent from  
12 employment for the purpose of performing funeral honors duty as  
13 authorized by section 12503 of title 10 or section 115 of title 32”; and

14 (B) in paragraph (16), by striking “when engaged in active duty for  
15 training, inactive duty training, or full-time National Guard duty” and inserting  
16 “when engaged in active duty, full-time National Guard duty, or reserve  
17 component duty”; and

18 (4) in section 4316, by striking subsection (e).

19 (o) **MILITARY SELECTIVE SERVICE ACT.**—The Military Selective Service Act (50 U.S.C.  
20 3801 et seq.) is amended—

21 (1) in section 6 (50 U.S.C. 3806)—

22 (A) in subsection (c)—



1 (i) in paragraph (1), by striking “scheduled drills and training  
2 periods” and inserting “required training pursuant to sections 12352(c) and  
3 12353(a) of title 10, United States Code, or sections 552(a) and 553(a) of  
4 title 32, United States Code,”; and

5 (ii) in the matter following clause (iii) of paragraph (2)(A), by  
6 striking “section 10147 of title 10 or section 502 of title 32, United States  
7 Code,” and inserting “the training prescribed in sections 12352(c) and  
8 12353(a) of title 10, United States Code, or sections 552(a) and 553(a) of  
9 title 32, United States Code,”; and

10 (B) in paragraph (1) of subsection (d), by striking “section 10147 of title  
11 10, United States Code)” and inserting “section 12352(c) of title 10, United States  
12 Code, or section 552(a) of title 32, United States Code”;

13 (2) in paragraph (2) of section 10(b) (50 U.S.C. 3809(b)), by inserting “under  
14 section 12342 of title 10, United States Code,” after “order to active duty”; and

15 (3) in subsection (h) of section 16 (50 U.S.C. 3814), by striking “scheduled drills  
16 and training periods” and inserting “training pursuant to sections 12352(c) and 12353(a)  
17 of title 10, United States Code, or sections 552(a) and 553(a) of title 32, United States  
18 Code,”.

19 **SEC. \_\_\_\_ . CONFORMING AMENDMENTS RELATED TO INACTIVE DUTY.**

20 (a) INACTIVE DUTY TRAINING.—

21 (1) TITLE 10, UNITED STATES CODE.—

1 (A) IN GENERAL.—The following provisions of title 10, United States  
2 Code, are amended by striking “inactive duty training” each place it appears and  
3 inserting “reserve component duty”:

4 (i) Paragraph (2) of section 1175(e).

5 (ii) Subsections (d)(2) and (e)(5) of section 2031.

6 (iii) Subsection (b) of section 10204.

7 (B) CLERICAL AMENDMENT.—The table of sections at the beginning of  
8 subchapter II of chapter 75 of title 10, United States Code, is amended by striking  
9 the item relating to section 1475 and inserting the following:

“1475. Death gratuity: death of members on active duty or reserve component duty and of certain other persons.”.

10 (2) INTERNAL REVENUE CODE OF 1986.—Section 3121(m) of the Internal Revenue  
11 Code of 1986 (26 U.S.C. 3121(m)) is amended—

12 (A) in paragraph (1)(B), by striking “inactive duty training” and inserting  
13 “reserve component duty”; and

14 (B) in paragraph (3)—

15 (i) in the paragraph heading, by striking “INACTIVE DUTY  
16 TRAINING” and inserting “RESERVE COMPONENT DUTY”; and

17 (ii) by striking “inactive duty training” each place it appears and  
18 inserting “reserve component duty”;

19 (3) TITLE 37, UNITED STATES CODE.—Title 37, United States Code, is amended—

20 (A) in subsection (e) of section 320, subsection (e) of section 334, and  
21 subsection (d) of section 352, in the subsection heading, by striking “INACTIVE  
22 DUTY TRAINING” and inserting “RESERVE COMPONENT DUTY”;

1 (B) in paragraph (1) of section 415(c), by striking “inactive duty training”  
2 and inserting “reserve component duty”; and

3 (C) in section 478a—

4 (i) in the section heading, by striking “**inactive duty training**” and  
5 inserting “**reserve component duty**”; and

6 (ii) in subsection (a), by striking “inactive duty training” each  
7 place it appears and inserting “reserve component duty”.

8 (4) TITLE 38, UNITED STATES CODE.—The following provisions of title 38, United  
9 States Code, are amended by striking “inactive duty training” each place it appears and  
10 inserting “reserve component duty”:

11 (A) Paragraph (1) of section 106(d).

12 (B) Clause (ii) of section 1112(c)(3)(A).

13 (C) Paragraph (2) of section 1302(b).

14 (D) Subparagraph (A) of section 1312(a)(2).

15 (E) Paragraphs (1) and (2)(A) of section 1720D(a).

16 (F) Subsections (a)(1)(B), (a)(5)(B), (b)(1), and (b)(2), and the matter  
17 following subsection (b)(2), of section 1967.

18 (G) The matter preceding paragraph (1) of subsection (a), subsection  
19 (a)(3), and subsection (b)(2) of section 1968.

20 (H) Paragraph (3) of section 1969(a).

21 (I) Subsection (e) of section 1977.

22 (J) Paragraph (2) of section 2402(a).

1 (5) COAST GUARD AUTHORIZATION ACT OF 1989.—Subparagraph (C) of section  
2 204(d)(2) of the Coast Guard Authorization Act of 1989 (Public Law 101-225; 14 U.S.C  
3 501 note) is amended by striking “inactive duty training” and inserting “reserve  
4 component duty”.

5 (6) SOCIAL SECURITY ACT.—The following provisions of the Social Security Act  
6 (42 U.S.C. 301 et seq.) are amended by striking “inactive duty training” each place it  
7 appears and inserting “reserve component duty”:

8 (A) Subparagraph (D) of section 202(t)(4) (42 U.S.C. 402(t)(4)).

9 (B) Paragraphs (1)(B) and (3) of section 210(l) (42 U.S.C. 410(l)).

10 (b) INACTIVE—DUTY TRAINING.—

11 (1) TITLE 10, UNITED STATES CODE.—

12 (A) IN GENERAL.—The following provisions of title 10, United States  
13 Code, are amended by striking “inactive-duty training” each place it appears and  
14 inserting “reserve component duty”:

15 (i) Subsections (a)(3)(A), (a)(3)(B)(i), (a)(3)(B)(ii), (a)(3)(B)(iii),  
16 (d)(2)(B), and (d)(5)(B) of section 802 (article 2 of the Uniform Code of  
17 Military Justice).

18 (ii) Subsection (d) of section 803 (article 3 of the Uniform Code of  
19 Military Justice).

20 (iii) in the matter preceding paragraph (1) of subsection (a) and the  
21 matter preceding paragraph (1) of subsection (b) of section 936 (article  
22 136 of the Uniform Code of Military Justice).

23 (iv) Paragraph (1) of section 976(a).

1 (v) Subclause (I) of section 1044e(a)(2)(B)(iii).

2 (vi) The matter preceding paragraph (1) of section 2601a(b).

3 (vii) Paragraph (3) of section 9446(a).

4 (viii) Subsection (a) of section 12604.

5 (B) CLERICAL AMENDMENTS.—Title 10, United States Code, is  
6 amended—

7 (i) in the table of sections at the beginning of chapter 61—

8 (I) by striking the item relating to section 1204 and

9 inserting the following:

“1204. Members on active duty for 30 days or less or on reserve component duty: retirement.”; and

10 (II) by striking the item relating to section 1206 and

11 inserting the following:

“1206. Members on active duty for 30 days or less or on reserve component duty: separation.”; and

12 (ii) in section 12604, in the section heading, by striking “**inactive-**  
13 **duty training**” and inserting “**reserve component duty**”; and

14 (iii) in the table of sections at the beginning of section 1805, by

15 striking the item relating to section 18505 and inserting the following:

“18505. Reserves traveling for reserve component duty: space-required travel on military aircraft.”.

16 (2) TITLE 14, UNITED STATES CODE.—The following provisions of title 14, United  
17 States Code, are amended by striking “inactive-duty training” and inserting “reserve  
18 component duty”:

19 (A) Section 3704.

20 (B) Subsection (a) of section 3705.

21 (3) TITLE 37, UNITED STATES CODE.—

1 (A) IN GENERAL.—The following provisions of title 37, United States  
2 Code, are amended by striking “inactive-duty training” and inserting “reserve  
3 component duty”:

4 (i) Subparagraph (A) of section 205(e)(2).

5 (ii) Subsection (e) of section 334.

6 (iii) Subsection (d) of section 352.

7 (iv) Subparagraph (B) of section 353(c)(1).

8 (v) Paragraph (3) of section 415(a).

9 (vi) The matter preceding paragraph (1) of subsection (a), the  
10 matter following paragraph (2) of subsection (a), and subsection (d) of  
11 section 552.

12 (B) CLERICAL AMENDMENT.—The table of sections at the beginning of  
13 chapter 3 of title 37, United States Code, is amended by striking the item relating  
14 to section 206 and inserting the following:

“206 Reserves; members of National Guard: reserve component duty.”.

15 (4) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004.—  
16 Subsection (a) of section 546 of the National Defense Authorization Act for Fiscal Year  
17 2004 (Public Law 108-136; 10 U.S.C. 113 note) is amended by striking “inactive-duty  
18 training” and inserting “reserve component duty”.

19 (c) INACTIVE DUTY FOR TRAINING.—

20 (1) TITLE 10, UNITED STATES CODE.—The following provisions of title 10, United  
21 States Code, are amended by striking “inactive duty for training” and inserting “reserve  
22 component duty”:

23 (A) Clauses (ii) and (iii) of section 1471(b)(3)(A).

1 (B) Subparagraph (D) of section 2107(c)(5).

2 (C) Subparagraph (D) of section 2107a(c)(4).

3 (2) TITLE 37.—Subsection (a) of section 308d of title 37, United States Code, is  
4 amended by striking “inactive duty for training” and inserting “reserve component duty”.

5 (d) INACTIVE DUTY.—The following provisions of law are amended by striking “inactive  
6 duty” and inserting “reserve component duty”:

7 (1) Subparagraph (A) of section 231(a)(2) of the Trade Act of 1974 (19 U.S.C.  
8 2291(a)(2)).

9 (2) Subsection (c) of section 308d of title 37, United States Code.

10 (3) Paragraph (1) of section 481f(a) of title 37, United States Code.

11 (e) REFERENCES TO INACTIVE DUTY, INACTIVE DUTY TRAINING, AND INACTIVE DUTY FOR  
12 TRAINING.—Any reference to inactive duty, inactive duty training, or inactive duty for training in  
13 a law, rule, regulation, or other record, document, or paper of the United States shall be deemed  
14 to be a reference to reserve component duty.

15 **SEC. \_\_. TRANSITION PROVISIONS; STATUTORY CONSTRUCTION.**

16 (a) EARLY ACCESS TO TRICARE.—

17 (1) IN GENERAL.—A member who, on or after the date of the enactment of this  
18 Act, is issued an order described in paragraph (2) to active duty or full-time National  
19 Guard duty shall be treated as meeting the eligibility requirements for TRICARE under  
20 section 1074(d) of title 10, United States Code, from the date of the issuance of such an  
21 order, but not to exceed 180 days before the date on which the period of such duty is to  
22 commence under such an order.

23 (2) COVERED ORDERS.—The orders described in this paragraph are as follows:

1 (A) An order to active duty that, beginning on the effective date of this  
2 title, will be covered service under section 12341 of title 10, United States Code.

3 (B) An order to full-time National Guard duty that, beginning on the  
4 effective date of this title, will be covered service under section 541 of title 32,  
5 United States Code.

6 (b) TRANSITION TO BENEFITS UNDER THIS TITLE.—A member who is on active duty or  
7 full-time National Guard duty on the effective date of this title shall be eligible for any additional  
8 benefit, or cease to be eligible for a benefit, based on the order to duty that would have been  
9 issued under the reserve component duty consolidation under this title, including the  
10 amendments made by this title, commencing on the effective date of this title.

11 (c) STATUTORY CONSTRUCTION.—

12 (1) BENEFITS ACCRUED BEFORE EFFECTIVE DATE.—Except as otherwise  
13 specifically provided, nothing in this Act or the amendments made by this Act may be  
14 construed to provide for a reduction or increase in the benefits accrued by an individual  
15 in connection with service occurring before the effective date of this Act, as determined  
16 in accordance with regulations prescribed by the Secretary of Defense, or the head of any  
17 other Federal department or agency concerned, as appropriate.

18 (2) ACTIVE DUTY OR FULL-TIME NATIONAL GUARD DUTY.—For the purposes of this  
19 Act and the amendments made by this Act, if the phrase “active duty or full-time  
20 National Guard duty” is followed by the phrase “in support of a contingency operation”  
21 or another qualifying phrase, the qualifying phrase shall be construed to apply to both  
22 active duty and full-time National Guard duty.

23 **SEC. \_\_. EFFECTIVE DATE.**



1 (a) IN GENERAL.—Subject to subsection (b), this title shall take effect ten years after the  
2 date of the enactment of this Act.

3 (b) PROCESS FOR ESTABLISHING EARLIER EFFECTIVE DATE.—The effective date of this  
4 title may occur on a date that is earlier than the date specified in subsection (a) if—

5 (1) the Secretary of Defense and the Secretary of Homeland Security jointly  
6 provide to the congressional defense committees advance written notice of the earlier  
7 effective date, together with—

8 (A) a certification by the Secretary of Defense that each department within  
9 the Department of Defense is prepared to fully implement the reserve component  
10 duty consolidation prescribed in this title; and

11 (B) a certification by the Secretary of Homeland Security that the Coast  
12 Guard is prepared to fully implement the reserve component duty consolidation  
13 prescribed in this title; and

14 (2) a law is enacted providing for the earlier effective date.

15 (c) REFERENCES TO THIS TITLE.—In this section, the term “this title” includes the  
16 amendments made by this title.

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

### **Section-by-Section Analysis**

This proposal is being submitted in response to section 513 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; `31 Stat. 1377).

Section 513 of the National Defense Authorization Act for Fiscal Year 2018 directed the Secretary of Defense to submit legislation by April 2019 that would implement an alternate approach to the current reserve component duty status system. In particular, the law required the Secretary of Defense to ensure the alternate approach was limited by the following constraints: The proposal:

(1) reduces the number of statutory authorities by which members of the reserve components of the Armed Forces may be ordered to perform duty to not more than 8 statutory authorities grouped into 4 duty categories to which specific pay and benefits may be aligned, which categories shall include—

(A) one duty category that shall generally reflect active service performed in support of contingency type operations or other military actions in support of the commander of a combatant command;

(B) a second duty category that shall—

(i) generally reflect active service not described in subparagraph (A); and

(ii) consist of training, administration, operational support, and full-time support of the reserve components;

(C) a third duty category that shall--

(i) generally reflect duty performed under direct military supervision while not in active service; and

(ii) include duty characterized by partial-day service; and

(D) a fourth duty category that shall--

(i) generally reflect remote duty completed while not under direct military supervision; and

(ii) include completion of correspondence courses and telework;

(2) distinguishes among duty performed under titles 10, 14, and 32, United States Code, and ensures that the reasons the members of the reserve components are utilized under the statutory authorities which exist prior to the alternate approach are preserved and can be tracked as separate and distinct purposes;

(3) minimizes, to the maximum extent practicable, disruptions in pay and benefits for members, and adheres to the principle that a member should receive pay and benefits commensurate with the nature and performance of the member's duties;

(4) ensures the Secretary has the flexibility to meet emerging requirements and to effectively manage the force; and

(5) aligns Department of Defense programming and budgeting to the types of duty members perform.

Problems associated with the current reserve component duty status system have been well documented, most notably, in at least seven different studies dating back to 2002. Each study, beginning with the 2002 Wexford Study to the most recent Military Compensation and Retirement Modernization Commission (MCRMC) in 2015, recommends different approaches to mitigate problems with the system. Unfortunately, no one study offered a holistic and balanced solution to the problems.

The problems identified by the multiple studies, and the problems that this proposal will help facilitate to resolve, include the following:

- **Pay and Benefits Inequities** - Pay and allowances and benefits differ depending on duty status—Service Members performing similar duties today can receive different benefit packages. Resolving these inconsistencies would require both simplification of the duty status structure and the reserve compensation system.

- **Disruption in Pays and Benefits** – Service Members may experience disruptions in pay and benefits when they transition from one duty authority to another. For instance, most current personnel and pay systems are not integrated and may cause the member to fall off of the Defense Enrollment Eligibility Reporting System (DEERS) system and the pay system. This may typically take an additional cycle to rectify.
- **Programming and Budgeting** - The budgeting process is based on artificial duty status distinctions that complicate the allocation of resources and obscure the understanding of the work and training actually being performed. It is difficult to track funding because duty statuses are not linked to how the budget is organized.
- **Accessibility** - The numerous criteria for determining reserve component statuses can make it difficult for operational commanders to call reserve component Service Members to duty. Likewise, when requirements are emergent rather than programmed, accessibility to reserve component Service Members may be limited.
- **Complexity** - Multiple duty statuses produce complex rules and procedures that are highly inefficient, inhibit volunteerism, and increase the difficulty of accessing reservists to perform operational missions. The complexity impacts reservists and operational commanders alike.

The above mentioned problems highlight several underlying issues with the authorities used when ordering Reserve Component (RC) Service Members to perform duty. Each individual authority corresponds to a particular set of benefits, is tethered to different funding sources, may be voluntary or involuntary, and may be used for required work or for discretionary work. This problem contributes to scenarios, both in training environments and combat deployments overseas, where RC Service Members performing similar service may be serving under different authorities and receive different benefits—to include death benefits in the unfortunate event of a member’s death.

### **Addressing Pay and Benefits Inequities:**

In March of 2011, the inequalities associated with members serving on different activation authorities garnered national attention after a helicopter crashed off the coast of Florida during a training mission resulting in the death of 11 Service Members. Of the 11 Service Members killed, 7 Marines were active component members on active duty while 4 Soldiers were members of the Louisiana National Guard on Inactive Duty for Training orders. Although the Guardsmen and Marines were participating in the same exercise their benefits in life and death were vastly different.

Among other ends, this proposal attempts to align pay and benefits a member receives to the type of duty being performed. This will ensure that members performing like duties will be eligible for the same benefit package. To achieve pay and benefit equity, this proposal separates the current 27 authorities with their purposes that define why the RC Service Members are activated. This allows for reduction of the number of statutory authorities by which members of the Reserve Components may be ordered to perform duty to not more than eight statutory authorities. These eight statutory authorities distinguish between duty performed under titles 10, 14, and 32, United States Code. These eight authorities are grouped into four duty categories and to which specific pay and benefits may be aligned. This alignment ensures that RC Service

Members performing duties in the same category will be eligible for the same benefit package that is assigned to that category.

Additionally, this proposal aims to ensure that surviving spouses of Service Members who die while on inactive duty receive all the same benefits as survivors of Service Members who die while on active duty. While Congress recently enacted a law that required the Survivor Benefit Plan computation to be equal irrespective of the status the member at the time of death, there were other surviving spousal benefits were overlooked. This proposal addresses the remaining survivor benefit inequities that still persist in law. Resolving these inequities is long overdue and the least that should be done for the family member whose spouse died in service to this country.

### **Addressing Disruption in Pays and Benefits:**

One important aspect the proposal attempts to solve is the disruption in pay and benefits that RC Service Members experience when a change to their orders occurs. An often repeated anecdote among RC Service Members is the delay in pay as they wait for the paper trail created from jumping between orders to catch up with them. A delay in pay is a nuisance at best, but can be devastating for some. In other cases, the disruption can cause family members to drop out of DEERs during inopportune times. A delay in medical services adds an unnecessary level of stress to the Service Member and the family while they seek to bridge the gap in medical coverage or attempt to explain their situation to TRICARE representatives. This problem is pervasive among the services under the current system.

While the proposal seeks to solve the pay and benefit disruption legislatively and through policy, another system, currently being rolled out within the Department, will assist in this effort. The Integrated Pay and Personnel System (IPPS), already in use by the Marine Corps and Coast Guard and with phase-in plans for the other services in the coming years, can easily adjust and adapt to the new construct. This obviates the need to establish a new technology when assisting the Services in the transition. Furthermore, IPPS is well-suited for the proposed construct in that it will allow a Service Member to stay on one order, and change purposes without interruption in the benefit authorization systems. For example, under the current system, if an RC Service Member is performing required training (10 U.S.C. 10147) and transitions to optional training (10 U.S.C. 12301(d)), the member will receive new orders during the reissuing of orders process and lose or gain the associated benefits coupled to that order. Though momentary, this could cause the aforementioned disruptions in pay and benefits. Under the proposed construct, an RC Service Member placed in Category II for the purpose of required training who then transitions to optional training will maintain the same pay and benefits package associated with Category II and simply undergo a change in purpose in IPPS for tracking and accounting purposes.

### **Addressing Programming and Budgeting:**

Services placing RC Service Members on duty today often have to place them on a set of particular orders due to emergent requirements. Funding to support required training, annual training and drill periods are programmed and budgeted for well in advance of actual execution. However, during the year of execution, emergent requirements may result in orders being funded from an underexecuting program versus the program associated with the training actually being

performed. Unfortunately for the RC Service Member, this may result in receiving orders not fully aligned to the nature of their work.

Misaligned orders may deprive the RC Service Member from due benefits, but for the sake of the programming and budgeting it obscures the real reason of why the RC Service Member was brought on to duty and the true nature of their training. This limits the Services' and Department's ability to forecast future years spending requirements and only compounds the problems year after year. Instead of perpetuating the cycle of assigning orders solely based on available funds, the proposed construct, with its 4 categories and purposes, allows the Department to establish a funding system of appropriation, allocation, and execution that is based on actual duty performed.

#### **Addressing Accessibility:**

Another important aspect of the proposed construct is RC Service Member accessibility. Currently, several different criteria defining a member's "status" hinders an operational commander's ability to access RC Service Members for emergent requirements or operations that are not preplanned. Streamlining this process removes antiquated obstacles for commanders while providing a more efficient use of RC Service Members. It will also assist in assigning the right person for the right type of duty because the Department and the Service will have a better understanding of the Service Member's recent reserve activities. This is not to suggest that the proposed construct will arbitrarily or capriciously activate RC Service Members as this is not in keeping with the goals of the proposed construct or the spirit of effectively using the reserve component.

#### **Addressing Complexity:**

The current system is complex and difficult to track as it is comprised of 27 different statutory authorities all with distinct benefits. The proposed construct accounts for each of the 27 current authorities as new purpose codes and ensures that no one activation authority hinders a Service Secretary's ability to activate RC Service Members. Decoupling the authority from pay and benefits allowed for a consolidation of the authorities into the 4 categories. In instances where a particular authority does not equate to one of the 4 categories, it became a purpose code aligned under a category.

The proposed system allows for the same level of tracking that is currently completed in the current system and ensures transparency for congressional oversight and the full accounting of personnel for end strength limitations and service duration. In fact, the proposed construct will simplify the tracking of RC Service Members as there will be fewer distinct and separate authorities to monitor.

Resolving these inequities is long overdue and the least that should be done for the family member whose spouse died in service to this country.

**Budget Implications:** The effective date of the legislation is ten years from enactment. During the Future Years Defense Program (FYDP) (fiscal years 2020 through 2025), the only budget

implication for this proposal is a reduction in the Service accrual contribution to the military retirement fund, which will be adjusted in the first year following enactment based upon anticipated decrease in the future population qualified for reduced eligibility age for retired pay based upon non-regular service.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>							
<b>Benefits</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>5-year</b>	<b>10-year</b>
Discretionary	0.00	-68.94	-68.94	-68.94	-68.94	-275.76	-620.06
Mandatory	0.00	68.94	68.94	68.94	68.94	275.76	620.06

DOD plans to include the funding for the two changes that would impact DOD’s program – income replacement and Federal civilian differential pay -- in its budget when the statutory changes are effective. Under the original proposal, those changes would not take effect until FY 2030, which is outside of the FY 2020 Future Years Defense Program window.

**Cost Methodology:** The cost methodology was developed through close collaboration with contracted fiscal analysts and representatives from the Department of Defense Comptroller. Cost models provided by the DoD Office of the Actuary (OACT) were used to determine the near-term impact to the Military Retirement Fund (MRF) accrual account.

The estimated change associated with the future eligible population was projected based on historical averages from Fiscal Years 2013 through 2018.

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

## **TITLE 4**

### **Flag and Seal, Seat of Government, and the States**

#### 4 U.S.C. §7. Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.

(b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the right fender.

(c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof: *Provided*, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.

(d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

(h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half-staff. When the flag is suspended over a sidewalk



from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

(i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.

(j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

(l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty, full-time National Guard duty, or reserve component duty, or the death of a first responder working in any State, territory, or possession who dies while serving in the line of duty, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia, members of the Armed Forces from the District of Columbia, and first responders working in the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation. The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of

an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection-

(1) the term "half-staff" means the position of the flag when it is one-half the distance between the top and bottom of the staff;

(2) the term "executive or military department" means any agency listed under sections 101 and 102 of title 5;

(3) the term "Member of Congress" means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico; and

(4) the term "first responder" means a "public safety officer" as defined in section 10284 of title 34.

(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty, full-time National Guard duty, or reserve component duty, or the death of a first responder working in any State, territory, or possession who dies while serving in the line of duty, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia, members of the Armed Forces from the District of Columbia, and first responders working in the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation. The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on

Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection-

(1) the term "half-staff" means the position of the flag when it is one-half the distance between the top and bottom of the staff;

(2) the term "executive or military department" means any agency listed under sections 101 and 102 of title 5, United States Code; and

(3) the term "Member of Congress" means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.

(n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

(o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

# **TITLE 5**

## **Government Organizations and Employees**

## 5 U.S.C. §3330d. Appointment of certain military spouses

(a) Definitions.-In this section:

(1) The term "active duty"-

(A) has the meaning given that term in section 101(d)(1) of title 10;

(B) includes full-time National Guard duty (as defined in section 101(d)(5) of title 10); and

(C) for a member of a reserve component (as described in section 10101 of title 10), does not include training duties or attendance at a service school.

(2) The term "agency"-

(A) has the meaning given the term "Executive agency" in section 105 of this title; and

(B) does not include the Government Accountability Office.

(3) The term "geographic area of the permanent duty station" means the area from which individuals reasonably can be expected to travel daily to and from work at the location of a member's permanent duty station.

(4) The term "permanent change of station" means the assignment, detail, or transfer of a member of the Armed Forces who is on active duty and serving at a permanent duty station under a competent authorization or order that does not-

(A) specify the duty as temporary;

(B) provide for assignment, detail, or transfer, after that different permanent duty station, to a further different permanent duty station; or

(C) direct return to the initial permanent duty station.

(5) The term "relocating spouse of a member of the Armed Forces" means an individual who-

(A) is married to a member of the Armed Forces (on or prior to a permanent change of station of the member) who is ordered to active duty for a period of more than 180 consecutive days;

(B) relocates to the member's permanent duty station; and

(C) before relocating as described in subparagraph (B), resided outside the geographic area of the permanent duty station.

(6) The term "spouse of a disabled or deceased member of the Armed Forces" means an individual-

(A) who is married to a member of the Armed Forces who-

(i) is retired, released, or discharged from the Armed Forces; and

(ii) on the date on which the member retires, is released, or is discharged, has a disability rating of 100 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) who-

(i) was married to a member of the Armed Forces on the date on which the member dies while on active duty or reserve component duty in the Armed Forces; and

(ii) has not remarried.

(b) Appointment Authority.-The head of an agency may appoint noncompetitively-

(1) a relocating spouse of a member of the Armed Forces; or

(2) a spouse of a disabled or deceased member of the Armed Forces.

(c) Special Rules Regarding Relocating Spouse.-

(1) In general.-An appointment of a relocating spouse of a member of the Armed Forces under this section may only be to a position the duty station for which is within the geographic area of the permanent duty station of the member of the Armed Forces, unless there is no agency with a position with a duty station within the geographic area of the permanent duty station of the member of the Armed Forces.

(2) Single permanent appointment per duty station.-A relocating spouse of a member of the Armed Forces may not receive more than 1 permanent appointment under this section for each time the spouse relocates as described in subparagraphs (B) and (C) of subsection (a)(5).

(3) No time limitation on appointment.-A relocating spouse of a member of the Armed Forces remains eligible for noncompetitive appointment under this section for the duration of the spouse's relocation to the permanent duty station of the member.

(d) Special Rules Regarding Spouse of a Disabled or Deceased Member of the Armed Forces.-

(1) In general.-An appointment of an eligible spouse as described in subparagraph (A) or (B) of subsection (a)(6) is not restricted to a geographical area.

(2) Single permanent appointment.-A spouse of a disabled or deceased member of the Armed Forces may not receive more than 1 permanent appointment under this section.

## 5 U.S.C. §5517. Withholding State income taxes

(a) When a State statute—

(1) provides for the collection of a tax either by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State, or by granting to employers generally the authority to withhold sums from the pay of employees if any employee voluntarily elects to have such sums withheld; and

(2) imposes the duty or grants the authority to withhold generally with respect to the pay of employees who are residents of the State;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with which the agreement is made. In the case of pay for service as a member of the armed forces, the preceding sentence shall be applied by substituting "who are residents of the State with which the agreement is made" for "whose regular place of Federal employment is within the State with which the agreement is made".

(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a State for services performed in withholding State income taxes from the pay of the employees of the agency.

(c) For the purpose of this section, "State" means a State, territory, possession, or commonwealth of the United States.

(d) For the purpose of this section and sections 5516 and 5520, the terms "serve as a member of the armed forces" and "service as a member of the Armed Forces" include—

(1) participation in exercises or the performance of duty under ~~section 502 of title 32 section 541 or 542 of title 32~~, United States Code, by a member of the National Guard; and

~~(2) participation in scheduled drills or training periods, or service on active duty for training, under section 10147 of title 10, United States Code, by a member of the Ready Reserve.~~

(2) participation in training as a member of the Ready Reserve pursuant to—

(A) subsections (c) and (d) of section 12352 of title 10 or subsections (a) or (c) of section 12353 of such title; or

(B) subsection (a) or (b)(1) of sections 552 of title 32 or subsection (a) or (c) of section 553 of such title.

## 5 U.S.C. §5538. Nonreduction in pay while serving in the uniformed services or National Guard

(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty or full-time National Guard duty in the uniformed services pursuant to a call or order to active duty ~~under section 12304b of title 10 or a provision of law referred to in section 101(a)(13)(B) of title 10~~ or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) shall be entitled, while ~~serving on active duty~~ serving on such duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

(2) the amount of pay and allowances which (as determined under subsection (d))—

(A) is payable to such employee for that service; and

(B) is allocable to such pay period.

(b) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

(1) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

(2) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

(c) Any amount payable under this section to an employee shall be paid—

(1) by such employee's employing agency;

(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.



(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

(f) For purposes of this section—

(1) the terms "employee", "Federal Government", and "uniformed services" have the same respective meanings as given those terms in section 4303 of title 38;

(2) the term "employing agency", as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

(3) the term "basic pay" includes any amount payable under section 5304.

## 5 U.S.C. §5742. Transportation of remains, dependents, and effects; death occurring away from official station or abroad

(a) For the purpose of this section, "agency" means—

- (1) an Executive agency;
- (2) a military department;
- (3) an agency in the legislative branch; and
- (4) an agency in the judicial branch.

(b) When an employee dies, the head of the agency concerned, under regulations prescribed by the President and, except as otherwise provided by law, may pay from appropriations available for the activity in which the employee was engaged—

(1) the expense of preparing and transporting the remains to the home or official station of the employee, or such other place appropriate for interment as is determined by the head of the agency concerned, if death occurred while the employee was in a travel status away from his official station in the United States or while performing official duties outside the continental United States or in transit thereto or therefrom;

(2) the expense of transporting his dependents, including expenses of packing, crating, draying, and transporting household effects and other personal property to his former home or such other place as is determined by the head of the agency concerned, if—

(A) the employee died while performing official duties outside the continental United States or in transit thereto or therefrom; or

(B) in the case of an employee who was a party to a mandatory mobility agreement that was in effect when the employee died—

(i) the employee died in the circumstances described in subparagraph (A); or

(ii)(I) the employee died as a result of disease or injury incurred while performing official duties—

(aa) in an overseas location that, at the time such employee was performing such official duties, was within the area of responsibility of the Commander of the United States Central Command; and

(bb) in direct support of or directly related to a military operation, including a contingency operation ~~(as defined in section 101(13) of title 10)~~ (as that term is defined in section 101(a)(13) of title 10) or an operation in response to an emergency declared by the President; and

(II) the employee's dependents were residing either outside the continental United States or within the continental United States when the employee died; and

(3) the travel expenses of not more than 2 persons to escort the remains of a deceased employee, if death occurred while the employee was in travel status away from his official station in the United States or while performing official duties outside the United States or in transit thereto or therefrom, from the place of death to the home or official station of such person, or such other place appropriate for interment as is determined by the head of the agency concerned.

(c) When a dependent of an employee dies while residing with the employee performing official duties outside the continental United States or in Alaska or in transit thereto or therefrom, the head of the agency concerned may pay the necessary expenses of transporting the remains to the home of the dependent, or such other place appropriate for interment as is determined by the head of the agency concerned. If practicable, the agency concerned in respect of the deceased may furnish mortuary services and supplies on a reimbursable basis when—

(1) local commercial mortuary facilities and supplies are not available; or

(2) the cost of available mortuary facilities and supplies are prohibitive in the opinion of the head of the agency.

Reimbursement for the cost of mortuary services and supplies furnished under this subsection shall be collected and credited to current appropriations available for the payment of these costs.

(d) The benefits of this section may not be denied because the deceased was temporarily absent from duty when death occurred.

(e) Employees covered by this section include an employee who has been reassigned away from the employee's home of record pursuant to a mandatory mobility agreement executed as a condition of employment.

## 5 U.S.C. §6323. Military leave; Reserves and National Guardsmen

(a)(1) Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty, ~~inactive-duty training (as defined in section 101 of title 37), funeral honors duty (as described in section 12503 of title 10 and section 115 of title 32), or engaging in field or coast defense training under sections 502–505 of title 32~~ full-time National Guard duty, or reserve component duty (as that term is defined in section 101(d)(7) of title 10), as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.

(2) In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401(2) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under paragraph (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year.

(3) The minimum charge for leave under this subsection is one hour, and additional charges are in multiples thereof.

(b) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

(1) is a member of a Reserve component of the Armed Forces, as described in section 10101 of title 10, or the National Guard, as described in section 101 of title 32; and

(2)(A) performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury—, full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; or

~~(i) Federal service under section 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or~~

~~(ii) full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; or~~

(B) performs full-time military service as a result of a call or order to active duty ~~in support of a contingency operation as defined in section 101(a)(13) of title 10~~ or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10;

is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 workdays in a calendar year. Upon the request of an employee, the period for which an employee is absent to perform service described in paragraph (2) may be charged to the employee's accrued annual leave or to compensatory time available to the employee instead of being charged as leave to which the employee is entitled under this subsection. The period of absence may not be charged to sick leave.

(c) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general.

(d)(1) A military reserve technician described in section 8401(30) is entitled at such person's request to leave without loss of, or reduction in, pay, leave to which such person is otherwise entitled, credit for time or service, or performance or efficiency rating for each day, not to exceed 44 workdays in a calendar year, in which such person is on active duty without pay, as authorized pursuant to ~~section 12315 of title 10, under section 12301(b) or 12301(d)~~ section 12319 of title 10, under section 12341 or 12342 of title 10 for participation in operations outside the United States, its territories and possessions.

(2) An employee who requests annual leave or compensatory time to which the employee is otherwise entitled, for a period during which the employee would have been entitled upon request to leave under this subsection, may be granted such annual leave or compensatory time without regard to this section or section 5519.

## 5 U.S.C. §6381. Definitions

For the purpose of this subchapter—

(1) the term "employee" means any individual who—

(A) is an "employee", as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia any individual employed on a temporary or intermittent basis, and any employee of the Government Accountability Office or the Library of Congress; and

(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

(2) the term "health care provider" means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

(3) the term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

(4) the term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

(5) the term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider;

(6) the term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability;

(7) the term "covered active duty" means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty ~~under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code~~ or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(8) the term "covered servicemember" means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy;

(9) the term "outpatient status", with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients;

(10) the term "next of kin", used with respect to an individual, means the nearest blood relative of that individual;

(11) the term "serious injury or illness"—

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty or full-time National Guard duty in the Armed Forces (or existed before the beginning of the member's active duty or full-time National Guard duty and was aggravated by service in line of duty on active duty or full-time National Guard duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (8)(B), means an injury or illness that was incurred by the member in line of duty on active duty or full-time National Guard duty in the Armed Forces (or existed before the beginning of the member's active duty or full-time National Guard duty and was aggravated by service in line of duty on active duty or full-time National Guard duty in the Armed Forces) and that manifested itself before or after the member became a veteran; and

(12) the term "veteran" has the meaning given the term in section 101 of title 38, United States Code.

## 5 U.S.C. §8102a. Death gratuity for injuries incurred in connection with employee's service with an Armed Force

(a) Death Gratuity Authorized.—The United States shall pay a death gratuity of up to \$100,000 to or for the survivor prescribed by subsection (d) immediately upon receiving official notification of the death of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force ~~in a contingency operation~~ in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(b) Retroactive Payment in Certain Cases.—At the discretion of the Secretary concerned, subsection (a) may apply in the case of an employee who died, on or after October 7, 2001, and before the date of enactment of this section, as a result of injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

(c) Relationship to Other Benefits.—The death gratuity payable under this section shall be reduced by the amount of any death gratuity provided under section 413 of the Foreign Service Act of 1980, section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, or any other law of the United States based on the same death.

(d) Eligible Survivors.—

(1) Subject to paragraph (5), a death gratuity payable upon the death of a person covered by subsection (a) shall be paid to or for the living survivor highest on the following list:

(A) The employee's surviving spouse.

(B) The employee's children, as prescribed by paragraph (2), in equal shares.

(C) If designated by the employee, any one or more of the following persons:

(i) The employee's parents or persons in loco parentis, as prescribed by paragraph (3).

(ii) The employee's brothers.

(iii) The employee's sisters.

(D) The employee's parents or persons in loco parentis, as prescribed by paragraph (3), in equal shares.

(E) The employee's brothers and sisters in equal shares.

Subparagraphs (C) and (E) of this paragraph include brothers and sisters of the half blood and those through adoption.

(2) Paragraph (1)(B) applies, without regard to age or marital status, to—

(A) legitimate children;



- (B) adopted children;
- (C) stepchildren who were a part of the decedent's household at the time of death;
- (D) illegitimate children of a female decedent; and
- (E) illegitimate children of a male decedent—
  - (i) who have been acknowledged in writing signed by the decedent;
  - (ii) who have been judicially determined, before the decedent's death, to be his children;
  - (iii) who have been otherwise proved, by evidence satisfactory to the employing agency, to be children of the decedent; or
  - (iv) to whose support the decedent had been judicially ordered to contribute.

(3) Subparagraphs (C) and (D) of paragraph (1), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before the decedent became an employee. However, only one father and one mother, or their counterparts in loco parentis, 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 became an employee.

(4) A person covered by this section may designate another person to receive an amount payable under this section. The designation 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 amount of the death gratuity shall be paid to or for the living survivors of the person concerned in accordance with subparagraphs (A) through (E) of paragraph (1).

(5) If a person entitled to all or a portion of a death gratuity under paragraph (1) or (4) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by paragraph (1).

(6) If a person covered by this section has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under this section, the head of the agency, or other entity, in which that person is employed shall provide notice of the designation to the spouse.

(e) Definitions.—(1) The term "contingency operation" has the meaning given to that term in section 1482a(c) of title 10, United States Code.

(2) The term "employee" has the meaning provided in section 8101 of this title, but also includes a nonappropriated fund instrumentality employee, as defined in section 1587(a)(1) of title 10.

## 5 U.S.C. §8905a. Continued coverage

(a) Any individual described in subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

(B) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract);

(2) any individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

(3) any employee who—

(A) is enrolled in a health benefits plan under this chapter;

(B) is a member of a reserve component of the armed forces;

(C) is called or ordered to active duty ~~in support of a contingency operation (as defined in section 101(a)(13) of title 10)~~ or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(D) is placed on leave without pay or separated from service to perform active duty or full-time National Guard duty; and

(E) serves on active duty or full-time National Guard duty for a period of more than 30 consecutive days.

(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual's rights under this section; and

(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee's or annuitant's family—

(i) the employee or annuitant may provide written notice of the child's change in status (complete with the child's name, address, and such other information as the Office may by regulation require)—

(I) to the employee's employing agency; or

(II) in the case of an annuitant, to the Office; and

(ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child's rights under this section.

(2) In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Office by regulation prescribes) must be made—

(A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—

(i) the effective date of the separation; or

(ii) the date the separated individual receives the notice required under paragraph (1)(A); or

(B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—

(i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or

(ii) the date such individual receives notice under paragraph (1)(B)(ii);

except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.

(d)(1)(A) Except as provided in paragraphs (4), (5), and (6), an individual receiving continued coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—

(i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and

(ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).

(B) Payments under this section to the Fund shall—

(i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or

(ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—

(I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or

(II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1), (4), or (5), as the case may be) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self plus one or for self and family.

(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position, or a voluntary separation from a surplus position, in or under the Department of Defense due to a reduction in force, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall apply with respect to any individual whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before—

(i) December 31, 2016; or

(ii) February 1, 2017, if specific notice of such separation was given to such individual before December 31, 2016.

(C) For the purpose of this paragraph, "surplus position" means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.

(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421<sup>1</sup> of the Atomic Energy Defense Act—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of the enactment of this paragraph.

(6)(A) If the basis for continued coverage under this section is, as a result of the termination of the Space Shuttle Program, an involuntary separation from a position due to a reduction-in-force or declination of a directed reassignment or transfer of function, or a voluntary separation from a surplus position in the National Aeronautics and Space Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the National Aeronautics and Space Administration shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before December 31, 2010.

(C) For purposes of this paragraph, "surplus position" means a position which is—

(i) identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures as a result of the termination of the Space Shuttle Program; or

(ii) encumbered by an employee who has received official certification from the National Aeronautics and Space Administration consistent with the Administration's career transition assistance program regulations that the position is being abolished as a result of the termination of the Space Shuttle Program.

(e)(1) Continued coverage under this section may not extend beyond—

(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation;

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2); or

(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty or full-time National Guard duty.

(2) In the case of an individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child;

(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee's separation from service,

extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

(A) to any individual who—

(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

(ii) would not, but for this subsection, be eligible to be so considered; and

(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

(2) The terms and conditions for coverage under the regulations shall include—

(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days' duration is afforded;

(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

(3) In the case of an individual—

(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section based on such person's separation from service under a self plus one enrollment that covered the individual or under a self and family enrollment; and

(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).

## 5 U.S.C. §8906. Contributions

(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

(A) enrollments under this chapter for self alone;

(B) enrollments under this chapter for self plus one; and

(C) enrollments under this chapter for self and family.

(2) In determining each weighted average under paragraph (1), the weight to be given to a particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

(3) For purposes of paragraph (2), the term "enrollee" means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

(b)(1) Except as provided in paragraphs (2), (3), and (4), the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 72 percent of the weighted average under subsection (a)(1)(A) or (B), as applicable. For an employee, the adjustment begins on the first day of the employee's first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office).

(4) In the case of persons who are enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10, the Government contribution shall be subject to the limitation set forth in subsection (i) of that section.

(c) There shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.



(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1)(A) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office.

(B) During each pay period in which an enrollment continues under subparagraph (A)—

(i) employee and Government contributions required by this section shall be paid on a current basis; and

(ii) if necessary, the head of the employing agency shall approve advance payment, recoverable in the same manner as under section 5524a(c), of a portion of basic pay sufficient to pay current employee contributions.

(C) Each agency shall establish procedures for accepting direct payments of employee contributions for the purposes of this paragraph.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(3)(A) An employing agency may pay both the employee and Government contributions, and any additional administrative expenses otherwise chargeable to the employee, with respect to health care coverage for an employee described in subparagraph (B) and the family of such employee.

(B) An employee referred to in subparagraph (A) is an employee who—

(i) is enrolled in a health benefits plan under this chapter;

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

(iii) is called or ordered to active duty ~~in support of a contingency operation (as defined in section 101(a)(13) of title 10)~~ or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(iv) is placed on leave without pay or separated from service to perform active duty or full-time National Guard duty; and

(v) serves on active duty or full-time National Guard duty for a period of more than 30 consecutive days.

(C) Notwithstanding the one-year limitation on coverage described in paragraph (1)(A), payment may be made under this paragraph for a period not to exceed 24 months.

(f) The Government contribution, and any additional payments under subsection (e)(3)(A), for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraphs (2) and (3), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2)(A) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971, while employed by the United States Postal Service, shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.

(3) The Government contribution for persons enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10 shall be paid as provided in subsection (i) of that section.

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(i) An annuitant whose annuity is insufficient to cover the withholdings required for enrollment in a particular health benefits plan may enroll (or remain enrolled) in such plan, notwithstanding any other provision of this section, if the annuitant elects, under conditions prescribed by regulations of the Office, to pay currently into the Employees Health Benefits Fund, through the retirement system that administers the annuitant's health benefits enrollment, an amount equal to the withholdings that would otherwise be required under this section.

## 5 U.S.C. §9903. Attracting highly qualified experts

(a) In General.—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

(b) Authority.—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376, as increased by locality-based comparability payments under section 5304, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

(c) Limitation on Term of Appointment.—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense's national security missions.

(d) Limitations on Additional Payments.—(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:

(A) \$50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

For purposes of this paragraph, the term "base quarter" has the meaning given such term by section 5302(3).

(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service, except for—

(A) payments authorized under this section; and

(B) in the case of an employee who is assigned in support of a contingency operation (~~as defined~~ as that term is defined in section 101(a)(13) of title 10), allowances and any other payments authorized under chapter 59.

(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3. In computing an employee's total annual compensation for purposes of the preceding sentence, any payment referred to in paragraph (2)(B) shall be excluded.

(e) Limitation on Number of Highly Qualified Experts.—The number of highly qualified experts appointed and retained by the Secretary under subsection (b)(1) shall not exceed 2,500 at any time.

(f) Savings Provisions.—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—

(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

(A) the period for which the employee was appointed; or

(B) the period to which the employee's service is limited under subsection (c), including any extension made under this section before the termination of the program; and

(2) the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.

# **TITLE 6**

## **Domestic Security**

## Section 886 of the Homeland Security Act of 2002

(6 U.S.C. §466. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act)

### **SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.**

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the “Posse Comitatus Act”), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President’s obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, ~~including chapter 13 of title 10, United States Code~~ including calling the militia of any State into Federal service under section 12341(a)(1)(B)(i) of title 10, United States Code, in response to an insurrection pursuant to section 12351(b)(1)(A) of such title (commonly known as the “Insurrection Act”), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

# **TITLE 7**

## **Agriculture**



**§ 332 - Consolidated Farm and Rural Development Act;  
(7 U.S.C. §1982). Relief for mobilized military reservists from certain agricultural  
loan obligations**

***(a) Definition of mobilized military reservist***

In this section, the term "mobilized military reservist" means an individual who—

(1) is on active duty under ~~section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 13 of title 10~~ section 688 of title 10, United States Code, section 12341 of such title for a purpose specified in subsection (a), (b), or (d)(1) of section 12351 of such title, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under ~~section 502(f) of title 32~~ section 541 of title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds.

***(b) Forgiveness of interest payments due while borrower is a mobilized military reservist***

Any requirement that a borrower of a direct loan made under this chapter make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is rescinded.

***(c) Deferral of principal payments due while or after borrower is a mobilized military reservist***

The due date of any payment of principal on a direct loan made to a borrower under this chapter that would otherwise be required to be made while or after the borrower is a mobilized military reservist is deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

***(d) Nonaccrual of interest***

Interest on a direct loan made to a borrower described in this section shall not accrue during the period the borrower is a mobilized military reservist.

***(e) Borrower not considered to be delinquent or receiving debt forgiveness***

Notwithstanding section 2008h of this title or any other provision of this chapter, a borrower who receives assistance under this section shall not, as a result of the assistance, be considered to be delinquent or receiving debt forgiveness for purposes of receiving a direct or guaranteed loan under this chapter.

## TITLE 8

## **Aliens and Nationality**

IMMIGRATION AND NATIONALITY ACT

(8 U.S.C. Chapter 12 – Immigration and Nationality)

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329A. Posthumous citizenship through death ~~during while on active duty service~~ during military service in armed forces during World War I, World War II, the Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities.

## Sec 319 of the Immigration and Nationality Act

### (8 U.S.C. §1430. Married persons and employees of certain nonprofit organizations)

(a) Any person whose spouse is a citizen of the United States, or any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty, may be naturalized upon compliance with all the requirements of this subchapter except the provisions of paragraph (1) of section 1427(a) of this title if such person immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his application has been living in marital union with the citizen spouse (except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent), who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months.

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or within a State or a district of the Service in the United States or proof thereof shall be required.

(c) Any person who (1) is employed by a bona fide United States incorporated nonprofit organization which is principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes United States interests abroad and which is recognized as such by the Attorney General, and (2) has been so employed continuously for a period of not less than five years after a lawful admission for permanent residence, and (3) who files his application for naturalization while so employed or within six months following the termination thereof, and (4) who is in the United States at the time of naturalization, and (5) who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon termination of such employment, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified period of physical presence within the United States or any State or district of the Service in the United States, or proof thereof, shall be required.

(d) Any person who is the surviving spouse, child, or parent of a United States citizen, whose citizen spouse, parent, or child dies during a period of honorable service ~~in an active duty status while on active duty, full-time National Guard duty, or reserve component duty~~ in the Armed Forces of the United States and who, in the case of a surviving spouse, was living in marital union with the citizen spouse at the time of his death, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified physical presence within the United States, or within a State or a district of the Service in the United States shall be required. For purposes of this subsection, the terms "United States citizen" and "citizen spouse" include a person granted posthumous citizenship under section 1440-1 of this title.

(e)(1) In the case of a person lawfully admitted for permanent residence in the United States who is the spouse of a member of the Armed Forces of the United States, is authorized to accompany such member and reside abroad with the member pursuant to the member's official orders, and is so accompanying and residing with the member in marital union, such residence and physical presence abroad shall be treated, for purposes of subsection (a) and section 1427(a) of this title, as residence and physical presence in-

(A) the United States; and

(B) any State or district of the Department of Homeland Security in the United States.

(2) Notwithstanding any other provision of law, a spouse described in paragraph (1) shall be eligible for naturalization proceedings overseas pursuant to section 1443a of this title.

## Sec. 329A. of the Immigration and Nationality Act

(8 U.S.C. §1440-1, Posthumous citizenship through death ~~while on active-duty service during military service~~ in armed forces during World War I, World War II, the Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities)

(a) Permitting granting of posthumous citizenship

Notwithstanding any other provision of this subchapter, the Secretary of Homeland Security shall provide, in accordance with this section, for the granting of posthumous citizenship at the time of death to a person described in subsection (b) if the Secretary of Homeland Security approves an application for that posthumous citizenship under subsection (c).

(b) Noncitizens eligible for posthumous citizenship

A person referred to in subsection (a) is a person who, while an alien or a noncitizen national of the United States-

(1) served honorably ~~in an active-duty status while on active duty, full-time National Guard duty, or reserve component duty~~ in the military, air, or naval forces of the United States during any period described in the first sentence of section 1440(a) of this title,

(2) died as a result of injury or disease incurred in or aggravated by that service, and

(3) satisfied the requirements of clause (1) or (2) of the first sentence of section 1440(a) of this title.

The executive department under which the person so served shall determine whether the person satisfied the requirements of paragraphs (1) and (2).

(c) Requests for posthumous citizenship

(1) In general

A request for the granting of posthumous citizenship to a person described in subsection (b) may be filed on behalf of that person-

(A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary's designee with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

(B) by the next-of-kin.

(2) Approval

The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if-

(A) the request is filed not later than 2 years after-

(i) November 24, 2003; or

(ii) the date of the person's death;

whichever date is later;

(B) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b); and

(C) the Director finds that the person satisfied the requirement of subsection (b)(3).

(d) Documentation of posthumous citizenship

If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), the Director shall send to the next-of-kin of the person who is granted citizenship, a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person's death.

# **TITLE 10**

## **Armed Forces**



## 10 U.S.C. PART I-ORGANIZATION AND GENERAL MILITARY POWERS

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## 10 U.S.C. §101. Definitions

(a) IN GENERAL.—The following definitions apply in this title:

### §101. Definitions

(a) In General.—The following definitions apply in this title:

(1) The term "United States", in a geographic sense, means the States and the District of Columbia.

[(2) Repealed. [Pub. L. 109–163, div. A, title X, §1057\(a\)\(1\), Jan. 6, 2006, 119 Stat. 3440.](#)]

(3) The term "possessions" includes the Virgin Islands, Guam, American Samoa, and the Guano Islands, so long as they remain possessions, but does not include any Commonwealth.

(4) The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) The term "uniformed services" means—

(A) the armed forces;

(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and

(C) the commissioned corps of the Public Health Service.

(6) The term "department", when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, such term means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(7) The term "executive part of the department" means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(8) The term "military departments" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(9) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

(10) The term "service acquisition executive" means the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations and procedures providing for a service acquisition executive for that military department.

(11) The term "Defense Agency" means an organizational entity of the Department of Defense-

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

(12) The term "Department of Defense Field Activity" means an organizational entity of the Department of Defense-

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department; and

(B) that is designated by the Secretary of Defense as a Department of Defense Field Activity.

(13) The term "contingency operation" means a military operation that—

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; ~~or~~

~~(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 13 of this title, section 712 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.~~

(B)(i) results in a member of a reserve component being called or ordered to active duty—

(I) under section 12341 of this title; or

(II) under section 3713 of title 14; or

(iii) results in a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National

Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia being called or ordered to full-time National Guard duty under section 541 of title 32; or

(C) results in a retired member being ordered to active duty under section 688 of this title for an operation described in subparagraph (A).

(14) The term "supplies" includes material, equipment, and stores of all kinds.

(15) The term "pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(16) The term "congressional defense committees" means-

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(17) The term "base closure law" means the following:

(A) Section 2687 of this title.

(B) 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).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(18) The term "acquisition workforce" means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.

(b) PERSONNEL GENERALLY.—The following definitions relating to military personnel apply in this title:

(1) The term "officer" means a commissioned or warrant officer.

(2) The term "commissioned officer" includes a commissioned warrant officer.

(3) The term "warrant officer" means a person who holds a commission or warrant in a warrant officer grade.

(4) The term "general officer" means an officer of the Army, Air Force, or Marine Corps serving in or having the grade of general, lieutenant general, major general, or brigadier general.

(5) The term "flag officer" means an officer of the Navy or Coast Guard serving in or having the grade of admiral, vice admiral, rear admiral, or rear admiral (lower half).

(6) The term "enlisted member" means a person in an enlisted grade.

(7) The term "grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) The term "rank" means the order of precedence among members of the armed forces.

(9) The term "rating" means the name (such as "boatswain's mate") prescribed for members of an armed force in an occupational field. The term "rate" means the name (such as "chief boatswain's mate") prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(10) The term "original", with respect to the appointment of a member of the armed forces in a regular or reserve component, refers to that member's most recent appointment in that component that is neither a promotion nor a demotion.

(11) The term "authorized strength" means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(12) The term "regular", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(13) The term "active-duty list" means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 620 of this title) which contains the names of all officers of that armed force, other than officers described in section 641 of this title, who are serving on active duty.

(14) The term "medical officer" means an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer.

(15) The term "dental officer" means an officer of the Dental Corps of the Army, an officer of the Dental Corps of the Navy, or an officer of the Air Force designated as a dental officer.

(16) The term "Active Guard and Reserve" means a member of a reserve component who is on active duty ~~pursuant to section 12301(d) of this title or, if a member of the Army National Guard or Air National Guard, is on full-time National Guard duty pursuant to section 502(f) of title 32, and who is performing Active Guard and Reserve duty.~~ pursuant to section 12342 of this title or, a member of the Army National Guard or Air National Guard who is on full-time National Guard duty pursuant to section 542 of title 32 and is performing Active Guard and Reserve functions.

(c) RESERVE COMPONENTS.—The following definitions relating to the reserve components apply in this title:

(1) The term "National Guard" means the Army National Guard and the Air National Guard.

(2) The term "Army National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that-

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(3) The term "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(4) The term "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that-

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) The term "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(6) The term "reserve", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of one of the armed forces.

(7) The term "reserve active-status list" means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 14002 of this title) that contains the names of all officers of that armed force except warrant officers (including commissioned warrant officers) who are in an active status in a reserve component of the Army, Navy, Air Force, or Marine Corps and are not on an active-duty list.

(8)(A) The term 'Active Guard and Reserve functions' means active duty performed by a member of a reserve component pursuant to section 12352(f) of this title, or full-time National Guard duty performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia pursuant to section 552(d) of title 32, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).

(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. ~~Such term does not~~ Except for purposes of chapters 40, 53, 54, 55, 56, 58, 59, 61, 63, 65, 69, 71, 73, 75, 76, 77, 79, 88, 101, 1217, and 1608 of this title, such term does not include full-time National Guard duty.

(2) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term "active service" means service on active duty or full-time National Guard duty.

(4) The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term "full-time National Guard duty" means training or other duty, other than ~~inactive duty reserve component duty~~, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under ~~section 316, 502, 503, 504, or 505 of title 32~~ section 541 or 542 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

~~(6)(A) The term "active Guard and Reserve duty" means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.~~

~~(B) Such term does not include the following:~~

~~(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.~~

~~(ii) Duty performed as a property and fiscal officer under section 708 of title 32.~~

~~(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.~~

~~(iv) Duty performed as a general or flag officer.~~

~~(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).~~

~~(7) The term "inactive duty training" means—~~

~~(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and~~

~~(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.~~

~~Such term includes those duties when performed by Reserves in their status as members of the National Guard.~~

~~(67) The term 'reserve component duty' means—~~

~~(A)(i) training prescribed for a member of a reserve component under section 12353(a) or 12353(c) of this title; or~~

~~(ii) training prescribed for a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia by the Secretary of the Army or Secretary of the Air Force under section 553(a) or 553(b) of title 32;~~

~~(B) muster pursuant to section 12353(b) of this title; or~~

~~(C) support activities or requirements performed by a member on a voluntary basis in connection with the prescribed training, maintenance, or support activities of the unit to which the member is assigned that are—~~

~~(i) authorized for a member of a reserve component pursuant to section 12353(d) of this title; or~~

~~(ii) authorized for a member of the Army National Guard or Air National Guard pursuant to section 553(c) of title 32.~~

~~(78) The term 'remote assignment' means—~~

~~(A) pre-approved work that is specifically and individually assigned to a member of the Ready Reserve or Standby Reserve in an active status pursuant to paragraph (1) of section 12344(a) of this title; or~~



(B) a pre-approved course of instruction that is specifically and individually assigned to a member of the Ready Reserve or Standby Reserve in an active status pursuant to paragraph (2) of section 12344(a) of this title.

(e) Facilities and Operations.-The following definitions relating to facilities and operations apply in this title:

(1) Range.-The term "range", when used in a geographic sense, means a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. Such term includes the following:

(A) Firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas.

(B) Airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration.

(2) Range activities.-The term "range activities" means-

(A) research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and

(B) the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems.

(3) Operational range.-The term "operational range" means a range that is under the jurisdiction, custody, or control of the Secretary of a military department and-

(A) that is used for range activities, or

(B) although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities.

(4) Military munitions.-

(A) The term "military munitions" means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard.

(B) Such term includes the following:

(i) Confined gaseous, liquid, and solid propellants.

(ii) Explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents.

(iii) Chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges.

(iv) Devices and components of any item specified in clauses (i) through (iii).

(C) Such term does not include the following:

(i) Wholly inert items.

(ii) Improvised explosive devices.

(iii) Nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

(5) Unexploded ordnance.-The term "unexploded ordnance" means military munitions that-

(A) have been primed, fused, armed, or otherwise prepared for action;

(B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(C) remain unexploded, whether by malfunction, design, or any other cause.

(6) Energy resilience.-The term "energy resilience" means the ability to avoid, prepare for, minimize, adapt to, and recover from anticipated and unanticipated energy disruptions in order to ensure energy availability and reliability sufficient to provide for mission assurance and readiness, including task critical assets and other mission essential operations related to readiness, and to execute or rapidly reestablish mission essential requirements.

(7) Energy security.-The term "energy security" means having assured access to reliable supplies of energy and the ability to protect and deliver sufficient energy to meet mission essential requirements.

(f) Rules of Construction.-In this title-

(1) "shall" is used in an imperative sense;

(2) "may" is used in a permissive sense;

(3) "no person may \* \* \*" means that no person is required, authorized, or permitted to do the act prescribed;

(4) "includes" means "includes but is not limited to"; and

(5) "spouse" means husband or wife, as the case may be.

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(5) "spouse" means husband or wife, as the case may be.

(g) Reference to Title 1 Definitions.-For other definitions applicable to this title, see sections 1 through 5 of title 1.

## 10 U.S.C. §115. Personnel strengths: requirement for annual authorization

(a) ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel unless on active duty pursuant to subsection (b), and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel unless on active duty or full-time National Guard duty pursuant to subsection (b).

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

(b) CERTAIN RESERVES ON ACTIVE DUTY OR FULL-TIME NATIONAL GUARD DUTY TO BE AUTHORIZED BY LAW.—(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

(A) active duty under ~~section 12301(d) of this title~~ section 12342 of this title for the purpose of providing operational support pursuant to section 12352(d)(2) of this title, as prescribed in regulation issued by the Secretary of Defense;

(B) full-time National Guard duty under ~~section 502(f)(1)(B) of title 32~~ section 542 of title 32 for the purpose of providing operational support pursuant to section 552(c)(4) of title 32 when authorized by the Secretary of Defense;

(C) active duty under ~~section 12301(d) of this title or full-time National Guard duty under section 502(f)(1)(B) of title 32~~ section 12342 of this title or full-time National Guard duty under section 542 of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

(D) active duty or retained on active duty under ~~sections 12301(g) of this title while in a captive status~~ section 12341 of this title while in a missing or captive status pursuant to section 12351(d)(1) of this title, or under section 12342 of this title while in a missing status pursuant to section 12352(b) of this title; ~~or~~

~~(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment~~

(E) active duty or retained on active duty for the purpose of medical care or treatment under—

(i) section 12341 of this title pursuant to subparagraphs (D) or (E) of section 12351(e)(1) of this title; or

(ii) section 12342 of this title pursuant to paragraphs (2) or (3) of section 12351(e) of this title; or

(F) full-time National Guard duty or retained on full-time National Guard duty for the purpose of medical evaluation or treatment under—

(i) section 541 of title 32 pursuant to subparagraphs (D) or (E) of section 551(c)(1) such title; or

(ii) section 542 of title 32 pursuant to paragraphs (5) or (6) of section 552(c) of such title.

(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under ~~paragraphs (1) through (8)~~ paragraphs (1) and (2) of subsection (i).

(4) As part of the budget justification materials submitted by the Secretary of Defense to Congress in support of the end strength authorizations required under subparagraphs (A) and (B) of subsection (a)(1) for fiscal year 2009 and each fiscal year thereafter, the Secretary shall provide the following:

(A) The number of members, specified by reserve component, authorized under subparagraphs (A) and (B) of paragraph (1) who were serving on active duty or full-time National Guard duty for operational support beyond each of the limits specified under subparagraphs (A) and (B) of paragraph (2) at the end of the fiscal year preceding the fiscal year for which the budget justification materials are submitted.

(B) The number of members, specified by reserve component, on active duty or full-time National Guard duty for operational support who, at the end of the fiscal year for which the budget justification materials are submitted, are projected to be serving on active duty or full-time National Guard duty for operational support beyond such limits.

(C) The number of members, specified by reserve component, on active duty or full-time National Guard duty for operational support who are included in, and counted against, the end strength authorizations requested under subparagraphs (A) and (B) of subsection (a)(1).

(D) A summary of the missions being performed by members identified under subparagraphs (A) and (B).

(c) LIMITATION ON APPROPRIATIONS FOR MILITARY PERSONNEL.—No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law;

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law; or

(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.

(d) MILITARY TECHNICIAN (DUAL STATUS) END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

(e) END-OF-QUARTER STRENGTH LEVELS.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by subsections (a) and (d) are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance with subsection (a) (as such levels may be adjusted pursuant to subsection (f)) and subsection (d).

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted pursuant to subsection (f)) and subsection (d).

(3) Whenever the Secretary establishes an end-of-quarter strength level under subparagraph (A) of paragraph (2), or modifies a strength level under the authority provided in subparagraph (B) of paragraph (2), the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that strength level or of that modification, as the case may be.

(f) **AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE STRENGTHS.**—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 3 percent of that end strength;

(2) increase the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength;

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 3 percent of that end strength; and

(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty or full-time National Guard duty for any of the reserve components by a number equal to not more than 10 percent of that strength.

(g) **AUTHORITY FOR SERVICE SECRETARY VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS.**—(1) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may—

(A) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength; and

(B) increase the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Selected Reserve of the reserve component of any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength.

(2) Any increase under paragraph (1)(A) of the end strength for an armed force for a fiscal year shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (f)(1). Any increase under paragraph (1)(B) of the end strength for the Selected Reserve of a reserve component of an armed force for a fiscal year shall be counted as part of the increase for that Selected Reserve for that fiscal year authorized under subsection (f)(3).

(h) ADJUSTMENT WHEN COAST GUARD IS OPERATING AS A SERVICE IN THE NAVY.—The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

(i) CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.—In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of a reserve component ordered to active duty under ~~section 12301(a) of this title~~ section 12341 of this title.

~~(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.~~

~~(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.~~

~~(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.~~

~~(5) Members of the National Guard called into Federal service under section 12406 of this title.~~

~~(6) Members of the militia called into Federal service under chapter 13 of this title.~~

~~(7)~~ Members of the National Guard on full-time National Guard duty under ~~section 502(f)(1)(A) of title 32~~ section 541 of title 32.

~~(8)~~ Members of reserve components on active duty for training or full-time National Guard duty for training.

~~(9)~~ Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1321(a) of the Department of Defense Cooperative Threat Reduction Act (50 U.S.C. 3711(a)).

~~(10)~~ Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

~~(11)~~ Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) <sup>1</sup> for the administration of the Selective Service System.



(127) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by ~~section 509 of title 32~~ section 515 of title 32.

~~(13) Members of the National Guard on full-time National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32.~~

## 10 U.S.C. §277. Reimbursement

(a) Subject to subsection (c), to the extent otherwise required by section 1535 of title 31 (popularly known as the "Economy Act") or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b)(1) Subject to subsection (c), the Secretary of Defense shall require a Federal agency to which law enforcement support or support to a national special security event is provided by National Guard personnel performing duty under ~~section 502(f) of title 32~~ section 541 of title 32 to reimburse the Department of Defense for the costs of that support, notwithstanding any other provision of law. No other provision of this chapter shall apply to such support.

(2) Any funds received by the Department of Defense under this subsection as reimbursement for support provided by personnel of the National Guard shall be credited, at the election of the Secretary of Defense, to the following:

(A) The appropriation, fund, or account used to fund the support.

(B) The appropriation, fund, or account currently available for reimbursement purposes.

(c) An agency to which support is provided under this chapter or ~~section 502(f) of title 32~~ section 541 of title 32 is not required to reimburse the Department of Defense for such support if the Secretary of Defense waives reimbursement. The Secretary may waive the reimbursement requirement under this subsection if such support-

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense or personnel of the National Guard providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

## 10 U.S.C. §386. Annual report

(a) Annual Report Required.-Not later than January 31 of each year beginning in 2018, the Secretary of Defense shall submit to the appropriate congressional committees a report that sets forth, on a country-by-country basis, a description of each program carried out by the Department of Defense under the authorities in subsection (c) to provide training, equipment, or other assistance or reimbursement during the fiscal year ending in the year before the year in which such report is submitted.

(b) Elements of Report.-Each report required under subsection (a) shall provide for each program covered by such report, and for the reporting period covered by such report, the following:

(1) A description of the purpose, duration, and type of the training, equipment, or assistance or reimbursement provided, including how the training, equipment, or assistance or reimbursement provided advances the theater security cooperation strategy of the combatant command, as appropriate.

(2) The cost and expenditures of such training, equipment, or assistance or reimbursement, including by type of support provided.

(3) A description of the metrics, if any, used for assessing the effectiveness of such training, equipment, or assistance or reimbursement provided.

(4) For each foreign country in which defense articles, defense services, supplies (including consumables), small-scale construction, or reimbursement were provided, a description of the extent of participation, if any, by the military forces and security forces or other government organizations of such foreign country.

(5) The number of members of the United States armed forces involved in providing such defense articles, defense services, supplies (including consumables), and small-scale construction, and, if applicable, a description of the military benefits for such members involved in providing such training, equipment, or assistance.

(6) A summary, by authority, of the activities carried out under each authority specified in subsection (c).

(c) Specified Authorities.-The authorities specified in this subsection are the following authorities (or any successor authorities):

(1) ~~Sections 246, 251, 252, 253, 321,~~ Sections 311, 321, 331, 332, 333, 344, 348, 349, and 350 of this title.

(2) Section 166a(b)(6) of this title, relating to humanitarian and civic assistance by the commanders of the combatant commands.

(3) Section 168 of this title, relating to authority-

(A) to provide assistance to nations of the former Soviet Union as part of the Warsaw Initiative Fund;

(B) to conduct the Defense Institution Reform Initiative; and

(C) to conduct a program to increase defense institutional legal capacity through the Defense Institute of International Legal Studies.

(4) Section 2249c of this title, relating to authority to use appropriated funds for costs associated with education and training of foreign officials under the Regional Defense Combating Terrorism Fellowship Program.

(5) Section 2561 of this title, relating to authority to provide humanitarian assistance.

(6) Section 1532, relating to the Afghanistan Security Forces Fund.

(7) Section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 393), relating to authority to reimburse certain coalition nations for support provided to United States military operations.

(8) Section 1234 of the National Defense Authorization Act for Fiscal Year 2008 (122 Stat. 394), relating to authorization for logistical support for coalition forces supporting certain United States military operations.

(9) Section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1881), relating to authority to provide additional support for counter-drug activities of Peru and Colombia.

(10) Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note), relating to additional support for counter-drug activities.

(11) Section 401 of this title, relating to humanitarian and civic assistance provided in conjunction with military operations.

(12) Section 1206 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (128 Stat. 3538; 10 U.S.C. 2282 note), relating to authority to conduct human rights training of security forces and associated security ministries of foreign countries.

(13) Any other authority on assistance or reimbursement that the Secretary of Defense considers appropriate and consistent with subsection (a).

(d) Nonduplication of Effort.-

(1) In general.-Except as provided in paragraph (2), if any information required under subsection (a) has been included in another report or notification previously submitted to Congress by law,

the Secretary of Defense may provide a list of such reports and notifications at the time of submitting the report required by subsection (a) in lieu of including such information in the report required by subsection (a).

(2) Exception.-Paragraph (1) does not apply with respect to information required under subsection (a) that is required to be submitted as described in paragraphs (1) and (2) of subsection (b).

(e) Form.-Each report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex that may also include other sensitive information.

## 10 U.S.C. §511. College First Program

(a) Program Authority.—The Secretary of each military department may establish a program to increase the number of, and the level of the qualifications of, persons entering the armed forces as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service.

(b) Delayed Entry With Allowance for Higher Education.—The Secretary concerned may—

(1) exercise the authority under section 513 of this title—

(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

(c) Maximum Period of Delay.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

(d) Allowance.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37. The Secretary concerned may supplement that stipend by an amount not to exceed \$225 per month.

(2) An allowance may not be paid to a person under this section for more than 24 months.

(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in ~~section 10147(a)(1) of this title or section 502(a) of title 32~~ sections 12352(c) of this title, or section 552(a) of title 32. Satisfactory performance shall be determined under regulations prescribed by the Secretary concerned.

(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

(e) Recoupment of Allowance.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the unserved part of the total required period of service bears to the total period.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge of a person in bankruptcy under title 11 that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 does not discharge that person from a debt arising under paragraph (1).

(4) The Secretary concerned may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(f) Special Pay and Bonuses.—Upon enlisting in the regular component of the member's armed force, a person who initially enlisted as a Reserve under this section may, at the discretion of the Secretary concerned, be eligible for all regular special pays, bonuses, education benefits, and loan repayment programs.

## **10 U.S.C. §638b. Voluntary retirement incentive**

(a) Incentive for Voluntary Retirement for Certain Officers.-The Secretary of Defense may authorize the Secretary of a military department to provide a voluntary retirement incentive payment in accordance with this section to an officer of the armed forces under that Secretary's jurisdiction who is specified in subsection (c) as being eligible for such a payment.

(b) Limitations.-(1) Any authority provided the Secretary of a military department under this section shall expire as specified by the Secretary of Defense, but not later than December 31, 2018.

(2) The total number of officers who may be provided a voluntary retirement incentive payment under this section may not exceed 675 officers.

(c) Eligible Officers.-(1) Except as provided in paragraph (2), an officer of the armed forces is eligible for a voluntary retirement incentive payment under this section if the officer-

(A) has served on active duty for more than 20 years, but not more than 29 years, on the approved date of retirement;

(B) meets the minimum length of commissioned service requirement for voluntary retirement as a commissioned officer in accordance with section 3911, 6323, or 8911 of this title, as applicable to that officer;

(C) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement years of active service for the member's grade as specified in section 633 or 634 of this title;

(D) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement age under any other provision of law; and

(E) meets any additional requirements for such eligibility as is specified by the Secretary concerned, including any requirement relating to years of service, skill rating, military specialty or competitive category, grade, any remaining period of obligated service, or any combination thereof.

(2) The following officers are not eligible for a voluntary retirement incentive payment under this section:

(A) An officer being evaluated for disability under chapter 61 of this title.

(B) An officer projected to be retired under section 1201 or 1204 of this title.

(C) An officer projected to be discharged with disability severance pay under section 1212 of this title.



(D) A member transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(E) An officer subject to pending disciplinary action or subject to administrative separation or mandatory discharge under any other provision of law or regulation.

(d) Amount of Payment.-The amount of the voluntary retirement incentive payment paid an officer under this section shall be an amount determined by the Secretary concerned, but not to exceed an amount equal to 12 times the amount of the officer's monthly basic pay at the time of the officer's retirement. The amount may be paid in a lump sum at the time of retirement.

(e) Repayment for Members Who Return to Active Duty or Full-time National Guard Duty.-(1) Except as provided in paragraph (2), a member of the armed forces who, after having received all or part of a voluntary retirement incentive under this section, returns to active duty or full-time National Guard duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary retirement incentive received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty under any provision of law shall not be subject to this subsection.

(3) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interest of the United States. The authority in this paragraph may be delegated only to the Under Secretary of Defense for Personnel and Readiness and the Principal Deputy Under Secretary of Defense of Personnel and Readiness.

**§672. Reference to chapter 1209**

Provisions of law relating to service of members of reserve components on active duty are set forth in chapter 1209 of this title (beginning with ~~section 12301~~ [section 12311](#)).

## 10 U.S.C. §688. Retired members: authority to order to active duty; duties

(a) Authority.—Under regulations prescribed by the Secretary of Defense, a member described in subsection (b) may be ordered to active duty by the Secretary of the military department concerned at any time.

(b) Covered Members.—Except as provided in subsection (d), subsection (a) applies to the following members of the armed forces:

(1) A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.

~~(2) A member of the Retired Reserve who was retired under section 1293, 3911, 3914, 6323, 8911, or 8914 of this title.~~

~~(3)~~ A member of the Fleet Reserve or Fleet Marine Corps Reserve.

(c) Duties of Member Ordered to Active Duty.—The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(d) Exclusion of Officers Retired on Selective Early Retirement Basis.—The following officers may not be ordered to active duty under this section:

(1) An officer who retired under section 638 of this title.

(2) An officer who—

(A) after having been notified that the officer was to be considered for early retirement under section 638 of this title by a board convened under section 611(b) of this title and before being considered by that board, requested retirement under section 3911, 6323, or 8911 of this title; and

(B) was retired pursuant to that request.

(e) Limitation of Period of Recall Service.—(1) A member ordered to active duty under subsection (a) may not serve on active duty pursuant to orders under that subsection for more than 12 months within the 24 months following the first day of the active duty to which ordered under that subsection.

(2) Paragraph (1) does not apply to the following officers:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of active duty to which ordered.

(C) An officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(f) Waiver for Periods of War or National Emergency.—Subsections (d) and (e) do not apply in time of war or of national emergency declared by Congress or the President.

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

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

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

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

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

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

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

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

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

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

## 10 U.S.C. §701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

- (1) absence from duty without leave;
- (2) absence over leave;
- (3) confinement as the result of a sentence of a court-martial; and
- (4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under ~~section 316, 502, 503, 504, or 505~~ section 541 or 542 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsections (d), (f), and (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) Notwithstanding subsection (b), during the period beginning on October 1, 2008, through September 30, 2015, a member may accumulate up to 75 days of leave.

(e) Leave taken before discharge is considered to be active service.

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who—

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or fourth fiscal year, if accumulated while subsection (d) is in effect) after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty ~~in a duty assignment or full-time National Guard duty~~ in support of a contingency operation during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which ~~such service on active duty such duty~~ is terminated.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the limitations in subsections (b), (d), and (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(i)(1)(A) Under regulations prescribed by the Secretary of Defense, a member of the armed forces described in paragraph (2) who is the primary caregiver in the case of the birth of a child is allowed up to twelve weeks of total leave, including up to six weeks of medical convalescent leave, to be used in connection with such birth.

(B) Under the regulations prescribed for purposes of this subsection, a member of the armed forces described in paragraph (2) who is the primary caregiver in the case of the

adoption of a child is allowed up to six weeks of total leave to be used in connection with such adoption.

(2) Paragraph (1) applies to the following members:

(A) A member on active duty, other than a member of a reserve component.

(B) A member of a reserve component performing ~~active Guard and Reserve duty~~ Active Guard and Reserve functions pursuant to section 12352(f) of this title or 552(d) of title 32.

(C) A member of a reserve component subject to ~~an active duty recall or mobilization order~~ a call or order to active duty under section 12341 of this title, or a member of the National Guard subject to a call or order to full-time National Guard duty under section 541 of title 32, in excess of 12 months.

(3) The Secretary shall prescribe in the regulations referred to in paragraph (1) a definition of the term "primary caregiver" for purposes of this subsection.

(4) Notwithstanding paragraph (1)(A), a member may receive more than six weeks of medical convalescent leave in connection with the birth of a child, but only if the additional medical convalescent leave—

(A) is specifically recommended, in writing, by the medical provider of the member to address a diagnosed medical condition; and

(B) is approved by the commander of the member.

(5) Any leave taken by a member under this subsection, including leave under paragraphs (1) and (4), may be taken only in one increment in connection with such birth or adoption.

(6)(A) Any leave authorized by this subsection that is not taken within one year of such birth or adoption shall be forfeited.

(B) Any leave authorized by this subsection for a member of a reserve component on active duty that is not taken by the time the member is separated from active duty shall be forfeited at that time.

(7) The period of active duty of a member of a reserve component may not be extended in order to permit the member to take leave authorized by this subsection.

(8) Under the regulations prescribed for purposes of this subsection, a member taking leave under paragraph (1) may, as a condition for taking such leave, be required—

(A) to accept an extension of the member's current service obligation, if any, by one week for every week of leave taken under paragraph (1); or



(B) to incur a reduction in the member's leave account by one week for every week of leave taken under paragraph (1).

(9)(A) Leave authorized by this subsection is in addition to any other leave provided under other provisions of this section.

(B) Medical convalescent leave under paragraph (4) is in addition to any other leave provided under other provisions of this subsection.

(10)(A) Subject to subparagraph (B), a member taking leave under paragraph (1) during a period of obligated service shall not be eligible for terminal leave, or to sell back leave, at the end such period of obligated service.

(B) Under the regulations for purposes of this subsection, the Secretary concerned may waive, whether in whole or in part, the applicability of subparagraph (A) to a member who reenlists at the end of the member's period of obligated service described in that subparagraph if the Secretary determines that the waiver is in the interests of the armed force concerned.

(j)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces described in subsection (i)(2) who is the secondary caregiver in the case of the birth of a child or the adoption of a child is allowed up to 21 days of leave to be used in connection with such birth or adoption.

(2) The Secretary shall prescribe in the regulations referred to in paragraph (1) a definition of the term "secondary caregiver" for purposes of this subsection.

(3) Any leave taken by a member under this subsection may be taken only in one increment in connection with such birth or adoption.

(4) Under the regulations prescribed for purposes of this subsection, paragraphs (6) through (10) of subsection (i) (other than paragraph (9)(B) of such subsection) shall apply to leave, and the taking of leave, authorized by this subsection.

(k) A member of a reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.

## 10 U.S.C. §704. Use of leave; regulations

(a) Under regulations prescribed by the Secretary concerned, or his designated representative, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(c) Facilitating Granting of Leave for Attendance at Hearings.—

(1) Regulations.—The Secretary concerned shall prescribe regulations to facilitate the granting of leave to a member of the armed forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed ~~in a contingency operation~~ in support of a contingency operation; and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) Covered hearings.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the armed forces is a natural parent of a child; or

(B) to determine an obligation of a member of the armed forces to provide child support.

(3) Definitions.—In this subsection:

(A) The term "court" has the meaning given that term in section 1408(a) of this title.

(B) The term "child support" has the meaning given that term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

**10 U.S.C. §709a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement**

(a) Authorization To Reimburse.—The Secretary concerned may reimburse a member of the armed forces under the jurisdiction of the Secretary for travel and related expenses (to the extent not otherwise reimbursable under law) incurred by the member as a result of the cancellation of previously approved leave when—

(1) the leave is canceled in connection with the member's participation ~~in a contingency operation~~ in support of a contingency operation; and

(2) the cancellation occurs within 48 hours of the time the leave would have commenced.

(b) Regulations.—The Secretary of Defense and, in the case of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security shall prescribe regulations to establish the criteria for the applicability of subsection (a).

(c) Conclusiveness of Settlement.—The settlement of an application for reimbursement under subsection (a) is final and conclusive.

## 10 U.S.C. §710. Career flexibility to enhance retention of members

(a) Programs Authorized.-Each Secretary of a military department may carry out programs under which members of the regular components ~~and members on Active Guard and Reserve duty of the armed forces of the armed forces and members of a reserve component of the armed forces performing Active Guard and Reserve functions pursuant to section 12352(f) of this title or 552(d) of title 32~~ under the jurisdiction of such Secretary may be inactivated from active service in order to meet personal or professional needs and returned to active service at the end of such period of inactivation from active service.

(b) Period of Inactivation From Active Service; Effect of Inactivation.-(1) The period of inactivation from active service under a program under this section of a member participating in the program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (c), except that such period may not exceed three years.

(2) Any service by a Reserve officer while participating in a program under this section shall be excluded from computation of the total years of service of that officer pursuant to section 14706(a) of this title.

(3) Any period of participation of a member in a program under this section shall not count toward-

(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of this title; or

(B) computation of retired or retainer pay under chapter 71 or 1223 of this title.

(c) Agreement.-Each member of the armed forces who participates in a program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of the armed force concerned during the period of the inactivation of the member from active service under the program.

(2) To undergo during the period of the inactivation of the member from active service under the program such inactive service training as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the military skills, professional qualifications, and physical readiness of the member during the inactivation of the member from active service.

(3) Following completion of the period of the inactivation of the member from active service under the program, to serve two months as a member of the armed forces on active service for each month of the period of the inactivation of the member from active service under the program.

(d) Conditions of Release.-The Secretary of Defense shall prescribe regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (c). At a minimum, the Secretary shall prescribe the procedures and standards to be used to instruct a member on the obligations to be assumed by the member under paragraph (2) of such subsection while the member is released from active service.

(e) Order to Active Service.-Under regulations prescribed by the Secretary of the military department concerned, a member of the armed forces participating in a program under this section may, in the discretion of such Secretary, be required to terminate participation in the program and be ordered to active service.

(f) Pay and Allowances.- (1) During each month of participation in a program under this section, a member who participates in the program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the member would otherwise be entitled under section 204 of title 37 as a member of the uniformed services on active service in the grade and years of service of the member when the member commences participation in the program.

(2)(A) A member who participates in a program shall not, while participating in the program, be paid any special or incentive pay or bonus to which the member is otherwise entitled under an agreement under chapter 5 of title 37 that is in force when the member commences participation in the program.

(B) The inactivation from active service of a member participating in a program shall not be treated as a failure of the member to perform any period of service required of the member in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37 that is in force when the member commences participation in the program.

(3)(A) Subject to subparagraph (B), upon the return of a member to active service after completion by the member of participation in a program-

(i) any agreement entered into by the member under chapter 5 of title 37 for the payment of a special or incentive pay or bonus that was in force when the member commenced participation in the program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run when the member commenced participation in the program; and

(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

(B)(i) Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active service as described in that subparagraph-

(I) such pay or bonus is no longer authorized by law; or

(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active service.

(ii) Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

(C) A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37.

(D) Any service required of a member under an agreement covered by this paragraph after the member returns to active service as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (c).

(4)(A) Subject to subparagraph (B), a member who participates in a program is entitled, while participating in the program, to the travel and transportation allowances authorized by section 474 of title 37 for-

(i) travel performed from the residence of the member, at the time of release from active service to participate in the program, to the location in the United States designated by the member as his residence during the period of participation in the program; and

(ii) travel performed to the residence of the member upon return to active service at the end of the participation of the member in the program.

(B) An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

(5) A member who participates in a program is entitled to carry forward the leave balance existing as of the day on which the member begins participation and accumulated in accordance with section 701 of this title, but not to exceed 60 days.

(g) Promotion.- (1)(A) An officer participating in a program under this section shall not, while participating in the program, be eligible for consideration for promotion under chapter 36 or 1405 of this title.

(B) Upon the return of an officer to active service after completion by the officer of participation in a program-

(i) the Secretary of the military department concerned shall adjust the date of rank of the officer in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(2) An enlisted member participating in a program shall not be eligible for consideration for promotion during the period that-

(A) begins on the date of the inactivation of the member from active service under the program; and

(B) ends at such time after the return of the member to active service under the program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the program.

(h) Continued Entitlements.-A member participating in a program under this section shall, while participating in the program, be treated as a member of the armed forces on active duty for a period of more than 30 days for purposes of-

(1) the entitlement of the member and of the dependents of the member to medical and dental care under the provisions of chapter 55 of this title; and

(2) retirement or separation for physical disability under the provisions of chapters 55 and 61 of this title.

## 10 U.S.C. §802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)(A) While on ~~inactive-duty training~~ reserve component duty and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the ~~inactive-duty training~~ reserve component duty site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of ~~inactive-duty training~~ reserve component duty on the same day, pursuant to orders or regulations.

(iii) Intervals between ~~inactive-duty training~~ reserve component duty on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.



(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who-

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily under section 12342 of this title for the purpose of-

(A) a preliminary hearing under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was-

(A) on active duty; or

(B) on ~~inactive-duty training~~ reserve component duty, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not-

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of ~~inactive-duty training~~ reserve component duty or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

### 10 U.S.C. §803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or ~~inactive-duty training~~ reserve component duty, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or ~~inactive-duty training~~ reserve component duty.

## 10 U.S.C. §936. Art. 136. Authority to administer oaths

(a) The following persons on active duty or performing ~~inactive-duty training-reserve component duty~~ may administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.
- (5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(c) Each judge and senior judge of the United States Court of Appeals for the Armed Forces shall have the powers relating to oaths, affirmations, and acknowledgments provided to justices and judges of the United States by section 459 of title 28.

## 10 U.S.C. §976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term "member of the armed forces" means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing ~~inactive-duty training~~ reserve component duty.

(2) The term "military labor organization" means any organization that engages in or attempts to engage in-

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to-

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term "civilian officer or employee" means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization-

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person-

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to-

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may-

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of

participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than \$25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces-

(1) to join or maintain membership in any organization or association not constituting a "military labor organization" as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

**10 U.S.C. §987. Terms of consumer credit extended to members and dependents: limitations**

(a) Interest.-A creditor who extends consumer credit to a covered member of the armed forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such credit, except as-

(1) agreed to under the terms of the credit agreement or promissory note;

(2) authorized by applicable State or Federal law; and

(3) not specifically prohibited by this section.

(b) Annual Percentage Rate.-A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) Mandatory Loan Disclosures.-

(1) Information required.-With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) Terms.-Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) Preemption.-

(1) Inconsistent laws.-Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) Different treatment under state law of members and dependents prohibited.-States shall not-



(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for any consumer credit or loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections covering consumer credit for the benefit of residents of the State on the basis of nonresident or military status of a covered member or dependent of such a member, regardless of the member's or dependent's domicile or permanent home of record.

(e) Limitations.-It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which-

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.);

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the borrower as a condition for legal action;

(5) the creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) Penalties and Remedies.-

(1) Misdemeanor.-A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies.-The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) Contract void.-Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) Arbitration.-Notwithstanding section 2 of title 9, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(5) Civil liability.-

(A) In general.-A person who violates this section with respect to any person is civilly liable to such person for-

(i) any actual damage sustained as a result, but not less than \$500 for each violation;

(ii) appropriate punitive damages;

(iii) appropriate equitable or declaratory relief; and

(iv) any other relief provided by law.

(B) Costs of the action.-In any successful action to enforce the civil liability described in subparagraph (A), the person who violated this section is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(C) Effect of finding of bad faith and harassment.-In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(D) Defenses.-A person may not be held liable for civil liability under this paragraph if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(E) Jurisdiction, venue, and statute of limitations.-An action for civil liability under this paragraph may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of-

(i) two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) five years after the date on which the violation that is the basis for such liability occurs.

(6) Administrative enforcement.-The provisions of this section (other than paragraph (1) of this subsection) shall be enforced by the agencies specified in section 108 of the Truth in Lending

Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

(g) Servicemembers Civil Relief Act Protections Unaffected.-Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 3937).

(h) Regulations.-(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of "creditor" under paragraph (5) and "consumer credit" under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

(3) In prescribing regulations under this subsection, and not less often than once every two years thereafter, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The Bureau of Consumer Financial Protection.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) Definitions.-In this section:

(1) Covered member.-The term "covered member" means a member of the armed forces who is-

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

~~(B) on active Guard and Reserve Duty;~~ on active duty or full-time National Guard duty performing Active Guard and Reserve functions.

(2) Dependent.-The term "dependent", with respect to a covered member, means a person described in subparagraph (A), (D), (E), or (I) of section 1072(2) of this title.

(3) Interest.-The term "interest" includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember's dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) Annual percentage rate.-The term "annual percentage rate" has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(5) Creditor.-The term "creditor" means a person-

(A) who-

(i) is engaged in the business of extending consumer credit; and

(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

(6) Consumer credit.-The term "consumer credit" has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

## 10 U.S.C. §1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of \$5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is \$10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status during the Vietnam conflict, during the Persian Gulf conflict, or while serving on active duty or full-time National Guard duty in support of a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the member entered a missing status, or September 1, 1966, whichever is later.

(f) The Secretary of Defense may authorize a member of the armed forces who is on a temporary duty assignment outside of the United States or its possessions while on active duty in support of a contingency operation to make deposits of unallotted current pay and allowances during that duty as provided in subsection (a). The Secretary shall prescribe regulations establishing standards and procedures for the administration of this subsection.

(g) In this section:

(1) The term "missing status" has the meaning given that term in section 551(2) of title 37.

(2) The term "Vietnam conflict" means the period beginning on February 28, 1961, and ending on May 7, 1975.

(3) The term "Persian Gulf conflict" means the period beginning on January 16, 1991, and ending on the date thereafter prescribed by Presidential proclamation or by law.

## 10 U.S.C. §1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

(1) Members of the armed forces who are on active duty .

(2) Members and former members entitled to retired or retainer pay or equivalent pay.

(3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

(4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty ~~under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary) or full-time National Guard duty for period of more than 30 days in support of a contingency operations,~~ for a period of time (prescribed by the Secretary) that begins on the date of the release and is not less than twice the length of the period ~~served on active duty under that call or order to active duty.~~ served on such duty.

(5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

(6) Survivors of a deceased member or former member described in paragraphs (1), (2), (3), and (4) who were dependents of the member or former member at the time of the death of the member or former member, except that the eligibility of such survivors shall be determined pursuant to regulations prescribed by the Secretary concerned.

(7) Civilian employees of the Federal Government serving in locations where legal assistance from non-military legal assistance providers is not reasonably available, except that the eligibility of civilian employees shall be determined pursuant to regulations prescribed by the Secretary concerned.

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d)(1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.

(2) Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State and, for purposes of service as a Special Victims' Counsel under section 1044e of this title, satisfies the additional qualifications and training requirements specified in subsection (d) of such section.

(3) In this subsection, the term "military legal assistance" includes-

(A) legal assistance provided under this section; and

(B) legal assistance contemplated by sections 1044a, 1044b, 1044c, 1044d, 1044e, and 1565b(a)(1)(A) of this title.

(e) The Secretary concerned shall define "dependent" for the purposes of this section.

## **10 U.S.C. §1044e. Special Victims' Counsel for victims of sex-related offenses**

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

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

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

(B) An individual who is-

(i) not covered under subparagraph (A);

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

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

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

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

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

(b) Types of Legal Assistance Authorized.- The types of legal assistance authorized by subsection (a) include the following:

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

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

(A) the rights and benefits afforded the victim;

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

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

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

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



- (5) Legal consultation regarding the military justice system, including (but not limited to)-
  - (A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;
  - (B) any proceedings of the military justice process in which the victim may observe;
  - (C) the Government's authority to compel cooperation and testimony; and
  - (D) the victim's responsibility to testify, and other duties to the court.

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

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

(8) Legal consultation and assistance-

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

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

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

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

(9) Legal consultation and assistance in connection with-

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

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

(C) any correspondence or other communications with Congress.

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

(c) Nature of Relationship.-The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(d) Qualifications.-**(1)** An individual may not be designated as a Special Victims' Counsel under this section unless the individual-

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

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

(2) The Secretary of Defense shall-

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

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

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

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

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

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

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

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

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

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

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

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

(3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects

unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

(g) **Alleged Sex-related Offense Defined.**-In this section, the term "alleged sex-related offense" means any allegation of-

(1) a violation of section 920, 920a, 920b, 920c, or 925 of this title (article 120, 120a, 120b, 120c, or 125 of the Uniform Code of Military Justice); or

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

(h) **Regulations.**-The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

## 10 U.S.C. §1054. Defense of certain suits arising out of legal malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under ~~section 316, 502, 503, 504, or 505 of title 32~~ section 541 or 542 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein-

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court-

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term "head of the agency concerned" means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

## 10 U.S.C. §1061. Survivors of certain Reserve and Guard members

(a) Benefits.-The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

(b) Covered Dependents.-A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died-

(1) while on active duty, ~~active duty for training, or inactive-duty training~~ or reserve component duty (regardless of the period of such duty); or

(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, ~~active duty for training, or inactive-duty training~~ or reserve component duty (regardless of the period of such duty).

## **10 U.S.C. §1074. Medical and dental care for members and certain former members**

(a)(1) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service described in paragraph (2) is entitled to medical and dental care in any facility of any uniformed service.

(2) Members of the uniformed services referred to in paragraph (1) are as follows:

(A) A member of a uniformed service on active duty.

(B) A member of a reserve component of a uniformed service who has been commissioned as an officer if—

(i) the member has requested orders to active duty for the member's initial period of active duty following the commissioning of the member as an officer;

(ii) the request for orders has been approved;

(iii) the orders are to be issued but have not been issued or the orders have been issued but the member has not entered active duty; and

(iv) the member does not have health care insurance and is not covered by any other health benefits plan.

(b)(1) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(2) Paragraph (1) does not apply to a member or former member entitled to retired pay for non-regular service under chapter 1223 of this title who is under 60 years of age.

(c)(1) Funds appropriated to a military department, the Department of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service) may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the uniformed services. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(2)(A) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care for members of the uniformed services under this subsection, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(B) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(C) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this paragraph.

(3)(A) A member of the uniformed services described in subparagraph (B) may not be required to receive routine primary medical care at a military medical treatment facility.

(B) A member referred to in subparagraph (A) is a member of the uniformed services on active duty who is entitled to medical care under this subsection and who—

(i) receives a duty assignment described in subparagraph (C); and

(ii) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(C) A duty assignment referred to in subparagraph (B) means any of the following:

(i) Permanent duty as a recruiter.

(ii) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

(iii) Permanent duty as a full-time adviser to a unit of a reserve component.

(iv) Any other permanent duty designated by the Secretary concerned for purposes of this paragraph.

(4)(A) Subject to such terms and conditions as the Secretary of Defense considers appropriate, coverage comparable to that provided by the Secretary under subsections (d) and (e) of section 1079 of this title shall be provided under this subsection to members of the uniformed services who incur a serious injury or illness on active duty as defined by regulations prescribed by the Secretary.

(B) The Secretary of Defense shall prescribe in regulations—

(i) the individuals who shall be treated as the primary caregivers of a member of the uniformed services for purposes of this paragraph; and



(ii) the definition of serious injury or illness for the purposes of this paragraph.

(d)~~(1) For the purposes~~For the purposes of this chapter, a member of a reserve component of the armed forces who is issued ~~a delayed effective date active duty order~~an order to report for active duty or full-time National Guard duty in support of a contingency operation, or is covered by such an order, shall be treated as being ~~on active duty on such duty~~ for a period of more than 30 days beginning on the later of the date that is—

~~(1A)~~ the date of the issuance of such order; or

~~(2B)~~ 180 days before the date on which the period of ~~active duty~~such duty is to commence under such order for that member.

~~(2) In this subsection, the term "delayed effective date active duty order" means an order to active duty for a period of more than 30 days under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of this title that provides for active duty service to begin under such order on a date after the date of the issuance of the order.~~

## 10 U.S.C. §1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less; or

(B) reserve component duty. ~~inactive-duty training; or~~

~~(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.~~

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less; or

(B) reserve component duty. ~~inactive-duty training; or~~

~~(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.~~

(3) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of ~~inactive-duty training~~ reserve component duty, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the ~~inactive-duty training~~ reserve component duty.

~~(4) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before serving on funeral honors duty under section 12503 of this title or section 115 of title 32 at or in the vicinity of the place at which the member was to so serve, if the place is outside reasonable commuting distance from the member's residence.~~

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member is not entitled to benefits under subsection (b) if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(d)(1) The Secretary concerned shall provide to members of the Selected Reserve who are assigned to units scheduled for deployment within 75 days after mobilization-reporting for active duty or full-time National Guard duty in support of a contingency operation the following medical and dental services:

(A) An annual medical screening.

(B) For members who are over 40 years of age, a full physical examination not less often than once every two years.

(C) An annual dental screening.

(D) The dental care identified in an annual dental screening as required to ensure that a member meets the dental standards required for deployment in the event of mobilization.

(2) The services provided under this subsection shall be provided at no cost to the member.

(e)(1) A member of a uniformed service on active duty for health care or recuperation reasons, as described in paragraph (2), is entitled to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title while the member remains on active duty.

(2) Paragraph (1) applies to a member described in paragraph (1) or (2) of subsection (a) who, while being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty, is continued on active duty pursuant to a modification or extension of orders, or is ordered to active duty, so as to result in active duty for a period of more than 30 days.

(f)(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty for a period of more than 30 days, the administering Secretaries may provide to each such member any medical and dental screening and care that is necessary to ensure that the member meets the applicable medical and dental standards for deployment.

(2) The notification to members of the Ready Reserve described in paragraph (1) shall include notice that the members are eligible for screening and care under this section.

(3) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care.

(g)(1) The Secretary concerned may provide to any member of the Selected Reserve not described in subsection (d)(1) or (f), and to any member of the Individual Ready Reserve described in section 10144(b) of this title the medical and dental services specified in subsection (d)(1) if the Secretary determines that the receipt of such services by such member is necessary to ensure that the member meets applicable standards of medical and dental readiness.

(2) Services may not be provided to a member under this subsection for a condition that is the result of the member's own misconduct.

(3) The services provided under this subsection shall be provided at no cost to the member.

(h)(1) The Secretary of Defense may provide to any member of the reserve components performing ~~inactive-duty training-reserve component duty~~ during scheduled ~~unit training assemblies-periods of such duty~~ access to mental health assessments with a licensed mental health professional who shall be available for referrals during duty hours on the premises of the principal duty location of the member's unit.

(2) Mental health services provided to a member under this subsection shall be at no cost to the member.

(i) Amounts available for operation and maintenance of a reserve component of the armed forces may be available for purposes of this section to ensure the medical, dental, and behavioral health readiness of members of such reserve component.

## 10 U.S.C. §1074f. Medical tracking system for members deployed overseas

(a) System Required.—The Secretary of Defense shall establish a system to assess the medical condition of members of the armed forces (including members of the reserve components) who are deployed outside the United States or its territories or possessions ~~as part of a contingency operation~~ in support of a contingency operation (including a humanitarian operation, peacekeeping operation, or similar operation) or combat operation.

(b) Elements of System.—(1)(A) The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including the assessment of mental health and the drawing of blood samples) and postdeployment health reassessments to—

(i) accurately record the health status of members before their deployment;

(ii) accurately record any changes in their health status during the course of their deployment; and

(iii) identify health concerns, including mental health concerns, that may become manifest several months following their deployment.

(B) The postdeployment medical examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).

(C) The postdeployment health reassessment shall be conducted at an appropriate time during the period beginning 90 days after the member is redeployed and ending 180 days after the member is redeployed.

(2) The predeployment medical examination, postdeployment medical examination, and postdeployment health reassessment of a member of the armed forces required under paragraph (1) shall include the following:

(A) An assessment of the current treatment of the member and any use of psychotropic medications by the member for a mental health condition or disorder.

(B) An assessment of traumatic brain injury.

(C) An assessment of post-traumatic stress disorder.

(3)(A) The Secretary shall establish for purposes of subparagraphs (B) and (C) of paragraph (2) a protocol for the predeployment assessment and documentation of the cognitive (including memory) functioning of a member who is deployed outside the United States in order to facilitate the assessment of the postdeployment cognitive (including memory) functioning of the member.

(B) The protocol under subparagraph (A) shall include appropriate mechanisms to permit the differential diagnosis of traumatic brain injury in members returning from deployment in a combat zone.

(c) Recordkeeping.—The results of all medical examinations and reassessments conducted under the system, records of all health care services (including immunizations and the prescription and administration of psychotropic medications) received by members described in subsection (a) in anticipation of their deployment or during the course of their deployment, and records of events occurring in the deployment area that may affect the health of such members shall be retained and maintained in a centralized location to improve future access to the records.

(d) Quality Assurance.—(1) The Secretary of Defense shall establish a quality assurance program to evaluate the success of the system in ensuring that members described in subsection (a) receive predeployment medical examinations, postdeployment medical examinations, and postdeployment health reassessments and that the recordkeeping requirements with respect to the system are met.

(2) The quality assurance program established under paragraph (1) shall also include the following elements:

(A) The types of healthcare providers conducting postdeployment health assessments and reassessments.

(B) The training received by such providers applicable to the conduct of such assessments and reassessments, including training on assessments and referrals relating to mental health.

(C) The guidance available to such providers on how to apply the clinical practice guidelines developed under subsection (e)(1) in determining whether to make a referral for further evaluation of a member of the armed forces relating to mental health.

(D) The effectiveness of the tracking mechanisms required under this section in ensuring that members who receive referrals for further evaluations relating to mental health receive such evaluations and obtain such care and services as are warranted.

(E) Programs established for monitoring the mental health of each member who, after deployment to a combat operation ~~or contingency operations~~ or in support of a contingency operation, is known—

(i) to have a mental health condition or disorder; or

(ii) to be receiving treatment, including psychotropic medications, for a mental health condition or disorder.

(F) The diagnosis and treatment of traumatic brain injury and post-traumatic stress disorder.

(e) Criteria for Referral for Further Evaluations.—The system described in subsection (a) shall include—

(1) development of clinical practice guidelines to be utilized by healthcare providers in determining whether to refer a member of the armed forces for further evaluation relating to mental health (including traumatic brain injury);

(2) mechanisms to ensure that healthcare providers are trained in the application of such clinical practice guidelines; and

(3) mechanisms for oversight to ensure that healthcare providers apply such guidelines consistently.

(f) Minimum Standards for Deployment.—(1) The Secretary of Defense shall prescribe in regulations minimum standards for mental health for the eligibility of a member of the armed forces for deployment to a combat operation or in support of a contingency operation.

(2) The standards required by paragraph (1) shall include the following:

(A) A specification of the mental health conditions, treatment for such conditions, and receipt of psychotropic medications for such conditions that preclude deployment of a member of the armed forces to a combat operation or in support of a contingency operation, or to a specified type of such operation.

(B) Guidelines for the deployability and treatment of members of the armed forces diagnosed with a severe mental illness, traumatic brain injury, or post traumatic stress disorder.

(3) The Secretary shall take appropriate actions to ensure the utilization of the standards prescribed under paragraph (1) in the making of determinations regarding the deployability of members of the armed forces to a combat operation or in support of a contingency operation.

## **10 U.S.C. §1074g. Pharmacy benefits program**

(a) Pharmacy Benefits.-(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under this chapter (hereinafter in this section referred to as the "pharmacy benefits program").

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class. With respect to members of the uniformed services, such uniform formulary shall include pharmaceutical agents on the joint uniform formulary established under section 715 of the National Defense Authorization Act for Fiscal Year 2016.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee established under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). Except as provided in subparagraph (F), no pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through-

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.



(F)(i) The Secretary may implement procedures to place selected over-the-counter drugs on the uniform formulary and to make such drugs available to eligible covered beneficiaries. An over-the-counter drug may be included on the uniform formulary only if the Pharmacy and Therapeutics Committee established under subsection (b) finds that the over-the-counter drug is cost effective and clinically effective. If the Pharmacy and Therapeutics Committee recommends an over-the-counter drug for inclusion on the uniform formulary, the drug shall be considered to be in the same therapeutic class of pharmaceutical agents, as determined by the Committee, as similar prescription drugs.

(ii) Regulations prescribed by the Secretary to carry out clause (i) shall include the following with respect to over-the-counter drugs included on the uniform formulary:

(I) A determination of the means and conditions under paragraphs (5) and (6) through which over-the-counter drugs will be available to eligible covered beneficiaries and the amount of cost sharing that such beneficiaries will be required to pay for over-the-counter drugs, if any, except that no such cost sharing may be required for a member of a uniformed service on active duty.

(II) Any terms and conditions for the dispensing of over-the-counter drugs to eligible covered beneficiaries.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through the national mail-order pharmacy program under terms and conditions that shall include cost-sharing by the eligible covered beneficiary as specified in paragraph (6).

(6)(A) In the case of any of the years 2018 through 2027, the cost-sharing amounts under this subsection for eligible covered beneficiaries shall be determined in accordance with the following table:

For:	The cost-sharing amount for a 30-day supply of a retail generic is:	The cost-sharing amount for a 30-day supply of a retail formulary is:	The cost-sharing amount for a 90-day supply of a mail order generic is:	The cost-sharing amount for a 90-day supply of a mail order formulary is:	The cost-sharing amount for a 90-day supply of a mail order non-formulary is:
2018	\$11	\$28	\$7	\$24	\$53
2019	\$11	\$28	\$7	\$24	\$53
2020	\$13	\$33	\$10	\$29	\$60
2021	\$13	\$33	\$10	\$29	\$60
2022	\$14	\$38	\$12	\$34	\$68

2023	\$14	\$38	\$12	\$34	\$68
2024	\$16	\$43	\$13	\$38	\$76
2025	\$16	\$43	\$13	\$38	\$76
2026	\$16	\$48	\$14	\$44	\$85
2027	\$16	\$48	\$14	\$44	\$85

(B) For any year after 2027, the cost-sharing amounts under this subsection for eligible covered beneficiaries shall be equal to the cost-sharing amounts for the previous year adjusted by an amount, if any, determined by the Secretary to reflect changes in the costs of pharmaceutical agents and prescription dispensing, rounded to the nearest dollar.

(C) Notwithstanding subparagraphs (A) and (B), the cost-sharing amounts under this subsection for a dependent of a member of the uniformed services who dies while on active duty or reserve component duty, a member retired under chapter 61 of this title, or a dependent of a member retired under such chapter shall be equal to the cost-sharing amounts, if any, for 2017.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before October 5, 1999, and stabilized the medical condition of the beneficiary.

(9)(A) Beginning on October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program.

(B) The Secretary shall determine the maintenance medications subject to the requirement under subparagraph (A). The Secretary shall ensure that-

(i) such medications are generally available to eligible covered beneficiaries through retail pharmacies only for an initial filling of a 30-day or less supply; and

(ii) any refills of such medications are obtained through a military treatment facility pharmacy or the national mail-order pharmacy program.

(C) The Secretary may exempt the following prescription maintenance medications from the requirement of subparagraph (A):

(i) Medications that are for acute care needs.

(ii) Such other medications as the Secretary determines appropriate.

(10) Notwithstanding paragraphs (2), (5), and (6), in order to encourage the use by covered beneficiaries of pharmaceutical agents that provide the best clinical effectiveness to covered beneficiaries and the Department of Defense (as determined by the Secretary, including considerations of better care, healthier people, and smarter spending), the Secretary may, upon the recommendation of the Pharmacy and Therapeutics Committee established under subsection (b) and review by the Uniform Formulary Beneficiary Advisory Panel established under subsection (c)-

(A) exclude from the pharmacy benefits program any pharmaceutical agent that the Secretary determines provides very little or no clinical effectiveness to covered beneficiaries and the Department under the program; and

(B) give preferential status to any non-generic pharmaceutical agent on the uniform formulary by treating it, for purposes of cost-sharing under paragraph (6), as a generic product under the TRICARE retail pharmacy program and mail order pharmacy program.

(b) Establishment of Committee.- (1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities and representatives of providers in facilities of the uniformed services. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (h).

(2) The committee shall meet at least quarterly and shall, during meetings, consider for inclusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) Advisory Panel.- (1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent-

(A) nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries;

(B) contractors responsible for the TRICARE retail pharmacy program;

(C) contractors responsible for the national mail-order pharmacy program; and

(D) TRICARE network providers.

(d) Procedures.- (1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) The Secretary shall use a modification to the bid price adjustment methodology in the managed care support contracts current as of October 5, 1999, to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the "at-risk" nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(3) With respect to the TRICARE retail pharmacy program described in subsection (a)(2)(E)(ii), the Secretary shall ensure that a contract entered into with a TRICARE pharmacy program contractor includes requirements described in section 1860D-12(b)(6) of the Social Security Act (42 U.S.C. 1395w-112(b)(6)) to ensure the provision of information regarding the pricing standard for prescription drugs.

(e) Pharmacy Data Transaction Service.-The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) Procurement of Pharmaceuticals by TRICARE Retail Pharmacy Program.-With respect to any prescription filled after January 28, 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

(g) Definitions.-In this section:

(1) The term "eligible covered beneficiary" means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term "pharmaceutical agent" means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(3) The term "over-the-counter drug" means a drug that is not subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(4) The term "prescription drug" means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(h) Regulations.-The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

**10 U.S.C. §1074m. Mental health assessments for members of the armed forces deployed in support of a contingency operation**

(a) Mental Health Assessments.—(1) The Secretary of Defense shall provide a person-to-person mental health assessment for each member of the armed forces who is deployed in support of a contingency operation as follows:

(A) Once during the period beginning 120 days before the date of the deployment.

(B) Until January 1, 2019, once during each 180-day period during which a member is deployed.

(C) Subject to subsection (d), once during the period beginning 90 days after the date of redeployment from the contingency operation and ending 180 days after such redeployment date.

(D) Subject to subsection (d), not later than once during each of—

(i) the period beginning 180 days after the date of redeployment from the contingency operation and ending 18 months after such redeployment date; and

(ii) the period beginning 18 months after such redeployment date and ending 30 months after such redeployment date.

(2) A mental health assessment is not required for a member of the armed forces under subparagraphs (C) and (D) of paragraph (1) if the Secretary determines that—

(A) the member was not subjected or exposed to operational risk factors during deployment ~~in the contingency operation~~ in support of the contingency operation concerned; or

(B) providing such assessment to the member during the time periods under such subparagraphs would remove the member from forward deployment or put members or operational objectives at risk.

(b) Purpose.—The purpose of the mental health assessments provided pursuant to this section shall be to identify post-traumatic stress disorder, suicidal tendencies, and other behavioral health conditions identified among members described in subsection (a) in order to determine which such members are in need of additional care and treatment for such health conditions.

(c) Elements.—(1) The mental health assessments provided pursuant to this section shall—

(A) be performed by personnel trained and certified to perform such assessments and may be performed—

(i) by licensed mental health professionals if such professionals are available and the use of such professionals for the assessments would not impair the capacity of such professionals to perform higher priority tasks;

(ii) by personnel in deployed units whose responsibilities include providing unit health care services if such personnel are available and the use of such personnel for the assessments would not impair the capacity of such personnel to perform higher priority tasks; and

(iii) by personnel at private facilities in accordance with section 1074(c) of this title;

(B) include a person-to-person dialogue between members described in subsection (a) and the professionals or personnel described by subparagraph (A), as applicable, on such matters as the Secretary shall specify in order that the assessments achieve the purpose specified in subsection (b) for such assessments;

(C) be conducted in a private setting to foster trust and openness in discussing sensitive health concerns;

(D) be provided in a consistent manner across the military departments; and

(E) include a review of the health records of the member that are related to each previous deployment of the member or other relevant activities of the member while serving in the armed forces, as determined by the Secretary.

(2) The Secretary may treat periodic health assessments and other person-to-person assessments that are provided to members of the armed forces, including examinations under section 1074f of this title, as meeting the requirements for mental health assessments required under this section if the Secretary determines that such assessments and person-to-person assessments meet the requirements for mental health assessments established by this section.

(d) Cessation of Assessments.—No mental health assessment is required to be provided to an individual under subparagraph (C) and (D) of subsection (a)(1) after the individual's discharge or release from the armed forces.

(e) Sharing of Information.—(1) The Secretary of Defense shall share with the Secretary of Veterans Affairs such information on members of the armed forces that is derived from confidential mental health assessments, including mental health assessments provided pursuant to this section and section 1074n of this title and health assessments and other person-to-person assessments provided before the date of the enactment of this section, as the Secretary of Defense and the Secretary of Veterans Affairs jointly consider appropriate to ensure continuity of mental health care and treatment of members of the armed forces during the transition from health care and treatment provided by the Department of Defense to health care and treatment provided by the Department of Veterans Affairs.

(2) Any sharing of information under paragraph (1) shall occur pursuant to a protocol jointly established by the Secretary of Defense and the Secretary of Veterans Affairs for purposes of this subsection. Any such protocol shall be consistent with the following:

(A) Applicable provisions of the Wounded Warrior Act (title XVI of Public Law 110–181; 10 U.S.C. 1071 note), including section 1614 of such Act (122 Stat. 443; 10 U.S.C. 1071 note).

(B) Section 1720F of title 38.

(3) Before each mental health assessment is conducted under subsection (a), the Secretary of Defense shall ensure that the member is notified of the sharing of information with the Secretary of Veterans Affairs under this subsection.

(f) Regulations.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(2) Not later than 270 days after the date of the issuance of the regulations prescribed under paragraph (1), the Secretary shall notify the congressional defense committees of the implementation of the regulations by the military departments.



## 10 U.S.C. §1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service described in one of the following subparagraphs:

(A) A member who is on active duty for a period of more than 30 days or died while on that duty.

(B) A member who died from an injury, illness, or disease incurred or aggravated—

(i) while the member was on active duty under a call or order to active duty of 30 days or less, ~~on active duty for training, or on inactive-duty training or on reserve component duty~~; or

(ii) while the member was traveling to or from the place at which the member was to perform, or had performed, such active duty, ~~active-duty for training, or inactive-duty training or reserve component duty~~.

(C) A member who died from an injury, illness, or disease incurred or aggravated in the line of duty while the member remained overnight immediately before the commencement of ~~inactive-duty training reserve component duty~~, or while the member remained overnight between successive periods of ~~inactive-duty training reserve component duty~~, at or in the vicinity of the site of the ~~inactive-duty training reserve component duty~~.

(D) A member on active duty who is entitled to benefits under subsection (e) of section 1074a of this title by reason of paragraph (1), (2), or (3) of subsection (a) of such section.

~~(E) A member who died from an injury, illness, or disease incurred or aggravated while the member—~~

~~(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;~~

~~(ii) was traveling to or from the place at which the member was to so serve; or~~

~~(iii) remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.~~

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death would have been eligible for retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before December 1, 1994) but for the fact that he was under 60 years of age;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in paragraph (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), the administering Secretary shall furnish an abused dependent of a former member of a uniformed service described in paragraph (4), during that period that the abused dependent is in receipt of transitional compensation under section 1059 of this title, with medical and dental care, including mental health services, in facilities of the uniformed services in accordance with the same eligibility and benefits as were applicable for that abused dependent during the period of active service of the former member.

(2) Subject to paragraph (3), upon request of any dependent of a former member of a uniformed service punished for an abuse described in paragraph (4), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

(3) Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

(A) shall be limited to the health care prescribed by section 1077 of this title; and

(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(4)(A) A former member of a uniformed service referred to in paragraph (1) is a member who—

(i) received a dishonorable or bad-conduct discharge or was dismissed from a uniformed service as a result of a court-martial conviction for an offense, under either military or civil law, involving abuse of a dependent of the member; or

(ii) was administratively discharged from a uniformed service as a result of such an offense.

(B) A determination of whether an offense involved abuse of a dependent of the member shall be made in accordance with regulations prescribed by the administering Secretary for such uniformed service.

(f)(1) The administering Secretaries shall furnish an eligible dependent a physical examination that is required by a school in connection with the enrollment of the dependent as a student in that school.

(2) A dependent is eligible for a physical examination under paragraph (1) if the dependent—

(A) is entitled to receive medical care under subsection (a) or is authorized to receive medical care under subsection (b); and

(B) is at least 5 years of age and less than 12 years of age.

(3) Nothing in paragraph (2) may be construed to prohibit the furnishing of a school-required physical examination to any dependent who, except for not satisfying the age requirement under that paragraph, would otherwise be eligible for a physical examination required to be furnished under this subsection.

## 10 U.S.C. §1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents

(a) Requirement for Plan.-(1) The Secretary of Defense shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.

(2) The Secretary may satisfy the requirement under paragraph (1) by entering into an agreement with the Director of the Office of Personnel Management to allow persons described in subsection (b) to enroll in an insurance plan under chapter 89A of title 5 that provides benefits similar to those benefits required to be provided under subsection (d).

(b) Persons Eligible for Plan.-The following persons are eligible to enroll in the dental insurance plan established under subsection (a):

(1) Members of the uniformed services who are entitled to retired pay.

(2) Members of the Retired Reserve who would be entitled to retired pay under chapter 1223 of this title but for being under 60 years of age.

(3) Eligible dependents of a member described in paragraph (1) or (2) who are covered by the enrollment of the member in the plan.

(4) Eligible dependents of a member described in paragraph (1) or (2) who is not enrolled in the plan and who-

(A) is enrolled under section 1705 of title 38 to receive dental care from the Secretary of Veterans Affairs;

(B) is enrolled in a dental plan that-

(i) is available to the member as a result of employment by the member that is separate from the military service of the member; and

(ii) is not available to dependents of the member as a result of such separate employment by the member; or

(C) is prevented by a medical or dental condition from being able to obtain benefits under the plan.

(5) The unremarried surviving spouse and eligible child dependents of a deceased member-

(A) who died while in a status described in paragraph (1) or (2);

(B) who is described in section 1448(d)(1) of this title~~;~~ ~~or~~

(C) who is described in section 1448(f)(1) of this title; or

(ED) who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible, or no longer eligible, for dental benefits under section 1076a of this title.

(c) Premiums.- (1) A member enrolled in the dental insurance plan established under subsection (a) shall pay the premiums charged for the insurance coverage.

(2) The Secretary of Defense shall establish procedures for the collection of the premiums charged for coverage by the dental insurance plan. To the maximum extent practicable, the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay of the member (if pay is available to the member).

(d) Benefits Available Under the Plan.- The dental insurance plan established under subsection (a) shall provide benefits for dental care and treatment which may be comparable to the benefits authorized under section 1076a of this title for plans established under that section and shall include diagnostic services, preventative services, endodontics and other basic restorative services, surgical services, and emergency services.

(e) Coverage.- (1) The Secretary shall prescribe a minimum required period for enrollment by a member or surviving spouse in the dental insurance plan established under subsection (a).

(2) The dental insurance plan shall provide for voluntary enrollment of participants and shall authorize a member or eligible unremarried surviving spouse to enroll for self only or for self and eligible dependents.

(f) Required Terminations of Enrollment.- The Secretary shall terminate the enrollment of any enrollee, and any eligible dependents of the enrollee covered by the enrollment, in the dental insurance plan established under subsection (a) upon the occurrence of the following:

(1) In the case of an enrollment under subsection (b)(1), termination of the member's entitlement to retired pay.

(2) In the case of an enrollment under subsection (b)(2), termination of the member's status as a member of the Retired Reserve.

(3) In the case of an enrollment under subsection (b)(5), remarriage of the surviving spouse.

(g) Continuation of Dependents' Enrollment Upon Death of Enrollee.- Coverage of a dependent in the dental insurance plan established under subsection (a) under an enrollment of a member or a surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. The Secretary may terminate coverage of the dependent when the premiums paid are no longer sufficient to cover continuation of the enrollment. The Secretary shall prescribe in regulations under subsection (h) the parties

responsible for paying the remaining premiums due on the enrollment and the manner for collection of the premiums.

(h) Regulations.-The dental insurance plan established under subsection (a) shall be administered under regulations prescribed by the Secretary of Defense, in consultation with the other administering Secretaries.

(i) Voluntary Disenrollment.- (1) With respect to enrollment in the dental insurance plan established under subsection (a), the Secretary of Defense-

(A) shall allow for a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; and

(B) shall provide for limited circumstances under which disenrollment shall be permitted during the prescribed enrollment period, without jeopardizing the fiscal integrity of the dental program.

(2) The circumstances described in paragraph (1)(B) shall include-

(A) a case in which a retired member, surviving spouse, or dependent of a retired member who is also a Federal employee is assigned to a location outside the jurisdiction of the dental insurance plan established under subsection (a) that prevents utilization of dental benefits under the plan;

(B) a case in which a retired member, surviving spouse, or dependent of a retired member is prevented by a serious medical condition from being able to obtain benefits under the plan;

(C) a case in which severe financial hardship would result; and

(D) any other circumstances which the Secretary considers appropriate.

(3) The Secretary shall establish procedures for timely decisions on requests for disenrollment under this section and for appeal to the TRICARE Management Activity of adverse decisions.

(j) Definitions.-In this section:

(1) The term "eligible dependent" means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) The term "eligible child dependent" means a dependent described in subparagraph (D) or (I) of section 1072(2) of this title.

(3) The term "retired pay" includes retainer pay.

**10 U.S.C. §1076f. TRICARE program: extension of coverage for certain members of the National Guard and dependents during certain disaster response duty**

(a) EXTENDED COVERAGE.—During a period in which a member of the National Guard is performing disaster response duty, the member may be treated as being on active duty for a period of more than 30 days for purposes of the eligibility of the member and dependents of the member for health care benefits under the TRICARE program if such period immediately follows a period in which the member served on full-time National Guard duty under ~~section 502(f) of title 32~~ section 541 of title 32, including pursuant to chapter 9 of such title, unless the Governor of the State (or, with respect to the District of Columbia, the mayor of the District of Columbia) determines that such extended eligibility is not in the best interest of the member or the State.

(b) CONTRIBUTION BY STATE.—(1) The Secretary shall charge a State for the costs of providing coverage under the TRICARE program to members of the National Guard of the State and the dependents of the members pursuant to subsection (a). Such charges shall be paid from the funds of the State or from any other non-Federal funds.

(2) Any amounts received by the Secretary under paragraph (1) shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section, including to carry out subsection (a) of this section.

(c) DEFINITIONS.—In this section:

(1) The term "disaster response duty" means duty performed by a member of the National Guard in State status pursuant to an emergency declaration by the Governor of the State (or, with respect to the District of Columbia, the mayor of the District of Columbia) in response to a disaster or in preparation for an imminent disaster.

(2) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

## 10 U.S.C. §1078a. Continued health benefits coverage

(a) Provision of Continued Health Coverage.-The Secretary of Defense shall implement and carry out a program of continued health benefits coverage in accordance with this section to provide persons described in subsection (b) with temporary health benefits comparable to the health benefits provided for former civilian employees of the Federal Government and other persons under section 8905a of title 5.

(b) Eligible Persons.-The persons referred to in subsection (a) are the following:

(1) A member of the uniformed services who-

(A) is discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is entitled to medical and dental care under section 1074(a) of this title ~~(except in the case of a member discharged or released from full-time National Guard duty)~~; and

(C) after that discharge or release and any period of transitional health care provided under section 1145(a) of this title, would not otherwise be eligible for any benefits under this chapter.

(2) A member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces who-

(A) is discharged or released from service in the Selected Reserve, whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is enrolled in TRICARE Reserve Select; and

(C) after that discharge or release, would not otherwise be eligible for any benefits under this chapter.

(3) A person who-

(A) ceases to meet the requirements for being considered an unmarried dependent child of a member or former member of the uniformed services under section 1072(2)(D) of this title or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title;

(B) on the day before ceasing to meet those requirements, was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and



(C) would not otherwise be eligible for any benefits under this chapter.

(4) A person who-

(A) is an unremarried former spouse of a member or former member of the uniformed services;  
and

(B) on the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072(2) of this title or ends a one-year period of dependency under subparagraph (H) of such section.

(5) Any other person specified in regulations prescribed by the Secretary of Defense for purposes of this paragraph who loses entitlement to health care services under this chapter or section 1145 of this title, subject to such terms and conditions as the Secretary shall prescribe in the regulations.

(c) Notification of Eligibility.- (1) The Secretary of Defense shall prescribe regulations to provide for persons described in subsection (b) to be notified of eligibility to receive health benefits under this section.

(2) In the case of a member who becomes (or will become) eligible for continued coverage under subsection (b)(1) or subsection (b)(2), the regulations shall provide for the Secretary concerned to notify the member of the member's rights under this section as part of pre-separation counseling conducted under section 1142 of this title or any other provision of other law.

(3) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the regulations shall provide that-

(A) the member or former member may submit to the Secretary concerned a written notice of the dependent's change in status (including the dependent's name, address, and such other information as the Secretary of Defense may require); and

(B) the Secretary concerned shall, within 14 days after receiving that notice, inform the dependent of the dependent's rights under this section.

(4) In the case of a former spouse of a member or former member who becomes eligible for continued coverage under subsection (b)(4), the regulations shall provide appropriate notification provisions and a 60-day election period under subsection (d)(3).<sup>1</sup>

(d) Election of Coverage.- In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Secretary of Defense may prescribe) shall be made as follows:

(1) In the case of a member described in subsection (b)(1), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of-

(A) the date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) the date on which the period of transitional health care applicable to the member under section 1145(a) of this title ends; or

(C) the date the member receives the notification required pursuant to subsection (c).

(2) In the case of a member described in subsection (b)(2), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of-

(A) the date of the discharge or release of the member from service in the Selected Reserve; and

(B) the date the member receives the notification required pursuant to subsection (c).

(3)(A) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of-

(i) the date on which the dependent first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; or

(ii) the date the dependent receives the notification pursuant to subsection (c).

(B) Notwithstanding subparagraph (A), if the Secretary concerned determines that the dependent's parent has failed to provide the notice referred to in subsection (c)(3)(A) with respect to the dependent in a timely fashion, the 60-day period under this paragraph shall be based only on the date under subparagraph (A)(i).

(4) In the case of a former spouse of a member or a former member who becomes eligible for continued coverage under subsection (b)(4), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of-

(A) the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under section 1072(2) of this title; or

(B) such other date as the Secretary of Defense may prescribe.

(5) In the case of a person described in subsection (b)(5), by such date as the Secretary shall prescribe in the regulations required for purposes of that subsection.

(e) Coverage of Dependents.-A person eligible under subsection (b)(1) or subsection (b)(2) to elect to receive coverage may elect coverage either as an individual or, if appropriate, for self

and dependents. A person eligible under subsection (b)(3) or subsection (b)(4) may elect only individual coverage.

(f) Charges.- (1) Under arrangements satisfactory to the Secretary of Defense, a person receiving continued coverage under this section shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of-

(A) the employee and agency contributions which would be required in the case of a similarly situated employee enrolled in a comparable health benefits plan under section 8905a(d)(1)(A)(i) of title 5; and

(B) an amount, not to exceed 10 percent of the amount determined under subparagraph (A), determined under regulations prescribed by the Secretary of Defense to be necessary for administrative expenses; and

(2) If a person elects to continue coverage under this section before the end of the applicable period under subsection (d), but after the person's coverage under this chapter (and any transitional extension of coverage under section 1145(a) of this title) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(g) Period of Continued Coverage.- (1) Continued coverage under this section may not extend beyond-

(A) in the case of a member described in subsection (b)(1), the date which is 18 months after the date the member ceases to be entitled to care under section 1074(a) of this title and any transitional care under section 1145 of this title, as the case may be;

(B) in the case of a member described in subsection (b)(2), the date which is 18 months after the date the member ceases to be eligible to enroll in TRICARE Reserve Select;

(C) in the case of a person described in subsection (b)(3), the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title;

(D) in the case of a person described in subsection (b)(4), except as provided in paragraph (4), the date which is 36 months after the later of-

(i) the date on which the final decree of divorce, dissolution, or annulment occurs; and

(ii) if applicable, the date the one-year extension of dependency under section 1072(2)(H) of this title expires; and

(E) in the case of a person described in subsection (b)(5), the date that is 36 months after the date on which the person loses entitlement to health care services as described in that subsection.

(2) Notwithstanding paragraph (1)(C), if a dependent of a member becomes eligible for continued coverage under subsection (b)(3) during a period of continued coverage of the member for self and dependents under this section, extended coverage of the dependent under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(3) Notwithstanding paragraph (1)(D), if a person becomes eligible for continued coverage under subsection (b)(4) as the former spouse of a member during a period of continued coverage of the member for self and dependents under this section, extended coverage of the former spouse under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(4)(A) Notwithstanding paragraph (1), in the case of a former spouse described in subparagraph (B), continued coverage under this section shall continue for such period as the former spouse may request.

(B) A former spouse referred to in subparagraph (A) is a former spouse of a member or former member (other than a former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement)-

(i) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved;

(ii) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the divorce, dissolution, or annulment; and

(iii)(I) who is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or

(II) for whom a court order (as defined in section 1408(a)(2) of this title) has been issued for payment of any portion of the retired or retainer pay or for whom a court order (as defined in section 1447(13) of this title) or a written agreement (whether voluntary or pursuant to a court order) provides for an election by the member or former member to provide an annuity to the former spouse.

(h) TRICARE Reserve Select Defined.-In this section, the term "TRICARE Reserve Select" means TRICARE Standard coverage provided under section 1076d of this title.

**10 U.S.C. §1086. Contracts for health benefits for certain members, former members, and their dependents**

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in paragraph (2), the first \$150 each calendar year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a calendar year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first \$300 each calendar year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a calendar year.

(3) 25 percent of the charges for inpatient care, except that in no case may the charges for inpatient care for a patient exceed \$535 per day during the period beginning on April 1, 2006, and ending on September 30, 2011. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than \$3,000 for health care received during any calendar year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service-

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated-

(i) while on active duty under a call or order to active duty of 30 days or less, ~~on active duty for training, or on inactive duty training or on reserve component duty~~; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, ~~active duty for training, or inactive duty training or reserve component duty~~.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) 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.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who-

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426-1(a)).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of-

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term "medicare" means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term "third party payer" has the meaning given such term in section 1095(h)(1) of this title.

(4)(A) If a person referred to in subsection (c) and described by paragraph (2)(B) is subject to a retroactive determination by the Social Security Administration of entitlement to hospital

insurance benefits described in paragraph (1), the person shall, during the period described in subparagraph (B), be deemed for purposes of health benefits under this section-

(i) not to have been covered by paragraph (1); and

(ii) not to have been subject to the requirements of section 1079(i)(1) of this title, whether through the operation of such section or subsection (g) of this section.

(B) The period described in this subparagraph with respect to a person covered by subparagraph (A) is the period that-

(i) begins on the date that eligibility of the person for hospital insurance benefits referred to in paragraph (1) is effective under the retroactive determination of eligibility with respect to the person as described in subparagraph (A); and

(ii) ends on the date of the issuance of such retroactive determination of eligibility by the Social Security Administration.

(5) The administering Secretaries shall develop a mechanism by which persons described in subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph are promptly notified of their ineligibility for health benefits under this section. In developing the notification mechanism, the administering Secretaries shall consult with the Administrator of the Centers for Medicare & Medicaid Services.

(e) A person covered by this section may elect to receive inpatient medical care either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. In addition, subsections (b) and (c) of section 1080 of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Section 1079(i) of this title shall apply to a plan contracted for under this section, except that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted

for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.



## **10 U.S.C. §1089. Defense of certain suits arising out of medical malpractice**

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under ~~section 316, 502, 503, 504, or 505 of title 32~~ section 541 or 542 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply to such a physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) serving under a personal services contract entered into under section 1091 of this title or a subcontract at any tier under such a contract that is authorized in accordance with the requirements of such section 1091.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney's fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term "head of the agency concerned" means-

(1) the Director of the Central Intelligence Agency, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Homeland Security, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Chief Operating Officer of the Armed Forces Retirement Home, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

**10 U.S.C. §1092. Studies and demonstration projects relating to delivery of health and medical care**

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(3) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards and incentives to members of the armed forces and covered beneficiaries who obtain health promotion and disease prevention health care services under the TRICARE program in accordance with terms and schedules prescribed by the Secretary. Such awards and incentives may include cash awards and, in the case of members of the armed forces, personnel incentives.

(4)(A) The Secretary of Defense may, in consultation with the other administering Secretaries, include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards or incentives to individual health care professionals under the authority of such Secretaries, including members of the uniformed services, Federal civilian employees, and contractor personnel, to encourage and reward effective implementation of innovative health care programs designed to improve quality, cost-effectiveness, health promotion, medical readiness, and other priority objectives. Such awards and incentives may

include cash awards and, in the case of members of the armed forces and Federal civilian employees, personnel incentives.

(B) Amounts available for the pay of members of the uniformed services shall be available for awards and incentives under this paragraph with respect to members of the uniformed services.

(5) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the medical and dental readiness of members of reserve components of the armed forces, including the provision of health care services to such members for which they are not otherwise entitled or eligible under this chapter.

(6) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the continuity of health care services for family members of ~~mobilized~~ members of the reserve components of the armed forces who have been called or ordered to active duty or full-time National Guard duty in support of a contingency operation and are eligible for such services under this chapter, including payment of a stipend for continuation of employer-provided health coverage during extended periods of active duty .

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

## 10 U.S.C. §1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than \$5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) or (3) may practice the health profession or professions of the health-care professional at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such health-care professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties.

(2) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the armed forces, civilian employee of the Department of Defense, personal services contractor under section 1091 of this title, or other health-care professional credentialed and privileged at a Federal health care institution or location specially designated by the Secretary for this purpose who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing training or duty under ~~section 502(f) of title 32~~ section 541 or 542 of title 32 in response to an actual or potential disaster.

(e) In this section:

(1) The term "license"—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term "health-care professional" means a physician, dentist, clinical psychologist, marriage and family therapist certified as such by a certification recognized by the Secretary of Defense, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

## 10 U.S.C. §1145. Health benefits

(a) TRANSITIONAL HEALTH CARE.—(1) For the time period described in paragraph (4), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member) shall be entitled to receive—

(A) except as provided in paragraph (3), medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

(B) health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(2) This subsection applies to the following members of the armed forces:

(A) A member who is involuntarily separated from active duty.

(B) A member of a reserve component who is separated from active duty ~~to which called or ordered under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of this title if the active duty is active duty for a period of more than 30 days, or full-time National Guard duty which was in support of a contingency operation for a period of more than 30 days.~~

(C) A member who is separated from active duty for which the member is involuntarily retained under ~~section 12305~~ section 12311 of this title in support of a contingency operation.

(D) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

(E) A member who receives a sole survivorship discharge (as defined in section 1174(i) of this title).

(F) A member who is separated from active duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component, or a member performing Active Guard and Reserve functions who separates from active duty or full-time National Guard duty and agrees to remain in the Selected Reserve of the Ready Reserve of a reserve component.

(3) In the case of a member described in paragraph (2)(B), the dental care to which the member is entitled under this subsection shall be the dental care to which a member of the uniformed services on active duty for more than 30 days is entitled under section 1074 of this title.

(4) Except as provided in paragraph (7), transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty. For purposes of the preceding sentence, in the case of a member on active duty as described in subparagraph (B), (C), or (D) of paragraph (2) who, without a break in service, is extended on active duty for any reason, the 180-day period shall begin on the date on which the member is separated from such extended active duty.

(5)(A) The Secretary concerned shall require a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) to undergo a physical examination and a mental health assessment conducted pursuant to section 1074n of this title immediately before that separation. The physical examination shall be conducted in accordance with regulations prescribed by the Secretary of Defense.

(B) Notwithstanding subparagraph (A), if a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) has otherwise undergone a physical examination within 12 months before the scheduled date of separation from active duty, the requirement for a physical examination under subparagraph (A) may be waived in accordance with regulations prescribed under this paragraph. Such regulations shall require that such a waiver may be granted only with the consent of the member and with the concurrence of the member's unit commander.

(6)(A) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, ensure that appropriate actions are taken to assist a member of the armed forces who, as a result of a medical examination under paragraph (5), receives an indication for a referral for follow up treatment from the health care provider who performs the examination.

(B) Assistance provided to a member under paragraph (1) shall include the following:

(i) Information regarding, and any appropriate referral for, the care, treatment, and other services that the Secretary of Veterans Affairs may provide to such member under any other provision of law, including—

(I) clinical services, including counseling and treatment for post-traumatic stress disorder and other mental health conditions; and

(II) any other care, treatment, and services.

(ii) Information on the private sector sources of treatment that are available to the member in the member's community.

(iii) Assistance to enroll in the health care system of the Department of Veterans Affairs for health care benefits for which the member is eligible under laws administered by the Secretary of Veterans Affairs.

(7)(A) A member who has a medical condition relating to service on active duty that warrants further medical care that has been identified during the member's 180-day transition period, which condition can be resolved within 180 days as determined by a Department of Defense physician, shall be entitled to receive medical and dental care for that medical condition, and that medical condition only, as if the member were a member of the armed forces on active duty for 180 days following the diagnosis of the condition.

(B) The Secretary concerned shall ensure that the Defense Enrollment and Eligibility Reporting System (DEERS) is continually updated in order to reflect the continuing entitlement of members covered by subparagraph (A) to the medical and dental care referred to in that subparagraph.



(b) **CONVERSION HEALTH POLICIES.**—(1) The Secretary of Defense shall inform each member referred to in subsection (a) before the date of the member's discharge or release from active duty of the availability for purchase by the member of a conversion health policy for the member and the dependents of that member. A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.

(2) If a member referred to in subsection (a) purchases a conversion health policy during the period applicable to the member (or within a reasonable time after that period as prescribed by the Secretary of Defense), the Secretary shall provide health care, or pay the costs of health care provided, to the member and the dependents of the member—

(A) during the 18-month period beginning on the date on which coverage under the conversion health policy begins; and

(B) for a condition (including pregnancy) that exists on such date and for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(3) The Secretary of Defense may arrange for the provision of health care described in paragraph (2) through a contract with the insurer offering the conversion health policy.

(4) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to provide the conversion health policy required under paragraph (1) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall offer such a policy under the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (5), a member purchasing a policy from the Secretary shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(5) The amount paid by a member who purchases a conversion health policy from the Secretary of Defense under paragraph (4) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(6) In order to reduce premiums required under paragraph (4), the Secretary of Defense may offer a conversion health policy that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(c) **HEALTH CARE FOR CERTAIN SEPARATED MEMBERS NOT OTHERWISE ELIGIBLE.**—(1) Consistent with the authority of the Secretary concerned to designate certain classes of persons as eligible to receive health care at a military medical facility, the Secretary concerned should consider authorizing, on an individual basis in cases of hardship, the provision of that care for a member who is separated from the armed forces, and is ineligible for transitional health care

under subsection (a) or does not obtain a conversion health policy (or a dependent of the member).

(2) The Secretary concerned shall give special consideration to requests for such care in cases in which the condition for which treatment is required was incurred or aggravated by the member or the dependent before the date of the separation of the member, particularly if the condition is a result of the particular circumstances of the service of the member.

(d) Physical Examinations for Certain Members of a Reserve Component.- (1) The Secretary concerned shall provide a physical examination pursuant to subsection (a)(5) to each member of a reserve component who-

(A) during the two-year period before the date on which the member is scheduled to be separated from the armed forces served on active duty in support of a contingency operation for a period of more than 30 days;

(B) will not otherwise receive such an examination under such subsection; and

(C) elects to receive such a physical examination.

(2) The Secretary concerned shall-

(A) provide the physical examination under paragraph (1) to a member during the 90-day period before the date on which the member is scheduled to be separated from the armed forces; and

(B) issue orders to such a member to receive such physical examination.

(3) A member may not be entitled to health care benefits pursuant to subsection (a), (b), or (c) solely by reason of being provided a physical examination under paragraph (1).

(4) In providing to a member a physical examination under paragraph (1), the Secretary concerned shall provide to the member a record of the physical examination.

(e) Definition.- In this section, the term "conversion health policy" means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of a person who is no longer a member of the armed forces or a covered beneficiary.

(f) Coast Guard.- The Secretary of Homeland Security shall implement this section for the members of the Coast Guard and their dependents when the Coast Guard is not operating as a service in the Navy.

**10 U.S.C. §1154. Assistance to eligible members and former members to obtain employment as teachers: Troops-to-Teachers Program**

(a) Definitions.-In this section:

(1) Charter school.-The term "charter school" has the meaning given that term in section 4310 of the Elementary and Secondary Education Act of 1965.

(2) Eligible school.-The term "eligible school" means-

(A) a public school, including a charter school, at which-

(i) at least 30 percent of the students enrolled in the school are from families with incomes below 185 percent of poverty level (as defined by the Office of Management and Budget and revised at least annually in accordance with section 9(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1)) applicable to a family of the size involved; or

(ii) at least 13 percent of the students enrolled in the school qualify for assistance under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

(B) a Bureau-funded school as defined in section 1141(3) of the Education Amendments of 1978 (25 U.S.C. 2021(3)).

(3) High-need school.-The term "high-need school" means-

(A) an elementary or middle school in which at least 50 percent of the enrolled students are children from low-income families, based on the number of children eligible for free and reduced priced lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the number of children in families receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the number of children eligible to receive medical assistance under the Medicaid program, or a composite of these indicators;

(B) a high school in which at least 40 percent of enrolled students are children from low-income families, which may be calculated using comparable data from feeder schools; or

(C) a school that is in a local educational agency that is eligible under section 5211(b) of the Elementary and Secondary Education Act of 1965.

(4) Member of the armed forces.-The term "member of the armed forces" includes a retired or former member of the armed forces.

(5) Participant.-The term "participant" means an eligible member of the armed forces selected to participate in the Program.

(6) Program.-The term "Program" means the Troops-to-Teachers Program authorized by this section.

(7) Secretary.-The term "Secretary" means the Secretary of Defense.

(8) Additional terms.-The terms "elementary school", "local educational agency", "secondary school", and "State" have the meanings given those terms in section 8101 of the Elementary and Secondary Education Act of 1965.

(b) Program Authorization.-The Secretary of Defense may carry out a Troops-to-Teachers Program-

(1) to assist eligible members of the armed forces described in subsection (d) to meet the requirements necessary to become a teacher in a school described in paragraph (2); and

(2) to facilitate the employment of such members-

(A) by local educational agencies or charter schools that the Secretary of Education identifies as-

(i) receiving grants under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; or

(ii) experiencing a shortage of teachers, in particular a shortage of science, mathematics, special education, foreign language, or career or technical teachers; and

(B) in elementary schools or secondary schools, or as career or technical teachers.

(c) Counseling and Referral Services.-The Secretary may provide counseling and referral services to members of the armed forces who do not meet the eligibility criteria described in subsection (d), including the education qualification requirements under paragraph (3)(B) of such subsection.

(d) Eligibility and Application Process.-

(1) Eligible members.-The following members of the armed forces are eligible for selection to participate in the Program:

(A) Any member who-

(i) on or after October 1, 1999, becomes entitled to retired or retainer pay under this title or title 14;

(ii) has an approved date of retirement that is within one year after the date on which the member submits an application to participate in the Program; or

(iii) has been transferred to the Retired Reserve.

(B) Any member who, on or after January 8, 2002-

(i)(I) is separated or released from active duty after four or more years of continuous active duty immediately before the separation or release; or

(II) has completed a total of at least six years of ~~active duty service~~ active service, six years of service computed under section 12732 of this title, or six years of any combination of such service; and

(ii) executes a reserve commitment agreement for a period of not less than three years under paragraph (5)(B).

(C) Any member who, on or after January 8, 2002, is retired or separated for physical disability under chapter 61 of this title.

(2) Submission of applications.- (A) Selection of eligible members of the armed forces to participate in the Program shall be made on the basis of applications submitted to the Secretary within the time periods specified in subparagraph (B). An application shall be in such form and contain such information as the Secretary may require.

(B) In the case of an eligible member of the armed forces described in subparagraph (A)(i), (B), or (C) of paragraph (1), an application shall be considered to be submitted on a timely basis if the application is submitted not later than three years after the date on which the member is retired, separated, or released from active duty, whichever applies to the member.

(3) Selection criteria; educational background requirements; honorable service requirement.- (A) The Secretary shall prescribe the criteria to be used to select eligible members of the armed forces to participate in the Program.

(B) If a member of the armed forces is applying for the Program to receive assistance for placement as an elementary school or secondary school teacher, the Secretary shall require the member to have received a baccalaureate or advanced degree from an accredited institution of higher education.

(C) If a member of the armed forces is applying for the Program to receive assistance for placement as a career or technical teacher, the Secretary shall require the member-

(i) to have received the equivalent of one year of college from an accredited institution of higher education or the equivalent in military education and training as certified by the Department of Defense; or

(ii) to otherwise meet the certification or licensing requirements for a career or technical teacher in the State in which the member seeks assistance for placement under the Program.

(D) A member of the armed forces is eligible to participate in the Program only if the member's last period of service in the armed forces was honorable, as characterized by the Secretary concerned. A member selected to participate in the Program before the retirement of the member or the separation or release of the member from active duty may continue to participate in the Program after the retirement, separation, or release only if the member's last period of service is characterized as honorable by the Secretary concerned.

(4) Selection priorities.-In selecting eligible members of the armed forces to receive assistance under the Program, the Secretary-

(A) shall give priority to members who-

(i) have educational or military experience in science, mathematics, special education, foreign language, or career or technical subjects; and

(ii) agree to seek employment as science, mathematics, foreign language, or special education teachers in elementary schools or secondary schools or in other schools under the jurisdiction of a local educational agency; and

(B) may give priority to members who agree to seek employment in a high-need school.

(5) Other conditions on selection.- (A) Subject to subsection (i), the Secretary may not select an eligible member of the armed forces to participate in the Program and receive financial assistance unless the Secretary has sufficient appropriations for the Program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (e) with respect to the member.

(B) The Secretary may not select an eligible member of the armed forces described in paragraph (1)(B)(i) to participate in the Program and receive financial assistance under subsection (e) unless the member executes a written agreement to serve as a member of the Selected Reserve of a reserve component of the armed forces for a period of not less than three years.

(e) Participation Agreement and Financial Assistance.-

(1) Participation agreement.- (A) An eligible member of the armed forces selected to participate in the Program under subsection (b) and to receive financial assistance under this subsection shall be required to enter into an agreement with the Secretary in which the member agrees-

(i) within such time as the Secretary may require, to meet the requirements necessary to become a teacher in a school described in subsection (b)(2); and

(ii) to accept an offer of full-time employment as an elementary school teacher, secondary school teacher, or career or technical teacher for not less than three school years in an eligible school to begin the school year after obtaining that certification or licensing.

(B) The Secretary may waive the three-year commitment described in subparagraph (A)(ii) for a participant if the Secretary determines such waiver to be appropriate. If the Secretary provides the waiver, the participant shall not be considered to be in violation of the agreement and shall not be required to provide reimbursement under subsection (f), for failure to meet the three-year commitment.

(2) Violation of participation agreement; exceptions.-A participant shall not be considered to be in violation of the participation agreement entered into under paragraph (1) during any period in which the participant-

(A) is pursuing a full-time course of study related to the field of teaching at an institution of higher education;

(B) is serving on active duty as a member of the armed forces;

(C) is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician;

(D) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(E) is unable to find full-time employment as a teacher in an eligible elementary school or secondary school or as a career or technical teacher for a single period not to exceed 27 months;  
or

(F) satisfies the provisions of additional reimbursement exceptions that may be prescribed by the Secretary.

(3) Stipend and bonus for participants.- (A) Subject to subparagraph (C), the Secretary may pay to a participant a stipend to cover expenses incurred by the participant to obtain the required educational level, certification, or licensing. Such stipend may not exceed \$5,000 and may vary by participant.

(B)(i) Subject to subparagraph (C), the Secretary may pay a bonus to a participant who agrees in the participation agreement under paragraph (1) to accept full-time employment as an elementary school teacher, secondary school teacher, or career or technical teacher for not less than three school years in an eligible school.

(ii) The amount of the bonus may not exceed \$5,000, unless the eligible school is a high-need school, in which case the amount of the bonus may not exceed \$10,000. Within such limits, the bonus may vary by participant and may take into account the priority placements as determined by the Secretary.

(C)(i) The total number of stipends that may be paid under subparagraph (A) in any fiscal year may not exceed 5,000.

(ii) The total number of bonuses that may be paid under subparagraph (B) in any fiscal year may not exceed 3,000.

(iii) A participant may not receive a stipend under subparagraph (A) if the participant is eligible for benefits under chapter 33 of title 38.

(iv) The combination of a stipend under subparagraph (A) and a bonus under subparagraph (B) for any one participant may not exceed \$10,000.

(4) Treatment of stipend and bonus.-A stipend or bonus paid under this subsection to a participant shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(f) Reimbursement Under Certain Circumstances.-

(1) Reimbursement required.-A participant who is paid a stipend or bonus under this subsection shall be subject to the repayment provisions of section 373 of title 37 under the following circumstances:

(A) The participant fails to meet the requirements necessary to become a teacher in a school described in subsection (b)(2) or to obtain employment as an elementary school teacher, secondary school teacher, or career or technical teacher as required by the participation agreement under subsection (e)(1).

(B) The participant voluntarily leaves, or is terminated for cause from, employment as an elementary school teacher, secondary school teacher, or career or technical teacher during the three years of required service in violation of the participation agreement.

(C) The participant executed a written agreement with the Secretary concerned under subsection (d)(5)(B) to serve as a member of a reserve component of the armed forces for a period of three years and fails to complete the required term of service.

(2) Amount of reimbursement.-A participant required to reimburse the Secretary for a stipend or bonus paid to the participant under subsection (e) shall pay an amount that bears the same ratio to the amount of the stipend or bonus as the unserved portion of required service bears to the three years of required service.

(3) Interest.-Any amount owed by a participant under this subsection shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the participant is first notified of the amount due.

(4) Exceptions to reimbursement requirement.-A participant shall be excused from reimbursement under this subsection if the participant becomes permanently totally disabled as



established by sworn affidavit of a qualified physician. The Secretary may also waive the reimbursement in cases of extreme hardship to the participant, as determined by the Secretary.

(g) Relationship to Educational Assistance Under Montgomery GI Bill.-Except as provided in subsection (e)(3)(C)(iii), the receipt by a participant of a stipend or bonus under subsection (e) shall not reduce or otherwise affect the entitlement of the participant to any benefits under chapter 30 or 33 of title 38 or chapter 1606 of this title.

(h) Participation by States.-

(1) Discharge of state activities through consortia of states.-The Secretary may permit States participating in the Program to carry out activities authorized for such States under the Program through one or more consortia of such States.

(2) Assistance to states.-  
(A) Subject to subparagraph (B), the Secretary may make grants to States participating in the Program, or to consortia of such States, in order to permit such States or consortia of States to operate offices for purposes of recruiting eligible members of the armed forces for participation in the Program and facilitating the employment of participants as elementary school teachers, secondary school teachers, and career or technical teachers.

(B) The total amount of grants made under subparagraph (A) in any fiscal year may not exceed \$5,000,000.

(i) Limitation on Total Fiscal-year Obligations.-The total amount obligated by the Secretary under the Program for any fiscal year may not exceed \$15,000,000.

## 10 U.S.C. §1175. Voluntary separation incentive

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless-

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Homeland Security determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member-

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to-

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After December 31, 2001, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for ~~inactive duty training~~ reserve component duty, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3)(A) A member who has received the voluntary separation incentive and who later qualifies for retired or retainer pay under this title 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 voluntary separation incentive so paid. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced as the Secretary of Defense shall specify.

(B) If a member is receiving simultaneous voluntary separation incentive payments and retired or retainer pay, the member may elect to terminate the receipt of voluntary separation incentive payments. Any such election is permanent and irrevocable. The rate of monthly recoupment from retired or retainer pay of voluntary separation incentive payments received after such an election shall be reduced by a percentage that is equal to a fraction with a denominator equal to the number of months that the voluntary separation incentive payments were scheduled to be paid and a numerator equal to the number of months that would not be paid as a result of the member's decision to terminate the voluntary separation incentive.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by

the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty .

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Homeland Security for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the "Voluntary Separation Incentive Fund" (hereinafter in this subsection referred to as the "Fund"). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Board of Actuaries (hereinafter in this subsection referred to as the "Board") shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999-

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall-

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Homeland Security may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 474 and 476 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

## **10 U.S.C. §1175a. Voluntary separation pay and benefits**

(a) In General.—Under regulations approved by the Secretary of Defense, the Secretary concerned may provide voluntary separation pay and benefits in accordance with this section to eligible members of the armed forces who are voluntarily separated from active duty in the armed forces.

(b) Eligible Members.—(1) Except as provided in paragraph (2), a member of the armed forces is eligible for voluntary separation pay and benefits under this section if the member—

(A) has served on active duty for more than 6 years but not more than 20 years;

(B) has served at least 5 years of continuous active duty immediately preceding the date of the member's separation from active duty ;

(C) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(D) meets such other requirements as the Secretary concerned may prescribe, which may include requirements relating to—

(i) years of service, skill, rating, military specialty, or competitive category;

(ii) grade or rank;

(iii) remaining period of obligated service; or

(iv) any combination of these factors; and

(E) requests separation from active duty .

(2) The following members are not eligible for voluntary separation pay and benefits under this section:

(A) Members discharged with disability severance pay under section 1212 of this title.

(B) Members transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(C) Members being evaluated for disability retirement under chapter 61 of this title.

(D) Members who have been previously discharged with voluntary separation pay.

(E) Members who are subject to pending disciplinary action or who are subject to administrative separation or mandatory discharge under any other provision of law or regulations.

(3) The Secretary concerned shall determine each year the number of members to be separated, and provided separation pay and benefits, under this section during the fiscal year beginning in such year.

(c) Separation.—Each eligible member of the armed forces whose request for separation from active duty under subsection (b)(1)(E) is approved shall be separated from active duty .

(d) Additional Service in Ready Reserve.—Of the number of members of the armed forces to be separated from active duty in a fiscal year, as determined under subsection (b)(3), the Secretary concerned shall determine a number of such members, in such skill and grade combinations as the Secretary concerned shall designate, who shall serve in the Ready Reserve, after separation from active duty, for a period of not less than three years, as a condition of the receipt of voluntary separation pay and benefits under this section.

(e) Separation Pay and Benefits.—(1) A member of the armed forces who is separated from active duty under subsection (c) shall be paid voluntary separation pay in accordance with subsection (g) in an amount determined by the Secretary concerned pursuant to subsection (f).

(2) A member who is not entitled to retired or retainer pay upon separation shall be entitled to the benefits and services provided under—

(A) chapter 58 of this title during the 180-day period beginning on the date the member is separated (notwithstanding any termination date for such benefits and services otherwise applicable under the provisions of such chapter); and

(B) sections 474 and 476 of title 37.

(f) Computation of Voluntary Separation Pay.—The Secretary concerned shall specify the amount of voluntary separation pay that an individual or defined group of members of the armed forces may be paid under subsection (e)(1). No member may receive as voluntary separation pay an amount greater than four times the full amount of separation pay for a member of the same pay grade and years of service who is involuntarily separated under section 1174 of this title.

(g) Payment of Voluntary Separation Pay.—(1) Voluntary separation pay under this section may be paid in a single lump sum.

(2) In the case of a member of the armed forces who, at the time of separation under subsection (c), has completed at least 15 years, but less than 20 years, of active service, voluntary separation pay may be paid, at the election of the Secretary concerned, in—

(A) a single lump sum;

(B) installments over a period not to exceed 10 years; or

(C) a combination of lump sum and such installments.

(h) Coordination With Retired or Retainer Pay and Disability Compensation.—(1) A member who is paid voluntary separation pay under this section 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 concerned shall specify, until the total amount deducted from such retired or retainer pay is equal to the total amount of voluntary separation pay so paid.

(2)(A) Except as provided in subparagraphs (B) and (C), a member who is paid voluntary separation pay under this section shall not be deprived, by reason of the member's receipt of such pay, of any disability compensation to which the member is entitled under the laws administered by the Secretary of Veterans Affairs, but there shall be deducted from such disability compensation an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such disability compensation is equal to the total amount of voluntary separation pay so paid, 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).

(B) No deduction shall be made from the disability compensation paid to an eligible disabled uniformed services retiree under section 1413, or to an eligible combat-related disabled uniformed services retiree under section 1413a of this title, who is paid voluntary separation pay under this section.

(C) No deduction may be made from the disability compensation paid to a member for the amount of voluntary separation pay received by the member 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) The requirement under this subsection to repay voluntary separation pay following retirement from the armed forces does not apply to a member who was eligible to retire at the time the member applied and was accepted for voluntary separation pay and benefits under this section.

(4) The Secretary concerned may waive the requirement to repay voluntary separation pay under paragraphs (1) and (2) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(i) Retirement Defined.—In this section, the term "retirement" includes a transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

(j) Repayment for Members Who Return to Active Duty .—(1) Except as provided in paragraphs (2) and (3), a member of the armed forces who, after having received all or part of voluntary separation pay under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary separation pay received.

(2) Members who are ~~involuntarily~~ recalled to active duty or full-time National Guard duty ~~in accordance with section 12301(a), 12301(b), 12301(g), 12302, 12303, 12304, 12304a, or 12304b of this title or section 502(f)(1)(A) of title 32 in support of a contingency operation~~ shall not be subject to this subsection.

(3) Members who are recalled or perform active duty ~~or full-time National Guard duty in accordance with section 101(d)(1), 101(d)(2), 101(d)(5), 12301(d) under section 12342 of this title~~ (insofar as the period served is less than 180 consecutive days with the consent of the member), ~~12319, or 12503 of this title, or section 114, 115, or 502(f)(1)(B) or full-time National~~



Guard duty under section 542 of title 32 (insofar as the period served is less than 180 consecutive days with consent of the member), shall not be subject to this subsection.

(4) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States. The authority in this paragraph may be delegated only to the Undersecretary of Defense for Personnel and Readiness and the Principal Deputy Undersecretary of Defense for Personnel and Readiness.

(k) Termination of Authority.—(1) The authority to separate a member of the armed forces from active duty under subsection (c) shall terminate on December 31, 2025.

(2) A member who separates by the date specified in paragraph (1) may continue to be provided voluntary separation pay and benefits under this section until the member has received the entire amount of pay and benefits to which the member is entitled under this section.

## 10 U.S.C. CHAPTER 61-RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.

- 1201. Regulars and members on active duty for more than 30 days: retirement.
- 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
- 1203. Regulars and members on active duty for more than 30 days: separation.
- ~~1204. Members on active duty for 30 days or less or on inactive duty training: retirement.~~
- 1204. Members on active duty for 30 days or less or on reserve component duty: retirement.
- 1205. Members on active duty for 30 days or less: temporary disability retired list.
- ~~1206. Members on active duty for 30 days or less or on inactive duty training: separation.~~
- 1206. Members on active duty for 30 days or less or on reserve component duty: separation.
- 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing.
- 1207. Disability from intentional misconduct or willful neglect: separation.
- 1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions.
- 1208. Computation of service.
- 1209. Transfer to inactive status list instead of separation.
- 1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
- 1211. Members on temporary disability retired list: return to active duty; promotion.
- 1212. Disability severance pay.
- 1213. Effect of separation on benefits and claims.
- 1214. Right to full and fair hearing.
- 1214a. Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation.
- 1215. Members other than Regulars: applicability of laws.
- 1216. Secretaries: powers, functions, and duties.
- 1216a. Determinations of disability: requirements and limitations on determinations.
- 1217. Academy cadets and midshipmen: applicability of chapter.
- 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
- 1218a. Discharge or release from active duty: transition assistance for reserve component members injured while on active duty.
- 1219. Statement of origin of disease or injury: limitations.
- [1220. Repealed.]
- 1221. Effective date of retirement or placement of name on temporary disability retired list.
- 1222. Physical evaluation boards.

## 10 U.S.C. §1201. Regulars and members on active duty for more than 30 days: retirement

(a) RETIREMENT.—Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) ELIGIBLE MEMBERS.—This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (~~other than for training under section 10148(a) of this title~~) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as determined by the Secretary concerned.

**10 U.S.C. §1204. Members on active duty for 30 days or less or on ~~inactive-duty training reserve component duty~~: retirement**

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability—

(A) was incurred before September 24, 1996, as the proximate result of—

(i) performing active duty or ~~inactive-duty training reserve component duty~~;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) an injury, illness, or disease incurred or aggravated while remaining overnight, immediately before the commencement of ~~inactive-duty training reserve component duty~~, or while remaining overnight between successive periods of ~~inactive-duty training reserve component duty~~, at or in the vicinity of the site of the ~~inactive-duty training reserve component duty~~, if the site of the ~~inactive-duty training reserve component duty~~ is outside reasonable commuting distance of the member's residence; or

(B) is a result of an injury, illness, or disease incurred or aggravated in line of duty after September 23, 1996—

(i) while performing active duty or ~~inactive-duty training reserve component duty~~;

(ii) while traveling directly to or from the place at which such duty is performed; or

(iii) while remaining overnight, immediately before the commencement of ~~inactive-duty training reserve component duty~~, or while remaining overnight between successive periods of ~~inactive-duty training reserve component duty~~, at or in the vicinity of the site of the ~~inactive-duty training reserve component duty~~; ~~or~~

~~(C) is a result of an injury, illness, or disease incurred or aggravated in line of duty—~~

~~(i) while the member was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;~~

~~(ii) while the member was traveling to or from the place at which the member was to so serve; or~~

~~(iii) while the member remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence;~~

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

**10 U.S.C. §1206. Members on active duty for 30 days or less or on ~~inactive-duty training reserve component duty~~: separation**

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is a result of an injury, illness, or disease incurred or aggravated ~~in line of duty—in the line of duty while—~~

~~(A) while—~~

~~(i) performing active duty or inactive duty training;~~

~~(ii) traveling directly to or from the place at which such duty is performed; or~~

~~(iii) remaining overnight immediately before the commencement of inactive duty training, or while remaining overnight between successive periods of inactive duty training, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence; or~~

~~(B) while the member—~~

~~(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;~~

~~(ii) was traveling to or from the place at which the member was to so serve; or~~

~~(iii) remained overnight at or in the vicinity of that place immediately before so serving;~~

~~(A) performing active duty or reserve component duty;~~

~~(B) traveling directly to or from the place at which such duty is performed; or~~

~~(C) remaining overnight immediately before the commencement of reserve component duty, or while remaining overnight between successive periods of reserve component duty, at or in the vicinity of the site of the reserve component duty, if the site is outside reasonable commuting distance of the member's residence;~~

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(4) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(5) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and, in the case of a

disability incurred before October 5, 1999, was the proximate result of performing active duty or ~~inactive duty training reserve component duty~~ or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

## 10 U.S.C. §1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under ~~sections 502, 503, 504, and 505 of title 32~~ section 541 and 542 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.



**10 U.S.C. §1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization**

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he-

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary who is determined, after a ~~mobilization and deployment~~ deployment in support of a contingency operation to an area in which imminent danger pay is authorized under section 310 or 351 of title 37, to require evaluation for a physical or mental disability which could result in separation or retirement for disability under this chapter or placement on the temporary disability retired list or inactive status list under this chapter is retained on active duty during the disability evaluation process until such time as such member is-

(A) cleared by appropriate authorities for continuation on active duty; or

(B) separated, retired, or placed on the temporary disability retired list or inactive status list.

(2)(A) A member described in paragraph (1) may request termination of active duty under such paragraph at any time during the demobilization or disability evaluation process of such member.

(B) Upon a request under subparagraph (A), a member described in paragraph (1) shall only be released from active duty after the member receives counseling about the consequences of termination of active duty.

(C) Each release from active duty under subparagraph (B) shall be thoroughly documented.

(3) The requirements in paragraph (1) shall expire on October 28, 2014.

## 10 U.S.C. §1482a. Expenses incident to death: civilian employees serving with an armed force

(a) Payment of Expenses.-The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in support of a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) Regulations.-The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Homeland Security shall prescribe regulations to implement this section with regard to civilian employees of the Department of Homeland Security. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) Definitions.-In this section:

(1) The term "civilian employee" means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term "contingency operation" includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term "parent" has the meaning given such term in section 1482(e)(5)(A) of this title.

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

## **10 U.S.C. §1448. Application of Plan**

### **(a) General Rules for Participation in the Plan.-**

(1) Name of plan; eligible participants.-The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) Participants in the plan.-The Plan applies to the following persons, who shall be participants in the Plan:

(A) Standard annuity participants.-A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) Reserve-component annuity participants.-A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

### **(3) Elections.-**

(A) Spousal consent for certain elections respecting standard annuity.-A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect-

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) Spousal consent for certain elections respecting reserve-component annuity.-A married person who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect-

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) Exception when spouse unavailable.-A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned-

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) Construction with former spouse election provisions.-This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) Notice to spouse of election to provide former spouse annuity.-If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) Irrevocability of elections.-

(A) Standard annuity.-An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) Reserve-component annuity.-An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) Participation by person marrying after retirement, etc.-

(A) Election to participate in plan.-A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) Manner and time of election.-Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) Limitation on revocation of election.-Such an election may not be revoked except in accordance with subsection (b)(3).

(D) Effective date of election.-The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) Designation if RCSBP election.-In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) Election out of plan by person with spouse coverage who remarries.-

(A) General rule.-A person-

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) Effect of election on retired pay.-If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) Terms and conditions of election.-An election under this paragraph-

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) Notice to spouse.-If a person makes an election under this paragraph-

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) Construction with former spouse election provisions.-This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) Insurable Interest and Former Spouse Coverage.-

(1) Coverage for person with insurable interest.-

(A) General rule.-A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) Termination of coverage.-An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) Form for discontinuation.-A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) Withdrawal of request for discontinuation.-The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) Consequences of discontinuation.-Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a) or under subparagraph (G) of this paragraph.

(F) Vitiating of election by disability retiree who dies of disability-related cause.-If a member retired after November 23, 2003, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)-

(i) an election made by the member under paragraph (1) to provide an annuity under the Plan to any person other than a dependent of that member (as defined in section 1072(2) of this title) is vitiating; and

(ii) the amounts by which the member's retired pay was reduced under section 1452 of this title shall be refunded and paid to the person to whom the annuity under the Plan would have been paid pursuant to such election.

(G) Election of new beneficiary upon death of previous beneficiary.-

(i) Authority for election.-If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) Procedures.-Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

(iii) Vitiating of election by participant who dies within two years of election.-If a person providing an annuity under an election under clause (i) dies before the end of the two-year period beginning on the effective date of the election-

(I) the election is vitiated; and

(II) the amount by which the person's retired pay was reduced under section 1452 of this title that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the vitiated election if the deceased person had died after the end of such two-year period.

(2) Former spouse coverage upon becoming a participant in the plan.-

(A) General rule.-A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) Effect of former spouse election on spouse or dependent child.-In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) Designation if more than one former spouse.-If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) Designation if RCSBP election.-In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) Former spouse coverage by persons already participating in plan.-

(A) Election of coverage.-

(i) Authority for election.-A person-

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) Termination of previous coverage.-Any such election terminates any previous coverage under the Plan.

(iii) Manner and time of election.-Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) Limitation on election.-A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless-

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) Irrevocability, etc.-An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) Notice to spouse.-If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) Effective date of election.-An election under this paragraph is effective as of-

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) Former spouse and child coverage.-A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.



(5) Disclosure of whether election of former spouse coverage is required.-A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth-

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(6) Special needs trusts for sole benefit of certain dependent children.-A person who has established a supplemental or special needs trust 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 may elect to provide an annuity to that supplemental or special needs trust.

(7) Effect of death of former spouse beneficiary.-

(A) Termination of participation in plan.-A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) and whose former spouse subsequently dies is no longer a participant in the Plan, effective on the date of death of the former spouse.

(B) Authority for election of new spouse beneficiary.-If a person's participation in the Plan is discontinued by reason of the death of a former spouse beneficiary, the person may elect to resume participation in the Plan and to elect a new spouse beneficiary as follows:

(i) Married on the date of death of former spouse.-A person who is married at the time of the death of the former spouse beneficiary may elect to provide coverage to that person's spouse. Such an election must be received by the Secretary concerned within one year after the date of death of the former spouse beneficiary.

(ii) Marriage after death of former spouse beneficiary.-A person who is not married at the time of the death of the former spouse beneficiary and who later marries may elect to provide spouse coverage. Such an election must be received by the Secretary concerned within one year after the date on which that person marries.

(C) Effective date of election.-The effective date of election under this paragraph shall be as follows:

(i) An election under subparagraph (B)(i) is effective as of the first day of the first calendar month following the death of the former spouse beneficiary.

(ii) An election under subparagraph (B)(ii) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(D) Level of coverage.-A person making an election under subparagraph (B) may not reduce the base amount previously elected.

(E) Procedures.-An election under this paragraph shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe.

(F) Irrevocability.-An election under this paragraph is irrevocable.

(c) Persons on Temporary Disability Retired List.-The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) Coverage for Survivors of Members Who Die on Active Duty.-

(1) Surviving spouse annuity.-Except as provided in paragraph (2)(B), the Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of-

(A) a member who dies while on active duty after-

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) Dependent children.-

(A) Annuity when no eligible surviving spouse.-In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the member's dependent children under subsection (a)(2) or (a)(4) of section 1450 of this title as applicable.

(B) Optional annuity when there is an eligible surviving spouse.-In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under subsection (a)(3) or (a)(4) of section 1450 of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it

appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) Mandatory former spouse annuity.-If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary-

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) Priority.-An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) Computation.-The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(6) Deemed election.-

(A) Annuity for dependent.-In the case of a member described in paragraph (1) who dies after November 23, 2003, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

(B) Computation of annuity.-An annuity under this subparagraph shall be computed under section 1451(b) of this title as if the member had retired for total disability on the date of death with reductions as specified under section 1452(c) of this title, as applicable to the ages of the member and the natural person with an insurable interest.

(e) Designation for Commencement of Reserve-Component Annuity.-In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on-

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) Coverage of Survivors of Persons Dying When or Before Eligible To Elect Reserve-Component Annuity.-

(1) Surviving spouse annuity.-The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who-

(A) is eligible to provide a reserve-component annuity and dies-

(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or

(B) is a member of a reserve component not described in subparagraph (A) and dies from an injury or illness incurred or aggravated in the line of duty ~~during inactive-duty training while performing reserve component duty.~~

(2) Dependent children annuity.-

(A) Annuity when no eligible surviving spouse.-In the case of a person described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the dependent children of that person under section 1450(a)(2) of this title as applicable.

(B) Optional annuity when there is an eligible surviving spouse.-The Secretary may pay an annuity under this subchapter to the dependent children of a person described in paragraph (1) under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) Mandatory former spouse annuity.-If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary-

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) Computation.-The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(5) Deemed election to provide an annuity for dependent.-Paragraph (6) of subsection (d) shall apply in the case of a member described in paragraph (1) who dies after November 23, 2003, when no other annuity is payable on behalf of the member under this subchapter.

(g) Election To Increase Coverage Upon Remarriage.-

(1) Election.-A person-

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) Payment required.-Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) Amount to be paid.-The amount referred to in paragraph (2) is the amount equal to the difference between-

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) Manner of making election.-An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) Disposition of payments.-A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

## 10 U.S.C. §1471. Forensic pathology investigations

(a) Authority.-Under regulations prescribed by the Secretary of Defense, the Armed Forces Medical Examiner may conduct a forensic pathology investigation to determine the cause or manner of death of a deceased person if such an investigation is determined to be justified under circumstances described in subsection (b). The investigation may include an autopsy of the decedent's remains.

(b) Basis for Investigation.-

- (1) A forensic pathology investigation of a death under this section is justified if at least one of the circumstances in paragraph (2) and one of the circumstances in paragraph (3) exist.

- (2) A circumstance under this paragraph is a circumstance under which-

- (A) it appears that the decedent was killed or that, whatever the cause of the decedent's death, the cause was unnatural;

- (B) the cause or manner of death is unknown;

- (C) there is reasonable suspicion that the death was by unlawful means;

- (D) it appears that the death resulted from an infectious disease or from the effects of a hazardous material that may have an adverse effect on the military installation or community involved; or

- (E) the identity of the decedent is unknown.

- (3) A circumstance under this paragraph is a circumstance under which-

- (A) the decedent-

- (i) was found dead or died at an installation garrisoned by units of the armed forces that is under the exclusive jurisdiction of the United States;

- (ii) was a member of the armed forces on active duty or ~~inactive duty for training~~ reserve component duty;

- (iii) was recently retired under chapter 61 of this title as a result of an injury or illness incurred while a member on active duty or ~~inactive duty for training~~ reserve component duty; or

- (iv) was a civilian dependent of a member of the armed forces and was found dead or died outside the United States;

- (B) in any other authorized Department of Defense investigation of matters which involves the death, a factual determination of the cause or manner of the death is necessary; or

(C) in any other authorized investigation being conducted by the Federal Bureau of Investigation, the National Transportation Safety Board, or any other Federal agency, an authorized official of such agency with authority to direct a forensic pathology investigation requests that the Armed Forces Medical Examiner conduct such an investigation.

(c) Determination of Justification.- (1) Subject to paragraph (2), the determination that a circumstance exists under paragraph (2) of subsection (b) shall be made by the Armed Forces Medical Examiner.

(2) A commander may make the determination that a circumstance exists under paragraph (2) of subsection (b) and require a forensic pathology investigation under this section without regard to a determination made by the Armed Forces Medical Examiner if-

(A) in a case involving circumstances described in paragraph (3)(A)(i) of that subsection, the commander is the commander of the installation where the decedent was found dead or died; or

(B) in a case involving circumstances described in paragraph (3)(A)(ii) of that subsection, the commander is the commander of the decedent's unit at a level in the chain of command designated for such purpose in the regulations prescribed by the Secretary of Defense.

(d) Limitation in Concurrent Jurisdiction Cases.- (1) The exercise of authority under this section is subject to the exercise of primary jurisdiction for the investigation of a death-

(A) in the case of a death in a State, by the State or a local government of the State; or

(B) in the case of a death in a foreign country, by that foreign country under any applicable treaty, status of forces agreement, or other international agreement between the United States and that foreign country.

(2) Paragraph (1) does not limit the authority of the Armed Forces Medical Examiner to conduct a forensic pathology investigation of a death that is subject to the exercise of primary jurisdiction by another sovereign if the investigation by the other sovereign is concluded without a forensic pathology investigation that the Armed Forces Medical Examiner considers complete. For the purposes of the preceding sentence a forensic pathology investigation is incomplete if the investigation does not include an autopsy of the decedent.

(e) Procedures.- For a forensic pathology investigation under this section, the Armed Forces Medical Examiner shall-

(1) designate one or more qualified pathologists to conduct the investigation;

(2) to the extent practicable and consistent with responsibilities under this section, give due regard to any applicable law protecting religious beliefs;

(3) as soon as practicable, notify the decedent's family, if known, that the forensic pathology investigation is being conducted;

(4) as soon as practicable after the completion of the investigation, authorize release of the decedent's remains to the family, if known; and

(5) promptly report the results of the forensic pathology investigation to the official responsible for the overall investigation of the death.

(f) Definition of State.-In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and Guam.



## 10 U.S.C. CHAPTER 75 SUBCHAPTER II-DEATH BENEFITS

Sec.

~~1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.~~

1475. Death gratuity: death of members on active duty or reserve component duty and of certain other persons.

1476. Death gratuity: death after discharge or release from duty or training.

1477. Death gratuity: eligible survivors.

1478. Death gratuity: amount.

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1480. Death gratuity: miscellaneous provisions.

1481. Recovery, care, and disposition of remains: decedents covered.

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1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties.

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1491. Funeral honors functions at funerals for veterans.

**10 U.S.C. §1475. Death gratuity: death of members on active duty or ~~inactive-duty training~~ reserve component duty and of certain other persons**

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of-

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

~~(2) a Reserve of an armed force who dies while on inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);~~

~~(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active-duty for training, or inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies while traveling directly to or from that active-duty for training or inactive-duty training or while staying at the Reserve's residence, when so authorized by proper authority, during the period of such inactive-duty training or between successive days of inactive-duty training;~~

(2) a member of a reserve component or a member of the National Guard who dies while performing reserve component duty;

(3) any member of a reserve component or any member of the National Guard who, when authorized or required by an authority designated by the Secretary concerned, assumed an obligation to perform active-duty for training or reserve component duty, and who dies while traveling directly to or from that duty, or while staying at the member's residence, when so authorized by proper authority, during the period of reserve component duty or between successive days of reserve component duty;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who-

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Military Selective Service Act (50 U.S.C. 3801 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

**10 U.S.C. §1476. Death gratuity: death after discharge or release from duty or training**

(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from-

(A) active duty; or

~~(B) inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).~~

(B) reserve component duty.

(2) A death gratuity may be paid under paragraph (1) only if the Secretary of Veterans Affairs determines that the death resulted from an injury or disease incurred or aggravated during-

(A) the active duty or ~~inactive duty training~~ reserve component duty described in paragraph (1);  
or

(B) travel directly to or from such duty.

(b) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Department of Veterans Affairs, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(c) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

## 10 U.S.C. §1478. Death gratuity: amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be \$100,000. For this purpose:

(1) A person covered by subsection (a)(1) of section 1475 of this title who died while traveling to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from ~~inactive duty training reserve component duty~~ is considered to have been on ~~inactive duty training reserve component duty~~ on the date of his death.

(4) A person covered by subsection (a)(3) of section 1475 of this title who died while on authorized stay at the person's residence during a period of ~~inactive duty training reserve component duty~~ or between successive days of ~~inactive duty training reserve component duty~~ is considered to have been on ~~inactive duty training reserve component duty~~ on the date of his death.

(5) A person covered by subsection (a)(4) of section 1475 of this title who died while performing ~~annual training duty active duty for the purpose of required training as specified in section 12352(c) of this title or full-time National Guard duty for the purpose of required training as specified in section 552(a) of title 32~~ or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209(c) of title 37. A person covered by section 1475(a)(4) of this title who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209(c) of title 37.

(6) A person covered by subsection (a)(5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(7) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(8) A person covered by section 1475 or 1476 of this title who performed active duty, or ~~inactive duty training reserve component duty~~, without pay is considered to have been entitled to basic pay under section 204 of title 37, or compensation under section 206 of title 37, while performing that duty ~~or training~~.

(9) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or ~~inactive duty training reserve component duty~~ and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or ~~inactive duty training reserve component duty~~, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[(c) Repealed. [Pub. L. 109-163, div. A, title VI, §664\(a\)\(2\)\(B\), Jan. 6, 2006, 119 Stat. 3316](#) .]

(d)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable, subject to section 664(c) of the National Defense Authorization Act for Fiscal Year 2006, for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (a).

(2) This subsection applies in the case of a person who died during the period beginning on October 7, 2001, and ending on August 31, 2005, while a member of the armed forces on active duty and whose death did not establish eligibility for an additional death gratuity under the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109-13; 119 Stat. 247), because the person was not described in paragraph (2) of that prior subsection.

(3) The amount of additional death gratuity payable under this subsection shall be \$150,000.

(4) A payment pursuant to this subsection shall be paid in the same manner as provided under paragraph (4) of the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109-13; 119 Stat. 247), for payments pursuant to paragraph (3)(A) of that prior subsection.

## 10 U.S.C. §1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) on active duty;

(B) performing ~~inactive-duty training~~ reserve component duty;

(C) performing authorized travel directly to or from active duty or ~~inactive-duty training~~ reserve component duty;

(D) remaining overnight immediately before the commencement of ~~inactive-duty training~~ reserve component duty, or remaining overnight, between successive periods of ~~inactiveduty training~~ reserve component duty, at or in the vicinity of the site of the ~~inactive-duty training~~ reserve component duty;

(E) staying at the member's residence, when so authorized by proper authority, during a period of ~~inactive-duty training~~ reserve component duty or between successive days of ~~inactive-duty training~~ reserve component duty; ~~or~~

(F) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing ~~inactive-duty training~~ reserve component duty; ~~or~~

~~(G) either—~~

~~(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;~~

~~(ii) traveling directly to or from the place at which the member is to so serve; or~~

~~(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.~~

[(3) Repealed. [Pub. L. 99-661, div. A, title VI, §604\(e\)\(3\)\(B\), Nov. 14, 1986, 100 Stat. 3877.](#).]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease

contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who—

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(f) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(10) To the extent authorized under section 1482(g) of this title, any person not otherwise covered by the preceding paragraphs whose remains (or partial remains) have been retained by the Secretary concerned for purposes of a forensic pathology investigation by the Armed Forces Medical Examiner under section 1471 of this title.

(b) This section applies to each person covered by subsection (a)(1)–(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term "dependent" has the meaning given such term in section 1072(2) of this title.



## **10 U.S.C. §1482a. Expenses incident to death: civilian employees serving with an armed force**

(a) PAYMENT OF EXPENSES.—The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in support of a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Homeland Security shall prescribe regulations to implement this section with regard to civilian employees of the Department of Homeland Security. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) DEFINITIONS.—In this section:

(1) The term "civilian employee" means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term "contingency operation" includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term "parent" has the meaning given such term in section 1482(e)(5)(A) of this title.

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

## **10 U.S.C. §1552. Correction of military records: claims incident thereto**

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3)(A) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(B) If a board makes a preliminary determination that a claim under this section lacks sufficient information or documents to support the claim, the board shall notify the claimant, in writing, indicating the specific information or documents necessary to make the claim complete and reviewable by the board.

(C) If a claimant is unable to provide military personnel or medical records applicable to a claim under this section, the board shall make reasonable efforts to obtain the records. A claimant shall provide the board with documentary evidence of the efforts of the claimant to obtain such records. The board shall inform the claimant of the results of the board's efforts, and shall provide the claimant copies of any records so obtained upon request of the claimant.

(D) Any request for reconsideration of a determination of a board under this section, no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the board in making such determination.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(5) Each final decision of a board under this subsection shall be made available to the public in electronic form on a centralized Internet website. In any decision so made available to the public there shall be redacted all personally identifiable information.

(b) No correction may be made under subsection (a)(1) unless the claimant (or the claimant's heir or legal representative) or the Secretary concerned files a request for the correction within three years after discovering the error or injustice. The Secretary concerned may file a request for correction of a military record only if the request is made on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice.

A board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid-

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) If the correction of military records under this section involves setting aside a conviction by court-martial, the payment of a claim under this subsection in connection with the correction of the records shall include interest at a rate to be determined by the Secretary concerned, unless the Secretary determines that the payment of interest is inappropriate under the circumstances. If the payment of the claim is to include interest, the interest shall be calculated on an annual basis, and compounded, using the amount of the lost pay, allowances, compensation, emoluments, or other pecuniary benefits involved, and the amount of any fine or forfeiture paid, beginning from the date of the conviction through the date on which the payment is made.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases 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 subsection (a) may extend only to-

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) Any medical advisory opinion issued to a board established under subsection (a)(1) with respect to a member or former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request for correction of records concerned relates to a mental health disorder.

(h)(1) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal 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, and whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(2) In the case of a claimant described in paragraph (1), a board established under subsection (a)(1) shall-

(A) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and

(B) review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

(i) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of claims considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or release of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or in support of a contingency operation, catalogued by each war or contingency operation.

(3) The number of military records corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or release of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

(j) In this section, the term "military record" means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).

## **10 U.S.C. §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 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 clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable).

(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.

(3)(A) In addition to the requirements of paragraphs (1) and (2), in the case of a former member described in subparagraph (B), the Board shall—

(i) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the former member; and

(ii) review the case with liberal consideration to the former member that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge of a lesser characterization.

(B) A former member described in this subparagraph is 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, whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(e) In the case of a former member of the armed forces (other than a former member covered by subsection (d)) who was diagnosed while serving in the armed forces as experiencing a mental health disorder, a board established under this section to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with special training on mental health disorders.

(f) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of motions or requests for review considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or dismissal of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or in support of a contingency operation, catalogued by each war or contingency operation.

(3) The number of discharges or dismissals corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or dismissal of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

## **10 U.S.C. § 1782. Surveys of military families**

(a) Authority.—The Secretary of Defense, in order to determine the effectiveness of Federal programs relating to military families and the need for new programs, may conduct surveys of—

(1) members of the armed forces who are on active duty, in an active status, or retired;

(2) family members of such members; and

(3) survivors of deceased retired members and of members who died while on active duty or reserve component duty.

(b) Responses To Be Voluntary.—Responses to surveys conducted under this section shall be voluntary.

(c) Federal Recordkeeping Requirements.—With respect to a survey authorized under subsection (a) that includes a person referred to in that subsection who is not an employee of the United States or is not otherwise considered an employee of the United States for the purposes of section 3502(3)(A)(i) of title 44, the person shall be considered as being an employee of the United States for the purposes of that section.

(d) Survey Required For Fiscal Year 2010.—Notwithstanding subsection (a), during fiscal year 2010, the Secretary of Defense shall conduct a survey otherwise authorized under such subsection. Thereafter, additional surveys may be conducted not less often than once every three fiscal years.



## 10 U.S.C. §1788. Additional family assistance

(a) Authority.—The Secretary of Defense may provide for the families of members of the armed forces serving on active duty, in addition to any other assistance available for such families, any assistance that the Secretary considers appropriate to ensure that the children of such members obtain needed child care, education, and other youth services.

(b) Primary Purpose of Assistance.—The assistance authorized by this section should be directed primarily toward providing needed family support, including child care, education, and other youth services, for children of members of the armed forces who are deployed, assigned to duty, or ordered to active duty ~~in connection with~~ in support of a contingency operation.

## **10 U.S.C. §2012. Support and services for eligible organizations and activities outside Department of Defense**

(a) Authority To Provide Services and Support.-Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may in accordance with this section authorize units or individual members of the armed forces under that Secretary's jurisdiction to provide support and services to non-Department of Defense organizations and activities specified in subsection (e), but only if-

(1) such assistance is authorized by a provision of law (other than this section); or

(2) the provision of such assistance is incidental to military training.

(b) Scope of Covered Activities Subject to Section.-This section does not-

(1) apply to the provision by the Secretary concerned, under regulations prescribed by the Secretary of Defense, of customary community relations and public affairs activities conducted in accordance with Department of Defense policy; or

(2) prohibit the Secretary concerned from encouraging members of the armed forces under the Secretary's jurisdiction to provide volunteer support for community relations activities under regulations prescribed by the Secretary of Defense.

(c) Requirement for Specific Request.-Assistance under subsection (a) may only be provided if-

(1) the assistance is requested by a responsible official of the organization to which the assistance is to be provided; and

(2) the assistance is not reasonably available from a commercial entity or (if so available) the official submitting the request for assistance certifies that the commercial entity that would otherwise provide such services has agreed to the provision of such services by the armed forces.

(d) Relationship to Military Training.- (1) Assistance under subsection (a) may only be provided if the following requirements are met:

(A) The provision of such assistance-

(i) in the case of assistance by a unit, will accomplish valid unit training requirements; and

(ii) in the case of assistance by an individual member, will involve tasks directly related to the specific military occupational specialty of the member.

(B) The provision of such assistance will not adversely affect the quality of training or otherwise interfere with the ability of a member or unit of the armed forces to perform the military functions of the member or unit.

(C) The provision of such assistance will not result in a significant increase in the cost of the training.

(2) Subparagraph (A)(i) of paragraph (1) does not apply in a case in which the assistance to be provided consists primarily of military manpower and the total amount of such assistance in the case of a particular project does not exceed 100 man-hours.

(e) Eligible Entities.-The following organizations and activities are eligible for assistance under this section:

(1) Any Federal, regional, State, or local governmental entity.

(2) Youth and charitable organizations specified in ~~section 508 of title 32~~ section 514 of title 32.

(3) Any other entity as may be approved by the Secretary of Defense on a case-by-case basis.

(f) Regulations.-The Secretary of Defense shall prescribe regulations governing the provision of assistance under this section. The regulations shall include the following:

(1) Rules governing the types of assistance that may be provided.

(2) Procedures governing the delivery of assistance that ensure, to the maximum extent practicable, that such assistance is provided in conjunction with, rather than separate from, civilian efforts.

(3) Procedures for appropriate coordination with civilian officials to ensure that the assistance-

(A) meets a valid need; and

(B) does not duplicate other available public services.

(4) Procedures to ensure that Department of Defense resources are not applied exclusively to the program receiving the assistance.

(g) Treatment of Member's Participation in Provision of Support or Services.- (1) The Secretary of a military department may not require or request a member of the armed forces to submit for consideration by a selection board (including a promotion board, command selection board, or any other kind of selection board) evidence of the member's participation in the provision of support and services to non-Department of Defense organizations and activities under this section or the member's involvement in, or support of, other community relations and public affairs activities of the armed forces.

(2) Paragraph (1) does not prevent a selection board from considering material submitted voluntarily by a member of the armed forces which provides evidence of the participation of that member or another member in activities described in that paragraph.

(h) Advisory Councils.- (1) The Secretary of Defense shall encourage the establishment of advisory councils at regional, State, and local levels, as appropriate, in order to obtain recommendations and guidance concerning assistance under this section from persons who are knowledgeable about regional, State, and local conditions and needs.

(2) The advisory councils should include officials from relevant military organizations, representatives of appropriate local, State, and Federal agencies, representatives of civic and social service organizations, business representatives, and labor representatives.

(3) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to such councils.

(i) Construction of Provision.- Nothing in this section shall be construed as authorizing-

(1) the use of the armed forces for civilian law enforcement purposes or for response to natural or manmade disasters; or

(2) the use of Department of Defense personnel or resources for any program, project, or activity that is prohibited by law.

(j) Oversight and Cost Accounting.- The Secretary of Defense shall establish a program to improve the oversight and cost accounting of training projects conducted in accordance with this section. The program shall include measures to accomplish the following:

(1) Ensure that each project that is proposed to be conducted in accordance with this section (regardless of whether additional funding from the Secretary of Defense is sought) is requested in writing, reviewed for full compliance with this section, and approved in advance of initiation by the Secretary of the military department concerned and, in the case of a project that seeks additional funding from the Secretary of Defense, by the Secretary of Defense.

(2) Ensure that each project that is conducted in accordance with this section is required to provide, within a specified period following completion of the project, an after-action report to the Secretary of Defense.

(3) Require that each application for a project to be conducted in accordance with this section include an analysis and certification that the proposed project would not result in a significant increase in the cost of training (as determined in accordance with procedures prescribed by the Secretary of Defense).

(4) Determine the total program cost for each project, including both those costs that are borne by the military departments from their own accounts and those costs that are borne by defense-wide accounts.

(5) Provide for oversight of project execution to ensure that a training project under this section is carried out in accordance with the proposal for that project as approved.

## **10 U.S.C. §2031. Junior Reserve Officers' Training Corps**

(a)(1) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(2) It is a purpose of the Junior Reserve Officers' Training Corps to instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.

(b) No unit may be established or maintained at an institution unless-

(1) the number of physically fit students in such unit who are in a grade above the 8th grade and are citizens or nationals of the United States, or aliens lawfully admitted to the United States for permanent residence, is not less than (A) 10 percent of the number of students enrolled in the institution who are in a grade above the 8th grade, or (B) 100, whichever is less;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve Officers' Training Corps program-

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1), the Secretary of the military department concerned may authorize qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers who are in receipt of retired pay, and members of the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) A retired member so employed is entitled to receive the member's retired or retainer pay without reduction by reason of any additional amount paid to the member by the institution concerned. In the case of payment of any such additional amount by the institution concerned, the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount paid to the retired member by the institution for any period, up to a maximum of one-half of the difference between the member's retired or retainer pay for that period and the active duty pay and allowances which the member would have received for that period if on active duty. Notwithstanding the limitation in the preceding sentence, the Secretary concerned may pay to the institution more than one-half of the additional amount paid to the retired member by the institution if (as determined by the Secretary) the institution is in an educationally and economically deprived area and the Secretary determines that such action is in the national interest. Payments by the Secretary concerned under this paragraph shall be made from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or ~~inactive duty training~~ reserve component duty for any purpose.

(e) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1) and authorizing the employment of retired officers and noncommissioned officers who are in receipt of retired pay and members of the Fleet Reserve and Fleet Marine Corps Reserve under subsection (d), the Secretary of the military department concerned may authorize qualified institutions to employ as administrators and instructors in the program officers and noncommissioned officers who are under 60 years of age and who, but for age, would be eligible for retired pay for non-regular service under section 12731 of this title and whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) The Secretary concerned shall pay to the institution an amount equal to one-half of the amount paid to the member by the institution for any period, up to a maximum of one-half of the difference between-

(A) the retired or retainer pay for an active duty officer or noncommissioned officer of the same grade and years of service for such period; and

(B) the active duty pay and allowances which the member would have received for that period if on active duty.

(2) Notwithstanding the limitation in paragraph (1), the Secretary concerned may pay to the institution more than one-half of the amount paid to the member by the institution if (as determined by the Secretary)-

(A) the institution is in an educationally and economically deprived area; and

(B) the Secretary determines that such action is in the national interest.

(3) Payments by the Secretary concerned under this subsection shall be made from funds appropriated for that purpose.

(4) Amounts may be paid under this subsection with respect to a member after the member reaches the age of 60.

(5) Notwithstanding any other provision of law, a member employed by a qualified institution pursuant to an authorization under this subsection is not, while so employed, considered to be on active duty or ~~inactive duty training-reserve component duty~~ for any purpose.

(f)(1) When determined by the Secretary of the military department concerned to be in the national interest and agreed upon by the institution concerned, the institution may reimburse a Junior Reserve Officers' Training Corps instructor for moving expenses incurred by the instructor to accept employment at the institution in a position that the Secretary concerned determines is hard-to-fill for geographic or economic reasons.

(2) As a condition on providing reimbursement under paragraph (1), the institution shall require the instructor to execute a written agreement to serve a minimum of two years of employment at the institution in the hard-to-fill position.

(3) Any reimbursement provided to an instructor under paragraph (1) is in addition to the minimum instructor pay otherwise payable to the instructor.

(4) The Secretary concerned shall reimburse an institution providing reimbursement to an instructor under paragraph (1) in an amount equal to the amount of the reimbursement paid by the institution under that paragraph. Any reimbursement provided by the Secretary concerned shall be provided from funds appropriated for that purpose.

(5) The provision of reimbursement under paragraph (1) or (4) shall be subject to regulations prescribed by the Secretary of Defense for purposes of this subsection.

## **10 U.S.C. §2107. Financial assistance program for specially selected members**

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible member of the program who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy or as a second lieutenant in the Army, Air Force, or Marine Corps, as the case may be.

(b) To be eligible for appointment as a cadet or midshipman under this section a member must-

(1) be a citizen or national of the United States;

(2) be specially selected for the financial assistance program under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in the reserve component of the armed force in which he is appointed as a cadet or midshipman for the period prescribed by the Secretary of the military department concerned;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program; and

(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will-

(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe; and

(ii) serve on active duty for four or more years;

(B)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department concerned; or

(C)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and



(ii) serve in a reserve component of that armed force until at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary of the receipt of such appointment, unless such appointment is otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as may be prescribed by the Secretary of the military department concerned.

The performance of service under clause (5)(B) or (5)(C) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed, except that performance of service under clause (5)(C) shall include not less than two years of active duty.

(c)(1) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses. In the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, financial assistance under this section may also be provided during a fifth academic year or during a combination of a part of a fifth academic year and summer sessions.

(2) The Secretary of the military department concerned may provide financial assistance, as described in paragraph (1), to a student enrolled in an advanced education program beyond the baccalaureate degree level if the student also is a cadet or midshipman in an advanced training program. Not more than 15 percent of the total number of scholarships awarded under this section in any year may be awarded under this paragraph.

(3) In the case of a cadet or midshipman eligible to receive financial assistance under paragraph (1) or (2), the Secretary of the military department concerned may, in lieu of all or part of the financial assistance described in paragraph (1), provide financial assistance in the form of room and board expenses for the cadet or midshipman and other expenses required by the educational institution.

[~~(4) Repealed. [Pub. L. 109-163, div. A, title V, §531\(a\)\(1\), Jan. 6, 2006, 119 Stat. 3247.](#)]~~

(5)(A) The Secretary of the Army, under regulations and criteria established by the Secretary, may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

(B) Such assistance is in addition to any financial assistance provided under paragraph (1) or (3).

(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior

Reserve Officers' Training Corps on ~~inactive duty for training~~ reserve component duty, as defined in section 101(23) of title 38.

(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(f) A cadet or midshipman who does not complete the four-year course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service, other than concurrent enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(h)(1) The Secretary of Defense shall determine the number of cadets and midshipmen appointed under this section who may be in the financial assistance programs at any one time in each military department.

(2) Of the total number of cadets appointed in the financial assistance programs under this section in any year, not less than 100 shall be designated for placement in the program of the Army for service upon commissioning in the Army National Guard, of which one-half shall be for financial assistance awarded for a period of two years and the remainder shall be for financial assistance awarded for a period of four years. A cadet designated under this paragraph who, having initially contracted for service as provided in subsection (b)(5)(A) and having received financial assistance for two years under an award providing for four years of financial assistance under this section, modifies such contract with the consent of the Secretary of the Army to

provide for service as described in subsection (b)(5)(B), may be counted, for the year in which the contract is modified, toward the number of appointments required under the preceding sentence for financial assistance awarded for a period of four years. A cadet who receives financial assistance under this paragraph and is commissioned in the Army National Guard shall perform service as provided in subsection (b)(5)(B) and may not be accepted for service on full-time active duty pursuant to the member's voluntary application until the completion of the period of service prescribed in that subsection. The Secretary of the Army shall prescribe regulations to ensure a geographical distribution of the cadets who receive financial assistance under this paragraph.

(i) The Secretary of each military department shall seek to achieve an increase in the number of agreements entered into under this section so as to achieve an increase, by the 2006–2007 academic year, of not less than 400 in the number of cadets or midshipmen, as the case may be, enrolled under this section, compared to such number enrolled for the 2002–2003 academic year. In the case of the Secretary of the Navy, the Secretary shall seek to ensure that not less than one-third of such increase in agreements under this section are with students enrolled (or seeking to enroll) in programs of study leading to a baccalaureate degree in nuclear engineering or another appropriate technical, scientific, or engineering field of study.

(j)(1) Payment of financial assistance under this section for, and payment of a monthly subsistence allowance under section 209 of title 37 to, a cadet or midshipman appointed under this section may be suspended on the basis of health-related incapacity of the cadet or midshipman only in accordance with regulations prescribed under paragraph (2).

(2) The Secretary of Defense shall prescribe in regulations the policies and procedures for suspending payments under paragraph (1). The regulations shall apply uniformly to all of the military departments. The regulations shall include the following matters:

(A) The standards of health-related fitness that are to be applied.

(B) Requirements for-

(i) the health-related condition and prognosis of a cadet or midshipman to be determined, in relation to the applicable standards prescribed under subparagraph (A), by a health care professional on the basis of a medical examination of the cadet or midshipman; and

(ii) the Secretary concerned to take into consideration the determinations made under clause (i) with respect to such condition in deciding whether to suspend payment in the case of such cadet or midshipman on the basis of that condition.

(C) A requirement for the Secretary concerned to transmit to a cadet or midshipman proposed for suspension under this subsection a notification of the proposed suspension together with the determinations made under subparagraph (B)(i) in the case of the proposed suspension.

(D) A procedure for a cadet or midshipman proposed for suspension under this subsection to submit a written response to the proposal for suspension, including any supporting information.

(E) Requirements for-

(i) one or more health-care professionals to review, in the case of such a response of a cadet or midshipman, each health-related condition and prognosis addressed in the response, taking into consideration the matters submitted in such response; and

(ii) the Secretary concerned to take into consideration the determinations made under clause (i) with respect to such condition in making a final decision regarding whether to suspend payment in the case of such cadet or midshipman on the basis of that condition, and the conditions under which such suspension may be lifted.

## **10 U.S.C. §2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard**

(a)(1) The Secretary of the Army may appoint as a cadet in the Army Reserve or Army National Guard of the United States any eligible member of the program who is enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution and who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as a second lieutenant in the Army Reserve or Army National Guard.

(2) To be considered a military college or military junior college for the purposes of this section, a school must be a civilian postsecondary educational institution essentially military in nature and meet such other requirements as the Secretary of the Army may prescribe. For purposes of this section, a military junior college does not confer a baccalaureate degree.

(b)(1) To be eligible for appointment as a cadet under this section, a member of the program must-

(A) be a citizen or national of the United States;

(B) be specially selected for the financial assistance program under this section under procedures prescribed by the Secretary of the Army;

(C) enlist in a reserve component of the Army for the period prescribed by the Secretary of the Army;

(D) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the Army to serve for the period required by the program;

(E) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army Reserve or the Army National Guard of the United States; and

(F) agree in writing that he will serve in a troop program unit of the Army Reserve or Army National Guard for not less than eight years.

(2) Performance of duty under an agreement under this subsection shall be under such terms and conditions as the Secretary of the Army may prescribe and may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed.

(3)(A) Subject to subparagraph (C), in the case of a person described in subparagraph (B), the Secretary may, at any time and with the consent of the person, modify an agreement described in paragraph (1)(F) submitted by the person for the purpose of reducing or eliminating the troop program unit service obligation specified in the agreement and to establish, in lieu of that obligation, an active duty service obligation.

(B) Subparagraph (A) applies with respect to the following persons:

(i) A cadet under this section at a military junior college.

(ii) A cadet or former cadet under this section who is selected under section 2114 of this title to be a medical student at the Uniformed Services University of the Health Sciences.

(iii) A cadet or former cadet under this section who signs an agreement under section 2122 of this title for participation in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(C) The modification of an agreement described in paragraph (1)(F) may be made only if the Secretary determines that it is in the best interests of the United States to do so.

(c)(1) The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

(2) In the case of a cadet eligible to receive financial assistance under paragraph (1), the Secretary of the military department concerned may, in lieu of all or part of the financial assistance described in paragraph (1), provide financial assistance in the form of room and board expenses for such cadet and other expenses required by the educational institution.

[~~(3) Repealed. [Pub. L. 109-163, div. A, title V, §531\(b\), Jan. 6, 2006, 119 Stat. 3247.](#)~~]

(4)(A) The Secretary of the Army may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

(B) Such assistance is in addition to any provided under paragraph (1) or (2).

(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers' Training Corps on ~~inactive duty for training~~ reserve component duty, as defined in section 101(23) of title 38.

(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.

(d) Upon satisfactorily completing the academic and military requirements of the program, a cadet may be appointed as a reserve officer in the Army in the grade of second lieutenant, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets from the United States Military Academy in that year. The Secretary of the Army shall establish the date of rank of all other officers appointed under this section.

(f) A cadet who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section, may be ordered to active duty by the Secretary of the Army to serve in his enlisted grade for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service as a cadet or with concurrent enlisted service, other than enlisted service performed after August 1, 1979, as a member of the Selected Reserve.

(h) The Secretary of the Army shall appoint each year under this section not less than 22 cadets at each military junior college at which there are not less than 22 members of the program eligible under subsection (b) for such an appointment. At any military junior college at which in any year there are fewer than 22 such members, the Secretary shall appoint each such member as a cadet under this section.

(i) Cadets appointed under this section are in addition to the number appointed under section 2107 of this title.

(j) Financial assistance provided under this section to a cadet appointed at a military junior college is designated as, and shall be known as, an "Ike Skelton Early Commissioning Program Scholarship".

## **10 U.S.C. §2148. Duration of entitlement**

The entitlement of any person to educational assistance under this chapter expires at the end of the ten-year period beginning on the date of the retirement or discharge or other separation from active duty of the person upon whose service such entitlement is based. In the case of a member entitled to educational assistance under this chapter who dies while on active duty or reserve component duty and whose entitlement is transferred to a spouse or dependent child, such entitlement expires at the end of the ten-year period beginning on the date of such member's death.



## 10 U.S.C. §2601. General gift funds

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

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

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

(b) Additional Authority to Accept Gifts to Benefit Certain Members, Dependents, and Civilian Employees.—(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, money, or services made on the condition that the gift, devise, or bequest be used for the benefit of—

(A) members of the armed forces, including members performing full-time National Guard duty under ~~section 502(f) of title 32~~section 541 or 542 of title 32, who incur a wound, injury, or illness while in the line of duty;

(B) civilian employees of the Department of Defense who incur a wound, injury, or illness while in the line of duty;

(C) dependents of such members or employees; and

(D) survivors of such members or employees who are killed.

(2) The Secretary concerned may not accept a gift of services from a foreign government or international organization under this subsection. A gift of real property, personal property, or money from a foreign government or international organization may be accepted under this subsection only if the gift is not designated for a specific individual.

(3) The Secretary of Defense shall prescribe regulations specifying the conditions that may be attached to a gift, devise, or bequest accepted under this subsection.

(c) Gift Funds.—Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) or (b) shall be deposited in the Treasury in the following accounts:

(1) The Department of the Army General Gift Fund, in the case of deposits made by the Secretary of the Army.

(2) The Department of the Navy General Gift Fund, in the case of deposits made by the Secretary of the Navy.

(3) The Department of the Air Force General Gift Fund, in the case of deposits made by the Secretary of the Air Force.

(4) The Coast Guard General Gift Fund, in the case of deposits made by the Secretary of Homeland Security.

(5) The Department of Defense General Gift Fund, in the case of deposits made by the Secretary of Defense.

(d) Use of Gifts; Prohibitions.—(1) Except as provided in paragraph (2), property and money accepted under subsection (a) or (b) may be used by the Secretary concerned, and services accepted under such subsections may be performed, without further specific authorization in law.

(2) Property, money, and services may not be accepted under subsection (a) or (b)—

(A) if the use of the property or money or the performance of the services in connection with any program, project, or activity would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity;

(B) if the conditions attached to the property, money, or services are inconsistent with applicable law or regulations;

(C) if the Secretary concerned determines that the use of the property or money or the performance of the services would reflect unfavorably on the ability of the Department of Defense or the Coast Guard, any employee of the Department or Coast Guard, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner; or

(D) if the Secretary concerned determines that the use of the property or money or the performance of the services would compromise the integrity or appearance of integrity of any program of the Department of Defense or Coast Guard, or any individual involved in such a program.

(3) The Secretary concerned may disburse funds deposited in a gift fund referred to in subsection (c) for the purposes specified in subsections (a) and (b), subject to the terms of the gift, devise, or bequest.

(e) Acceptance of Real Property Gifts; Naming Rights.—(1) The Secretary concerned may accept a gift under subsection (a) or (b) consisting of the provision, acquisition, enhancement, or construction of real property offered to the United States Military Academy, the Naval Academy, the Air Force Academy, or the Coast Guard Academy even though the gift will be subject to the condition that the real property, or a portion thereof, bear a specified name.

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

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

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

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

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

(f) Payment of Expenses.—The Secretary concerned may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest accepted under this section.

(g) Treatment of Gifts.—For the purposes of Federal income, estate, and gift taxes, any property, money, or services accepted under subsection (a) or (b) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(h) Management of Funds.—In the case of each gift fund referred to in subsection (c), the Secretary of the Treasury, upon the request of the Secretary concerned, may retain money, securities, and the proceeds of the sale of securities in the gift fund and may invest money and reinvest the proceeds of the sale of securities in the gift fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund and may be disbursed as provided in subsection (d).

(i) Comptroller General Review.—The Comptroller General shall make periodic audits of gifts, devises, and bequests accepted under subsection (a) or (b) at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) Definitions.—In this section:

(1) The term "Secretary concerned" includes the Secretary of Defense.

(2) The term "services" includes activities that benefit the education, morale, welfare, or recreation of members of the armed forces and their dependents or are related or incidental to the conveyance of a gift, devise, or bequest of real property or personal property under subsection (a) or (b).

## 10 U.S.C. §2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families

(a) Regulations Governing Acceptance of Gifts.-(1) The Secretary of Defense (and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy) shall prescribe regulations to provide that, subject to such limitations as may be specified in such regulations, the following individuals may accept gifts from nonprofit organizations, private parties, and other sources outside the Department of Defense or the Department of Homeland Security:

(A) A member of the armed forces described in subsection (b).

(B) A civilian employee of the Department of Defense or Coast Guard described in subsection (c).

(C) The family members of such a member or employee.

(D) Survivors of such a member or employee who is killed.

(2) The regulations required by this subsection shall-

(A) apply uniformly to all elements of the Department of Defense and, to the maximum extent feasible, to the Coast Guard; and

(B) require review and approval by a designated agency ethics official before acceptance of a gift to ensure that acceptance of the gift complies with the Joint Ethics Regulation.

(b) Covered Members.-This section applies to a member of the armed forces who, while performing active duty, full-time National Guard duty, or ~~inactive duty training reserve component duty~~ on or after September 11, 2001, incurred an injury or illness-

(1) as described in section 1413a(e)(2) of this title;

(2) in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subsection (a); or

(3) under other circumstances determined by the Secretary concerned to warrant treatment analogous to members covered by paragraph (1).

(c) Covered Employees.-This section applies to a civilian employee of the Department of Defense or Coast Guard who, while an employee on or after September 11, 2001, incurred an injury or illness under a circumstance described in paragraph (1), (2) or (3) of subsection (b).

(d) Gifts From Certain Sources Prohibited.-The regulations prescribed under subsection (a) may not authorize the acceptance of a gift from a foreign government or international organization or their agents.

(e) Application of Certain Regulations.-To the extent provided in the regulations issued under subsection (a) to implement subsection (b)(2), the regulations shall apply to the acceptance of gifts received after December 31, 2011, for injuries or illnesses incurred on or after September 11, 2001.

## 10 U.S.C. §8146. Navy and Marine Corps: temporary appointments of officers designated for limited duty

(a) Under such regulations as he may prescribe, the Secretary of the Navy may make temporary appointments of officers designated for limited duty in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain from sources authorized under section 5589 of this title. Such appointments shall be made by warrant if in the grade of warrant officer, W-1, and by commission if in a higher grade.

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(c) The following members of the naval service are ineligible for temporary appointments under this section:

(1) Retired members.

(2) Members of the Navy Reserve and the Marine Corps Reserve ordered to active duty for training.

(3) Members of the Navy Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, ~~training, or drilling or training~~ the Navy Reserve or the Marine Corps Reserve.

(4) Members of the Navy Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(d) Officers designated for limited duty under subsection (a) may be temporarily appointed by the Secretary of the Navy in a higher grade not above commander in the Regular Navy or lieutenant colonel in the Regular Marine Corps under such regulations as the Secretary may prescribe. Regulations prescribed under this section shall to the greatest extent practicable conform to the procedures prescribed in chapter 36 of this title for selection for promotion and promotion to higher permanent grades.

(e) The Secretary of the Navy may terminate any appointment made under this section.

## 10 U.S.C. §9446. Miscellaneous personnel authorities

(a) Use of Retired Air Force Personnel.- (1) Upon the request of a person retired from service in the Air Force, the Secretary of the Air Force may enter into a personal services contract with that person providing for the person to serve as an administrator or liaison officer for the Civil Air Patrol. The qualifications of a person to provide the services shall be determined and approved in accordance with regulations prescribed under section 9448 of this title.

(2) To the extent provided in a contract under paragraph (1), a person providing services under the contract may accept services on behalf of the Air Force.

(3) A person, while providing services under a contract authorized under paragraph (1), may not be considered to be on active duty or ~~inactive duty training~~ reserve component duty for any purpose.

(b) Use of Civil Air Patrol Chaplains.- The Secretary of the Air Force may use the services of Civil Air Patrol chaplains in support of the Air Force active duty and reserve component forces to the extent and under conditions that the Secretary determines appropriate.

## CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

Sec.

10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories.

10142. Ready Reserve.

10143. Ready Reserve: Selected Reserve.

10144. Ready Reserve: Individual Ready Reserve.

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10150. Ready Reserve: transfer back from Standby Reserve.

10151. Standby Reserve: composition.

10152. Standby Reserve: inactive status list.

10153. Standby Reserve: status of members.

10154. Retired Reserve.



**10 U.S.C. §10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories**

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

(c) As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the degrees of training, including ~~the number and duration of drills~~ the number and duration of required periods of reserve component duty or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

## 10 U.S.C. §10142. Ready Reserve

(a) The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in ~~sections 12301 and 12302 of this title~~ sections 12341 and 12342 of this title.

(b) The authorized strength of the Ready Reserve is 2,900,000.

## 10 U.S.C. §10143. Ready Reserve: Selected Reserve

(a) Within the Ready Reserve of each of the reserve components there is a Selected Reserve. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of Reserves, trained as prescribed in ~~section 10147(a)(1) of this title or section 502(a) of title 32~~ sections 12352(c) and 12353(a) of this title or sections 552(a) and 553(a) of title 32, as appropriate.

(b) The organization and unit structure of the Selected Reserve shall be approved—

(1) in the case of all reserve components other than the Coast Guard Reserve, by the Secretary of Defense based upon recommendations from the military departments as approved by the Chairman of the Joint Chiefs of Staff in accordance with contingency and war plans; and

(2) in the case of the Coast Guard Reserve, by the Secretary of Homeland Security upon the recommendation of the Commandant of the Coast Guard.

## 10 U.S.C. §10144. Ready Reserve: Individual Ready Reserve

(a) Within the Ready Reserve of each of the reserve components there is an Individual Ready Reserve. The Individual Ready Reserve consists of those members of the Ready Reserve who are not in the Selected Reserve or the inactive National Guard.

(b)(1) Within the Individual Ready Reserve of each reserve component there is a category of members, as designated by the Secretary concerned, who are subject to being ordered to active duty involuntarily in accordance with ~~section 12304 of this title~~ section 12341 of this title for the purpose specified in section 12351(b)(3) of this title. A member may not be placed in that mobilization category unless—

(A) the member volunteers for that category; and

(B) the member is selected for that category by the Secretary concerned, based upon the needs of the service and the grade and military skills of that member.

(2) A member of the Individual Ready Reserve may not be carried in such mobilization category of members after the end of the 24-month period beginning on the date of the separation of the member from active service.

(3) The Secretary shall designate the grades and military skills or specialties of members to be eligible for placement in such mobilization category.

(4) A member in such mobilization category shall be eligible for benefits (other than pay and training) as are normally available to members of the Selected Reserve, as determined by the Secretary of Defense.

## 10 U.S.C. §10151. Standby Reserve: composition

The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in ~~sections 12301 and 12306 of this title~~ section 12341 of this title for the purpose specified in section 12351(a) of this title.

## 10 U.S.C. §10204. Personnel records

(a) The Secretary concerned shall maintain adequate and current personnel records of each member of the reserve components under the Secretary's jurisdiction showing the following with respect to the member:

- (1) Physical condition.
- (2) Dependency status.
- (3) Military qualifications.
- (4) Civilian occupational skills.
- (5) Availability for service.
- (6) Such other information as the Secretary concerned may prescribe.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary of each military department shall maintain a record of the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for training and ~~inactive-duty training-reserve component duty~~ with pay.

## 10 U.S.C. §10207. Mobilization forces: maintenance

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued organization and training of the reserve components not mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section, the term "partial mobilization" means ~~the mobilization resulting from~~ action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty or full-time National Guard duty for a limited expansion of the active armed forces.

**10 U.S.C. §10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status**

(a)(1) Officers of the Army National Guard of the United States who are not on active duty—

(A) may order members of the Army National Guard of the United States to active duty for training under ~~section 12301(d) of this title~~ section 12342 of this title; and

(B) with the approval of the Secretary of the Air Force, may order members of the Air National Guard of the United States to active duty for training under that section.

(2) Officers of the Air National Guard of the United States who are not on active duty—

(A) may order members of the Air National Guard of the United States to active duty for training under ~~section 12301(d) of this title~~ section 12342 of this title; and

(B) with the approval of the Secretary of the Army, may order members of the Army National Guard of the United States to active duty for training under that section.

(b) Officers of the Army National Guard of the United States or the Air National Guard of the United States who are not on active duty—

(1) may enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(2) with respect to their Federal status, may promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(c) This section shall be carried out under regulations prescribed by the Secretary of the Army, with respect to matters concerning the Army, and by the Secretary of the Air Force, with respect to matters concerning the Air Force.



## 10 U.S.C. §10508. National Guard Bureau: general provisions

(a) Manpower Requirements of National Guard Bureau.-The manpower requirements of the National Guard Bureau as a joint activity of the Department of Defense shall be determined in accordance with regulations prescribed by the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff.

(b) Personnel for Functions of National Guard Bureau.-

(1) In general.-The Chief of the National Guard Bureau may program for, appoint, employ, administer, detail, and assign persons under sections 2102, 2103, 2105, and 3101 of title 5, subchapter IV of chapter 53 of title 5, ~~or section 328 of title 32,~~ or section 12342 of this title, within the National Guard Bureau and the National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands to execute the functions of the National Guard Bureau and the missions of the National Guard, and missions as assigned by the Chief of the National Guard Bureau.

(2) Administration through adjutants general.-The Chief of the National Guard Bureau may designate the adjutants general referred to in section 314 of title 32 to appoint, employ, and administer the National Guard employees authorized by this subsection.

(3) Administrative actions.-Notwithstanding the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.) and under regulations prescribed by the Chief of the National Guard Bureau, all personnel actions or conditions of employment, including adverse actions under title 5, pertaining to a person appointed, employed, or administered by an adjutant general under this subsection shall be accomplished by the adjutant general of the jurisdiction concerned. For purposes of any administrative complaint, grievance, claim, or action arising from, or relating to, such a personnel action or condition of employment:

(A) The adjutant general of the jurisdiction concerned shall be considered the head of the agency and the National Guard of the jurisdiction concerned shall be considered the employing agency of the individual and the sole defendant or respondent in any administrative action.

(B) The National Guard of the jurisdiction concerned shall defend any administrative complaint, grievance, claim, or action, and shall promptly implement all aspects of any final administrative order, judgment, or decision.

(C) In any civil action or proceeding brought in any court arising from an action under this section, the United States shall be the sole defendant or respondent.

(D) The Attorney General of the United States shall defend the United States in actions arising under this section described in subparagraph (C).

(E) Any settlement, judgment, or costs arising from an action described in subparagraph (A) or (C) shall be paid from appropriated funds allocated to the National Guard of the jurisdiction concerned.

## **10 U.S.C. §10541. National Guard and reserve component equipment: annual report to Congress**

(a) The Secretary of Defense shall submit to the Congress each year, not later than March 15, a written report concerning the equipment of the National Guard and the reserve components of the armed forces for each of the three succeeding fiscal years.

(b) Each report under this section shall include the following:

(1) Recommendations as to the type and quantity of each major item of equipment which should be in the inventory of the Selected Reserve of the Ready Reserve of each reserve component of the armed forces.

(2) A statement of the quantity and average age of each type of major item of equipment which is expected to be physically available in the inventory of the Selected Reserve of the Ready Reserve of each reserve component as of the beginning of each fiscal year covered by the report.

(3) A statement of the quantity and cost of each type of major item of equipment which is expected to be procured for the Selective Reserve of the Ready Reserve of each reserve component from commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces.

(4) A statement of the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

(5) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

(A) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;

(B) the number of each such item in the inventory of the component;

(C) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;

(D) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and

(E) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.

(6) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short of major items of equipment at the outset of war.

(7) For each item of major equipment reported under paragraph (3) in a report for one of the three previous years under this section as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.

(8) A statement of the current status of the compatibility of equipment between the Army reserve components and active forces of the Army, the effect of that level of incompatibility on combat effectiveness, and a plan to achieve full equipment compatibility.

(9) An assessment of the extent to which the National Guard possesses the equipment required to perform the responsibilities of the National Guard pursuant to ~~sections 251, 252, 253 12304(b), and 12406 of this title~~ sections 12351(b)(1) and 12351(b)(3)(B) of this title in response to an emergency or major disaster (as such terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)). Such assessment shall—

(A) identify any shortfall in equipment provided to the National Guard by the Department of Defense throughout the United States and the territories and possessions of the United States that is likely to affect the ability of the National Guard to perform such responsibilities;

(B) evaluate the effect of any such shortfall on the capacity of the National Guard to perform such responsibilities in response to an emergency or major disaster that occurs in the United States or a territory or possession of the United States; and

(C) identify the requirements and investment strategies for equipment provided to the National Guard by the Department of Defense that are necessary to plan for a reduction or elimination of any such shortfall.

(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense.

(d) Each report under this section concerning equipment of the National Guard shall also include the following:

(1) A statement of the accuracy of the projections required by subsection (b)(5)(D) contained in earlier reports under this section, and an explanation, if the projection was not met, of why the projection was not met.

(2) A certification from the Chief of the National Guard Bureau setting forth an inventory for the preceding fiscal year of each item of equipment—

(A) for which funds were appropriated;

(B) which was due to be procured for the National Guard during that fiscal year; and

(C) which has not been received by a National Guard unit as of the close of that fiscal year.

**10 U.S.C. §12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard**

(a) LIMITATIONS.—(1) Of the total number of members of a reserve component who are serving on ~~full-time reserve component duty~~ covered duty for the purposes specified in subsection (e) at the end of any fiscal year, the number of those members who may be serving in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of officers of that reserve component who may be serving in the grade of:		
	Major	Lieutenant Colonel	Colonel
Army Reserve:			
10,000	1,390	740	230
11,000	1,529	803	242
12,000	1,668	864	252
13,000	1,804	924	262
14,000	1,940	984	272
15,000	2,075	1,044	282
16,000	2,210	1,104	291
17,000	2,345	1,164	300
18,000	2,479	1,223	309
19,000	2,613	1,282	318
20,000	2,747	1,341	327
21,000	2,877	1,400	336
Army National Guard:			
20,000	1,500	850	325
22,000	1,650	930	350
24,000	1,790	1,010	378
26,000	1,930	1,085	395
28,000	2,070	1,168	420
30,000	2,200	1,245	445
32,000	2,330	1,315	460
34,000	2,450	1,385	470
36,000	2,570	1,455	480
38,000	2,670	1,527	490
40,000	2,770	1,590	500
42,000	2,837	1,655	505
Marine Corps Reserve:			
1,000	99	63	20
1,200	103	67	21

1,300	107	70	22
1,400	111	73	23
1,500	114	76	24
1,600	117	79	25
1,700	120	82	26
1,800	123	85	27
1,900	126	88	28
2,000	129	91	29
2,100	132	94	30
2,200	134	97	31
2,300	136	100	32
2,400	138	103	33
2,500	140	106	34
2,600	142	109	35

Air Force Reserve:

500	83	85	50
1,000	155	165	95
1,500	220	240	135
2,000	285	310	170
2,500	350	369	203
3,000	413	420	220
3,500	473	464	230
4,000	530	500	240
4,500	585	529	247
5,000	638	550	254
5,500	688	565	261
6,000	735	575	268
7,000	770	595	280
8,000	805	615	290
10,000	835	635	300

Air National Guard:

5,000	333	335	251
6,000	403	394	260
7,000	472	453	269
8,000	539	512	278
9,000	606	571	287
10,000	673	665	313
11,000	740	759	339
12,000	807	827	353
13,000	873	886	363

14,000	939	945	374
15,000	1,005	1,001	384
16,000	1,067	1,057	394
17,000	1,126	1,113	404
18,000	1,185	1,169	414
19,000	1,235	1,224	424
20,000	1,283	1,280	428

(2) Of the total number of members of the Navy Reserve who are serving on ~~full-time reserve component duty covered duty~~ for the purposes specified in subsection (e) at the end of any fiscal year, the number of those members who may be serving in each of the grades of lieutenant commander, commander, and captain may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of Navy Reserve serving on full-time reserve component duty:	Number of officers who may be serving in the grade of:		
	Lieutenant commander	Commander	Captain
10,000	807	447	141
11,000	867	467	153
12,000	924	485	163
13,000	980	503	173
14,000	1,035	521	183
15,000	1,088	538	193
16,000	1,142	555	203
17,000	1,195	565	213
18,000	1,246	575	223
19,000	1,291	585	233
20,000	1,334	595	242
21,000	1,364	603	250
22,000	1,384	610	258
23,000	1,400	615	265
24,000	1,410	620	270.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on ~~full-time reserve component duty covered duty~~ is between any two consecutive numbers in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on ~~full-time reserve component duty covered duty~~ is more or less than the highest or lowest number,

respectively, set forth in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADES.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve officers that may be on full-time reserve component duty covered duty for a reserve component in a grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for the grade in that table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

~~(e) Full-Time Reserve Component Duty Defined. In this section, the term "full-time reserve component duty" means the following duty:~~

~~(1) Active duty described in sections 10211, 10302, 10303, 10304, 10305, 12310, or 12402 of this title.~~

~~(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32, except for duty under section 115(b)(1)(B) and (C) of this title and section 115(i)(9) of this title.~~

~~(3) Active duty described in section 708 of title 32.~~

(e) COVERED DUTY DEFINED.—In this section, the term ‘covered duty’ means service on active duty under section 12342 of this title, or full-time National Guard duty under section 542 of title 32, for the following purposes:

(1) Active duty described in section 10211, 10302, 10303, 10304, 10305, 12352(f), or 12402 of this title.

(2) Full-time National Guard duty described in section 552(b)(2), 552(c)(1), 552(c)(3), or 552(d) of title 32.

(3) Active duty for the purpose described in section 708 of title 32

**10 U.S.C. §12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard**

(a) LIMITATIONS.—Of the total number of members of a reserve component who are serving on ~~full-time reserve component duty covered duty~~ at the end of any fiscal year, the number of those members in each of pay grades of E-8 and E-9 who may be serving on active duty under ~~section 10211 or 12310 or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard section 12342 of this title, for the purpose described in section 10211 or 12352(f) of this title, or full-time National Guard duty under section 542 of title 32, for the purpose described in section 552(d) of title 32,~~ may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E-8	E-9
Army Reserve:		
10,000	1,052	154
11,000	1,126	168
12,000	1,195	180
13,000	1,261	191
14,000	1,327	202
15,000	1,391	213
16,000	1,455	224
17,000	1,519	235
18,000	1,583	246
19,000	1,647	257
20,000	1,711	268
21,000	1,775	278
Army National Guard:		
20,000	1,650	550
22,000	1,775	615
24,000	1,950	645
26,000	2,100	675
28,000	2,250	715
30,000	2,400	735
32,000	2,500	760
34,000	2,600	780
36,000	2,700	800
38,000	2,800	820



40,000	2,900	830
42,000	3,000	840

Navy Reserve:

10,000	340	143
11,000	364	156
12,000	386	169
13,000	407	182
14,000	423	195
15,000	435	208
16,000	447	221
17,000	459	234
18,000	471	247
19,000	483	260
20,000	495	273
21,000	507	286
22,000	519	299
23,000	531	312
24,000	540	325

Marine Corps Reserve:

1,100	50	11
1,200	55	12
1,300	60	13
1,400	65	14
1,500	70	15
1,600	75	16
1,700	80	17
1,800	85	18
1,900	89	19
2,000	93	20
2,100	96	21
2,200	99	22
2,300	101	23
2,400	103	24
2,500	105	25
2,600	107	26

Air Force Reserve:

500	75	40
1,000	145	75
1,500	208	105

2,000	270	130
2,500	325	150
3,000	375	170
3,500	420	190
4,000	460	210
4,500	495	230
5,000	530	250
5,500	565	270
6,000	600	290
7,000	670	330
8,000	740	370
10,000	800	400
Air National Guard:		
5,000	1,020	405
6,000	1,070	435
7,000	1,120	465
8,000	1,170	490
9,000	1,220	510
10,000	1,270	530
11,000	1,320	550
12,000	1,370	570
13,000	1,420	589
14,000	1,470	608
15,000	1,520	626
16,000	1,570	644
17,000	1,620	661
18,000	1,670	678
19,000	1,720	695
20,000	1,770	712.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on ~~full-time reserve component duty covered duty~~ is between any two consecutive numbers in the first column of the table in subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on ~~full-time reserve component duty covered duty~~ is more or less than the highest or lowest number, respectively, set forth in the first column of the table in subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in the table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADE.—Whenever the number of members serving in pay grade E–9 for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E–8.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve enlisted members that may be on active duty or full-time National Guard duty as described in subsection (a) for a reserve component in a pay grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for that grade and reserve component in the table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

~~(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term "full-time reserve component duty" has the meaning given the term in section 12011(e) of this title.~~

(e) Covered Duty Defined.—In this section, the term ‘covered duty’ means duty for the purposes described in section 12011(e) of this title.

## CHAPTER 1211-NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.

12401. Army and Air National Guard of the United States: status.

12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.

12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service.

12404. Army and Air National Guard of the United States: mobilization; maintenance of organization.

12405. National Guard in Federal service: status.

~~12406. National Guard in Federal service: call. [Repealed]~~

12407. National Guard in Federal service: period of service; apportionment.

12408. National Guard in Federal service: physical examination.

**10 U.S.C. §12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau**

(a) ~~The President may, with their consent, order~~ Pursuant to section 10508 of this title, commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States ~~to active duty in the National Guard Bureau~~ may, with their consent, be ordered to active duty under section 12342 of this title for duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

## 10 U.S.C. §12408. National Guard in Federal service: physical examination

(a) Under regulations prescribed by the President, each member of the National Guard ~~called into Federal service under section 12301(a), 12302, or 12304 of this title~~ called or ordered to active duty in support of a contingency operation shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member ~~is mustered out of Federal service~~ is released from duty performed pursuant to subsection (a), he shall be examined as to physical fitness. The record of this examination shall be retained by the United States.

**10 U.S.C. CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS,  
AND DUTIES**

Sec.

12501. Reserve components: detail of members of regular and reserve components to assist.

12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.

~~12503. Ready Reserve: funeral honors duty.~~ [Repealed]

[12505. Repealed.]

**10 U.S.C. CHAPTER 1215-MISCELLANEOUS PROHIBITIONS AND PENALTIES**

Sec.

[12551. Repealed.]

~~12552. Funeral honors functions at funerals for veterans.~~[Repealed]



## 10 U.S.C. CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.

12601. Compensation: Reserve on active duty accepting from any person.

12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.

~~12603. Attendance at inactive-duty training assemblies commercial travel at Federal supply schedule rates.~~

~~12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training~~

12603. Attend reserve component duty commercial travel at Federal supply schedule rates.

12604. Billeting in Department of Defense facilities: Reserves attending reserve component duty.

12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

## 10 U.S.C. §12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard

(a) For the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Army;

(2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Army; and

(3) ~~inactive-duty training-reserve component duty~~ performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under ~~section 502 of title 32-section 543(a) of title 32~~ or other express provision of law, shall be considered ~~inactive-duty training-reserve component duty~~ in Federal service as a Reserve of the Army.

(b) For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Air Force;

(2) full-time National Guard duty performed by a member of the Air National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Air Force; and

(3) ~~inactive-duty training-reserve component duty~~ performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard, in accordance with regulations prescribed under ~~section 502 of title 32-section 543(a) of title 32~~ or other express provision of law, shall be considered ~~inactive-duty training-reserve component duty~~ in Federal service as a Reserve of the Air Force.

**10 U.S.C. §12603. ~~Attendance at inactive-duty training assemblies~~ Attend reserve component duty: commercial travel at Federal supply schedule rates**

- (a) Federal Supply Schedule Travel.-Commercial travel under Federal supply schedules is authorized for the travel of a Reserve to the location of ~~inactive-duty training-reserve component duty~~ to be performed by the Reserve and from that location upon completion of the training.
- (b) Regulations.-The Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions for travel under the authority of subsection (a) as the Secretary considers appropriate. The regulations shall include policies and procedures for preventing abuses of that travel authority.
- (c) Reimbursement Not Authorized.-A Reserve is not entitled to Government reimbursement for the cost of travel authorized under subsection (a).
- (d) Treatment of Transportation as Use by Military Departments.-For the purposes of section 501 of title 40, travel authorized under subsection (a) shall be treated as transportation for the use of a military department.

**10 U.S.C. §12604. Billeting in Department of Defense facilities: Reserves attending ~~inactive-duty training reserve component duty~~**

(a) Authority for Billeting on Same Basis as Active Duty Members Traveling Under Orders.-The Secretary of Defense shall prescribe regulations authorizing a Reserve traveling to ~~inactive-duty training reserve component duty~~ at a location more than 50 miles from that Reserve's residence to be eligible for billeting in Department of Defense facilities on the same basis and to the same extent as a member of the armed forces on active duty who is traveling under orders away from the member's permanent duty station.

(b) Proof of Reason for Travel.-The Secretary shall include in the regulations the means for confirming a Reserve's eligibility for billeting under subsection (a).

**10 U.S.C. §12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty**

(a) LIMITATION.— Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system (other than the retirement system under chapter 1223 of this title), may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

(b) WAIVER.— With respect to a member of a reserve component who is to be ordered to active duty (other than for training) under ~~section 12301 of this title pursuant to an order to active duty that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require, as a condition of such order to active duty, that the member waive the applicability of subsection (a) to the member for the period of active duty covered by that order~~ section 12342 of this title, or to full-time National Guard duty (other than for training) under section 542 of title 32, pursuant to an order to such duty that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require as a condition of that order that the member waive the applicability of subsection (a) to the member for the period of such duty covered by that order. In carrying out this subsection, the Secretary concerned may require that a waiver under the preceding sentence be executed ~~before the period of active duty begins~~ before the period of such duty begins.

10 U.S.C. CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec. 12731. Age and service requirements.

12731a. Temporary special retirement qualification authority.

12731b. Special rule for members with physical disabilities not incurred in line of duty.

12732. Entitlement to retired pay: computation of years of service.

12733. Computation of retired pay: computation of years of service.

12734. Time not creditable toward years of service.

12735. Inactive status list.

12736. Service credited for retired pay benefits not excluded for other benefits.

12737. Limitation on active duty or full-time National Guard duty.

12738. Limitations on revocation of retired pay.

12739. Computation of retired pay.

12740. Eligibility: denial upon certain punitive discharges or dismissals.

12741. Retirement for service in an active status performed in the Selected Reserve of the Ready Reserve after eligibility for regular retirement.

## **10 U.S.C. §12731. Age and service requirements**

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) has attained the eligibility age applicable under subsection (f) to that person;

(2) has performed at least 20 years of service computed under section 12732 of this title;

(3) in the case of a person who completed the service requirements of paragraph (2) before April 25, 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight; and

(4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c)(1) A person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 12732(a)(1) of this title except a regular component, is not eligible for retired pay under this chapter unless—

(A) the person performed active duty during World War I or World War II; or

(B) the person performed active duty (other than for training) during the Korean conflict, the Berlin crisis, or the Vietnam era.

(2) In this subsection:

(A) The term "World War I" means the period beginning on April 6, 1917, and ending on November 11, 1918.

(B) The term "World War II" means the period beginning on September 9, 1940, and ending on December 31, 1946.

(C) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on July 27, 1953.

(D) The term "Berlin crisis" means the period beginning on August 14, 1961, and ending on May 30, 1963.

(E) The term "Vietnam era" means the period beginning on August 5, 1964, and ending on March 27, 1973.

(d) The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service. The notice shall include notice of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter, and the effects of such elections.

(e) Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

(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) 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.~~

(B) Active service described in this paragraph is service on active duty or full-time National Guard duty in support of a contingency operation.

(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.

## 10 U.S.C. §12732. Entitlement to retired pay: computation of years of service

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

(1) The person's years of service, before July 1, 1949, in the following:

(A) The armed forces.

(B) The federally recognized National Guard before June 15, 1933.

(C) A federally recognized status in the National Guard before June 15, 1933.

(D) The National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States.

(E) The Navy Reserve Force.

(F) The Naval Militia that conformed to the standards prescribed by the Secretary of the Navy.

(G) The National Naval Volunteers.

(H) The Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901.

(I) The Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072).

(J) An active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist.

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

~~(A) One point for each day of—~~

~~(i) active service; or~~

~~(ii) full time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;~~

~~if that service conformed to required standards and qualifications.~~

(A) One point for each day of active service.

~~(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.~~

(B) One point for each period of reserve component duty performed by the member under section 12343 of this title or section 543 of title 32.

(C) Points at the rate of 15 a year for membership—

(i) in a reserve component of an armed force,

(ii) in the Army or the Air Force without component, or

(iii) in any other category covered by subsection (a)(1) except a regular component.

(D) Points credited for the year under section 2126(b) of this title.

~~(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.~~

(E) Points credited, as determined by the Secretary concerned, in accordance with section 12354(b) of this title, for completion of pre-approved work or completion of a pre-approved course of instruction assigned under section 12344 of this title,

For the purpose of ~~clauses (A), (B), (C), (D), and (E)~~ subparagraphs (A), (B), (C), and (D), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

(3) The person's years of active service in the Commissioned Corps of the Public Health Service.

(4) The person's years of active commissioned service in the National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Navy Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(8) Service in the screening performed pursuant to section 10149 of this title through electronic means, regardless of whether or not a stipend is paid the member concerned for such service under section 433a of title 37.

## 10 U.S.C. §12733. Computation of retired pay: computation of years of service

For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

(1) The person's days of active service.

~~(2) The person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.~~

~~(3)~~ One day for each point credited to the person ~~under clause~~ under subparagraph (B), (C), or (D) of section 12732(a)(2) of this title, but not more than—

(A) 60 days in any one year of service before the year of service that includes September 23, 1996;

(B) 75 days in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes October 30, 2000;

(C) 90 days in the year of service that includes October 30, 2000, and in any subsequent year of service before the year of service that includes October 30, 2007; and

(D) 130 days in the year of service that includes October 30, 2007, and in any subsequent year of service.

~~(4)~~ One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title.

~~(5)~~ 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 12732(a)(1) of this title, except a regular component.

**10 U.S.C. §12737. Limitation on active duty or full-time National Guard duty**

A member of the armed forces may not be ordered to active duty or full-time National Guard duty solely for the purpose of qualifying the member for retired pay under this chapter.

## 10 U.S.C. §14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer

(1) shall be treated as if the officer had not been considered and recommended for promotion by the selection board or examined and been found qualified for Federal recognition; and

(2) may not be placed on a promotion list or promoted to the higher grade after returning to an active status,

unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

(b) EFFECT OF PLACEMENT ON ACTIVE-DUTY LIST.—A reserve officer who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title and who before being promoted is placed on the active-duty list of the same armed force and placed in the same competitive category shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list for officers on the active-duty list established under chapter 36 of this title.

(c) OFFICERS ON A PROMOTION LIST REMOVED FROM ACTIVE-DUTY LIST.—An officer who is on the active-duty list and is on a promotion list as the result of selection for promotion by a selection board convened under chapter 36 of this title and who before being promoted is removed from the active-duty list and placed on the reserve active-status list of the same armed force and in the same competitive category (including a regular officer who on removal from the active-duty list is appointed as a reserve officer and placed on the reserve active-status list) shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list established under this chapter.

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—(1) Except as provided in subsection (e), if a reserve officer is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14315 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer—

(A) is ordered to active duty or full-time National Guard duty as a member of the unit in which the vacancy exists when that ~~unit is ordered to active duty~~ unit is ordered to such duty; or

(B) has been ordered to or is serving on active duty or full-time National Guard duty in support of a contingency operation.

(2) If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition.

(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—(1) A reserve component officer who is not on the active-duty list and who is ordered to active duty or full-time National Guard duty in time of war or national emergency may, if eligible, be considered for promotion—

(A) by a mandatory promotion board convened under section 14101(a) of this title or a special selection board convened under section 14502 of this title; or

(B) in the case of an officer who has been ordered to or is serving on active duty or full-time National Guard duty in support of a contingency operation, by a vacancy promotion board convened under section 14101(a) of this title, or by examination for Federal recognition under title 32.

(2) An officer may not be considered for promotion under this subsection after the end of the two-year period beginning on the date on which the officer is ordered to active duty or full-time National Guard duty.

(3) An officer may not be considered for promotion under this subsection during a period when the operation of this section has been suspended by the President under section 123(a) of this title.

(4) Consideration of an officer for promotion under this subsection shall be under regulations prescribed by the Secretary of the military department concerned.



## **10 U.S.C. §16131. Educational assistance program: establishment; amount**

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the Selected Reserve for a period of not less than six years.

(b)(1) Except as provided in subsections (d) through (f), each educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, to each person entitled to educational assistance under this chapter who is pursuing a program of education of an educational assistance allowance at the following rates:

(A) \$251 (as increased from time to time under paragraph (2)) per month for each month of full-time pursuit of a program of education;

(B) \$188 (as increased from time to time under paragraph (2)) per month for each month of three-quarter-time pursuit of a program of education;

(C) \$125 (as increased from time to time under paragraph (2)) per month for each month of half-time pursuit of a program of education; and

(D) an appropriately reduced rate, as determined under regulations which the Secretary of Veterans Affairs shall prescribe, for each month of less than half-time pursuit of a program of education, except that no payment may be made to a person for less than half-time pursuit if tuition assistance is otherwise available to the person for such pursuit from the military department concerned.

(2) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1) equal to the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under ~~section 12301(a), 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of this title~~ section 12341 of this title for a purpose specified in subsection (a), (b)(2), (b)(3), (c), or (d) of section 12351 of this title, or section 12342 of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(d)(1) Except as provided in paragraph (2), the amount of the monthly educational assistance allowance payable to a person pursuing a full-time program of apprenticeship or other on-the-job training under this chapter is—

(A) for each of the first six months of the person's pursuit of such program, 75 percent of the monthly educational assistance allowance otherwise payable to such person under this chapter;

(B) for each of the second six months of the person's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

(C) for each of the months following the first 12 months of the person's pursuit of such program, 35 percent of such monthly educational assistance allowance.

(2) In any month in which any person pursuing a program of education consisting of a program of apprenticeship or other on-the-job training fails to complete 120 hours of training, the amount of the monthly educational assistance allowance payable under this chapter to the person shall be limited to the same proportion of the applicable full-time rate as the number of hours worked during such month, rounded to the nearest 8 hours, bears to 120 hours.

(3)(A) Except as provided in subparagraph (B), for each month that such person is paid a monthly educational assistance allowance under this chapter, the person's entitlement under this chapter shall be charged at the rate of—

(i) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A);

(ii) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B); and

(iii) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C).

(B) Any such charge to the entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2).

(e)(1)(A) The amount of the educational assistance allowance payable under this chapter to a person who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such person.

(B) For purposes of subparagraph (A), the term "established charge" means the lesser of—

(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency; or

(ii) the actual charge to the person for such course or courses.

(C) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the person and serviced by the institution.

(2) In each case in which the amount of educational assistance is determined under paragraph (1), the period of entitlement of the person concerned shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to the individual as an educational assistance allowance.

(f)(1) Each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 16136(c) of this title shall be paid an educational assistance allowance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No educational assistance allowance may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the

institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The period of entitlement of an individual pursuing a program of education described in paragraph (1) shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to that individual as an educational assistance allowance for such program.

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(g)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

(i) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving individualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed \$100 for any month, nor aggregate more than \$1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of \$600.

(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of \$600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(h) A program of education in a course of instruction beyond the baccalaureate degree level shall be provided under this chapter, subject to the availability of appropriations.

(i)(1) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under subparagraphs (A) through (D) of subsection (b)(1) as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed \$350 per month.

(2) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, who is eligible for educational benefits under chapter 30 (other than section 3012) of title 38 and who meets the eligibility criteria specified in subparagraphs (A) and (B) of section 16132(a)(1) of this title, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under section 3015 of title 38 as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed \$350 per month.

(3) The authority provided by paragraphs (1) and (2) shall be exercised by the Secretaries concerned under regulations prescribed by the Secretary of Defense.

(j)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3452(b) of title 38 is the lesser of \$2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance which, but for paragraph (1), such individual would otherwise be paid under subsection (b).

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

## 10 U.S.C. §16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires on the date the person is separated from the Selected Reserve.

(b)(1) In the case of a person—

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, or the period beginning on October 1, 2007, and ending on September 30, 2014, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty ~~pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of this title~~ or full-time National Guard duty in support of a contingency operation—

(A) the period of such active ~~duty~~-service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active ~~duty~~-service.

## 10 U.S.C. §16162. Educational assistance program

(a) Program Establishment.—The Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program as prescribed in this chapter to provide educational assistance to members of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned.

(b) Authorized Education Programs.—Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(c) Benefit Amount.—(1) The educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, an educational assistance allowance to each member entitled to educational assistance under this chapter who is pursuing a program of education authorized under subsection (b).

(2) The educational assistance allowance provided under this chapter shall be based on the applicable percent under paragraph (4) to the applicable rate provided under section 3015 of title 38 for a member whose entitlement is based on completion of an obligated period of active duty of three years.

(3) The educational assistance allowance provided under this section for a person who is undertaking a program for which a reduced rate is specified in chapter 30 of title 38, that rate shall be further adjusted by the applicable percent specified in paragraph (4).

(4) The adjusted educational assistance allowance under paragraph (2) or (3), as applicable, shall be—

(A) 40 percent in the case of a member of a reserve component who performed active service for 90 consecutive days but less than one continuous year;

(B) 60 percent in the case of a member of a reserve component who performed active service for one continuous year but less than two continuous years; or

(C) 80 percent in the case of a member of a reserve component who performed active service for—

(i) two continuous years or more; or

(ii) an aggregate of three years or more.

(d) Maximum Months of Assistance.—(1) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any member under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty ~~under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title or full-time National Guard duty in support of a contingency operation~~; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(e) Availability of Assistance for Licensing and Certification Tests.—The provisions of section 16131(j) of this title shall apply to the provision of educational assistance under this chapter, except that, in applying such section under this chapter, the reference to subsection (b) in paragraph (2) of such section is deemed to be a reference to subsection (c) of this section.

(f) Contributions for Increased Amount of Educational Assistance.—(1)(A) Any individual eligible for educational assistance under this section may contribute amounts for purposes of receiving an increased amount of educational assistance as provided for in paragraph (2).

(B) An individual covered by subparagraph (A) may make the contributions authorized by that subparagraph at any time while a member of a reserve component, but not more frequently than monthly.

(C) The total amount of the contributions made by an individual under subparagraph (A) may not exceed \$600. Such contributions shall be made in multiples of \$20.

(D) Contributions under this subsection shall be made to the Secretary concerned. Such Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(2) Effective as of the first day of the enrollment period following the enrollment period in which an individual makes contributions under paragraph (1), the monthly amount of educational assistance allowance applicable to such individual under this section shall be the monthly rate otherwise provided for under subsection (c) increased by—



(A) an amount equal to \$5 for each \$20 contributed by such individual under paragraph (1) for an approved program of education pursued on a full-time basis; or

(B) an appropriately reduced amount based on the amount so contributed as determined under regulations that the Secretary of Veterans Affairs shall prescribe, for an approved program of education pursued on less than a full-time basis.

## 10 U.S.C. §16163. Eligibility for educational assistance

(a) Eligibility.—On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter ~~if the member—~~ if the member served on active duty or full-time National Guard duty in support of a contingency operation for 90 consecutive days or more.

~~(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or~~

~~(2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.~~

(b) Disabled Members.—Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.

(c) Written Notification.—(1) Each member who becomes entitled to educational assistance under subsection (a) shall be given a statement in writing prior to release from active service that summarizes the provisions of this chapter and stating clearly and prominently the substance of section 16165 of this title as such section may apply to the member.

(2) At the request of the Secretary of Veterans Affairs, the Secretary concerned shall transmit a notice of entitlement for each such member to that Secretary.

(d) Bar From Dual Eligibility.—A member who qualifies for educational assistance under this chapter may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall make an irrevocable election (in such form and manner as the Secretary of Veterans Affairs may prescribe) as to the program to which such service is to be credited.

(e) Bar From Duplication of Educational Assistance Allowance.—(1) Except as provided in paragraph (2), an individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 1606 of this title, chapter 30, 31, 32, 33, or 35 of title 38, or under the Hostage Relief Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note) may not receive assistance under more than one such program and shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) under which program the member elects to receive educational assistance.

(2) The restriction on duplication of educational assistance under paragraph (1) does not apply to the entitlement of educational assistance under section 16131(i) of this title.

## 10 U.S.C. Chapter 1805—Miscellaneous Provisions

Sec.

18501. Reserve components: personnel and logistic support by military departments.

18502. Reserve components: supplies, services, and facilities.

~~18505. Reserves traveling for inactive duty training: space required travel on military aircraft.~~

18505. Reserves traveling for reserve component duty: space-required travel on military aircraft.

[18506. Repealed.]

<sup>1</sup> So in original. No sections 18503 and 18504 have been enacted.

**10 U.S.C. §18505. Reserves traveling for ~~inactive-duty training reserve component duty~~: space-required travel on military aircraft**

(a) A member of a reserve component traveling for ~~inactive-duty training reserve component duty~~ (including a place other than the place of the member's ~~unit training assembly unit training location~~ if the member is performing ~~inactive-duty training reserve component duty~~ in another location) may travel in a space-required status on aircraft of the armed forces between the member's home and the place of the ~~inactive-duty training reserve component duty~~.

(b) A member traveling in a space-required status on any such aircraft under subsection (a) is not authorized to receive travel, transportation, or per diem allowances in connection with that travel.

**Section 546 of the National Defense Authorization Act for Fiscal Year 2004**  
**(Pub. L. 108–136, div. A, title V, §546, Nov. 24, 2003, 117 Stat. 1479)**  
**(10 U.S.C. 113 note)**

**Policy on Public Identification of Casualties**

"(a) Requirement for Policy.-Not later than 180 days after the date of the enactment of this Act [Nov. 24, 2003], the Secretary of Defense shall prescribe the policy of the Department of Defense on public release of the name or other personally identifying information of any member of the Army, Navy, Air Force, or Marine Corps who while on active duty or performing ~~inactive-duty training reserve component~~ duty is killed or injured, whose duty status becomes unknown, or who is otherwise considered to be a casualty.

"(b) Guidance on Timing of Release.-The policy under subsection (a) shall include guidance for ensuring that any public release of information on a member under the policy occurs only after the lapse of an appropriate period following notification of the next-of-kin regarding the casualty status of such member."

**Pub. L. 108–106, title I, §1120, Nov. 6, 2003, 117 Stat. 1219**

**(10 U.S.C.113, note)**

An Act — Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004; provided that:

Sec 1120. (a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

(b) Each report shall include the following information:

(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for military operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

(2) An assessment of the progress made toward preventing attacks on United States personnel.

(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under ~~section 12304 of title 10, United States Code~~ section 12341 of title 10, United States Code, for the purpose prescribed in section 12351(b)(3) of such title.

(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under ~~section 12304 of title 10, United States Code~~ section 12341 of title 10, United States Code, for the purpose prescribed in section 12351(b)(3) of such title, the following information:

(A) The unit.

(B) The projected date of return of the unit to its home station.

(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces.

**Pub. L. 108–287, title IX, §9010, Aug. 5, 2004, 118 Stat. 1008**

**(10 U.S.C. 113 note )**

Department of Defense Appropriations Act, 2005, as amended by Pub. L. 108–324, div. B, §306, Oct. 13, 2004, 118 Stat. 1243 , provided that:

(a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

(b) Each report shall include the following information:

(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for military operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

(2) An assessment of the progress made toward preventing attacks on United States personnel.

(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under ~~section 12302 of title 10, United States Code~~ section 12341 of title 10, United States Code, for the purpose prescribed in section 12351(b)(2) of such title.

(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under ~~section 12302 of title 10, United States Code~~ section 12341 of title 10, United States Code, for the purpose prescribed in section 12351(b)(2) of such title, the following information:

(A) The unit.



(B) The projected date of return of the unit to its home station.

(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces.

**§403 of the National Defense Authorization Act for Fiscal Year 1987.**

**(Public Law 99-661, as amended; 10 U.S.C.521 note)**

Sec. 403. Strength of Active Duty Officer Corps.

Pub. L. 99-661, div. A, title IV, §403, Nov. 14, 1986, 100 Stat. 3859, as amended by Pub. L. 100-456, div. A, title IV, §402(a), Sept. 29, 1988, 102 Stat. 1963; Pub. L. 101-189, div. A, title VI, §653(e)(2), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 103-337, div. A, title XVI, §1677(e), Oct. 5, 1994, 108 Stat. 3020, provided that:

(a) Reduction in Size of Officer Corps.-On and after each of the dates set forth in column 1 of the following table, the total number of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps (excluding officers in categories specified in subsection (b)) may not exceed the percentage, set forth in column 2 opposite such date, of the total number of commissioned officers serving on active duty as of September 30, 1986 (excluding officers in categories specified in subsection (b)):

Column 1	Column 2
On and after:	Percentage of total commissioned officers serving on active duty as of September 30, 1986:
September 30, 1987	99
September 30, 1988	97

(b) Exclusions.-In computing the authorized strength of commissioned officers under subsection (a), officers in the following categories shall be excluded:

(1) Reserve officers-

(A) on active duty for training;

~~(B) on active duty under section 10148(a), 10211, 10302 through 10305, 12301(a), or 12402 of title 10, United States Code or under section 708 of title 32, United States Code~~

~~(B) on active duty—~~

~~(i) under section 12341 of title 10, United States Code, for the purpose prescribed in section 12351(a) of such title; or~~

~~(ii) under section 12342 of title 10, United States Code, for a purpose prescribed in section 10211, 10302, 10303, 10304, 10305, or 12402 of such title, or section 708 of title 32, United States Code;~~

(C) on active duty under ~~section 12301(d) of title 10, United States Code, section 12342 of title 10, United States Code,~~ in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard;

(D) on active duty ~~to pursue special work~~ under section 12342 of title 10, United States Code, to provide operational support;

(E) ordered to active duty under ~~section 12304 of title 10, United States Code~~ section 12341 of title 10, United States Code, for the purpose prescribed in section 12351(b)(3) of such title; or

(F) on full-time National Guard duty.

(2) Retired officers on active duty under a call or order to active duty for 180 days or less.

(3) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) [now 50 U.S.C. 3809(b)(2)] for the administration of the Selective Service System.

(c) Apportionment of Reductions by Secretary of Defense.-The Secretary of Defense shall apportion the reductions in the number of commissioned officers serving on active duty required by subsection (a) among the Army, Navy, Air Force, and Marine Corps. Not later than February 1 of each fiscal year in which reductions are required under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the manner in which the reductions have been or are to be apportioned for that fiscal year and for the next fiscal year for which such reductions are required."

**Section 533 of the Duncan Hunter National Defense Authorization Act of 2009**  
**(10 U.S.C. Chapter 40 note)**

(a) PILOT PROGRAMS AUTHORIZED.—

(1) IN GENERAL.—Each Secretary of a military department may carry out pilot programs under which officers and enlisted members of the regular components and ~~members on active Guard and Reserve duty of the Armed Forces~~ members on active duty performing Active Guard and Reserve functions under the jurisdiction of such Secretary may be inactivated from active duty in order to meet personal or professional needs and returned to active duty at the end of such period of inactivation from active duty.

(2) PURPOSE.—The purpose of the pilot programs under this section shall be to evaluate whether permitting inactivation from active duty and greater flexibility in career paths for members of the Armed Forces will provide an effective means to enhance retention of members of the Armed Forces and the capacity of the Department of Defense to respond to the personal and professional needs of individual members of the Armed Forces.

(b) PERIOD OF INACTIVATION FROM ACTIVE DUTY; EFFECT OF INACTIVATION.—

(1) LIMITATION.—The period of inactivation from active duty under a pilot program under this section of a member participating in the pilot program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (c), except that such period may not exceed three years.

(2) EXCLUSION FROM COMPUTATION OF RESERVE COMPONENT OFFICER'S TOTAL YEARS OF SERVICE.—Any service by a ~~Reserve-reserve component~~ officer while participating in a pilot program under this section shall be excluded from computation of the officer's total years of service pursuant to section 14706(a) of title 10, United States Code.

(3) RETIREMENT AND RELATED PURPOSES.—Any period of participation of a member in a pilot program under this section shall not count toward-

(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of title 10, United States Code; or

(B) computation of retired or retainer pay under chapter 71 or 1223 of title 10, United States Code.

(c) AGREEMENT.—Each member of the Armed Forces who participates in a pilot program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of the Armed Force concerned during the period of the member's inactivation from active duty under the pilot program.

(2) To undergo during the period of the inactivation of the member from active duty under the pilot program such ~~inactive-duty training-reserve component duty~~ as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the member's military skills, professional qualifications, and physical readiness during the inactivation of the member from active duty.

(3) Following completion of the period of the inactivation of the member from active duty under the pilot program, to serve two months as a member of the Armed Forces on active duty for each month of the period of the inactivation of the member from active duty under the pilot program.

(d) **CONDITIONS OF RELEASE.**—The Secretary of Defense shall issue regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (c). At a minimum, the Secretary shall prescribe the procedures and standards to be used to instruct a member on the obligations to be assumed by the member under paragraph (2) of such subsection while the member is released from active duty.

(e) **ORDER TO ACTIVE DUTY.**—Under regulations prescribed by the Secretary of the military department concerned, a member of the Armed Forces participating in a pilot program under this section may, in the discretion of such Secretary, be required to terminate participation in the pilot program and be ordered to active duty.

(f) **PAY AND ALLOWANCES.**—

(1) **BASIC PAY.**—During each month of participation in a pilot program under this section, a member who participates in the pilot program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the member would otherwise be entitled under section 204 of title 37, United States Code, as a member of the uniformed services on active duty in the grade and years of service of the member when the member commences participation in the pilot program.

(2) **PROHIBITION ON RECEIPT OF SPECIAL AND INCENTIVE PAYS.**—

(A) **PROHIBITION ON RECEIPT DURING PARTICIPATION.**—A member who participates in a pilot program shall not, while participating in the pilot program, be paid any special or incentive pay or bonus to which the member is otherwise entitled under an agreement under chapter 5 of title 37, United States Code, that is in force when the member commences participation in the pilot program.

(B) **TREATMENT OF REQUIRED SERVICE.**—The inactivation from active duty of a member participating in a pilot program shall not be treated as a failure of the member to perform any period of service required of the member in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37, United States Code, that is in force when the member commences participation in the pilot program.

(3) **REVIVAL OF SPECIAL PAYS UPON RETURN TO ACTIVE DUTY.**—

(A) REVIVAL REQUIRED.—Subject to subparagraph (B), upon the return of a member to active duty after completion by the member of participation in a pilot program-

(i) any agreement entered into by the member under chapter 5 of title 37, United States Code, for the payment of a special or incentive pay or bonus that was in force when the member commenced participation in the pilot program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run when the member commenced participation in the pilot program; and

(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

(B) LIMITATIONS.—

(i) LIMITATION AT TIME OF RETURN TO ACTIVE DUTY.—Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active duty as described in that subparagraph—

(I) such pay or bonus is no longer authorized by law; or

(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active duty.

(ii) CESSATION DURING LATER SERVICE.—Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

(C) REPAYMENT.—A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37, United States Code.

(D) CONSTRUCTION OF REQUIRED SERVICE.—Any service required of a member under an agreement covered by this paragraph after the member returns to active duty as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (c).

(4) CERTAIN TRAVEL AND TRANSPORTATION ALLOWANCES.—

(A) IN GENERAL.—Subject to subparagraph (B), a member who participates in a pilot program is entitled, while participating in the pilot program, to the travel and transportation allowances authorized by section 474 of title 37, United States Code, for-

(i) travel performed from the member's residence, at the time of release from active duty to participate in the pilot program, to the location in the United States designated by the member as his residence during the period of participation in the pilot program; and

(ii) travel performed to the member's residence upon return to active duty at the end of the member's participation in the pilot program.

(B) LIMITATION.—An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

(5) LEAVE.—A member who participates in a pilot program is entitled to carry forward the leave balance existing as of the day on which the member begins participation and accumulated in accordance with section 701 of title 10, United States Code, but not to exceed 60 days.

(g) PROMOTION.—

(1) OFFICERS.—

(A) LIMITATION ON PROMOTION.—An officer participating in a pilot program under this section shall not, while participating in the pilot program, be eligible for consideration for promotion under chapter 36 or 1405 of title 10, United States Code.

(B) PROMOTION AND RANK UPON RETURN TO ACTIVE DUTY.—Upon the return of an officer to active duty after completion by the officer of participation in a pilot program-

(i) the Secretary of the military department concerned shall adjust the officer's date of rank in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(2) ENLISTED MEMBERS.—An enlisted member participating in a pilot program shall not be eligible for consideration for promotion during the period that-

(A) begins on the date of the member's inactivation from active duty under the pilot program; and

(B) ends at such time after the return of the member to active duty under the pilot program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the pilot program.

(h) CONTINUED ENTITLEMENTS.—A member participating in a pilot program under this section shall, while participating in the pilot program, be treated as a member of the Armed Forces on active duty for a period of more than 30 days for purposes of-

(1) the entitlement of the member and the member's dependents to medical and dental care under the provisions of chapter 55 of title 10, United States Code; and

(2) retirement or separation for physical disability under the provisions of chapters 55 and 61 of title 10, United States Code.

(i) REPORTS.—

(1) INTERIM REPORTS.—Not later than June 1 of 2011, 2013, 2015, 2017, and 2019, the Secretary of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation and current status of the pilot programs conducted by such Secretary under this section.

(2) FINAL REPORT.—Not later than March 1, 2023, the Secretary of Defense shall submit to the congressional defense committees a report on the pilot programs conducted under this section.

(3) ELEMENTS OF REPORT.—Each interim report and the final report under this subsection shall include the following:

(A) A description of each pilot program conducted under this section, including a description of the number of applicants for such pilot program and the criteria used to select individuals for participation in such pilot program.

(B) An assessment by the Secretary concerned of the pilot programs, including an evaluation of whether—

(i) the authorities of the pilot programs provided an effective means to enhance the retention of members of the Armed Forces possessing critical skills, talents, and leadership abilities;

(ii) the career progression in the Armed Forces of individuals who participate in the pilot program has been or will be adversely affected; and

(iii) the usefulness of the pilot program in responding to the personal and professional needs of individual members of the Armed Forces.

(C) Such recommendations for legislative or administrative action as the Secretary concerned considers appropriate for the modification or continuation of the pilot programs.

(4) ADDITIONAL ELEMENTS FOR FINAL REPORT.—In addition to the elements required by paragraph (3), the final report under this subsection shall include the following:

(A) A description of the costs to each military department of each pilot program conducted under this section.

(B) A description of the reasons why members choose to participate in the pilot programs.



(C) A description of the members who did not return to active duty at the conclusion of their inactivation from active duty under the pilot programs, and a statement of the reasons why the members did not return to active duty.

(D) A statement whether members were required to perform ~~inactive-duty training reserve component duty~~ as part of their participation in the pilot programs, and if so, a description of the members who were required to perform such ~~inactive-duty training reserve component duty~~, a statement of the reasons why the members were required to perform such ~~inactive-duty training reserve component duty~~, and a description of how often the members were required to perform such ~~inactive-duty training reserve component duty~~.

~~(j) Definition. In this section, the term 'active Guard and Reserve duty' has the meaning given that term in section 101(d)(6) of title 10, United States Code.~~

~~(j) DEFINITIONS. In this section—~~

~~(1) The term 'Active Guard and Reserve functions' has the meaning given that term in section 101(c)(8) of title 10, United States Code.~~

~~(2) The term 'active duty' includes full-time National Guard duty.~~

(k) DURATION OF PROGRAM AUTHORITY.—

(1) No member of the Armed Forces may be released from active duty under a pilot program conducted under this section after December 31, 2019.

(2) A member may not be reactivated to active duty in the Armed Forces under a pilot program conducted under this section after December 31, 2022.

**Section 344 of the National Defense Authorization Act for Fiscal Year 2004  
(Public Law 108-136; Section 344; Nov 24, 2003, as amended;  
(10 U.S.C. Ch. 53, front matter note [Miscellaneous Rights and Benefits])**

**Department of Defense Telecommunications Benefit**

(a) Provision of Benefit.—(1) The Secretary of Defense shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service, to members of the Armed Forces stationed outside the United States who (as determined by the Secretary) are eligible for combat zone tax exclusion benefits due to their service in ~~direct~~ support of a contingency operation to enable those members to make telephone calls without cost to the member.

(2) As soon as possible after the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Oct. 17, 2006], the Secretary shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service to members of the Armed Forces who, although are no longer ~~directly supporting serving in support of~~ a contingency operation, are hospitalized as a result of wounds or other injuries incurred while serving in ~~direct~~ support of a contingency operation.

(b) Monthly Benefit.—The value of the benefit provided under subsection (a) to any member in any month, to the extent the benefit is provided from amounts available to the Department of Defense, may not exceed—

(1) \$40; or

(2) 120 calling minutes, if the cost to the Department of Defense of providing such number of calling minutes is less than the amount specified in paragraph (1).

(c) Termination of Benefit.—The authority to provide a benefit under subsection (a)(1) to a member directly supporting a contingency operation shall terminate on the date that is 60 days after the date on which the Secretary determines that the contingency operation has ended.

(d) Funding.—(1)(A) In carrying out the program under this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, free or reduced-cost services of private sector entities, and programs to enhance morale and welfare.

(B) The Secretary may not award a contract to a commercial firm for the purposes of subparagraph (A) other than through the use of competitive procedures.

(2) The Secretary may accept gifts and donations in order to defray the costs of the program under this section. Such gifts and donations may be accepted from—

(A) any foreign government;

(B) any foundation or other charitable organization, including any that is organized or operates under the laws of a foreign country; and

(C) any source in the private sector of the United States or a foreign country.

(e) Deployment of Additional Telephone Equipment or Internet Access.—If the Secretary of Defense determines that, in order to implement this section as quickly as practicable, it is necessary to provide additional telephones or Internet service in any area to facilitate telephone or packet based telephony calling for which benefits are provided under this section, the Secretary may, consistent with the availability of resources, award competitively bid contracts to one or more commercial entities for the provision and installation of telephones or Internet access in that area.

(f) No Compromise of Military Mission.—The Secretary of Defense should not take any action under this section that would compromise the military objectives or mission of the Department of Defense.

(g) Contingency Operation Defined.—In this section, the term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code. The term includes Operation Iraqi Freedom and Operation Enduring Freedom."

# **TITLE 11**

## **Bankruptcy**

## 11 U.S.C. §707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,000, whichever is greater; or

(II) \$10,000.

(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 302 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional

allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses. Such monthly expenses may include, if applicable, contributions to an account of a qualified ABLE program to the extent such contributions are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986) and if the designated beneficiary of such account is a child, stepchild, grandchild, or stepgrandchild of the debtor.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed \$1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the filing of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty or full-time National Guard duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims, or \$6,000, whichever is greater; or

(II) \$10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing—

(i) if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

(I) on active duty (as defined in section 101(d)(1) of title 10); or

~~(II) performing a homeland defense activity (as defined in section 901(1) of title 32);~~  
or

(II) on full-time National Guard duty (as defined in section 101(19) of title 32); or

(ii) with respect to the debtor, while the debtor is—

(I) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or

~~(II) performing, and during the 540-day period beginning immediately after the debtor is no longer performing homeland defense activities (as defined in section 901(1) of title 32) performed for a period of not less than 90 days; released from, a period of full-time National Guard duty (as defined in section 101(19) of title 32) of not less than 90 days;~~

(II) on, and during the 540-day period beginning immediately after the debtor is released from, a period of full-time National Guard duty (as defined in section 101(19) of title 32) of not less than 90 days;

if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, ~~was called to such active duty or performed such homeland defense activity~~ was called or ordered to active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(I) grants such motion; and

(II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—



(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

(i) the court does not grant the motion; and

(ii) the court finds that—

(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than \$1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph—

(i) the term "small business" means an unincorporated business, partnership, corporation, association, or organization that—

(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(II) is engaged in commercial or business activity; and

(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

(I) a parent corporation; and

(II) any other subsidiary corporation of the parent corporation.

(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4.

(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury—

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

(c)(1) In this subsection—

(A) the term "crime of violence" has the meaning given such term in section 16 of title 18; and

(B) the term "drug trafficking crime" has the meaning given such term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.

# **TITLE 14**

## **Coast Guard**

#### 14 U.S.C. §2102. Active duty promotion list

(a) The Secretary shall maintain a single active duty promotion list of officers of the Coast Guard on active duty in the grades of ensign and above. Reserve officers on active duty, other than pursuant to an active duty agreement executed under ~~section 12311 of title 10~~ section 12315 of title 10, retired officers, and officers of the permanent commissioned teaching staff of the Coast Guard Academy shall not be included on the active duty promotion list.

(b) Officers shall be carried on the active duty promotion list in the order of seniority of the grades in which they are serving. Officers serving in the same grade shall be carried in the order of their seniority in that grade. The Secretary may correct any erroneous position on the active duty promotion list that was caused by administrative error.

(c) A person appointed in the grade of ensign or above in the Regular Coast Guard shall be placed on the active duty promotion list in the order of his date of rank and seniority.

(d) A Reserve officer, other than one excluded by subsection (a), shall, when he enters on active duty, be placed on the active duty promotion list in accordance with his grade and seniority. The position of such a Reserve officer among other officers of the Coast Guard on active duty who have the same date of rank shall be determined by the Secretary.

#### 14 U.S.C. §2508. Emergency leave retention authority

(a) In General.-A duty assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or in response to a spill of national significance shall be treated, for the purpose of section 701(f)(2) of title 10, as a duty assignment in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(b) Definitions.-In this section:

(1) Spill of national significance.-The term "spill of national significance" means a discharge of oil or a hazardous substance that is declared by the Commandant to be a spill of national significance.

(2) Discharge.-The term "discharge" has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

#### **14 U.S.C. §3704. Grades and ratings; military authority**

The grades and ratings in the Reserve, including cadets but not grades above rear admiral, are those prescribed by law or regulation for the Coast Guard. A member of the Reserve on active duty or ~~inactive-duty training~~ reserve component duty has the same authority, rights, and privileges in the performance of that duty as a member of the Regular Coast Guard of corresponding grade or rating.

## 14 U.S.C. §3705. Benefits

(a) A member of the Reserve on active duty, on ~~inactive-duty training~~ reserve component duty, or engaged in authorized travel to or from that duty, is entitled to the same benefits as a member of the Navy Reserve of corresponding grade, rating, and length of service. In determining length of service for the purpose of this section, there shall be included all service for which credit is given by law to members of the Regular Coast Guard.

(b) Chapter 13 of this title applies to a member of the Reserve under the same conditions and limitations as it applies to a member of the Regular Coast Guard.

(c) A member of the Reserve who suffers sickness, disease, disability, or death is entitled to the same benefits as prescribed by law for a member of the Navy Reserve who suffers sickness, disease, disability, or death under similar conditions.

(d) A member of the Reserve on active duty or when retired for disability is entitled to the benefits of section 253(a) of title 42. A member of the Reserve when on active duty (other than for training) or when retired for disability is entitled to the benefits of chapter 55 of title 10.

(e) A member of the Reserve, except an enlisted member retiring on the basis of years of active service, is entitled to the same retirement rights, benefits, and privileges as prescribed by law for a member of the Navy Reserve, and wherever a law confers authority upon the Secretary of the Navy, similar authority is given to the Secretary to be exercised with respect to the Coast Guard when the Coast Guard is not operating as a service in the Navy. An enlisted member of the Reserve who retires on the basis of years of active service is entitled to the same retirement rights, benefits, and privileges as prescribed by law for an enlisted member of the Regular Coast Guard.

(f) A member of the Coast Guard Reserve not on active duty who is enrolled in an officer candidate program authorized by section 12209 of title 10 leading to a commission in the Coast Guard Reserve, and is a full-time student in an accredited college curriculum leading to a bachelor's degree may be paid a subsistence allowance for each month of the member's academic year at the same rate as that prescribed by section 209(a) of title 37.



#### 14 U.S.C. §3713. Active duty for emergency augmentation of regular forces

(a) Notwithstanding another law, and for the emergency augmentation of the Regular Coast Guard forces during a, or to aid in prevention of an imminent, serious natural or manmade disaster, accident, catastrophe, act of terrorism (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)), or transportation security incident as defined in section 70101 of title 46, the Secretary may, without the consent of the member affected, order to active duty of not more than 120 days ~~in any 2-year period~~ an organized training unit of the Coast Guard Ready Reserve, a member thereof, or a member not assigned to a unit organized to serve as a unit.

(b) Under the circumstances of the domestic emergency involved, a reasonable time shall be allowed between the date when a Reserve member ordered to active duty under this section is alerted for that duty and the date when the member is required to enter upon that duty. Unless the Secretary determines that the nature of the domestic emergency does not allow it, this period shall be at least two days.

(c) Active duty served under this section—

(1) satisfies on a day-for-day basis all or a part of the annual active duty for ~~training requirement of section 10147 of title 10~~ training requirements prescribed in section 12352(c) of title 10;

(2) does not satisfy any part of the active duty obligation of a member whose statutory Reserve obligation is not already terminated; and

(3) entitles a member while engaged therein, or while engaged in authorized travel to or from that duty, to all rights and benefits, including pay and allowances and time creditable for pay and retirement purposes, to which the member would be entitled while performing other active duty.

(d) Reserve members ordered to active duty under this section shall not be counted in computing authorized strength of members on active duty or members in grade under this title or under any other law.

~~(e) For purposes of calculating the duration of active duty allowed pursuant to subsection (a), each period of active duty shall begin on the first day that a member reports to active duty, including for purposes of training.~~

**Section 204(d)(2) of the Coast Guard Authorization Act of 1989 (P.L. 101-225, title II, §204, Dec. 12, 1989)**

**(14 U.S.C 501 note)**

(a) In General.-The Secretary of the department in which the Coast Guard is operating (hereinafter in this section referred to as the 'Secretary') may carry out a pilot program to establish and maintain a junior reserve officers training program in cooperation with the Dade County Public School System of Dade County, Florida, as part of the Maritime and Science Technology Academy established by that school system (hereinafter in this section referred to as the 'Academy').

(b) Program Requirements.-A pilot program carried out by the Secretary under this section-

(1) shall be known as the 'Claude Pepper Junior Reserve Officers Training Program', and

(2) shall provide to students at the Academy-

(A) instruction in subject areas relating to operations of the Coast Guard; and

(B) training in skills which are useful and appropriate for a career in the Coast Guard.

(c) Provision of Additional Support.-To carry out a pilot program under this section, the Secretary may provide to the Academy-

(1) assistance in course development, instruction, and other support activities;

(2) commissioned, warrant, and petty officers of the Coast Guard to serve as administrators and instructors; and

(3) necessary and appropriate course materials, equipment, and uniforms.

(d) Employment of Retired Coast Guard Personnel.-

(1) In general.-Subject to paragraph (2) of this subsection, the Secretary may authorize the Academy to employ as administrators and instructors for the pilot program retired Coast Guard and Coast Guard Reserve commissioned, warrant, and petty officers who request that employment and who are approved by the Secretary and the Academy.

(2) Authorized pay.- (A) Retired members employed under paragraph (1) of this subsection are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between-

(i) the amount the individual would be paid as pay and allowance if they were considered to have been ordered to active duty during that period of employment; and

(ii) the amount of retired pay the individual is entitled to receive during that period.

(B) The Secretary shall pay to the Academy an amount equal to one half of the amount described in subparagraph (A) of this paragraph, from funds appropriated for that purpose.

(C) Notwithstanding any other law, while employed under this subsection, an individual is not considered to be on active duty or ~~inactive duty training reserve component duty~~.

# **TITLE 15**

## **Commerce and Trade**

### **§ 3 of the Small Business Act. (§ 3(q)(5)(A)(i))**

#### **[15 U.S.C. 632. Definitions.]**

(a) SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—For the purposes of this Act, a small business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

(2) ESTABLISHMENT OF SIZE STANDARDS.—

(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

(B) ADDITIONAL CRITERIA.—The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) REQUIREMENTS.—Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years;  
or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) VARIATION BY INDUSTRY AND CONSIDERATION OF OTHER FACTORS.—When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4) EXCLUSION OF CERTAIN SECURITY EXPENSES FROM CONSIDERATION FOR PURPOSE OF SMALL BUSINESS SIZE STANDARDS.—

(A) DETERMINATION REQUIRED.—Not later than 30 days after the date of enactment of this paragraph, the Administrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and

determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area

(B) ACTION REQUIRED.—Not later than 60 days after the date of enactment of this paragraph, the Administrator shall either—

- (i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or
- (ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) QUALIFIED AREAS.—In this paragraph, the term “qualified area” means—

- (i) Iraq,
- (ii) Afghanistan, and
- (iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of the Internal Revenue Code of 1986, at the time of performance of the relevant Federal contract or subcontract.

(5) ALTERNATIVE SIZE STANDARD.—

(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

- (i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and
- (ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) PROPOSED RULEMAKING.—In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

- (A) a detailed description of the industry for which the new size standard is proposed;
- (B) an analysis of the competitive environment for that industry;
- (C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rulemaking; and

(D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rulemaking and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) COMMON SIZE STANDARDS.—In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) NUMBER OF SIZE STANDARDS.—The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(9) PETITIONS FOR RECONSIDERATION OF SIZE STANDARDS.—

(A) IN GENERAL.—A person may file a petition for reconsideration with the Office of Hearings and Appeals (as established under section 5(i)) of a size standard revised, modified, or established by the Administrator pursuant to this subsection.

(B) TIME LIMIT.—A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

(C) PROCESS FOR AGENCY REVIEW.—The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) JUDICIAL REVIEW.—The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E) RULES OR GUIDANCE.—The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size standards revised, modified, or established in a Federal Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

(b) For purposes of this Act, any reference to an agency or department of the United States, and the term “Federal agency,” shall have the meaning given the term “agency” by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

(c)(1) For purposes of this Act, a qualified employee trust shall be eligible for any loan guarantee under section 7(a) with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this Act, the term “qualified employee trust” means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1954)—

(i) which is maintained by such concern, and

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of such Code) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator of which enters into an agreement with the Administrator which is binding on the trust and no such small business concern and which provides that—

(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern.

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and (iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant’s account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employee of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1954).

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Administrator may prescribe, and



(C) in the case of a loan guarantee under section 7(a), such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d) For purposes of section 7 of this Act, the term “qualified Indian tribe” means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern.

(e) For purposes of section 7 of this Act, the term “public or private organization for the handicapped” means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f) For purposes of section 7 of this Act, the term “handicapped individual” means an individual—

(1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or

(2) who is a service-disabled veteran.

(g) For purposes of section 7 of this Act, the term “energy measures” includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination equipment;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) The term “credit elsewhere” means—

(1) for the purposes of this Act (except as used in section 7(b)), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources, considering factors associated with conventional lending practices, including—

(A) the business industry in which the loan applicant operates;

(B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;

(C) the adequacy of the collateral available to secure the requested loan;

(D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and

(E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

(2) for the purposes of section 7(b), the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.

(i) For purposes of section 7 of this Act, the term “homeowners” includes owners and lessees of residential property and also includes personal property.

(j) For the purposes of this Act, the term “small agricultural cooperative” means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k)(1) For the purposes of this Act, the term “disaster” means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(2) For purposes of section 7(b)(2), the term “disaster” includes—

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C) ice storms and blizzards.

(l) For purposes of this Act—

(1) the term “computer crime” means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) DEFINITIONS RELATING TO CONTRACTING.—In this Act:

(1) PRIME CONTRACT.—The term “prime contract” has the meaning given such term in section 8701(4) of title 41, United States Code.

(2) PRIME CONTRACTOR.—The term “prime contractor” has the meaning given such term in section 8701(5) of title 41, United States Code.

(3) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified acquisition threshold” has the meaning given such term in section 134 of title 41, United States Code.

(4) MICRO-PURCHASE THRESHOLD.—The term “micro-purchase threshold” has the meaning given such term in section 1902 of title 41, United States Code.

(5) TOTAL PURCHASES AND CONTRACTS FOR PROPERTY AND SERVICES.—The term “total purchases and contracts for property and services” shall mean total number and total dollar amount of contracts and orders for property and services. (n) For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—In this Act:

(1) BUNDLED CONTRACT.—The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

(A) the diversity, size, or specialized nature of the elements of the performance specified;

(B) the aggregate dollar value of the anticipated award;

(C) the geographical dispersion of the contract performance sites; or

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) SEPARATE SMALLER CONTRACT.—The term “separate smaller contract”, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) DEFINITIONS RELATING TO HUBZONES.—In this Act:

(1) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term “historically underutilized business zone” means any area located within 1 or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D) redesignated areas;

(E) base closure areas; or

(F) qualified disaster areas.

(2) HUBZONE.—The term “HUBZone” means a historically underutilized business zone.

(3) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone small business concern” means—

(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2));

(C) a small business concern—

(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D) a small business concern—

(i) that is wholly owned by one or more Native Hawaiian Organizations (as defined in section 8(a)(15)), or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

(ii) that is owned in part by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns;

(E) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(F) a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(4) QUALIFIED AREAS.—

(A) QUALIFIED CENSUS TRACT.—

(i) IN GENERAL.—The term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986.

(ii) EXCEPTION.—For any metropolitan statistical area in the Commonwealth of Puerto Rico, the term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 as applied without regard to subclause (II) of such section, except that this clause shall only apply—

(I) 10 years after the date that the Administrator implements this clause, or

(II) the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist, whichever event occurs first.

(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified nonmetropolitan county” means any county—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986; and

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;

(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of

1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C) REDESIGNATED AREA.—The term “redesignated area” means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a “redesignated area” only until the later of—

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) BASE CLOSURE AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “base closure area” means—

(I) lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(aa) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(bb) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(cc) section 2687 of title 10, United States Code; or

(dd) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(II) the census tract or nonmetropolitan county in which the lands described in subclause (I) are wholly contained;

(III) a census tract or nonmetropolitan county the boundaries of which intersect the area described in subclause (I); and

(IV) a census tract or nonmetropolitan county the boundaries of which are contiguous to the area described in subclause (II) or subclause (III).

(ii) LIMITATION.—A base closure area shall be treated as a HUBZone—

(I) with respect to a census tract or nonmetropolitan county described in clause (i), for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the date the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph

(A) or (B) in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area; and

(II) if such area was treated as a HUBZone at any time after 2010, until such time as the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B), after the 2020 decennial census.

(iii) DEFINITIONS.—In this subparagraph:

(I) CENSUS TRACT.—The term “census tract” means a census tract delineated by the United States Bureau of the Census in the most recent decennial census that is not located in a non-metropolitan county and does not otherwise qualify as a qualified census tract.

(II) NONMETROPOLITAN COUNTY.—The term “nonmetropolitan county” means a county that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts and does not otherwise qualify as a qualified nonmetropolitan county.

(E) QUALIFIED DISASTER AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “qualified disaster area” means any census tract or nonmetropolitan county located in an area for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or located in an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be qualified under subparagraph (A) or (B), as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date, except that such census tract or nonmetropolitan county may be a “qualified disaster area” only—

(I) in the case of a major disaster declared by the President, during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; and

(II) in the case of a catastrophic incident, during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

(ii) LIMITATION.—A qualified disaster area described in clause (i) shall be treated as a HUBZone for a period of not less than 8 years, beginning on the date the Administrator makes a final determination as to whether or not to implement the designations described in subparagraphs (A) and (B) in accordance with the results of the decennial census conducted after the area was initially designated as a qualified disaster area.

(5) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—A HUBZone small business concern is “qualified”, if—

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I) it is a HUBZone small business concern—

(aa) pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone;

(bb) pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), that its principal office is located within a base closure area and that not fewer than 35 percent of its employees reside in such base closure area or in another HUBZone; or

(cc) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that the requirements of section 46 are satisfied; and

(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 31(c)(1)—

(I) successfully challenged by an interested party; or

(II) otherwise determined by the Administrator to be materially false.

(B) LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—

The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually; and

(iii) be provided upon request to any Federal agency or other entity.

(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

(A) ALASKA NATIVE CORPORATION.—The term “Alaska Native Corporation” has the same meaning as the term “Native Corporation” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(B) ALASKA NATIVE VILLAGE.—The term “Alaska Native Village” has the same meaning as the term “Native village” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(C) INDIAN RESERVATION.—The term “Indian reservation”—

(i) has the same meaning as the term “Indian country” in section 1151 of title 18, United States Code, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of the enactment of this paragraph, unless that tribe is recognized after



that date of the enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

(II) lands taken into trust or acquired by an Indian tribe after the date of the enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of the enactment; and

(ii) in the State of Oklahoma, means lands that—

(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(7) AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

[Note: Subsection (p) (as added by section 1701(a)(3) of Public Law 115–91) takes effect on January 1, 2020 pursuant to section 1701(j) of such Public Law.]

(p) *QUALIFIED HUBZONE SMALL BUSINESS CONCERN.*—*In this*

*Act, the term “qualified HUBZone small business concern” has the meaning given such term in section 31(b).*

(q) DEFINITIONS RELATING TO VETERANS.—In this Act, the following definitions apply:

(1) SERVICE-DISABLED VETERAN.—The term “service-disabled veteran” means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

[Note: Section 1832(a)(1) of division A of Public Law 114–328 amends paragraph (2) to read as follows. Subsection (e) of such section provides: “The amendments made by subsections (a), (b), (c), and (d) shall take effect on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue regulations implementing such sections.”. Upon such effective date, paragraph (2) is amended to read as follows:]

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” means any of the following:

(A) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and

(ii) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(B) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or

(ii) in the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

(C)(i) During the time period described in clause (ii), a small business concern that was a small business concern described in subparagraph (A) or (B) immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, if—

(I) the surviving spouse of the deceased veteran acquires such veteran's ownership interest in such concern;

(II) such veteran had a service-connected disability (as defined in section 101(16) of title 38, United States Code) rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such veteran died as a result of a service-connected disability; and

(III) immediately prior to the death of such veteran, and during the period described in clause (ii), the small business concern is included in the database described in section 8127(f) of title 38, United States Code.

(ii) The time period described in this clause is the time period beginning on the date of the veteran's death and ending on the earlier of—

(I) the date on which the surviving spouse remarries;

(II) the date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(III) the date that is 10 years after the date of the death of the veteran.

(3) **SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.**—The term “small business concern owned and controlled by veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) VETERAN.—The term “veteran” has the meaning given the term in section 101(2) of title 38, United States Code.

(5) RELIEF FROM TIME LIMITATIONS.—

(A) IN GENERAL.—Any time limitation on any qualification, certification, or period of participation imposed under this Act on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty ~~under a provision of law specified in section 101(a)(13)(B) of title 10, United States Code, or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code)~~ on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of ~~active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) duty pursuant to a call or order to active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code)~~ on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) DURATION.—Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM ACT OF 1990.—The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

[Note: Section 1832(a)(2) of division A of Public Law 114–328 amends subsection (q) by adding at the end new paragraphs. Subsection (e) of such section provides: “The amendments made by subsections (a), (b), (c), and (d) shall take effect on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue regulations implementing such sections.”. Upon such effective date, paragraphs (6) and (7) (as added) read as follows:]

(6) ESOP.—The term “ESOP” has the meaning given the term “employee stock ownership plan” in section 4975(e)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)).

(7) SURVIVING SPOUSE.—The term “surviving spouse” has the meaning given such term in section 101(3) of title 38, United States Code.

(f) DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.—As used in section 23 of this Act:

(1) SMALL BUSINESS LENDING COMPANY.—The term “small business lending company” means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) NON-FEDERALLY REGULATED LENDER.—The term “non-Federally regulated lender” means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 7;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(s) MAJOR DISASTER.—In this Act, the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(t) SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term “small business development center” means a small business development center described in section 21.

(u) REGION OF THE ADMINISTRATION.—In this Act, the term “region of the Administration” means the geographic area served by a regional office of the Administration established under section 4(a).

(v) MULTIPLE AWARD CONTRACT.—In this Act, the term “multiple award contract” means—

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) PRESUMPTION.—

(1) IN GENERAL.—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) DEEMED CERTIFICATIONS.—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.—

(A) IN GENERAL.—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) CONTENT OF CERTIFICATIONS.—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) ANNUAL CERTIFICATION.—

(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) AQUACULTURE BUSINESS DISASTER ASSISTANCE.—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.

(aa) VENTURE CAPITAL OPERATING COMPANY.—In this Act, the term “venture capital operating company” means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) HEDGE FUND.—In this Act, the term “hedge fund” has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(cc) PRIVATE EQUITY FIRM.—In this Act, the term “private equity firm” has the meaning given the term “private equity fund” in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(dd) DEFINITIONS PERTAINING TO SUBCONTRACTING.—In this Act:

(1) Subcontract.—The term “subcontract” means a legally binding agreement between a contractor that is already under contract to another party to perform work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) FIRST TIER SUBCONTRACTOR.—The term “first tier subcontractor” means a subcontractor who has a subcontract directly with the prime contractor.

(3) AT ANY TIER.—The term “at any tier” means any subcontractor other than a subcontractor who is a first tier subcontractor.

**§ 7 of the Small Business Act**

**Section 7(a)(31)(G)(iii)(V) [scroll down 12 pages to (a)(31)(G)(iii)(V)]**

**Section 7(n)(1)(A) & (C) [scroll down 58 pages to (n)(1)(A) & (C)]**

**[15 U.S.C. 636. Additional Powers]**

(a) LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—

(i) IN GENERAL.—The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain credit elsewhere. No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

(ii) LIQUIDITY.—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the lender determines that the borrower is unable to obtain credit elsewhere solely because the liquidity of the lender depends upon the guaranteed portion of the loan being sold on the secondary market.

(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(C) LENDING LIMITS OF LENDERS.—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose for requesting the guarantee is to allow the lender to exceed the legal lending limit of the lender.

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), and (E), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000; or

(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$150,000.

(B) REDUCED PARTICIPATION UPON REQUEST.—

(i) IN GENERAL.—The guarantee percentage specified by subparagraph (A) for any loan under this subsection may be reduced upon the request of the participating lender.

(ii) PROHIBITION.—The Administration shall not use the guarantee percentage requested by a participating lender under clause (i) as a criterion for establishing priorities in approving loan guarantee requests under this subsection.

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

(ii) EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.

(iii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term ‘Preferred Lenders Program’ means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

(II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—In an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be 90 percent.

(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

(3) No loan shall be made under this subsection—

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed \$3,750,000 (or if the gross loan amount would exceed \$5,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed \$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000 may be used for working capital, supplies, or financings under section 7(a)(14) for export purposes; and

(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed \$350,000.

(4) INTEREST RATES AND PREPAYMENT CHARGES.—



(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided*, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

(B) PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(iii) APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C) PREPAYMENT CHARGES.—

(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

(I) the loan is for a term of not less than 15 years;

(II) the prepayment is voluntary;

(III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

(IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

(I) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment:

*Provided, however, That—*

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining “sound value” shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further,* That such status need not be as sound as that required for general loans under this subsection; and

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further,* That any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

(7) The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

(8) The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38, United States Code).

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale: *Provided, however,* That such loans shall not be used primarily for the acquisition of land.

(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 2(c) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(12)(A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer,

manufacture, distribute, market, install, or service energy measures: *Provided, however,* That such loan proceeds shall not be used primarily for research and development.

(b) The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than \$1,000,000.

(13) The Administration may provide financing under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

(14) EXPORT WORKING CAPITAL PROGRAM.—

(A) IN GENERAL.—The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(B) TERMS.—

(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

(ii) FEES.—

(I) In General.—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

(II) Untapped Credit.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.

(C) CONSIDERATIONS.—When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

(D) MARKETING.—The Administrator shall aggressively market its export financing program to small businesses.

(15)(A) The Administration may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern.

(B) The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1954), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated, and

(iii) there will be adequate management to assure management expertise and continuity.

(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration.

#### (16) INTERNATIONAL TRADE.—

(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern—

(i) in the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade;

(ii) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this subsection; or

(iii) by providing working capital.

#### (B) SECURITY.—

(i) IN GENERAL.—Except as provided in clause (ii), each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(ii) Exception.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small

business concern is in a position to expand existing export markets or develop new export markets.

(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

- (i) is confronting increased competition with foreign firms in the relevant market; and
- (ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.

(F) LIST OF EXPORT FINANCE LENDERS.—

(i) PUBLICATION OF LIST REQUIRED.—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

- (I) this paragraph;
- (II) paragraph (14); or
- (III) paragraph (34).

(ii) AVAILABILITY OF LIST.—The Administrator shall—

- (I) post the list published under clause (i) on the website of the Administration; and
- (II) make the list published under clause (i) available, upon request, at each district office of the Administration.

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

- (i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.
- (ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.
- (iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.
- (iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of \$50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) Authority to liquidate loans.—

(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

(ii) Automatic approval.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a).

Such assistance may be provided only if the Administration determines that—

(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

(i) that is subordinated by its terms to all other borrowings of the issuer;

(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

(iii) the term of which is not more than twenty-five years; and

(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

(21)(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(I) the closure (or substantial reduction) of a Department of Defense installation; or

(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

(D) For purposes of this paragraph a qualified individual is—

(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

(E) **JOB CREATION AND COMMUNITY BENEFIT.**—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

(i) have the greatest potential for—

(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

(22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

(23) **YEARLY FEE.**—

(A) **IN GENERAL.**—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration’s annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(B) **PAYER.**—The yearly fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

(C) **LOWERING OF BORROWER FEES.**—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.

(24) **NOTIFICATION REQUIREMENT.**—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

(25) **LIMITATION ON CONDUCTING PILOT PROJECTS.**—



(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) PILOT PROGRAM DEFINED.—In this paragraph, the term “pilot program” means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after the date of enactment of this subsection 22, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing loans under this Act.

(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

(A) shall be required by the Administration in connection with any such loan for more than \$250,000; or

(B) may be required by the Administration or the lender in connection with any such loan for \$250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(31) EXPRESS LOANS.—

(A) DEFINITIONS.—As used in this paragraph:

(i) The term “disaster area” means the area for which the President has declared a major disaster, during the 5-year period beginning on the date of the declaration.

(ii) The term “express lender” means any lender authorized by the Administration to participate in the Express Loan Program.

(iii) The term “express loan” means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(iv) The term “Express Loan Program” means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.

(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$350,000.

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F) EXPRESS LOANS FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term “biomass” —

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;

(BB) trees grown for energy production;

(CC) wood waste and wood residues;

(DD) plants (including aquatic plants and grasses);

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste materials; and

(HH) fats, oils, and greases (including recycled fats, oils, and greases); and

(bb) does not include—

(AA) paper that is commonly recycled; or

(BB) unsegregated solid waste;

(II) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(III) the term “renewable energy system” means a system of energy derived from—

(aa) a wind, solar, biomass (including biodiesel), or geothermal source; or

(bb) hydrogen derived from biomass or water using an energy source described in item (aa).

(ii) LOANS.—The Administrator may make a loan under the Express Loan Program for the purpose of—

(I) purchasing a renewable energy system; or

(II) carrying out an energy efficiency project for a small business concern.

(G) GUARANTEE FEE WAIVER FOR VETERANS.—

(i) GUARANTEE FEE WAIVER.—The Administrator may not collect a guarantee fee described in paragraph (18) in connection with a loan made under this paragraph to a veteran or spouse of a veteran on or after October 1, 2015.

(ii) EXCEPTION.—If the President’s budget for the upcoming fiscal year, submitted to Congress pursuant to section 1105(a) of title 31, United States Code, includes a cost for the program established under this subsection that is above zero, the requirements of clause (i) shall not apply to loans made during such upcoming fiscal year.

(iii) DEFINITION.—In this subparagraph, the term “veteran or spouse of a veteran” means—

(I) a veteran, as defined in section 3(q)(4);

(II) an individual who is eligible to participate in the Transition Assistance Program established under section 1144 of title 10, United States Code;

(III) a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code;

(IV) the spouse of an individual described in subclause (I), (II), or (III); or

(V) the surviving spouse (as defined in section 101 of title 38, United States Code) of an individual described in subclause (I), (II), or (III) who died while serving on active duty, full-time National Guard duty, or reserve component duty or as a result of a disability that is service-connected (as defined in such section).

(H) RECOVERY OPPORTUNITY LOANS.—

(i) IN GENERAL.—The Administrator may guarantee an express loan to a small business concern located in a disaster area in accordance with this subparagraph.

(ii) MAXIMUMS.—For a loan guaranteed under clause (i)—

(I) the maximum loan amount is \$150,000; and

(II) the guarantee rate shall be not more than 85 percent.

(iii) OVERALL CAP.—A loan guaranteed under clause (i) shall not be counted in determining the amount of loans made to a borrower for purposes of subparagraph (D).

(iv) OPERATIONS.—A small business concern receiving a loan guaranteed under clause (i) shall certify that the small business concern was in operation on the date on which the applicable major disaster occurred as a condition of receiving the loan.

(v) REPAYMENT ABILITY.—A loan guaranteed under clause (i) may only be made to a small business concern that demonstrates, to the satisfaction of the Administrator, sufficient capacity to repay the loan.

(vi) TIMING OF PAYMENT OF GUARANTEES.—

(I) IN GENERAL.—Not later than 90 days after the date on which a request for purchase is filed with the Administrator, the Administrator shall determine whether to pay the guaranteed portion of the loan.

(II) RECAPTURE.—Notwithstanding any other provision of law, unless there is a subsequent finding of fraud by a court of competent jurisdiction relating to a loan guaranteed under clause (i), on and after the date that is 6 months after the date on which the Administrator determines to pay the guaranteed portion of the loan, the Administrator may not attempt to recapture the paid guarantee.

(vii) FEES.—

(I) IN GENERAL.—Unless the Administrator has waived the guarantee fee that would otherwise be collected by the Administrator under paragraph (18) for a loan guaranteed under clause (i), and except as provided in subclause (II), the guarantee fee for the loan shall be equal to the guarantee fee that the Administrator would collect if the guarantee rate for the loan was 50 percent.

(II) EXCEPTION.—Subclause (I) shall not apply if the cost of carrying out the program under this subsection in a fiscal year is more than zero and such cost is directly attributable to the cost of guaranteeing loans under clause (i).

(viii) RULES.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall promulgate rules to carry out this subparagraph.

(32) LOANS FOR ENERGY EFFICIENT TECHNOLOGIES.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

(ii) the term “covered energy efficiency loan” means a loan—

(I) made under this subsection; and (II) the proceeds of which are used to purchase energy efficient designs, equipment, or fixtures, or to reduce the energy consumption of the borrower by 10 percent or more; and

(iii) the term “pilot program” means the pilot program established under subparagraph (B)

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for covered energy efficiency loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a covered energy efficiency loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans exceeds that of loans made under this subsection that are not covered energy efficiency loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making covered energy efficiency loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(II) a description of the energy efficiency savings with the pilot program;

(III) a description of the impact of the pilot program on the program under this subsection;

(IV) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(V) recommendations for improving the pilot program.

(33) INCREASED VETERAN PARTICIPATION PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

(ii) the term “pilot program” means the pilot program established under subparagraph (B); and

(iii) the term “veteran participation loan” means a loan made under this subsection to a small business concern owned and controlled by veterans of the Armed Forces or members of the reserve components of the Armed Forces.

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran participation loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A veteran participation loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a veteran participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran participation loans exceeds that of loans made under this subsection that are not veteran participation loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making veteran participation loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of veteran participation loans for which fees were reduced under the pilot program;

(II) a description of the impact of the pilot program on the program under this subsection;

(III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and  
(IV) recommendations for improving the pilot program.

(34) EXPORT EXPRESS PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “export development activity” includes—

(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

(II) participation in a trade show that takes place outside the United States;

(III) translation of product brochures or catalogues for use in markets outside the United States;

(IV) obtaining a general line of credit for export purposes;

(V) performing a service contract from buyers located outside the United States;

(VI) obtaining transaction-specific financing associated with completing export orders;

(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

(VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

(ii) the term “express loan” means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

(B) AUTHORITY.—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

(C) LEVEL OF PARTICIPATION.—

(i) MAXIMUM AMOUNT.—The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

(ii) PERCENTAGE.—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

(I) 90 percent of a loan that is not more than \$350,000; and

(II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.

(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as

the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters: *Provided*, That such damage or destruction is not compensated for by insurance or otherwise: *And provided further*, That the Administration may increase the amount of the loan by up to an additional 20 per centum of the aggregate costs of such damage or destruction (whether or not compensated for by insurance or otherwise) if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including—

(i) construction of retaining walls and sea walls;

(ii) grading and contouring land; and

(iii) relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters, if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency;

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided*, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern, private nonprofit organization, or small agricultural cooperative located in an area affected by a disaster, (including drought), with respect to both farm-related and nonfarm-related small business concerns, if the Administration determines that the concern, the organization, or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph; or

(C) a disaster, as determined by the Administrator of the Small Business Administration; or



(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore, and may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

*Provided*, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

(3)(A) In this paragraph—

(i) the term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern;

(ii) the term “period of military conflict” has the meaning given the term in subsection (n)(1); and

(iii) the term “substantial economic injury” means an economic harm to a business concern that results in the inability of the business concern—

(I) to meet its obligations as they mature;

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 1 year after the date on which such essential employee is discharged or released from active duty. The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year.

(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed \$1,500,000, unless such applicant constitutes, or have become due to changed economic circumstances, a major source of employment in its surrounding area, as determined by the

Administration, in which case the Administration, in its discretion, may waive the \$1,500,000 limitation.

(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

(G)(i) Notwithstanding any other provision of law, the Administrator may make a loan under this paragraph of not more than \$50,000 without collateral.

(ii) The Administrator may defer payment of principal and interest on a loan described in clause (i) during the longer of—

(I) the 1-year period beginning on the date of the initial disbursement of the loan; and

(II) the period during which the relevant essential employee is on active duty.

(H) The Administrator shall give priority to any application for a loan under this paragraph and shall process and make a determination regarding such applications prior to processing or making a determination on other loan applications under this subsection, on a rolling basis.

(4) COORDINATION WITH FEMA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this subsection or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall ensure, to the maximum extent practicable, that all application periods for disaster relief under this Act correspond with application deadlines established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

(B) DEADLINES.—Notwithstanding any other provision of law, not later than 10 days before the closing date of an application period for a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that includes—

(i) the deadline for submitting applications for assistance under this Act relating to that major disaster;

(ii) information regarding the number of loan applications and disbursements processed by the Administrator relating to that major disaster for each day during the period beginning on the date on which that major disaster was declared and ending on the date of that report; and

(iii) an estimate of the number of potential applicants that have not submitted an application relating to that major disaster.

(5) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this subsection or the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator shall make every effort to communicate through radio, television, print, and web-based outlets, all relevant information needed by disaster loan applicants, including—

- (A) the date of such declaration;
- (B) cities and towns within the area of such declaration;
- (C) loan application deadlines related to such disaster;
- (D) all relevant contact information for victim services available through the Administration (including links to small business development center websites);
- (E) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;
- (F) information on eligibility criteria for Administration loan programs, including where such applications can be found; and
- (G) application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

(6) **AUTHORITY FOR QUALIFIED PRIVATE CONTRACTORS.**—

(A) **DISASTER LOAN PROCESSING.**—The Administrator may enter into an agreement with a qualified private contractor, as determined by the Administrator, to process loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the contractor a fee for each loan processed.

(B) **LOAN LOSS VERIFICATION SERVICES.**—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the lender or verification professional a fee for each loan for which such lender or verification professional verifies losses.

(7) **DISASTER ASSISTANCE EMPLOYEES.**—

(A) **IN GENERAL.**—In carrying out this section, the Administrator may, where practicable, ensure that the number of full-time equivalent employees—

- (i) in the Office of the Disaster Assistance is not fewer than 800; and
- (ii) in the Disaster Cadre of the Administration is not fewer than 1,000.

(B) **REPORT.**—In carrying out this subsection, if the number of full-time employees for either the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level described in subparagraph (A) for that office, not later than 21 days after the date on which that staffing level decreased below the level described in subparagraph (A), the Administrator shall submit to the Committee on Appropriations and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Appropriations and Committee on Small Business of the House of Representatives, a report—

- (i) detailing staffing levels on that date;
- (ii) requesting, if practicable and determined appropriate by the Administrator, additional funds for additional employees; and

(iii) containing such additional information, as determined appropriate by the Administrator.

(8) INCREASED LOAN CAPS.—

(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed \$2,000,000.

(B) WAIVER AUTHORITY.—The Administrator may, at the discretion of the Administrator, increase the aggregate loan amount under subparagraph (A) for loans relating to a disaster to a level established by the Administrator, based on appropriate economic indicators for the region in which that disaster occurred.

(9) DECLARATION OF ELIGIBILITY FOR ADDITIONAL DISASTER ASSISTANCE.—

(A) IN GENERAL.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this paragraph.

(B) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this paragraph shall—

(i) have resulted in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(ii) be comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto, unless there is no successor to such plan, in which case this clause shall have no force or effect; and

(iii) be of such size and scope that—

(I) the disaster assistance programs under the other paragraphs under this subsection are incapable of providing adequate and timely assistance to individuals or business concerns located within the disaster area; or

(II) a significant number of business concerns outside the disaster area have suffered disasterrelated substantial economic injury as a result of the incident.

(C) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

(i) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this paragraph, the Administrator may make such loans under this subparagraph (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator determines appropriate to eligible small business concerns located anywhere in the United States.

(ii) PROCESSING TIME.—

(I) IN GENERAL.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 15 days, the Administrator shall give priority to the processing of such applications submitted by eligible small business concerns located inside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(II) **SUSPENSION OF APPLICATIONS FROM OUTSIDE DISASTER AREA.**—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 30 days, the Administrator shall suspend the processing of such applications submitted by eligible small business concerns located outside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(iii) **LOAN TERMS.**—A loan under this subparagraph shall be made on the same terms as a loan under paragraph (2).

(D) **DEFINITIONS.**—In this paragraph—

(i) the term “disaster area” means the area for which the applicable major disaster was declared;

(ii) the term “disaster-related substantial economic injury” means economic harm to a business concern that results in the inability of the business concern to—

(I) meet its obligations as it matures;

(II) meet its ordinary and necessary operating expenses; or

(III) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern because the business concern relies on materials from the disaster area or sells or markets in the disaster area; and

(iii) the term “eligible small business concern” means a small business concern—

(I) that has suffered disaster-related substantial economic injury as a result of the applicable major disaster; and

(II)(aa) for which not less than 25 percent of the market share of that small business concern is from business transacted in the disaster area;

(bb) for which not less than 25 percent of an input into a production process of that small business concern is from the disaster area; or

(cc) that relies on a provider located in the disaster area for a service that is not readily available elsewhere.

(10) **REDUCING CLOSING AND DISBURSEMENT DELAYS.**—The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.

(11) **INCREASING TRANSPARENCY IN LOAN APPROVALS.**—The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.

(12) **ADDITIONAL AWARDS TO SMALL BUSINESS DEVELOPMENT CENTERS, WOMEN’S BUSINESS CENTERS, AND SCORE FOR DISASTER RECOVERY.**—

(A) **IN GENERAL.**—The Administration may provide financial assistance to a small business development center, a women’s business center described in section 29, the Service Corps of Retired Executives, or any proposed consortium of such individuals or entities to spur disaster

recovery and growth of small business concerns located in an area for which the President has declared a major disaster.

(B) FORM OF FINANCIAL ASSISTANCE.—Financial assistance provided under this paragraph shall be in the form of a grant, contract, or cooperative agreement.

(C) NO MATCHING FUNDS REQUIRED.—Matching funds shall not be required for any grant, contract, or cooperative agreement under this paragraph.

(D) REQUIREMENTS.—A recipient of financial assistance under this paragraph shall provide counseling, training, and other related services, such as promoting long-term resiliency, to small business concerns and entrepreneurs impacted by a major disaster.

(E) PERFORMANCE.—

(i) IN GENERAL.—The Administrator, in cooperation with the recipients of financial assistance under this paragraph, shall establish metrics and goals for performance of grants, contracts, and cooperative agreements under this paragraph, which shall include recovery of sales, recovery of employment, reestablishment of business premises, and establishment of new small business concerns.

(ii) USE OF ESTIMATES.—The Administrator shall base the goals and metrics for performance established under clause (i), in part, on the estimates of disaster impact prepared by the Office of Disaster Assistance for purposes of estimating loan-making requirements.

(F) TERM.—

(i) IN GENERAL.—The term of any grant, contract, or cooperative agreement under this paragraph shall be for not more than 2 years.

(ii) EXTENSION.—The Administrator may make 1 extension of a grant, contract, or cooperative agreement under this paragraph for a period of not more than 1 year, upon a showing of good cause and need for the extension.

(G) EXEMPTION FROM OTHER PROGRAM REQUIREMENTS.—

Financial assistance provided under this paragraph is in addition to, and wholly separate from, any other form of assistance provided by the Administrator under this Act.

(H) COMPETITIVE BASIS.—The Administration shall award financial assistance under this paragraph on a competitive basis.

(13) SUPPLEMENTAL ASSISTANCE FOR CONTRACTOR MALFEASANCE.—

(A) IN GENERAL.—If a contractor or other person engages in malfeasance in connection with repairs to, rehabilitation of, or replacement of real or personal property relating to which a loan was made under this subsection and the malfeasance results in substantial economic damage to the recipient of the loan or substantial risks to health or safety, upon receiving documentation of the substantial economic damage or the substantial risk to health and safety from an independent loss verifier, and subject to subparagraph (B), the Administrator may increase the amount of the loan under this subsection, as necessary for the cost of repairs, rehabilitation, or replacement needed to address the cause of the economic damage or health or safety risk.

(B) REQUIREMENTS.—The Administrator may only increase the amount of a loan under subparagraph (A) upon receiving an appropriate certification from the borrower and person

performing the mitigation attesting to the reasonableness of the mitigation costs and an assignment of any proceeds received from the person engaging in the malfeasance. The assignment of proceeds recovered from the person engaging in the malfeasance shall be equal to the amount of the loan under this section. Any mitigation activities shall be subject to audit and independent verification of completeness and cost reasonableness.

(14) BUSINESS RECOVERY CENTERS.—

(A) IN GENERAL.—The Administrator, acting through the district offices of the Administration, shall identify locations that may be used as recovery centers by the Administration in the event of a disaster declared under this subsection or a major disaster.

(B) REQUIREMENTS FOR IDENTIFICATION.—Each district office of the Administration shall—

(i) identify a location described in subparagraph

(A) in each county, parish, or similar unit of general local government in the area served by the district office; and

(ii) ensure that the locations identified under subparagraph

(A) may be used as a recovery center without cost to the Government, to the extent practicable.

(15) INCREASED OVERSIGHT OF ECONOMIC INJURY DISASTER LOANS.—The Administrator shall increase oversight of entities receiving loans under paragraph (2), and may consider—

(A) scheduled site visits to ensure borrower eligibility and compliance with requirements established by the Administrator; and

(B) reviews of the use of the loan proceeds by an entity described in paragraph (2) to ensure compliance with requirements established by the Administrator. No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (d) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b), shall not exceed the average annual interest rate on all interest bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however*, That the interest rate for loans made under paragraphs (1) and (2) hereof

shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest

rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding \$10,000, and 3 per centum on the amount of such loan over \$10,000 but not exceeding \$40,000. The interest rate on the Administration's share of the first \$250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than \$2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. No later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committee of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

In the administration of the disaster loan program under paragraphs (1) and (2) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such project is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that



loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed \$2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed \$5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.

With respect to any loan referred to in clause (D) which is outstanding on the date of enactment of this paragraph, the Administrator shall—

(i) make sure change in the interest rate on the balance of such loan as is required under that clause effective as of such date of enactment; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970.

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.

(E) A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act<sup>1</sup> to a disaster loan under paragraph (1) (2)<sup>2</sup> of this subsection.

(c) PRIVATE DISASTER LOANS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “disaster area” means any area for which the President declared a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9), during the period of that major disaster declaration;

(B) the term “eligible individual” means an individual who is eligible for disaster assistance under subsection (b)(1) relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9);

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<sup>1</sup> Section 109(d) of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100-707, 102 Stat. 4708, amended this paragraph by striking out “section 302(a) of the Disaster Relief Act of 1974” and inserting in lieu thereof “sections 402 and 502 of the Disaster Relief and Emergency Assistance Act”. Reference to “Disaster Relief and Emergency Assistance Act” was so in original. In light of sec. 102(a) Public Law 100-707, probably should read “Robert T. Stafford Disaster Relief and Emergency Assistance Act”.

<sup>2</sup> So in law. Section 12078(c)(2)(B) of Public Law 110-246 amends “the undesignated matter at the end” at the end of subsection (b) by striking “, (2), or (4)” and inserting “(2)”.

- (C) the term “eligible small business concern” means a business concern that is—
- (i) a small business concern, as defined under this Act; or
  - (ii) a small business concern, as defined in section 103 of the Small Business Investment Act of 1958;
- (D) the term “preferred lender” means a lender participating in the Preferred Lender Program;
- (E) the term “Preferred Lender Program” has the meaning given that term in subsection (a)(2)(C)(ii); and
- (F) the term “qualified private lender” means any privately-owned bank or other lending institution that—
- (i) is not a preferred lender; and
  - (ii) the Administrator determines meets the criteria established under paragraph (10).
- (2) PROGRAM REQUIRED.—The Administrator shall carry out a program, to be known as the Private Disaster Assistance program, under which the Administration may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual.
- (3) USE OF LOANS.—A loan guaranteed by the Administrator under this subsection may be used for any purpose authorized under subsection (b).
- (4) ONLINE APPLICATIONS.—
- (A) ESTABLISHMENT.—The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this subsection.
- (B) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this paragraph may be considered for any other Federal assistance program for disaster relief.
- (C) CONSULTATION.—In establishing an online application process under this paragraph, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.
- (5) MAXIMUM AMOUNTS.—
- (A) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 85 percent of a loan under this subsection.
- (B) LOAN AMOUNT.—The maximum amount of a loan guaranteed under this subsection shall be \$2,000,000.
- (6) TERMS AND CONDITIONS.—A loan guaranteed under this subsection shall be made under the same terms and conditions as a loan under subsection (b).
- (7) LENDERS.—
- (A) IN GENERAL.—A loan guaranteed under this subsection made to—
- (i) a qualified individual may be made by a preferred lender; and

(ii) a qualified small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to qualified individuals.

(B) COMPLIANCE.—If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this subsection or violated the terms of the standard operating procedure agreement between that preferred lender and the Administration, the Administrator shall do 1 or more of the following:

(i) Exclude the preferred lender from participating in the program under this subsection.

(ii) Exclude the preferred lender from participating in the Preferred Lender Program for a period of not more than 5 years.

(8) FEES.—

(A) IN GENERAL.—The Administrator may not collect a guarantee fee under this subsection.

(B) ORIGINATION FEE.—The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this subsection in an amount agreed upon in advance between the qualified private lender or preferred lender and the Administrator.

(9) DOCUMENTATION.—A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this subsection, to the extent authorized by the Administrator. The ability of a lender to use its own loan documentation for a loan guaranteed under this subsection shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under paragraph (10).

(10) IMPLEMENTATION REGULATIONS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall issue final regulations establishing permanent criteria for qualified private lenders.

(B) REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall submit a report on the progress of the regulations required by subparagraph (A) to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(11) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—Amounts necessary to carry out this subsection shall be made available from amounts appropriated to the Administration to carry out subsection (b).

(B) AUTHORITY TO REDUCE INTEREST RATES AND Other Terms And Conditions.—Funds appropriated to the Administration to carry out this subsection, may be used by the Administrator to meet the loan terms and conditions specified in paragraph (6).

(12) PURCHASE OF LOANS.—The Administrator may enter

into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this subsection.

(d)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957,

for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b), the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: *Provided*, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such time (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior the effective date of this Act, on the Administration's share of loans made pursuant to paragraph (1) of subsection (b)—

(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first \$55,000 of such loan;

(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from one-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed \$500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.

(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection

(b) shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury

taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner, able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business, private nonprofit organization, or other concern, including agricultural cooperatives,

unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of 7 years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rate for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided*, That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed \$500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation: *Provided further*, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than \$100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than \$20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further*, That the Administration shall not require collateral for loans of \$25,000 or less (or such higher amount as the Administrator determines appropriate in the event of a disaster) which are made under paragraph (1) of subsection (b): *Provided further*, That the Administrator, in obtaining the best available collateral for a loan of not more than \$200,000 under paragraph (1) or (2) of subsection

(b) relating to damage to or destruction of the property of, or economic injury to, a small business concern, shall not require the owner of the small business concern to use the primary residence of the owner as collateral if the Administrator determines that the owner has other assets of equal quality and with a value equal to or greater than the amount of the loan that could be used as collateral for the loan: *Provided further*, That nothing in the preceding proviso may be construed to reduce the amount of collateral required by the Administrator in connection with a loan described in the preceding proviso or to modify the standards used to evaluate the quality (rather than the type) of such collateral. Employees of concerns sharing a common business premises shall be aggregated in determining “major source of employment” status for nonprofit applicants owning such premises. With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rate for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided*, That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed \$500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation: *Provided further*, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than \$100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than \$20,000 for each disaster, such sums being in

addition to any eligible refinancing: Provided further, That the Administration shall not require collateral for loans of \$14,000 or less (or such higher amount as the Administrator determines appropriate in the event of a major disaster) which are made under paragraph (1) of subsection (b): Provided further, That the Administrator, in obtaining the best available collateral for a loan of not more than \$200,000 under paragraph (1) or (2) of subsection (b) relating to damage to or destruction of the property of, or economic injury to, a small business concern, shall not require the owner of the small business concern to use the primary residence of the owner as collateral if the Administrator determines that the owner has other assets of equal quality and with a value equal to or greater than the amount of the loan that could be used as collateral for the loan: Provided further, That nothing in the preceding proviso may be construed to reduce the amount of collateral required by the Administrator in connection with a loan described in the preceding proviso or to modify the standards used to evaluate the quality (rather than the type) of such collateral. Employees of concerns sharing a common business premises shall be aggregated in determining “major source of employment” status for nonprofit applicants owning such premises. With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) the term “an area affected by a disaster” includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

(8) DISASTER LOANS FOR SUPERSTORM SANDY.—

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, nonprofit entity, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—

(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

(ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

(B) TIMING.—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.

(C) INSPECTOR GENERAL REVIEW.—Not later than 6 months after the date on which the Administrator begins carrying out this authority, the Inspector General of the Administration shall initiate a review of the controls for ensuring applicant eligibility for loans made under this paragraph.

(e) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.

(f) ADDITIONAL REQUIREMENTS FOR 7(B) LOANS.—

(1) INCREASED DEFERMENT AUTHORIZED.—

(A) IN GENERAL.—In making loans under subsection

(b), the Administrator may provide, to the person receiving the loan, an option to defer repayment on the loan.

(B) PERIOD.—The period of a deferment under subparagraph (A) may not exceed 4 years.

(g) NET EARNINGS CLAUSES PROHIBITED FOR 7(B) LOANS.—In making loans under subsection (b), the Administrator shall not require the borrower to pay any non-amortized amount for the first five years after repayment begins.

(e) [RESERVED].

(f) [RESERVED].

(h)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed \$350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed \$350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All

loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a



permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(i)(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed \$100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between \$3,500 and \$100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 10(a) of this Act.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made; (D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however,* That

the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (42 U.S.C. 3142); and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection when the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

(j)(1) the Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designated to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of this Act;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperative; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in area of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under section 7(i), 7(j), and 8(a), of this Act.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

[Paragraph (8) of section 7(j) repealed by Public Law 101-574.]

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

(10) There is established with the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D)

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financing counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and (vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to,

(I) the preparation of application forms required to receive a surety bond,

(II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and

(III) guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the plan') as described in clause(ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

(ii) The plans submitted under this subparagraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 8(a).

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a).

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a),

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9).

(F) For the purposes of section and 8(a), the terms "terminated" or "termination" means the total denial or suspension of assistance under this paragraph or under section 8(a) prior to the graduation of the participating small business concern or prior to the expiration of the maximum

program participation in term. An action for termination shall be based upon good cause, including—

- (i) the failure by such concern to maintain its eligibility for Program participation;
- (ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);
- (iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;
- (iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;
- (v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or
- (vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

(H) For the purposes of sections 7(j) and 8(a) the term “graduated” or “graduation” means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).

(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as “business activity targets.”). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii);

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9).

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 8(a) to a concern other than a small business concern.

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each

firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100–656, the “Business Opportunity Development Reform Act of 1988”, shall be eligible for award of a contract pursuant to section 8(a).

(11)(A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.

(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 8(a)(4) shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to section 7(j)(10) and section 8(a) if—

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the Division’) that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to—

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);



(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

(v) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(vii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

(A) Contract support pursuant to section 8(a).

(B) Financial assistance pursuant to section 7(a)(20).

(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled “An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes”, approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8)(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

(D) A maximum of five exemptions from the requirements of the Act entitled “An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works”, approved August 24, 1935 (49 Stat. 793), which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed \$3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term "training provider" shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Innovation and Opportunity Act. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F)(i) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the

heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

(ii)(I) In this clause—

(aa) the term “covered period” means the 2-year period beginning on the date on which the President declared the applicable major disaster; and

(bb) the term “disaster area” means the area for which the President has declared a major disaster, during the covered period.

(II) The Administrator may transfer technology or surplus property under clause (i) on a priority basis to a small business concern located in a disaster area if—

(aa) the small business concern meets the requirements for such a transfer, without regard to whether the small business concern is a Program Participant; and

(bb) for a small business concern that is a Program Participant, on and after the date on which the President declared the applicable major disaster, the small business concern has not received property under this subparagraph on the basis of the status of the small business concern as a Program Participant.

(III) For any transfer of property under this clause to a small business concern, the terms and conditions shall be the same as a transfer to a Program Participant, except that the small business concern shall agree not to sell or transfer the property to any party other than the Federal Government during the covered period.

(IV) A small business concern that receives a transfer of property under this clause may not receive a transfer of property under clause (i) during the covered period.

(V) If a small business concern sells or transfers property in violation of the agreement described in subclause (III), the Administrator may initiate proceedings to prohibit the small business concern from receiving a transfer of property under this clause or clause (i), in addition to any other remedy available to the Administrator.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms

participating in the Program during such year; and (II) of firms in each of the nine years of program participation. (vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

(k) In carrying out its functions under subsections 7(i), 7(j), and 8(a) of this Act, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 655(b)); and

(4) to employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) authorized by section 5 of such Act (5 U.S.C. 73b-2) for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(l) SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.—

(1) DEFINITIONS.—In this subsection—

(A) the term “eligible intermediary”—

(i) means a private, nonprofit entity that—

(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

(ii) includes—

(I) a private, nonprofit community development corporation;

(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

(III) an agency of or nonprofit entity established by a Native American Tribal Government; and  
(B) the term “Program” means the small business intermediary lending pilot program established under paragraph (2).

(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

(3) PURPOSES.—The purposes of the Program are—

(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

(i) the type of small business concerns to be assisted;

(ii) the size and range of loans to be made;

(iii) the interest rate and terms of loans to be made;

(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

(vi) the qualifications of the applicant to carry out this subsection.

(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

(i) to not more than 20 eligible intermediaries; and

(ii) in a total amount of not more than \$20,000,000.

(5) LOANS TO SMALL BUSINESS CONCERNS.—

(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010.

(m) MICROLOAN PROGRAM.—

(1)(A) PURPOSES.—The purposes of the Microloan Program are—

(i) to assist women, low-income, veteran (within the meaning of such term under section 3(q)), and minority entrepreneurs and business owners and other individuals possessing the capability to operate successful business concerns;

(ii) to assist small business concerns in those areas suffering from a lack of credit due to economic downturns;

(iii) to establish a microloan program to be administered by the Small Business Administration—

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than \$10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment; (II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and



(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

(I) establishing small businesses; and

(II) eliminating their dependence on that assistance.

(B) ESTABLISHMENT.—There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed \$50,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(2) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs

(B)(i) and (B)(ii) of paragraph (1) if it—

(A) meets the definition in paragraph (10); and

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

(3) LOANS TO INTERMEDIARIES.—

(A) INTERMEDIARY APPLICATIONS.—

(i) IN GENERAL.—As part of its application for a loan, each intermediary shall submit a description to the Administration of—

(I) the type of businesses to be assisted;

(II) the size and range of loans to be made;

(III) the geographic area to be served and its economic, poverty, and unemployment characteristics;

(IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

(V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

(VI) the local economic credit markets, including the costs associated with obtaining credit locally;

(VII) the qualifications of the applicant to carry out the purpose of this subsection; and

(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

(ii) **SELECTION OF INTERMEDIARIES.**—In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than \$10,000.

(B) **INTERMEDIARY CONTRIBUTION.**—As a condition of any loan made to an intermediary under subparagraph

(B)(i) of paragraph (1), the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

(C) **LOAN LIMITS.**—Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed \$750,000 in the first year of such intermediary's participation in the program, and \$5,000,000 in the remaining years of the intermediary's participation in the program.

(D)(i) **IN GENERAL.**—The Administrator shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid.

(ii) **LEVEL OF LOAN LOSS RESERVE FUND.**—

(I) **IN GENERAL.**—Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

(II) **REVIEW OF LOAN LOSS RESERVE.**—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(III) **REDUCTION OF LOAN LOSS RESERVE.**—Subject to the requirements of clause IV, the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

(IV) REQUIREMENTS.—The Administrator may reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that—

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administration under this subsection.

(E) UNAVAILABILITY OF COMPARABLE CREDIT.—An intermediary may make a loan under this subsection of more than \$20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than \$50,000, or have outstanding or committed to any 1 borrower more than \$50,000.

(F) LOAN DURATION; INTEREST RATES.—

(i) LOAN DURATION.—Loans made by the Administration under this subsection shall be for a term of 10 years.

(ii) APPLICABLE INTEREST RATES.—Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iii) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than \$7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iv) RATES APPLICABLE TO MULTIPLE SITES OR OFFICES.—

The interest rate prescribed in clause (ii) or

(iii) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

(v) RATE BASIS.—The applicable rate of interest under this paragraph shall—

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(vii) COVERED INTERMEDIARIES.—The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

(G) DELAYED PAYMENTS.—The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

(H) FEES; COLLATERAL.—Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

(4) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

(B) CONTRIBUTION.—As a condition of a grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(C) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

(i) IN GENERAL.—In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

(II) the intermediary has a portfolio of loans made under this subsection that averages not more than \$10,000 during the period of the intermediary's participation in the program.

(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

(iii) CONTRIBUTION EXCEPTION.—The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

(D) ELIGIBILITY FOR MULTIPLE SITES OR OFFICES.—The eligibility for a grant described in subparagraph (A) or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

(i) IN GENERAL.—Each intermediary may expend an amount not to exceed 50 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) TECHNICAL ASSISTANCE.—An intermediary may expend not more than 50 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

(F) SUPPLEMENTAL GRANT.—

(i) IN GENERAL.—The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries and technical assistance providers under paragraph

(5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

(ii) ELIGIBLE RECIPIENTS; GRANT AMOUNTS.—In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed \$200,000 per year.

(iii) USE OF GRANT AMOUNTS.—Grants under this subparagraph—

(I) are in addition to other grants provided under this subsection and shall not require the contribution of matching amounts as a condition of eligibility; and

(II) may be used by a grantee—

(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) or under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

(iv) MEMORANDUM OF UNDERSTANDING.—Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure compliance with this subparagraph by those grantees and recipients of assistance.

(5) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS.—Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each in amounts not to exceed \$200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(6) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

(A) IN GENERAL.—An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) PORTFOLIO REQUIREMENT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than \$15,000.

(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) REVIEW RESTRICTION.—The Administration shall not review individual microloans made by intermediaries prior to approval.

(E) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(7) PROGRAM FUNDING FOR MICROLOANS.—

(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

(B) ALLOCATION.—

(i) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) \$800,000; or

(bb) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and (II) any additional amount, as determined by the Administration.

(ii) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

(8) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

(9) GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES.—

(A) IN GENERAL.—The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

(B) ASSISTANCE AMOUNT.—The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing, to achieve the purpose set forth in subparagraph (A).

(C) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

(10) REPORT TO CONGRESS.—On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3 1/2 years of the microloan program and the following:

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

(C) a description of the matching contributions of each intermediary;

(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

(E) the repayment history of each intermediary;

(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

(G) any recommendations for legislative changes that would improve program operations.

(11) DEFINITIONS.—For purposes of this subsection—

(A) the term “intermediary” means—

(i) a private, nonprofit entity;

(ii) a private, nonprofit community development corporation;

(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

(I) no application is received from an eligible nonprofit organization; or

(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

(v) an agency of or nonprofit entity established by a Native American Tribal Government, that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;

(B) the term “microloan” means a short-term, fixed rate loan of not more than \$50,000, made by an intermediary to a startup, newly established, or growing small business concern;

(C) the term “rural area” means any political subdivision or unincorporated area—

(i) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or

(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural; and

(D) the term “economically distressed area”, as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.

(12) DEFERRED PARTICIPATION LOAN PILOT.—In lieu of making direct loans to intermediaries as authorized in paragraph

(1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or nonprofit entity or by alliances of such entities, subject to the following conditions:



(A) NUMBER OF LOANS.—In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

(B) TERM OF LOANS.—The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

(C) INTEREST RATE.—The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

(13) EVALUATION OF WELFARE-TO-WORK MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F).

(n) REPAYMENT DEFERRED FOR ~~ACTIVE DUTY-ELIGIBLE~~ RESERVISTS.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE RESERVIST.—The term “eligible reservist” means a member of a reserve component of the Armed Forces ordered to active duty or full-time National Guard duty during a period of military conflict.

(B) ESSENTIAL EMPLOYEE.—The term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

(C) PERIOD OF MILITARY CONFLICT.—The term “period of military conflict” means—

(i) a period of war declared by the Congress;

(ii) a period of national emergency declared by the Congress or by the President; or

(iii) a period of ~~a contingency operation, as defined in section 101(a) of title 10, United States Code;~~ active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code).

(D) QUALIFIED BORROWER.—The term “qualified borrower” means—

(i) an individual who is an eligible reservist and who received a direct loan under subsection (a) or (b) before being ordered to active duty; or

(ii) a small business concern that received a direct loan under subsection (a) or (b) before an eligible reservist, who is an essential employee, was ordered to active duty.

(2) DEFERRAL OF DIRECT LOANS.—

(A) IN GENERAL.—The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b), if such loan was incurred by a qualified borrower.

(B) PERIOD OF DEFERRAL.—The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active duty and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active duty.

(C) INTEREST RATE REDUCTION DURING DEFERRAL.—

Notwithstanding any other provision of law, during the period of deferral described in subparagraph (B), the Administration may, in its discretion, reduce the interest rate on any loan qualifying for a deferral under this paragraph.

(3) DEFERRAL OF LOAN GUARANTEES AND OTHER

FINANCINGS.—The Administration shall—

(A) encourage intermediaries participating in the program under subsection (m) to defer repayment of a loan made with proceeds made available under that subsection, if such loan was incurred by a small business concern that is eligible to apply for assistance under subsection (b)(3); and

(B) not later than 30 days after the date of the enactment of this subsection, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) and financings under section 504 of the Small Business Investment Act of 1958 that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3), and loan guarantees provided under subsection (m) if the intermediary provides relief to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of repayment or other relief to any intermediary providing relief to a small business borrower under this paragraph.

**§3 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008**  
**(15 U.S.C. 636 note, Public Law 101-186, Feb 14, 2008)**

**SEC. 3. DEFINITIONS.**

In this Act [Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008; P.L. 110-186, Feb 14, 2008]—

(1) the term “activated” means receiving an order placing a Reservist on active duty;

(2) the term “active duty” has the meaning given that term in section 101 of title 10, United States Code, and such term includes full-time National Guard duty;

(3) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively;

(4) the term “Reservist” means a member of a reserve component of the Armed Forces, as described in section 10101 of title 10, United States Code;

(5) the term “Service Corps of Retired Executives” means the Service Corps of Retired Executives authorized by section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1));

(6) the terms “service-disabled veteran” and “small business concern” have the meaning as in section 3 of the Small Business Act (15 U.S.C. 632);

(7) the term “small business development center” means a small business development center described in section 21 of the Small Business Act (15 U.S.C. 648); and

(8) the term “women’s business center” means a women’s business center described in section 29 of the Small Business Act (15 U.S.C. 656).

## § 603 of the Fair and Accurate Credit Transaction Act of 2003 [§603(q)(1)(A)]

### 15 U.S.C. §1681a. Definitions; rules of construction (15 U.S.C.1681a(q)(1))

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) Consumer Report.—

(1) In general.—The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) Exclusions.—Except as provided in paragraph (3), the term "consumer report" does not include—

(A) subject to section 1681s-3 of this title, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to

whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (o) or (x).<sup>1</sup>

(3) Restriction on sharing of medical information.—Except for information or any communication of information disclosed as provided in section 1681b(g)(3) of this title, the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) Medical Information.—The term "medical information"—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the payment for the provision of health care to an individual.<sup>2</sup>

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) Definitions Relating to Child Support Obligations.—

(1) Overdue support.—The term "overdue support" has the meaning given to such term in section 666(e) of title 42.

(2) State or local child support enforcement agency.—The term "State or local child support enforcement agency" means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) Adverse Action.—

(1) Actions included.—The term "adverse action"—

(A) has the same meaning as in section 1691(d)(6) of this title; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 1681b(a)(3)(D) of this title; and

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 1681b(a)(3)(F)(ii) of this title; and

(II) adverse to the interests of the consumer.

(2) Applicable findings, decisions, commentary, and orders.—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 1691(d)(6) of this title by the Bureau or any court shall apply.

(1) Firm Offer of Credit or Insurance.—The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification—

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) Credit or Insurance Transaction That Is Not Initiated by the Consumer.—The term "credit or insurance transaction that is not initiated by the consumer" does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) State.—The term "State" means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) Excluded Communications.—A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) Consumer Reporting Agency That Compiles and Maintains Files on Consumers on a Nationwide Basis.—The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:



(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(q) Definitions Relating to Fraud Alerts.—

(1) Active duty military consumer.—The term "active duty military consumer" means a consumer in military service who—

(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) ~~or is a reservist performing duty under a call or order to active duty under a provision of law referred to or is a member described in subparagraph (B) or (C) of section 101(a)(13)(B) of title 10, United States Code, on or active duty or full-time National Guard duty in support of a contingency operation as that term is defined~~ in section 101(a)(13) of title 10, United States Code; and

(B) is assigned to service away from the usual duty station of the consumer.

(2) Fraud alert; active duty alert.—The terms "fraud alert" and "active duty alert" mean a statement in the file of a consumer that—

(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and

(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

(3) Identity theft.—The term "identity theft" means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.

(4) Identity theft report.—The term "identity theft report" has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—

(A) that alleges an identity theft;

(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau; and

(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

(5) New credit plan.—The term "new credit plan" means a new account under an open end credit plan (as defined in section 1602(i) <sup>1</sup> of this title) or a new credit transaction not under an open end credit plan.

(f) Credit and Debit Related Terms—

(1) Card issuer.—The term "card issuer" means—

(A) a credit card issuer, in the case of a credit card; and

(B) a debit card issuer, in the case of a debit card.

(2) Credit card.—The term "credit card" has the same meaning as in section 1602 of this title.

(3) Debit card.—The term "debit card" means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(4) Account and electronic fund transfer.—The terms "account" and "electronic fund transfer" have the same meanings as in section 1693a of this title.

(5) Credit and creditor.—The terms "credit" and "creditor" have the same meanings as in section 1691a of this title.

(s) Federal Banking Agency.—The term "Federal banking agency" has the same meaning as in section 1813 of title 12.

(t) Financial Institution.—The term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 461(b) of title 12) belonging to a consumer.

(u) Reseller.—The term "reseller" means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) Commission.—The term "Commission" means the Bureau.<sup>3</sup>

(w) The term "Bureau" means the Bureau of Consumer Financial Protection.

(x) Nationwide Specialty Consumer Reporting Agency.—The term "nationwide specialty consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

(1) medical records or payments;

(2) residential or tenant history;

(3) check writing history;

(4) employment history; or

(5) insurance claims.

(y) Exclusion of Certain Communications for Employee Investigations.—

(1) Communications described in this subsection.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

(i) suspected misconduct relating to employment; or

(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

(i) to the employer or an agent of the employer;

(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

(iv) as otherwise required by law; or

(v) pursuant to section 1681f of this title.

(2) Subsequent disclosure.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) Self-regulatory organization defined.—For purposes of this subsection, the term "self-regulatory organization" includes any self-regulatory organization (as defined in section 78c(a)(26) of this title), any entity established under title I of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7211 et seq.], any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

# **TITLE 18**

## **Crimes and Criminal Procedure**

## 18 U.S.C. §209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of chapter 41 of title 5.

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and which is exempt from taxation under section 501(a) of such Code.

(g)(1) This section does not prohibit an employee of a private sector organization, while assigned to an agency under chapter 37 of title 5, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(2) For purposes of this subsection, the term "agency" means an agency (as defined by section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia.

(h) This section does not prohibit ~~a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10~~ a member of the armed forces described in section 101(a)(13)(B) of title 10, on active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) from receiving from any person that employed such member before the call or order to active duty or full-time National Guard duty any payment of any part of the salary or wages that such person would have paid the member if the member's employment had not been interrupted by such call or order to active duty or full-time National Guard duty.

# **TITLE 19**

## **Customs Duties**

Section 231 of the Trade Act of 1974 (19 U.S.C. 2291)

19 U.S.C. §2291. Qualifying requirements for workers

**SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.**

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins on or after the date of such certification, if the following conditions are met:

(1) Such worker's total or partial separation before the worker's application under this chapter occurred—

(A) on or after the date, as specified in the certification under which the worker is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or ~~inactive duty~~ reserve component duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States,

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm, or

(D) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is "Federal service" as defined in section 8521(a)(1) of title 5, United States Code, shall be treated as a week of employment at wages of \$30 or more, but not more than 7 weeks, in case of weeks described in subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or

(D)), may be treated as weeks of employment under this sentence.

(3) Such worker—



(A) was entitled to (or would be entitled to if the worker applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance, except additional compensation that is funded by a State and is not reimbursed from any Federal funds, to which the worker was entitled (or would be entitled if the worker applied therefor); and

(C) does not have an unexpired waiting period applicable to the worker for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A)(i) is enrolled in a training program approved by the Secretary under section 236(a), and

(ii) the enrollment required under clause (i) occurs no later than the latest of—

(I) in the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs after the date on which the Secretary issues a certification covering the worker, the last day of the 26th week after such total separation,

(II) in the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs before the date on which the Secretary issues a certification covering the worker, the last day of the 26th week after the date of such certification,

(III) 45 days after the date specified in subclause (I) or (II), as the case may be, if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period,

(IV) in the case of a worker who fails to enroll by the date required by subclause (I), (II), or (III), as the case may be, due to the failure to provide the worker with timely information regarding the date specified in such subclause, the last day of a period determined by the Secretary, or

(V) the last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c),

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement under subsection (c)(1) after the date described in subparagraph (B).

(b) If—

(1) the Secretary determines that—

(A) the adversely affected worker—

(i) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(ii) has ceased to participate in such training program before completing such training program, and

(B) there is no justifiable cause for such failure or cessation, or

(2) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2), no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

(c) WAIVERS OF TRAINING REQUIREMENTS.—

(1) ISSUANCE OF WAIVERS.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons:

(A) HEALTH.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(B) ENROLLMENT UNAVAILABLE.—The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(C) TRAINING NOT AVAILABLE.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

(2) DURATION OF WAIVERS.—

(A) IN GENERAL.—Except as provided in paragraph (3)(B), a waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) REVOCATION.—The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

(3) AGREEMENTS UNDER SECTION 239.—

(A) ISSUANCE BY COOPERATING STATES.—An agreement under section 239 shall authorize a cooperating State to issue waivers as described in paragraph (1).

(B) REVIEW OF WAIVERS.—An agreement under section 239 shall require a cooperating State to review each waiver issued by the State under subparagraph (A), (B), or (C) of paragraph (1)—

(i) 3 months after the date on which the State issues the waiver; and

(ii) on a monthly basis thereafter.

(C) SUBMISSION OF STATEMENTS.—An agreement under section 239 shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

**Section 233 of the Trade Act of 1974**

**(19 U.S.C. 2293)**

**SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.**

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance under paragraph (1) shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 231(a)(1), and

(B) with respect to which the worker meets the requirements of section 231(a)(2).

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete a training program approved for the worker under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 65 additional weeks in the 78-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A). Payments for such additional weeks may be made only for weeks in such 78-week period during which the individual is participating in such training.

(b) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(c) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(d) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

(e) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 30 days if—

(1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and

(2) the break is provided under such training program.

(f) PAYMENT OF TRADE READJUSTMENT ALLOWANCES TO COMPLETE TRAINING.—

Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 that leads to the completion of a degree or industry-recognized credential, payments may be made as trade readjustment allowances for not more than 13 weeks within such period of eligibility as the Secretary may prescribe to account for a break in training or for justifiable cause that follows the last week for which the worker is otherwise entitled to a trade readjustment allowance under this chapter if—

(1) payment of the trade readjustment allowance for not more than 13 weeks is necessary for the worker to complete the training;

(2) the worker participates in training in each such week; and

(3) the worker—

(A) has substantially met the performance benchmarks established as part of the training approved for the worker;

(B) is expected to continue to make progress toward the completion of the training; and

(C) will complete the training during that period of eligibility.

(g) SPECIAL RULE FOR CALCULATING SEPARATION.—Notwithstanding any other provision of this chapter, any period during which a judicial or administrative appeal is pending with respect to the denial by the Secretary of a petition under section 223 shall not be counted for purposes of calculating the period of separation under subsection (a)(2).

(h) SPECIAL RULE FOR JUSTIFIABLE CAUSE.—If the Secretary determines that there is justifiable cause, the Secretary may extend the period during which trade readjustment allowances are payable to an adversely affected worker under paragraphs (2) and

(3) of subsection (a) (but not the maximum amounts of such allowances that are payable under this section).

(i) SPECIAL RULE WITH RESPECT TO MILITARY SERVICE.—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, the Secretary may waive any requirement of this chapter that the Secretary determines is necessary to ensure that an adversely affected worker who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (2) is eligible to receive a trade readjustment allowance, training, and other benefits under this chapter in the same manner and to the same extent as if the worker had not served the period of duty.

(2) PERIOD OF DUTY DESCRIBED.—An adversely affected worker serves a period of duty described in this paragraph if, before completing training under section 236, ~~the worker—~~

~~(A) serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or~~

~~(B) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under section 502(f) of title 32, United States Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds. the worker serves on active duty or full-time National Guard duty for a period of more than 30 days under a call or order to active duty or full-time National Guard duty of more than 30 days.~~

# **TITLE 20**

## **Education**

**§1404 of the Defense Dependents' Education Act of 1978 [§1404(c)(2)]  
(20 U.S.C. §923. Space-available enrollment of students; tuition)**

*(a) Enrollment of ineligible child in system school*

Subject to subsection (b) and in accordance with regulations issued under subsection (c), the Director may authorize the enrollment in a school of the defense dependents' education system of a child not otherwise eligible to enroll in such a school if and to the extent that there is space available for such child in the school.

*(b) Determination of amount of tuition; use of payments*

(1) Except as otherwise provided under subsection (c), any child permitted to enroll in a school of the defense dependents' education system under this section shall be required to pay tuition at a rate determined by the Secretary of Defense, which shall not be less than the rate necessary to defray the average cost of the enrollment of children in the system under this section.

(2) Amounts received under paragraph (1) shall be available to the defense dependents' education system to assist in defraying the cost of enrollment of children in the system under this section.

*(c) Regulations respecting enrollment requirements*

(1) The Secretary of Defense may by regulation identify classes of children who shall be eligible to enroll in schools of the defense dependents' education system under this section if and to the extent that there is space available, establish priorities among such classes, waive the tuition requirement of subsection (b)(1) with respect to any such class, and issue such other regulations as may be necessary to carry out this section.

(2)(A) The Secretary shall include in the regulations prescribed under this subsection a requirement that children in the class of children described in subparagraph (B) shall be subject to the same tuition requirements, or waiver of tuition requirements, as children in the class of children described in subparagraph (C).

(B) The class of children described in this subparagraph are children of members of reserve components of the Armed Forces who—

(i) are on active duty under an order to active duty under ~~section 12301 or 12302 of title 10, United States Code, section 12341 of title 10, United States Code, for a purpose specified in subsection (a), (b)(2) or (d)(1) of section 12351 of such title, or section 12342 of such title;~~

(ii) were ordered to active duty from a location in the United States (other than in Alaska or Hawaii); and

(iii) are serving on active duty outside the United States or in Alaska or Hawaii.



(C) The class of children described in this subparagraph are children of members of reserve components of the Armed Forces who—

(i) are on active duty under an order to active duty under ~~section 12301 or 12302 of title 10, United States Code~~ section 12341 of title 10, United States Code, for a purpose specified in subsection (a), (b)(2) or (d)(1) of section 12351 of such title, or section 12342 of such title;

(ii) were ordered to active duty from a location outside the United States (or in Alaska or Hawaii) ; and

(iii) are serving on active duty outside the United States or in Alaska or Hawaii.

*(d) Enrollment of certain children in overseas schools*

(1) The Secretary of Defense may authorize the enrollment in schools of the defense dependents' education system of children in the following classes:

(A) Children of officers and employees of the United States (other than civilian officers and employees who are sponsors under section 932(2) of this title) stationed in overseas areas.

(B) Children of employees of contractors employed in carrying out work for the United States in overseas areas.

(C) Children of other citizens or nationals of the United States or of foreign nationals, if the Secretary determines that enrollment of such children is in the national interest.

(2) Notwithstanding subsection (c), the Secretary may not waive the tuition requirements of subsection (b)(1) with respect to children referred to in paragraph (1).

**§481 of the Higher Education Act of 1965  
(20 U.S.C. §1088(d). Definitions)**

***(a) Academic and award year***

(1) For the purpose of any program under this subchapter, the term "award year" shall be defined as the period beginning July 1 and ending June 30 of the following year.

(2)(A) For the purpose of any program under this subchapter, the term "academic year" shall—

(i) require a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours; or

(ii) require a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours; and

(iii) require an undergraduate course of study to contain an amount of instructional time whereby a full-time student is expected to complete at least—

(I) 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures its program length in credit hours; or

(II) 900 clock hours in a course of study that measures its program length in clock hours.

(B) The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree and that measures program length in credit hours or clock hours.

***(b) Eligible program***

(1) For purposes of this subchapter, the term "eligible program" means a program of at least—

(A) 600 clock hours of instruction, 16 semester hours, or 24 quarter hours, offered during a minimum of 15 weeks, in the case of a program that—

(i) provides a program of training to prepare students for gainful employment in a recognized profession; and

(ii) admits students who have not completed the equivalent of an associate degree; or

(B) 300 clock hours of instruction, 8 semester hours, or 12 hours, offered during a minimum of 10 weeks, in the case of—

(i) an undergraduate program that requires the equivalent of an associate degree for admissions; or

(ii) a graduate or professional program.

(2)(A) A program is an eligible program for purposes of part B of this subchapter if it is a program of at least 300 clock hours of instruction, but less than 600 clock hours of instruction, offered during a minimum of 10 weeks, that—

(i) has a verified completion rate of at least 70 percent, as determined in accordance with the regulations of the Secretary;

(ii) has a verified placement rate of at least 70 percent, as determined in accordance with the regulations of the Secretary; and

(iii) satisfies such further criteria as the Secretary may prescribe by regulation.

(B) In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to have satisfied the requirements of this paragraph.

(3) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for the purposes of this subchapter if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after February 8, 2006) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

(A) is recognized by the Secretary under subpart 2 of part H; and

(B) has evaluation of distance education programs within the scope of its recognition, as described in section 1099b(n)(3) of this title.

(4) For purposes of this subchapter, the term "eligible program" includes an instructional program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment. In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program.

*(c) Third party servicer*

For purposes of this subchapter, the term "third party servicer" means any individual, any State, or any private, for-profit or nonprofit organization, which enters into a contract with—

(1) any eligible institution of higher education to administer, through either manual or automated processing, any aspect of such institution's student assistance programs under this subchapter; or

(2) any guaranty agency, or any eligible lender, to administer, through either manual or automated processing, any aspect of such guaranty agency's or lender's student loan programs under part B of this subchapter, including originating, guaranteeing, monitoring, processing, servicing, or collecting loans.

*(d) Definitions for military deferments*

For purposes of parts B, D, and E of this subchapter:

*(1) Active duty*

The term "active duty" has the meaning given such term in section 101(d)(1) of title 10, except that such term does not include active duty for training or attendance at a service school.

*(2) Military operation*

The term "military operation" means a contingency operation as such term is defined in section 101(a)(13) of title 10.

*(3) National emergency*

The term "national emergency" means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

*(4) Serving on active duty*

The term "serving on active duty during a war or other military operation or national emergency" means service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under ~~section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code~~ section 12341 of title 10, United States Code, for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

*(5) Qualifying National Guard duty*

The term "qualifying National Guard duty during a war or other military operation or national emergency" means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under ~~section 502(f) of title 32~~ section 541 of title 32 in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.

*(e) Consumer reporting agency*

For purposes of this subchapter, the term "consumer reporting agency" has the meaning given the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" in Section 1681a(p) of title 15.

*(f) Definition of educational service agency*

For purposes of parts B, D, and E, the term "educational service agency" has the meaning given the term in section 7801 of this title.

**§484C of the Higher Education Act of 1965  
(20 U.S.C. §1091c. Readmission requirements for servicemembers)**

**As added by section 487 of the Higher Education Opportunity Act of 2008 (P.L. 110-315, Aug 14, 2008; 122 STAT. 3290 (3292))**

***(a) Definition of service in the uniformed services***

In this section, the term "service in the uniformed services" means service (whether voluntary or involuntary) on active duty in the Armed Forces, including such service by a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty or full-time National Guard duty of more than 30 days.

***(b) Discrimination against students who serve in the uniformed services prohibited***

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services shall not be denied readmission to an institution of higher education on the basis of that membership, application for membership, performance of service, application for service, or obligation.

***(c) Readmission procedures***

***(1) In general***

Any student whose absence from an institution of higher education is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution of higher education if—

(A) the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance written or verbal notice of such service to the appropriate official at the institution of higher education;

(B) the cumulative length of the absence and of all previous absences from that institution of higher education by reason of service in the uniformed services does not exceed five years; and

(C) except as otherwise provided in this section, the student submits a notification of intent to reenroll in the institution of higher education in accordance with the provisions of paragraph (4).

***(2) Exceptions***

***(A) Military necessity***

No notice is required under paragraph (1)(A) if the giving of such notice is precluded by military necessity, such as—

(i) a mission, operation, exercise, or requirement that is classified; or

(ii) a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

*(B) Failure to give advance notice*

Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or verbal notice of service to the appropriate official at the institution of higher education in accordance with paragraph (1)(A) may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the student's institution of higher education that the student performed service in the uniformed services that necessitated the student's absence from the institution of higher education.

*(3) Applicability*

This section shall apply to a student who is absent from an institution of higher education by reason of service in the uniformed services if such student's cumulative period of service in the Armed Forces (including the National Guard or Reserve), with respect to the institution of higher education for which a student seeks readmission, does not exceed five years, except that any such period of service shall not include any service—

(A) that is required, beyond five years, to complete an initial period of obligated service;

(B) during which such student was unable to obtain orders releasing such student from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such student; or

(C) performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

~~(i) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 251, 252, 359, 360, 367, or 712 of title 14;~~

~~(ii) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;~~

~~(iii) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;~~

(i) order to or retained on active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code);

(ii) ordered to or retained on active duty under section 2127, 2128, 2308, 2309, or 2314 of title 14, United States Code;

(iii) retained on active duty pursuant to section 123, 671a, 671b or 12311 of title 10, United States Code, because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned; or

(iv) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); ~~or~~

~~(v) called into Federal service as a member of the National Guard under chapter 13 of title 10 or section 12406 of title 10.~~

***(4) Notification of intent to return***

***(A) In general***

Except as provided in subparagraph (B), a student referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the institution of higher education of the student's intent to return to the institution not later than three years after the completion of the period of service.

***(B) Hospitalization or convalescence***

A student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services shall notify the institution of higher education of the student's intent to return to the institution not later than two years after the end of the period that is necessary for recovery from such illness or injury.

***(C) Special rule***

A student who fails to apply for readmission within the period described in this section shall not automatically forfeit such eligibility for readmission to the institution of higher education, but shall be subject to the institution of higher education's established leave of absence policy and general practices.

***(5) Documentation***

***(A) In general***

A student who submits an application for readmission to an institution of higher education under this section shall provide to the institution of higher education documentation to establish that—

(i) the student has not exceeded the service limitations established under this section; and

(ii) the student's eligibility for readmission has not been terminated due to an exception in subsection (d).

***(B) Prohibited documentation demands***

An institution of higher education may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

***(6) No change in academic status***



A student who is readmitted to an institution of higher education under this section shall be readmitted with the same academic status as such student had when such student last attended the institution of higher education.

*(d) Exception from readmission eligibility*

A student's eligibility for readmission to an institution of higher education under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

- (1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.
- (2) A dismissal of such person permitted under section 1161(a) of title 10.
- (3) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

## **§5 of the Higher Education Relief Opportunities (HEROS) Act of 2003 (20 U.S.C. §1098ee. Definitions)**

In this part:

### ***(1) Active duty***

The term "active duty" has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

### ***(2) Affected individual***

The term "affected individual" means an individual who—

(A) is serving on active duty during a war or other military operation or national emergency;

(B) is performing qualifying National Guard duty during a war or other military operation or national emergency;

(C) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or

(D) suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

### ***(3) Military operation***

The term "military operation" means a contingency operation as such term is defined in section 101(a)(13) of title 10.

### ***(4) National emergency***

The term "national emergency" means a national emergency declared by the President of the United States.

### ***(5) Serving on active duty***

The term "serving on active duty during a war or other military operation or national emergency" shall include service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under ~~section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, section 12341 of title 10, United States Code, for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title~~ or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

*(6) Qualifying National Guard duty*

The term "qualifying National Guard duty during a war or other military operation or national emergency" means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under ~~section 502(f)~~ section 541 of title 32, United States Code, in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

# **TITLE 26**

## **Internal Revenue Code**

**§3121 of the Internal Revenue Code  
(26 U.S.C. §3121. Definitions)**

***(a) Wages***

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include-

(1) in the case of the taxes imposed by sections 3101(a) and 3111(a) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of-

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workman's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee;

[(3) Repealed. [Pub. L. 98-21, title III, §324\(a\)\(3\)\(B\), Apr. 20, 1983, 97 Stat. 123](#) ]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary-

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974,

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received,

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof, or

(I) under a plan described in section 457(e)(11)(A)(ii) and maintained by an eligible employer (as defined in section 457(e)(1));

(6) the payment by an employer (without deduction from the remuneration of the employee)-

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7)(A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in subsection (x)) for such year;

(C) cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than \$100. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g)(5);

(8)(A) remuneration paid in any medium other than cash for agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless-

(i) the cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more, or

(ii) the employer's expenditures for agricultural labor in such year equal or exceed \$2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes "wages" under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

[ (9) Repealed. [Pub. L. 98-21, title III, §324\(a\)\(3\)\(B\), Apr. 20, 1983, 97 Stat. 123](#) ]

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than \$100;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n));

(12)(A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more;

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid-

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(14) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(15) any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than \$100;

[ (17) Repealed. [Pub. L. 113-295, div. A, title II, §221\(a\)\(19\)\(B\)\(iv\), Dec. 19, 2014, 128 Stat. 4040](#) ]

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);

(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;



(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights);

(22) remuneration on account of-

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock; or

(23) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter. Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

***(b) Employment***

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include-

(1) service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by a child under the age of 18 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if-

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service-

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who-

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause-

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with

the American Institute in Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 104(e)(2) of the Indian Self-Determination Act applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs-

(C) service performed as the President or Vice President of the United States,

(D) service performed-

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service-

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual-

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997, to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act;

(6) service performed in the employ of the United States or any instrumentality of the United States if such service is performed-

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of-

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter-

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code); except that the provisions of this subparagraph shall not be applicable to service performed-

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply,

(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed-

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than \$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term "retirement system" has the meaning given such term by section 218(b)(4) of the Social Security Act;

(8)(A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in

effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under subsection (w), other than service in an unrelated trade or business (within the meaning of section 513(a));

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) service performed in the employ of-

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government-

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization, except service which constitutes "employment" under subsection (y);

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which-

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

[(17) Repealed. [Pub. L. 113-295, div. A, title II, §221\(a\)\(99\)\(C\)\(i\), Dec. 19, 2014, 128 Stat. 4052.](#)]

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which-

(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration-



(i) which does not exceed \$100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) domestic service in a private home of the employer which-

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

***(c) Included and excluded service***

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b)(9).

***(d) Employee***

For purposes of this chapter, the term "employee" means-

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person-

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed; or

(4) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.

***(e) State, United States, and citizen***

For purposes of this chapter-

***(1) State***

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

***(2) United States***

The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

***(f) American vessel and aircraft***

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

***(g) Agricultural labor***

For purposes of this chapter, the term "agricultural labor" includes all service performed-

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

***(h) American employer***

For purposes of this chapter, the term "American employer" means an employer which is-

- (1) the United States or any instrumentality thereof,
- (2) an individual who is a resident of the United States,
- (3) a partnership, if two-thirds or more of the partners are residents of the United States,
- (4) a trust, if all of the trustees are residents of the United States, or
- (5) a corporation organized under the laws of the United States or of any State.

***(i) Computation of wages in certain cases***

***(1) Domestic service***

For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(7)(B).

***(2) Service in the uniformed services***

For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which

subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.

***(3) Peace Corps volunteer service***

For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

***(4) Service performed by certain members of religious orders***

For purposes of this chapter, in any case where an individual is a member of a religious order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a)(1), include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than \$100 a month.

***(5) Service performed by certain retired justices and judges***

For purposes of this chapter, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (relating to assignment of retired justices and judges to active duty), the term "wages" shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

***(j) Covered transportation service***

For purposes of this chapter-

***(1) Existing transportation systems-General rule***

Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

***(2) Existing transportation systems-Cases in which no transportation employees, or only certain employees, are covered***

Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if-

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who-

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

### ***(3) Transportation systems acquired after 1950***

All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

### ***(4) Definitions***

For purposes of this subsection-

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of-

(i) a State,

(ii) one or more political subdivisions of a State, or

(iii) a State and one or more of its political subdivisions.

***[ (k) Repealed. Pub. L. 98-21, title I, §102(b)(2), Apr. 20, 1983, 97 Stat. 71 ]***

***(l) Agreements entered into by American employers with respect to foreign affiliates***

***(1) Agreement with respect to certain employees of foreign affiliate***

The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (6)) by all employees who are citizens or residents of the United States, except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign affiliate of such American employer. Such agreement shall be applicable with respect to citizens or residents of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign affiliate specified in the agreement. Such agreement shall provide-

(A) that the American employer shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the American employer will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

***(2) Effective period of agreement***

An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other affiliate and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other affiliate only after the calendar quarter in which such amendment is executed.

Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).

***(3) No termination of agreement***

No agreement under this subsection may be terminated, either in its entirety or with respect to any foreign affiliate, on or after June 15, 1989.

***(4) Deposits in trust funds***

For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration-

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

***(5) Overpayments and underpayments***

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary within two years from the time such overpayment was made.



***(6) Foreign affiliate defined***

For purposes of this subsection and section 210(a) of the Social Security Act-

***(A) In general***

A foreign affiliate of an American employer is any foreign entity in which such American employer has not less than a 10-percent interest.

***(B) Determination of 10-percent interest***

For purposes of subparagraph (A), an American employer has a 10-percent interest in any entity if such employer has such an interest directly (or through one or more entities)-

(i) in the case of a corporation, in the voting stock thereof, and

(ii) in the case of any other entity, in the profits thereof.

***(7) American employer as separate entity***

Each American employer which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

***(8) Regulations***

Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on American employers with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

***(m) Service in the uniformed services***

For purposes of this chapter-

***(1) Inclusion of service***

The term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include-

(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed by an individual as a member of a uniformed service on ~~inactive duty~~ training reserve component duty.

**(2) Active duty**

The term "active duty" means "active duty" as described in paragraph (21) of section 101 of title 38, United States Code, except that it shall also include "active duty for training" as described in paragraph (22) of such section.

**(3) ~~INACTIVE DUTY TRAINING~~ RESERVE COMPONENT DUTY**

The term "~~inactive duty training~~reserve component duty" means "~~inactive duty training~~reserve component duty" as described in paragraph (23) of such section 101.

**(n) Member of a uniformed service**

For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38, United States Code), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes-

- (1) a retired member of any of those services;
- (2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;
- (3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;
- (4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and
- (5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service-
  - (A) who has been provisionally accepted for such duty; or
  - (B) who, under the Military Selective Service Act, has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

***(o) Crew leader***

For purposes of this chapter, the term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

***(p) Peace Corps volunteer service***

For purposes of this chapter, the term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

***(q) Tips included for both employee and employer taxes***

For purposes of this chapter, tips received by an employee in the course of his employment shall be considered remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111). Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary.

***(r) Election of coverage by religious orders***

***(1) Certificate of election by order***

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof. Such certificate of election shall provide that-

(A) such election of coverage by such order or subdivision shall be irrevocable;

(B) such election shall apply to all current and future members of such order, or in the case of a subdivision thereof to all current and future members of such order who belong to such subdivision;

(C) all services performed by a member of such an order or subdivision in the exercise of duties required by such order or subdivision shall be deemed to have been performed by such member as an employee of such order or subdivision; and

(D) the wages of each member, upon which such order or subdivision shall pay the taxes imposed by sections 3101 and 3111, will be determined as provided in subsection (i)(4).

***(2) Definition of member***

For purposes of this subsection, a member of a religious order means any individual who is subject to a vow of poverty as a member of such order and who performs tasks usually required (and to the extent usually required) of an active member of such order and who is not considered retired because of old age or total disability.

***(3) Effective date for election***

(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8) and for purposes of section 210(a)(8) of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

(B) If a certificate of election filed pursuant to this subsection is effective for one or more calendar quarters prior to the quarter in which such certificate is filed, then-

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

**[(4) Repealed. Pub. L. 98-21, title I, §102(b)(3)(B), Apr. 20, 1983, 97 Stat. 71.]**

***(s) Concurrent employment by two or more employers***

For purposes of sections 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

**[(t) Repealed. Pub. L. 100-203, title IX, §9006(b)(2), Dec. 22, 1987, 101 Stat. 1330-289.]**

***(u) Application of hospital insurance tax to Federal, State, and local employment***

***(1) Federal employment***

For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.

***(2) State and local employment***

For purposes of the taxes imposed by sections 3101(b) and 3111(b)-

***(A) In general***

Except as provided in subparagraphs (B) and (C), subsection (b) shall be applied without regard to paragraph (7) thereof.

***(B) Exception for certain services***

Service shall not be treated as employment by reason of subparagraph (A) if-

- (i) the service is included under an agreement under section 218 of the Social Security Act, or
- (ii) the service is performed-

(I) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(II) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(III) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(IV) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training,

(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than \$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year, or

(VI) by an individual in a position described in section 1402(c)(2)(E).

As used in this subparagraph, the terms "State" and "political subdivision" have the meanings given those terms in section 218(b) of the Social Security Act.

***(C) Exception for current employment which continues***

Service performed for an employer shall not be treated as employment by reason of subparagraph (A) if-

(i) such service would be excluded from the term "employment" for purposes of this chapter if subparagraph (A) did not apply;

(ii) such service is performed by an individual-

(I) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(II) who is a bona fide employee of that employer on March 31, 1986, and

(III) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(iii) the employment relationship with that employer has not been terminated after March 31, 1986.

***(D) Treatment of agencies and instrumentalities***

For purposes of subparagraph (C), under regulations-

(i) All agencies and instrumentalities of a State (as defined in section 218(b) of the Social Security Act) or of the District of Columbia shall be treated as a single employer.

(ii) All agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in clause (i).

***(3) Medicare qualified government employment***

For purposes of this chapter, the term "medicare qualified government employment" means service which-

(A) is employment (as defined in subsection (b)) with the application of paragraphs (1) and (2), but

(B) would not be employment (as so defined) without the application of such paragraphs.

***(v) Treatment of certain deferred compensation and salary reduction arrangements***

***(1) Certain employer contributions treated as wages***

Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term "wages"-

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3) or consisting of designated Roth contributions (as defined in section 402A(c)), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

***(2) Treatment of certain nonqualified deferred compensation plans***

***(A) In general***

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of-

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)) or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985.

***(B) Taxed only once***

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

***(C) Nonqualified deferred compensation plan***

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

***(3) Exempt governmental deferred compensation plan***

For purposes of subsection (a)(5), the term "exempt governmental deferred compensation plan" means any plan providing for deferral of compensation established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. Such term shall not include-

(A) any plan to which section 83, 402(b), 403(c), 457(a), or 457(f)(1) applies,

(B) any annuity contract described in section 403(b), and

(C) the Thrift Savings Fund (within the meaning of subchapter III of chapter 84 of title 5, United States Code).

***(w) Exemption of churches and qualified church-controlled organizations***

***(1) General rule***

Any church or qualified church-controlled organization (as defined in paragraph (3)) may make an election within the time period described in paragraph (2), in accordance with such procedures as the Secretary determines to be appropriate, that services performed in the employ of such church or organization shall be excluded from employment for purposes of title II of the Social Security Act and this chapter. An election may be made under this subsection only if the church or qualified church-controlled organization states that such church or organization is opposed for religious reasons to the payment of the tax imposed under section 3111.

***(2) Timing and duration of election***

An election under this subsection must be made prior to the first date, more than 90 days after July 18, 1984, on which a quarterly employment tax return for the tax imposed under section 3111 is due, or would be due but for the election, from such church or organization. An election under this subsection shall apply to current and future employees, and shall apply to service performed after December 31, 1983. The election may be revoked by the church or organization under regulations prescribed by the Secretary. The election shall be revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Any revocation under the preceding sentence shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.



### ***(3) Definitions***

(A) For purposes of this subsection, the term "church" means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(B) For purposes of this subsection, the term "qualified church-controlled organization" means any church-controlled tax-exempt organization described in section 501(c)(3), other than an organization which-

(i) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(ii) normally receives more than 25 percent of its support from either (I) governmental sources, or (II) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.

### ***(x) Applicable dollar threshold***

For purposes of subsection (a)(7)(B), the term "applicable dollar threshold" means \$1,000. In the case of calendar years after 1995, the Commissioner of Social Security shall adjust such \$1,000 amount at the same time and in the same manner as under section 215(a)(1)(B)(ii) of the Social Security Act with respect to the amounts referred to in section 215(a)(1)(B)(i) of such Act, except that, for purposes of this paragraph, 1993 shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) of such Act. If any amount as adjusted under the preceding sentence is not a multiple of \$100, such amount shall be rounded to the next lowest multiple of \$100.

### ***(y) Service in the employ of international organizations by certain transferred Federal employees***

#### ***(1) In general***

For purposes of this chapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5, United States Code, shall constitute "employment" if-

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted "employment" under subsection (b) for purposes of the taxes imposed by sections 3101(a) and 3111(a), and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

#### ***(2) Definitions***

For purposes of this subsection-

***(A) Federal agency***

The term "Federal agency" means an agency, as defined in section 3581(1) of title 5, United States Code.

***(B) International organization***

The term "international organization" has the meaning provided such term by section 3581(3) of title 5, United States Code.

***(z) Treatment of certain foreign persons as American employers***

***(1) In general***

If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

***(2) Domestically controlled group of entities***

For purposes of this subsection-

***(A) In general***

The term "domestically controlled group of entities" means a controlled group of entities the common parent of which is a domestic corporation.

***(B) Controlled group of entities***

The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1), except that-

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

***(3) Liability of common parent***

In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

***(4) Provisions preventing double taxation***

***(A) Agreements***

Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (1).

***(B) Equivalent foreign taxation***

Paragraph (1) shall not apply to any services if the employer establishes to the satisfaction of the Secretary that the remuneration paid by such employer for such services is subject to a tax imposed by a foreign country which is substantially equivalent to the taxes imposed by this chapter.

***(5) Cross reference***

**For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).**

# **TITLE 28**

## **Judiciary and Judicial Procedures**

## **28 U.S.C. §2671. Definitions**

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the government" includes (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under ~~section 115, 316, 502, 503, 504, or 505 of title 32~~ section 541 or 542 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation, and (2) any officer or employee of a Federal public defender organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

# **TITLE 29**

## **Labor**

**§101 of the Family and Medical Leave Act of 1993 (§101(14) as added by §565 of the National Defense Authorization Act for Fiscal Year 2010, Oct 28, 2009, 123 STAT. 2309)**

**(29 U.S.C. §2611. Definitions)**

**Sec 101. DEFINITIONS.**

As used in this subchapter:

**(1) Commerce**

The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and (3) of section 142 of this title.

**(2) Eligible employee**

**(A) In general**

The term "eligible employee" means an employee who has been employed—

- (i) for at least 12 months by the employer with respect to whom leave is requested under section 2612 of this title; and
- (ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

**(B) Exclusions**

The term "eligible employee" does not include—

- (i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5; or
- (ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

**(C) Determination**

For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 207 of this title shall apply.

**(D) Airline flight crews**

**(i) Determination**

For purposes of determining whether an employee who is a flight attendant or flight crewmember (as such terms are defined in regulations of the Federal Aviation Administration)

meets the hours of service requirement specified in subparagraph (A)(ii), the employee will be considered to meet the requirement if—

(I) the employee has worked or been paid for not less than 60 percent of the applicable total monthly guarantee, or the equivalent, for the previous 12-month period, for or by the employer with respect to whom leave is requested under section 2612 of this title; and

(II) the employee has worked or been paid for not less than 504 hours (not counting personal commute time or time spent on vacation leave or medical or sick leave) during the previous 12-month period, for or by that employer.

***(ii) File***

Each employer of an employee described in clause (i) shall maintain on file with the Secretary (in accordance with such regulations as the Secretary may prescribe) containing information specifying the applicable monthly guarantee with respect to each category of employee to which such guarantee applies.

***(iii) Definition***

In this subparagraph, the term "applicable monthly guarantee" means—

(I) for an employee described in clause (i) other than an employee on reserve status, the minimum number of hours for which an employer has agreed to schedule such employee for any given month; and

(II) for an employee described in clause (i) who is on reserve status, the number of hours for which an employer has agreed to pay such employee on reserve status for any given month,

as established in the applicable collective bargaining agreement or, if none exists, in the employer's policies.

***(3) Employ; employee; State***

The terms "employ", "employee", and "State" have the same meanings given such terms in subsections (c), (e), and (g) of section 203 of this title.

***(4) Employer***

***(A) In general***

The term "employer"—

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes—



(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer;

(iii) includes any "public agency", as defined in section 203(x) of this title; and

(iv) includes the Government Accountability Office and the Library of Congress.

***(B) Public agency***

For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

***(5) Employment benefits***

The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 1002(3) of this title.

***(6) Health care provider***

The term "health care provider" means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(B) any other person determined by the Secretary to be capable of providing health care services.

***(7) Parent***

The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

***(8) Person***

The term "person" has the same meaning given such term in section 203(a) of this title.

***(9) Reduced leave schedule***

The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

***(10) Secretary***

The term "Secretary" means the Secretary of Labor.

***(11) Serious health condition***

The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

- (A) inpatient care in a hospital, hospice, or residential medical care facility; or
- (B) continuing treatment by a health care provider.

***(12) Son or daughter***

The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

- (A) under 18 years of age; or
- (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

***(13) Spouse***

The term "spouse" means a husband or wife, as the case may be.

***(14) Covered active duty***

The term "covered active duty" means—

- (A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- (B) in the case of a member of a reserve component of the Armed Forces, ~~duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.~~ during the period the member is deployed to a foreign country in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code).

***(15) Covered servicemember***

The term "covered servicemember" means—

- (A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- (B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**(16) Outpatient status**

The term "outpatient status", with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**(17) Next of kin**

The term "next of kin", used with respect to an individual, means the nearest blood relative of that individual.

**(18) Serious injury or illness**

The term "serious injury or illness"—

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

**(19) Veteran**

The term "veteran" has the meaning given the term in section 101 of title 38.

## **§3 of the Workforce Innovation and Opportunity Act [Ch. 32; §3(16)(A)]**

### **(29 U.S.C. §3102. Definitions)**

In this Act, and the core program provisions that are not in this Act, except as otherwise expressly provided:

#### ***(1) Administrative costs***

The term "administrative costs" means expenditures incurred by State boards and local boards, direct recipients (including State grant recipients under part B of subchapter I and recipients of awards under parts C and D of subchapter I), local grant recipients, local fiscal agents or local grant subrecipients, and one-stop operators in the performance of administrative functions and in carrying out activities under subchapter I that are not related to the direct provision of workforce investment services (including services to participants and employers). Such costs include both personnel and nonpersonnel costs and both direct and indirect costs.

#### ***(2) Adult***

Except as otherwise specified in section 3172 of this title, the term "adult" means an individual who is age 18 or older.

#### ***(3) Adult education; adult education and literacy activities***

The terms "adult education" and "adult education and literacy activities" have the meanings given the terms in section 3272 of this title.

#### ***(4) Area career and technical education school***

The term "area career and technical education school" has the meaning given the term in section 2302 of title 20.

#### ***(5) Basic skills deficient***

The term "basic skills deficient" means, with respect to an individual—

(A) who is a youth, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(B) who is a youth or adult, that the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

#### ***(6) Career and technical education***

The term "career and technical education" has the meaning given the term in section 2302 of title 20.

***(7) Career pathway***

The term "career pathway" means a combination of rigorous and high-quality education, training, and other services that—

(A) aligns with the skill needs of industries in the economy of the State or regional economy involved;

(B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) (referred to individually in this Act as an "apprenticeship", except in section 3226 of this title);

(C) includes counseling to support an individual in achieving the individual's education and career goals;

(D) includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least 1 recognized postsecondary credential; and

(G) helps an individual enter or advance within a specific occupation or occupational cluster.

***(8) Career planning***

The term "career planning" means the provision of a client-centered approach in the delivery of services, designed—

(A) to prepare and coordinate comprehensive employment plans, such as service strategies, for participants to ensure access to necessary workforce investment activities and supportive services, using, where feasible, computer-based technologies; and

(B) to provide job, education, and career counseling, as appropriate during program participation and after job placement.

***(9) Chief elected official***

The term "chief elected official" means—

(A) the chief elected executive officer of a unit of general local government in a local area; and

(B) in a case in which a local area includes more than 1 unit of general local government, the individuals designated under the agreement described in section 3122(c)(1)(B) of this title.

***(10) Community-based organization***

The term "community-based organization" means a private nonprofit organization (which may include a faith-based organization), that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.

***(11) Competitive integrated employment***

The term "competitive integrated employment" has the meaning given the term in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705), for individuals with disabilities.

***(12) Core program***

The term "core programs" means a program authorized under a core program provision.

***(13) Core program provision***

The term "core program provision" means—

(A) subparts 2 and 3 of part B of subchapter I (relating to youth workforce investment activities and adult and dislocated worker employment and training activities);

(B) subchapter II (relating to adult education and literacy activities);

(C) sections 1 through 13 of the Wagner-Peyser Act (29 U.S.C. 49 et seq.) (relating to employment services); and

(D) title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.), other than section 112 or part C of that title (29 U.S.C. 732, 741) (relating to vocational rehabilitation services).

***(14) Customized training***

The term "customized training" means training—

(A) that is designed to meet the specific requirements of an employer (including a group of employers);

(B) that is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

(C) for which the employer pays—

(i) a significant portion of the cost of training, as determined by the local board involved, taking into account the size of the employer and such other factors as the local board determines to be appropriate, which may include the number of employees participating in training, wage and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities; and

(ii) in the case of customized training (as defined in subparagraphs (A) and (B)) involving an employer located in multiple local areas in the State, a significant portion of the cost of the training, as determined by the Governor of the State, taking into account the size of the employer and such other factors as the Governor determines to be appropriate.

*(15) Dislocated worker*

The term "dislocated worker" means an individual who—

(A)(i) has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(ii)(I) is eligible for or has exhausted entitlement to unemployment compensation; or

(II) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 3151(e) of this title, attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

(iii) is unlikely to return to a previous industry or occupation;

(B)(i) has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive services other than training services described in section 3174(c)(3) of this title, career services described in section 3174(c)(2)(A)(xii) of this title, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

(C) was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters;

(D) is a displaced homemaker; or

(E)(i) is the spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10), and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or

(ii) is the spouse of a member of the Armed Forces on active duty and who meets the criteria described in paragraph (16)(B).

***(16) Displaced homemaker***

The term "displaced homemaker" means an individual who has been providing unpaid services to family members in the home and who—

(A)(i) has been dependent on the income of another family member but is no longer supported by that income; or

(ii) is the dependent spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code) or full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) and whose family income is significantly reduced because of a deployment (as defined in section 991(b) of title 10 or pursuant to paragraph (4) of such section), a call or order to active duty ~~pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code)~~, a permanent change of station, or the service-connected (as defined in section 101(16) of title 38, United States Code) death or disability of the member; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

***(17) Economic development agency***

The term "economic development agency" includes a local planning or zoning commission or board, a community development agency, or another local agency or institution responsible for regulating, promoting, or assisting in local economic development.

***(18) Eligible youth***

Except as provided in parts C and D of subchapter I, the term "eligible youth" means an in—school youth or out-of-school youth.

***(19) Employment and training activity***

The term "employment and training activity" means an activity described in section 3174 of this title that is carried out for an adult or dislocated worker.

***(20) English language acquisition program***

The term "English language acquisition program" has the meaning given the term in section 3272 of this title.

***(21) English language learner***

The term "English language learner" has the meaning given the term in section 3272 of this title.

***(22) Governor***

The term "Governor" means the chief executive of a State or an outlying area.



***(23) In-demand industry sector or occupation***

***(A) In general***

The term "in-demand industry sector or occupation" means—

(i) an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or

(ii) an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

***(B) Determination***

The determination of whether an industry sector or occupation is in-demand under this paragraph shall be made by the State board or local board, as appropriate, using State and regional business and labor market projections, including the use of labor market information.

***(24) Individual with a barrier to employment***

The term "individual with a barrier to employment" means a member of 1 or more of the following populations:

(A) Displaced homemakers.

(B) Low-income individuals.

(C) Indians, Alaska Natives, and Native Hawaiians, as such terms are defined in section 3221 of this title.

(D) Individuals with disabilities, including youth who are individuals with disabilities.

(E) Older individuals.

(F) Ex-offenders.

(G) Homeless individuals (as defined in section 12473(6) of title 34), or homeless children and youths (as defined in section 11434a(2) of title 42).

(H) Youth who are in or have aged out of the foster care system.

(I) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers.

(J) Eligible migrant and seasonal farmworkers, as defined in section 3222(i) of this title.

(K) Individuals within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(L) Single parents (including single pregnant women).

(M) Long-term unemployed individuals.

(N) Such other groups as the Governor involved determines to have barriers to employment.

***(25) Individual with a disability***

***(A) In general***

The term "individual with a disability" means an individual with a disability as defined in section 12102 of title 42.

***(B) Individuals with disabilities***

The term "individuals with disabilities" means more than 1 individual with a disability.

***(26) Industry or sector partnership***

The term "industry or sector partnership" means a workforce collaborative, convened by or acting in partnership with a State board or local board, that—

(A) organizes key stakeholders in an industry cluster into a working group that focuses on the shared goals and human resources needs of the industry cluster and that includes, at the appropriate stage of development of the partnership—

(i) representatives of multiple businesses or other employers in the industry cluster, including small and medium-sized employers when practicable;

(ii) 1 or more representatives of a recognized State labor organization or central labor council, or another labor representative, as appropriate; and

(iii) 1 or more representatives of an institution of higher education with, or another provider of, education or training programs that support the industry cluster; and

(B) may include representatives of—

(i) State or local government;

(ii) State or local economic development agencies;

(iii) State boards or local boards, as appropriate;

(iv) a State workforce agency or other entity providing employment services;

(v) other State or local agencies;

- (vi) business or trade associations;
- (vii) economic development organizations;
- (viii) nonprofit organizations, community-based organizations, or intermediaries;
- (ix) philanthropic organizations;
- (x) industry associations; and
- (xi) other organizations, as determined to be necessary by the members comprising the industry or sector partnership.

***(27) In-school youth***

The term "in-school youth" means a youth described in section 3164(a)(1)(C) of this title.

***(28) Institution of higher education***

The term "institution of higher education" has the meaning given the term in section 1001 of title 20, and subparagraphs (A) and (B) of section 1002(a)(1), of title 20.

***(29) Integrated education and training***

The term "integrated education and training" has the meaning given the term in section 3272 of this title.

***(30) Labor market area***

The term "labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area shall be identified in accordance with criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas or similar criteria established by a Governor.

***(31) Literacy***

The term "literacy" has the meaning given the term in section 3272 of this title.

***(32) Local area***

The term "local area" means a local workforce investment area designated under section 3121 of this title, subject to sections 3121(c)(3)(A), 3122(c)(4)(B)(i), and 3249(i) of this title.

***(33) Local board***

The term "local board" means a local workforce development board established under section 3122 of this title, subject to section 3122(c)(4)(B)(i) of this title.

***(34) Local educational agency***

The term "local educational agency" has the meaning given the term in section 7801 of title 20.

***(35) Local plan***

The term "local plan" means a plan submitted under section 3123 of this title, subject to section 3121(c)(3)(B) of this title.

***(36) Low-income individual***

***(A) In general***

The term "low-income individual" means an individual who—

(i) receives, or in the past 6 months has received, or is a member of a family that is receiving or in the past 6 months has received, assistance through the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), the program of block grants to States for temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or the supplemental security income program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or State or local income-based public assistance;

(ii) is in a family with total family income that does not exceed the higher of—

(I) the poverty line; or

(II) 70 percent of the lower living standard income level;

(iii) is a homeless individual (as defined in section 12473(6) of title 34), or a homeless child or youth (as defined under section 11434a(2) of title 42);

(iv) receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(v) is a foster child on behalf of whom State or local government payments are made; or

(vi) is an individual with a disability whose own income meets the income requirement of clause (ii), but who is a member of a family whose income does not meet this requirement.

***(B) Lower living standard income level***

The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary.

***(37) Nontraditional employment***

The term "nontraditional employment" refers to occupations or fields of work, for which individuals from the gender involved comprise less than 25 percent of the individuals employed in each such occupation or field of work.

***(38) Offender***

The term "offender" means an adult or juvenile—

(A) who is or has been subject to any stage of the criminal justice process, and for whom services under this Act may be beneficial; or

(B) who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

***(39) Older individual***

The term "older individual" means an individual age 55 or older.

***(40) One-stop center***

The term "one-stop center" means a site described in section 3151(e)(2) of this title.

***(41) One-stop operator***

The term "one-stop operator" means 1 or more entities designated or certified under section 3151(d) of this title.

***(42) One-stop partner***

The term "one-stop partner" means—

(A) an entity described in section 3151(b)(1) of this title; and

(B) an entity described in section 3151(b)(2) of this title that is participating, with the approval of the local board and chief elected official, in the operation of a one-stop delivery system.

***(43) One-stop partner program***

The term "one-stop partner program" means a program or activities described in section 3151(b) of this title of a one-stop partner.

***(44) On-the-job training***

The term "on-the-job training" means training by an employer that is provided to a paid participant while engaged in productive work in a job that—

(A) provides knowledge or skills essential to the full and adequate performance of the job;

(B) is made available through a program that provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, except as provided in section 3174(c)(3)(H) of this title, for the extraordinary costs of providing the training and additional supervision related to the training; and

(C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

***(45) Outlying area***

The term "outlying area" means—

(A) American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands; and

(B) the Republic of Palau, except during any period for which the Secretary of Labor and the Secretary of Education determine that a Compact of Free Association is in effect and contains provisions for training and education assistance prohibiting the assistance provided under this Act.

***(46) Out-of-school youth***

The term "out-of-school youth" means a youth described in section 3164(a)(1)(B) of this title.

***(47) Pay-for-performance contract strategy***

The term "pay-for-performance contract strategy" means a procurement strategy that uses pay-for-performance contracts in the provision of training services described in section 3174(c)(3) of this title or activities described in section 3164(c)(2) of this title, and includes—

(A) contracts, each of which shall specify a fixed amount that will be paid to an eligible service provider (which may include a local or national community-based organization or intermediary, community college, or other training provider, that is eligible under section 3152 or 3153 of this title, as appropriate) based on the achievement of specified levels of performance on the primary indicators of performance described in section 3141(b)(2)(A) of this title for target populations as identified by the local board (including individuals with barriers to employment), within a defined timetable, and which may provide for bonus payments to such service provider to expand capacity to provide effective training;

(B) a strategy for independently validating the achievement of the performance described in subparagraph (A); and

(C) a description of how the State or local area will reallocate funds not paid to a provider because the achievement of the performance described in subparagraph (A) did not occur, for further activities related to such a procurement strategy, subject to section 3249(g)(4) of this title.

***(48) Planning region***

The term "planning region" means a region described in subparagraph (B) or (C) of section 3121(a)(2) of this title, subject to section 3122(c)(4)(B)(i) of this title.

***(49) Poverty line***

The term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42) applicable to a family of the size involved.

***(50) Public assistance***

The term "public assistance" means Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.

***(51) Rapid response activity***

The term "rapid response activity" means an activity provided by a State, or by an entity designated by a State, with funds provided by the State under section 3174(a)(1)(A) of this title, in the case of a permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster, that results in mass job dislocation, in order to assist dislocated workers in obtaining reemployment as soon as possible, with services including—

(A) the establishment of onsite contact with employers and employee representatives—

(i) immediately after the State is notified of a current or projected permanent closure or mass layoff; or

(ii) in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of such disaster;

(B) the provision of information on and access to available employment and training activities;

(C) assistance in establishing a labor-management committee, voluntarily agreed to by labor and management, with the ability to devise and implement a strategy for assessing the employment and training needs of dislocated workers and obtaining services to meet such needs;

(D) the provision of emergency assistance adapted to the particular closure, layoff, or disaster; and

(E) the provision of assistance to the local community in developing a coordinated response and in obtaining access to State economic development assistance.

***(52) Recognized postsecondary credential***

The term "recognized postsecondary credential" means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license

recognized by the State involved or Federal Government, or an associate or baccalaureate degree.

***(53) Region***

The term "region", used without further description, means a region identified under section 3121(a) of this title, subject to section 3122(c)(4)(B)(i) of this title and except as provided in section 3121(b)(1)(B)(ii) of this title.

***(54) School dropout***

The term "school dropout" means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

***(55) Secondary school***

The term "secondary school" has the meaning given the term in section 7801 of title 20.

***(56) State***

The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

***(57) State board***

The term "State board" means a State workforce development board established under section 3111 of this title.

***(58) State plan***

The term "State plan", used without further description, means a unified State plan under section 3112 of this title or a combined State plan under section 3113 of this title.

***(59) Supportive services***

The term "supportive services" means services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this Act.

***(60) Training services***

The term "training services" means services described in section 3174(c)(3) of this title.

***(61) Unemployed individual***

The term "unemployed individual" means an individual who is without a job and who wants and is available for work. The determination of whether an individual is without a job, for purposes of this paragraph, shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.



***(62) Unit of general local government***

The term "unit of general local government" means any general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers.

***(63) Veteran; related definition***

***(A) Veteran***

The term "veteran" has the meaning given the term in section 101 of title 38.

***(B) Recently separated veteran***

The term "recently separated veteran" means any veteran who applies for participation under this Act within 48 months after the discharge or release from active military, naval, or air service.

***(64) Vocational rehabilitation program***

The term "vocational rehabilitation program" means a program authorized under a provision covered under paragraph (13)(D).

***(65) Workforce development activity***

The term "workforce development activity" means an activity carried out through a workforce development program.

***(66) Workforce development program***

The term "workforce development program" means a program made available through a workforce development system.

***(67) Workforce development system***

The term "workforce development system" means a system that makes available the core programs, the other one-stop partner programs, and any other programs providing employment and training services as identified by a State board or local board.

***(68) Workforce investment activity***

The term "workforce investment activity" means an employment and training activity, and a youth workforce investment activity.

***(69) Workforce preparation activities***

The term "workforce preparation activities" has the meaning given the term in section 3272 of this title.

***(70) Workplace learning advisor***

The term "workplace learning advisor" means an individual employed by an organization who has the knowledge and skills necessary to advise other employees of that organization about the education, skill development, job training, career counseling services, and credentials, including services provided through the workforce development system, required to progress toward career goals of such employees in order to meet employer requirements related to job openings and career advancements that support economic self-sufficiency.

***(71) Youth workforce investment activity***

The term "youth workforce investment activity" means an activity described in section 3164 of this title that is carried out for eligible youth (or as described in section 3164(a)(3)(A) of this title).

# **TITLE 32**

## **National Guard**

## **32 U.S.C. CHAPTER 1-ORGANIZATION**

Sec.

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## 32 U.S.C. §101. Definitions

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1) For purposes of other laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, the term "Territory" includes Guam and the Virgin Islands.

(2) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(3) "National Guard" means the Army National Guard and the Air National Guard.

(4) "Army National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that-

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(6) "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that-

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(7) "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(8) "Officer" means commissioned or warrant officer.

(9) "Enlisted member" means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade.

(10) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(11) "Rank" means the order of precedence among members of the armed forces.

(12) "Active duty" means full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. ~~It does not include~~ Except for purposes of chapters 40, 53, 54, 55, 56, 58, 59, 61, 63, 65, 69, 71, 73, 75, 76, 77, 79, 88, 101, 1217, and 1608 of title 10, it does not include full-time National Guard duty.

(13) "Supplies" includes material, equipment, and stores of all kinds.

(14) "Shall" is used in an imperative sense.

(15) "May" is used in a permissive sense. The words "no person may \* \* \*" mean that no person is required, authorized, or permitted to do the act prescribed.

(16) "Includes" means "includes but is not limited to".

(17) "Pay" includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(18) "Spouse" means husband or wife, as the case may be.

(19) "Full-time National Guard duty" means training or other duty, other than ~~inactive-duty reserve component duty~~, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under ~~section 316, 502, 503, 504, or 505 of this title~~ section 541 or 542 of this title for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(20) 'Reserve component duty' has the meaning given that term in section 101(d)(7) of title 10.

### **32 U.S.C. §107. Availability of appropriations**

(a) Under such regulations as the Secretary concerned may prescribe, appropriations for the National Guard are available for-

(1) the necessary expenses of members of a regular or reserve component of the Army or the Air Force traveling on duty in connection with the National Guard;

(2) the necessary expenses of members of the Regular Army or the Regular Air Force on duty in the National Guard Bureau or with the Army Staff or the Air Staff, traveling to and from annual conventions of the Enlisted Association of the National Guard of the United States, the National Guard Association of the United States, or the Adjutants General Association;

(3) the transportation of supplies furnished to the National Guard as permanent equipment;

(4) the office rent and necessary office expenses of officers of a regular or reserve component of the Army or the Air Force on duty with the National Guard;

(5) the expenses of the National Guard Bureau, including clerical services;

(6) the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges;

(7) such incidental expenses of authorized encampments, maneuvers, and field instruction as the Secretary considers necessary; and

(8) other expenses of the National Guard authorized by law.

(b) The expenses of enlisted members of the Regular Army or the Regular Air Force on duty with the National Guard shall be paid from appropriations for the Army National Guard or the Air National Guard, as the case may be, but not from the allotment of a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands. Payable expenses include allowances for subsistence and housing under sections 402 and 403 of title 37 and expenses for medicine and medical attendance.

(c) The pay and allowances for the Chief of the National Guard Bureau and officers of the Army National Guard of the United States or the Air National Guard of the United States called to active duty under ~~section 12402 of title 10~~ section 12342 of title 10 for duty at the National Guard Bureau shall be paid from appropriations for the pay of the Army National Guard or Air National Guard.

### 32 U.S.C. §112. Drug interdiction and counter-drug activities

(a) Funding Assistance.-The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of drug interdiction and counter-drug activities.

(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.

(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed \$5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

(b) Use of Personnel Performing Full-Time National Guard Duty.-~~(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under [section 502\(f\) of this title](#)~~~~[section 542 of this title](#)~~ for the purpose of carrying out drug interdiction and counter-drug activities.

~~(2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required [under section 502\(a\) of this title](#)~~~~[pursuant to sections 552\(a\) and 553\(a\) of this title](#)~~ in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required ~~[under section 502\(a\)\(1\) pursuant to section 553\(a\)](#)~~ of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply



in determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform:

(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

(iii) The performance of the activities will not result in a significant increase in the cost of training.

(iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under ~~section 508 of this title~~ section 514 of this title if—

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

(c) Plan Requirements.—A State drug interdiction and counter-drug activities plan shall—

(1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;

(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State

attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(d) Examination of Plan.- (1) Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.

(2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) in consultation with the Director of National Drug Control Policy.

(3) Paragraph (2) shall not apply if-

(A) the Governor of a State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and

(B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

(e) End Strength Limitation.- (1) Except as provided in paragraph (2), at the end of a fiscal year there may not be more than 4000 members of the National Guard-

(A) on full-time National Guard duty under ~~section 502(f) of this title~~ section 542 of this title to perform drug interdiction or counter-drug activities pursuant to an order to duty; or

(B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.

(f) Annual Report.- The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

(1) The number of members of the National Guard excluded under subsection (e) <sup>1</sup> from the computation of end strengths.

(2) A description of the drug interdiction and counter-drug activities conducted under State drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.

(3) An accounting of the amount of funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plans.

(g) Statutory Construction.-Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

(h) Definitions.-For purposes of this section:

(1) The term "drug interdiction and counter-drug activities", with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the Governor of the State.

(2) The term "Governor of a State" means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(3) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

## **32 U.S.C. CHAPTER 3—PERSONNEL**

Sec.

- 301. Federal recognition of enlisted members.
- 302. Enlistments, reenlistments, and extensions.
- 303. Active and inactive enlistments and transfers.
- 304. Enlistment oath.
- 305. Federal recognition of commissioned officers: persons eligible.
- 307. Federal recognition of officers: examination; certificate of eligibility.
- 308. Federal recognition of officers: temporary recognition.
- 309. Federal recognition of National Guard officers: officers promoted to fill vacancies.
- 310. Federal recognition of National Guard officers: automatic recognition.
- 312. Appointment oath.
- 313. Appointments and enlistments: age limitations.
- 314. Adjutants general.
- 315. Detail of regular members of Army and Air Force to duty with National Guard.
- 316. Detail of members of Army National Guard for rifle instruction of civilians.
- 317. Command during joint exercises with Federal troops.
- [318 to 321. Repealed.]
- 322. Discharge of enlisted members.
- 323. Withdrawal of Federal recognition.
- 324. Discharge of officers; termination of appointment.
- 325. Relief from National Guard duty when ordered to active duty.
- 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures.
- 327. Courts-martial of National Guard not in Federal service: convening authority.
- ~~328. Active Guard and Reserve duty: Governor's authority. [Repealed]~~
- [329 to 335. Repealed.]

### **32 U.S.C. §709. Technicians: employment, use, status**

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in-

- (1) the organizing, administering, instructing, or training of the National Guard;
- (2) the maintenance and repair of supplies issued to the National Guard or the armed forces; and
- (3) the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the duties described by paragraphs (1) and (2):

(A) Support of operations or missions undertaken by the technician's unit at the request of the President or the Secretary of Defense.

(B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician's unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of-

- (i) active-duty members of the armed forces;
- (ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);
- (iii) Department of Defense contractor personnel; or
- (iv) Department of Defense civilian employees.

(b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:

- (1) Be a military technician (dual status) as defined in section 10216(a) of title 10.
- (2) Be a member of the National Guard.
- (3) Hold the military grade specified by the Secretary concerned for that position.
- (4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.

(c)(1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.

(2) The total number of non-dual status technicians in the National Guard is specified in section 10217(c)(2) of title 10.

(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States.

However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.

(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned-

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who-

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a

military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned when the appeal concerns activity occurring while the member is in a military pay status, or concerns fitness for duty in the reserve components;

(5) with respect to an appeal concerning any activity not covered by paragraph (4), the provisions of sections 7511, 7512, and 7513 of title 5, and section 717 of the Civil Rights Act of 1991 1 (42 U.S.C. 2000e-16) shall apply; and

(6) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g)(1) Except as provided in subsection (f), sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.

(2) In addition to the sections referred to in paragraph (1), section 6323(a)(1) of title 5 also does not apply to a person employed under this section ~~who is performing active Guard and Reserve duty (as that term is defined in section 101(d)(6) of title 10) who is on active duty or full-time National Guard duty to perform Active Guard and Reserve functions (as that term is defined in section 101(c)(8) of title 10).~~

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

(j) In this section:

(1) The term "military pay status" means a period of service where the amount of pay payable to a technician for that service is based on rates of military pay provided for under title 37.

(2) The term "fitness for duty in the reserve components" refers only to military-unique service requirements that attend to military service generally, including service in the reserve components or service on active duty.

### **32 U.S.C. §715. Property loss; personal injury or death: activities under certain sections of this title**

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than \$100,000 a claim against the United States for-

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under ~~section 316, 502, 503, 504, or 505 of this title~~ section 541 or 542 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if-

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.



## 32 U.S.C. CHAPTER 9-HOMELAND DEFENSE ACTIVITIES

Sec.

- 901. Definitions.
- 902. Homeland defense activities: funds.
- 903. Regulations.
- ~~904. Homeland defense duty.~~
- 904. Homeland defense activities.
- 905. Funding assistance.
- 906. Requests for funding assistance.
- 907. Relationship to State duty.
- 908. Annual report.

## 32 U.S.C. §904. Homeland defense ~~duty activities~~

(a) FULL-TIME NATIONAL GUARD DUTY.—All duty performed under this chapter shall be ~~considered to be full-time National Guard duty under section 502(f) of this title performed as full-time National Guard duty under section 541 of this title~~. Members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support or execute homeland defense activities performed by the National Guard under this chapter.

(b) DURATION.—The period for which a member of the National Guard performs ~~duty under this chapter activities under this chapter~~ shall be limited to 180 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

~~(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard performing duty under this chapter shall, in addition to performing such duty, participate in the training required under section 502(a) of this title. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing the duty under this chapter. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.~~

(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard performing activities under this chapter shall, in addition to performing such activities, participate in the training required pursuant to sections 552(a) and 553(a) of this title. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing such activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required pursuant to section 553(a) of this title.

(d) READINESS.—To ensure that the use of units and personnel of the National Guard of a State for homeland defense activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland defense activities that units and personnel of the National Guard of a State may perform:

(1) The performance of the activities is not to affect adversely the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(2) The performance of the activities is not to degrade the military skills of the members of the National Guard performing those activities.

# **TITLE 37**

## **Pay and Allowances of the Uniformed Services**

### **37 U.S.C. §101. Definitions**

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1)(A) The term "United States", in a geographic sense, means the States and the District of Columbia.

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

(2) The term "possessions" includes Guam, American Samoa, and the guano islands.

(3) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(4) The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) The term "Secretary concerned" means-

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy;

(E) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(F) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

(6) The term "National Guard" means the Army National Guard and the Air National Guard.

(7) The term "Army National Guard" means that part of the organized militia of the several States, Puerto Rico, Guam, the Canal Zone, the Virgin Islands, and the District of Columbia, active and inactive, that-

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(8) The term "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(9) The term "Air National Guard" means that part of the organized militia of the several States, Puerto Rico, Guam, the Canal Zone, the Virgin Islands, and the District of Columbia, active and inactive, that-

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(10) The term "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(11) The term "officer" means commissioned or warrant officer.

(12) The term "commissioned officer" includes a commissioned warrant officer.

(13) The term "warrant officer" means a person who holds a commission or warrant in a warrant officer grade.

(14) The term "enlisted member" means a person in an enlisted grade.

(15) The term "grade" means a step or degree, in a graduated scale of office or rank, that is established and designated as a grade by law or regulation.

(16) The term "rank" means the order of precedence among members of the uniformed services.

(17) The term "rating" means the name (such as "boatswain's mate") prescribed for members of a uniformed service in an occupational field; "rate" means the name (such as "chief boatswain's mate") prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(18) The term "active duty" means full-time duty in the active service of a uniformed service, and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned.

(19) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(20) The term "active service" means service on active duty.

(21) The term "pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

~~(22) The term "inactive-duty training" means—~~

~~(A) duty prescribed for members of a reserve component by the Secretary concerned under section 206 of this title or any other law; and~~

~~(B) special additional duties authorized for members of a reserve component by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned;~~

~~and includes those duties when performed by members of a reserve component in their status as members of the National Guard, but (except as provided in section 206(d)(2) of this title) does not include work or study in connection with a correspondence course of a uniformed service.~~

(22) The term 'reserve component duty' has the meaning given that term in paragraph (7) of section 101(d) of title 10.

(23) The term "member" means a person appointed or enlisted in, or conscripted into, a uniformed service.

(24) The term "reserve component" means—

(A) the Army National Guard of the United States;

(B) the Army Reserve;

(C) the Navy Reserve;

(D) the Marine Corps Reserve;

(E) the Air National Guard of the United States;

(F) the Air Force Reserve;

(G) the Coast Guard Reserve; or

(H) the Reserve Corps of the Public Health Service.

(25) The term "regular compensation" or "regular military compensation (RMC)" means the total of the following elements that a member of a uniformed service accrues or receives, directly or indirectly, in cash or in kind every payday: basic pay, basic allowance for housing, basic allowance for subsistence; and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax.

(26) The term "contingency operation" has the meaning given that term in section 101 of title 10.

(27) The term 'remote assignment' has the meaning given that term in paragraph (8) of section 101(d) of title 10.

### 37 U.S.C. CHAPTER 3—BASIC PAY

Sec.

201. Pay grades: assignment to; general rules.
202. Pay grades: retired Coast Guard rear admirals (lower half).
203. Rates.
204. Entitlement.
205. Computation: service creditable.
- ~~206. Reserves; members of National Guard: inactive-duty training.~~
206. Reserves; members of National Guard: reserve component duty.
207. Band leaders.
- [208. Repealed.]
209. Members of precommissioning programs.
210. Pay of senior enlisted members during terminal leave and while hospitalized.
211. Participation in Thrift Savings Plan.
212. Advancement of basic pay: members deployed in combat zone for more than one year.



## 37 U.S.C. §204. Entitlement

~~(a) The following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title—~~

~~(1) a member of a uniformed service who is on active duty; and~~

~~(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 10302, 10305, 10502, or 12402 of title 10, or section 503, 504, 505, or 506 of title 32.~~

(a) A member of a uniformed service who is on active duty is entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title.

(b) For the purposes of subsection (a), under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active duty.

~~(c)(1) A member of the National Guard who is called into Federal service for a period of 30 days or less is entitled to basic pay from the date on which the member, in person or by authorized telephonic or electronic means, contacts the member's unit.~~

~~(2) Paragraph (1) does not authorize any expenditure to be paid for a period before the date on which the unit receives the member's contact provided under such paragraph.~~

~~(3) The Secretary of the Army, with respect to the Army National Guard, and the Secretary of the Air Force, with respect to the Air National Guard, shall prescribe such regulations as may be necessary to carry out this subsection.~~

(d) Full-time training, training duty with pay, or other full-time duty performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, is active duty for the purposes of this section.

(e) A payment accruing under any law to a member of a uniformed service incident to his release from active duty or for his return home incident to that release may be paid to him before his departure from his last duty station, whether or not he actually performs the travel involved. If a member receives a payment under this subsection but dies before that payment would have been made but for this subsection, no part of that payment may be recovered by the United States.

(f) A cadet of the United States Military Academy or the United States Air Force Academy, or a midshipman of the United States Naval Academy, who, upon graduation from one of those academies, is appointed as a second lieutenant of the Army or the Air Force is entitled to the basic pay of pay grade O-1 beginning upon the date of his graduation.

(g)(1) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty;

(B) in line of duty while performing ~~inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service);~~ reserve component duty;

(C) while traveling directly to or from such duty or training; or

(D) in line of duty while remaining overnight immediately before the commencement of ~~inactive-duty training~~ reserve component duty, or while remaining overnight, between successive periods of ~~inactive-duty training~~ reserve component duty, at or in the vicinity of the site of the ~~inactive-duty training~~ reserve component duty; or.

~~(E) in line of duty while—~~

~~(i) serving on funeral honors duty under section 12503 of title 10 or section 115 of title 32;~~

~~(ii) traveling to or from the place at which the duty was to be performed; or~~

~~(iii) remaining overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.~~

(2) In the case of a member who receives earned income from nonmilitary employment or self-employment performed in any month in which the member is otherwise entitled to pay and allowances under paragraph (1), the total pay and allowances shall be reduced by the amount of such income. In calculating earned income for the purpose of the preceding sentence, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

(3) A member of a reserve component of a uniformed service is not entitled to compensation under this subsection for—

(A) work or a course of instruction undertaken pursuant to section 12344 of title 10; or

(B) attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service.

(h)(1) A member of a reserve component of a uniformed service who is physically able to perform his military duties, is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member

demonstrates a loss of earned income from nonmilitary employment or self-employment as a result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty;

(B) in line of duty while performing ~~inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service);~~ reserve component duty;

(C) while traveling directly to or from such duty or training;~~;~~or

(D) in line of duty while remaining overnight immediately before the commencement of ~~inactive-duty training~~ reserve component duty, or while remaining overnight, between successive periods of ~~inactive-duty training~~ reserve component duty, at or in the vicinity of the site of the ~~inactive-duty training~~ reserve component duty; ~~or.~~

~~(E) in line of duty while —~~

~~(i) serving on funeral honors duty under section 12503 of title 10 or section 115 of title 32;~~

~~(ii) traveling to or from the place at which the duty was to be performed; or~~

~~(iii) remaining overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.~~

(2) The monthly entitlement may not exceed the member's demonstrated loss of earned income from nonmilitary or self-employment. In calculating such loss of income, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

(3) A member of a reserve component of a uniformed service is not entitled to compensation under this subsection for—

(A) work or an course of instruction undertaken pursuant to section 12344 of title 10, or

(B) attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service.

(i)(1) The total amount of pay and allowances paid under subsections (g) and (h) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

(2) Pay and allowances may not be paid under subsection (g) or (h) for a period of more than six months. The Secretary concerned may extend such period in any case if the Secretary determines that it is in the interests of fairness and equity to do so.

(3) A member is not entitled to benefits under subsection (g) or (h) if the injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member.

(4) Regulations with respect to procedures for paying pay and allowances under subsections (g) and (h) shall be prescribed—

(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

(B) by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(j) A member of the uniformed services who is entitled to medical or dental care under section 1074a of title 10 is entitled to travel and transportation allowances, or a monetary allowance in place thereof, for necessary travel incident to such care, and return to his home upon discharge from treatment.

### **37 U.S.C. §205. Computation: service creditable**

(a) Subject to subsections (b) and (c), for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding-

(1) all periods of active service as an officer, Army field clerk, flight officer, aviation midshipman, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of-

(A) a regular component of a uniformed service;

(B) the Regular Army Reserve;

(C) the Organized Militia before July 1, 1916;

(D) the National Guard;

(E) the National Guard Reserve;

(F) a reserve component of a uniformed service;

(G) the Naval Militia;

(H) the National Naval Volunteers;

(I) the Navy Reserve Force;

(J) the Army without specification of component;

(K) the Air Force without specification of component;

(L) the Marine Corps Reserve Force;

(M) the Philippine Scouts; or

(N) the Philippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them;

(5) all periods during which he was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; and

(7) all periods while-

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Department of Veterans Affairs, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) and except as provided by subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a of title 10, a period of service described in clauses (2) through (7) that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5), periods during which a member was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration includes periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration or the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a).

(c) The periods of service authorized to be counted under subsection (a) shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(d) Notwithstanding subsection (a), a commissioned officer may not count in computing basic pay a period of service after October 13, 1964, that the officer performed concurrently as a member of the Senior Reserve Officers' Training Corps, except for service that the officer performed on or after August 1, 1979, other than for training as an enlisted member of the Selected Reserve may be so counted.

(e)(1) Notwithstanding subsection (a), a period of service described in paragraph (2) of a member who enlists in a reserve component may not be counted under this section.

(2) Paragraph (1) applies to the following service:

(A) Service performed while a member of a reserve component under an enlistment under section 12103(b) or 12103(d) of title 10 before the member begins service on active duty under such section (including a period of active duty for training) unless the member performs ~~inactive-duty training-reserve component duty~~ before beginning service on active duty or active duty for training;

(B) Service performed while a member of a reserve component under an enlistment under section 513 of title 10 (other than a period of active duty to which the member is ordered under chapter 1209 of title 10 or another provision of law).

(f) Notwithstanding subsection (a), the periods of service of a commissioned officer appointed under section 12203 of title 10 after receiving financial assistance under section 16401 of such title that are counted under this section may not include a period of service after January 1, 2000, that the officer performed concurrently as an enlisted member of the Marine Corps Platoon Leaders Class program and the Marine Corps Reserve, except that service after that date that the officer performed before commissioning (concurrently with the period of service as a member of the Marine Corps Platoon Leaders Class program) as an enlisted member on active duty or as a member of the Selected Reserve may be so counted.

**37 U.S.C. §206. Reserves; members of National Guard: ~~inactive-duty training reserve component duty~~**

(a) Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay—

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing—

(i) active duty; or

(ii) ~~inactive-duty training reserve component duty~~;

(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member); or

(C) in line of duty while remaining overnight immediately before the commencement of ~~inactive-duty training reserve component duty~~, or while remaining overnight, between successive periods of ~~inactive-duty training reserve component duty~~, at or in the vicinity of the site of the ~~inactive-duty training reserve component duty~~.

(b) The regulations prescribed under subsection (a) for each uniformed service, the National Guard, and each of the classes of organization of the reserve components within each uniformed service, may be different. The Secretary concerned shall, for the National Guard and each of the classes of organization within each uniformed service, prescribe—

(1) minimum standards that must be met before ~~an assembly for drill or other equivalent period of training, instruction, duty, or appropriate duties~~ a period of reserve component duty may be credited for pay purposes, and those standards may require the presence for duty of officers and enlisted members in numbers equal to or more than a minimum number or percentage of the unit strength for a specified period of time with participation in a prescribed kind of training;

(2) the maximum number of ~~assemblies or periods of other equivalent training, instruction, duty, or appropriate duties~~, reserve component duty periods required under



section 12353(a) of title 10 or section 553(a) of title 32, that may be counted for pay purposes in each fiscal year or in lesser periods of time; and

(3) the minimum number of ~~assemblies or periods of other equivalent training, instruction, duty, or appropriate duties~~ reserve component duty periods required under section 12353(a) of title 10, or under section 553(a) of title 32, that must be completed in stated periods of time before the members of units or organizations can qualify for pay.

(c) A person enlisted in the inactive National Guard is not entitled to pay under this section.

(d)(1) Except as provided in paragraph (2), this section does not authorize compensation for ~~work or study~~ work or course of instruction performed by a member of a reserve component ~~or by a member of the National Guard while not in Federal service in connection with correspondence courses of a uniformed service. A member of the National Guard may not be compensated under this section in connection with work or a course of instruction performed as a member of the Army National Guard or Air National Guard, as the case may be.~~

~~(2) A member of the Selected Reserve of the Ready Reserve may be paid compensation under this section at a rate and under terms determined by the Secretary of Defense, but not to exceed the rate otherwise applicable to the member under subsection (a), upon the member's successful completion of a course of instruction undertaken by the member using electronic-based distributed learning methodologies to accomplish training requirements related to unit readiness or mobilization, as directed for the member by the Secretary concerned. The compensation may be paid regardless of whether the course of instruction was under the direct control of the Secretary concerned or included the presence of an instructor.~~

(2) A member of the Ready Reserve or a member of the Standby Reserve on the active status list may be paid compensation under this section at a rate and under terms determined by the Secretary of Defense, but not to exceed the rate otherwise applicable to the member under subsection (a), upon the member's successful completion of work or a course of instruction specifically and individually assigned to the member under section 12344 of title 10 for a purpose specified in section 12354 of such title.

(3) The prohibition in paragraph (1), including the prohibition as it relates to a member of the National Guard while not in Federal service, applies to—

(A) any ~~work or study~~ work or course of instruction performed on or after September 7, 1962, unless that ~~work or study~~ work or course of instruction is specifically covered by the exception in paragraph (2); and

(B) any claim based on that ~~work or study~~ work or course of instruction arising after that date.

(e) A member of the National Guard or of a reserve component of the uniformed services may not be paid under this section for more than four periods ~~of equivalent training, instruction, duty, or appropriate duties performed during a fiscal year instead of the member's regular period of instruction or regular period of appropriate duty during that fiscal year.~~ of reserve component

duty that are performed in lieu of the regularly scheduled required periods of reserve component duty prescribed by the Secretary concerned for the member under section 12353(a) of title 10 or section 553(a) of title 32, as the case may be, during that fiscal year.

(f) A member of the Individual Ready Reserve is not entitled to compensation under this section for participation in screening for which the member is paid a stipend under section 433a of this title.

### 37 U.S.C. §302f. Special pay: reserve, recalled, or retained health care officers

(a) Eligible for Special Pay.—A health care officer described in subsection (b) shall be eligible for special pay under section 302, 302a, 302b, 302c, 302e, or 303 of this title (whichever applies) notwithstanding any requirement in those sections that—

- (1) the call or order of the officer to active duty be for a period of not less than one year; or
- (2) the officer execute a written agreement to remain on active duty for a period of not less than one year.

(b) Health Care Officers Described.—A health care officer referred to in subsection (a) is an officer of the armed forces who is otherwise eligible for special pay under section 302, 302a, 302b, 302c, 302e, or 303 of this title and who—

(1) is a reserve officer on active duty (other than for training) under a call or order to active duty for a period of more than 30 days but less than one year;

(2) is involuntarily retained on active duty ~~under section 12305 of title 10, or is recalled to active duty under section 688 of title 10 for a period of more than 30 days pursuant to section 12311 of title 10;~~ or

(3) voluntarily agrees to remain on active duty for a period of less than one year at a time when—

(A) officers are involuntarily retained on active duty under ~~section 12305 of title 10~~ section 12311 of title 10; or

(B) the Secretary of Defense determines (pursuant to regulations prescribed by the Secretary) that special circumstances justify the payment of special pay under this section.

(c) Monthly Payments.—Payment of special pay pursuant to this section may be made on a monthly basis. The officer shall repay in the manner provided in section 303a(e) of this title any amount received under this section in excess of the amount that corresponds to the actual period of active duty served by the officer.

(d) Special Rule for Reserve Medical and Dental Officers.—While a reserve medical or dental officer receives a special pay under section 302 or 302b of this title by reason of subsection (a), the officer shall not be entitled to special pay under section 302(h) or 302b(h) of this title.

### 37 U.S.C. §303b. Waiver of board certification requirements

(a) CERTIFICATION INTERRUPTED BY CONTINGENCY OPERATION.—A member of the armed forces described in subsection (b) who completes the board certification or recertification requirements specified in section 302(a)(5), 302b(a)(5), 302c(c)(3), or 302c(d)(4) of this title before the end of the period established for the member in subsection (c) shall be paid special pay under the applicable section for active duty performed during the period beginning on the date on which the member was assigned to duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) and ending on the date of that certification or recertification if the Secretary of Defense determines that the member was unable to schedule or complete that certification or recertification earlier because of that duty.

(b) ELIGIBLE MEMBERS DESCRIBED.—A member of the armed forces referred to in subsection (a) is a member who—

(1) is a medical or dental officer or a nonphysician health care provider;

(2) has completed any required residency training; and

(3) was, except for the board certification requirement, otherwise eligible for special pay under section 302(a)(5), 302b(a)(5), 302c(c)(3), or 302c(d)(4) of this title during a duty assignment in support of a contingency operation.

(c) PERIOD FOR CERTIFICATION.—The period referred to in subsection (a) for completion of board certification or recertification requirements with respect to a member of the armed forces is the 180-day period (extended for such additional time as the Secretary of Defense determines to be appropriate) beginning on the date on which the member is released from the duty to which the member was assigned in support of a contingency operation.

### 37 U.S.C. §305b. Special pay: service as member of Weapons of Mass Destruction Civil Support Team

(a) SPECIAL PAY AUTHORIZED.—The Secretary of a military department may pay special pay under this subsection to members of an armed force under the jurisdiction of the Secretary who are entitled to basic pay under section 204 and are assigned by orders to duty as members of a Weapons of Mass Destruction Civil Support Team if the Secretary determines that the payment of such special pay is needed to address recruitment or retention concerns in that armed force.

(b) MONTHLY RATE.—The monthly rate of special pay under subsection (a) may not exceed \$150.

(c) INCLUSION OF RESERVE COMPONENT MEMBERS PERFORMING ~~INACTIVE DUTY TRAINING~~ RESERVE COMPONENT DUTY.—(1) To the extent funds are made available to carry out this subsection, the Secretary of a military department may pay the special pay under subsection (a) to members of a reserve component of the armed forces who are entitled to compensation under section 206 of this title and who perform duty under orders as members of a Weapons of Mass Destruction Civil Support Team.

(2) The amount of the special pay for a member referred to in paragraph (1) shall be equal to 1/30 of the monthly special pay rate in effect under subsection (b) for each day on which the member performs duty under orders as members of a Weapons of Mass Destruction Civil Support Team.

(d) REGULATIONS.—Special pay under this section shall be provided in accordance with regulations prescribed by the Secretary of Defense.

(e) DEFINITION.—In this section, the term "Weapons of Mass Destruction Civil Support Team" means a team of members of the reserve components of the armed forces that is established under ~~section 12310(e) of title 10~~ section 12352(f)(3) of title 10 in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction.

**37 U.S.C. §306. Special pay: officers holding positions of unusual responsibility and of critical nature**

(a)(1) The Secretary concerned may designate positions of unusual responsibility which are of a critical nature to an armed force under his jurisdiction and may pay special pay, in addition to other pay prescribed by law, to an officer of an armed force described in paragraph (2) who is performing the duties of such a position, at the following monthly rates:

Pay Grade	Monthly Rate
O-6	\$150
O-5	100
O-4 and below	50

(2) An officer of the armed forces referred to in paragraph (1) is an officer who is entitled to the basic pay under section 204 of this title, or the compensation under section 206 of this title, of pay grade O-6 or below.

(b) If an officer entitled to compensation under section 206 of this title is paid special pay under subsection (a) for the performance of duties in a position designated under such subsection, the special pay shall be paid at the rate of 1/30 of the monthly rate authorized by such subsection for each day of the performance of duties in the designated position.

(c) The Secretary concerned shall prescribe the criteria and circumstances under which officers of an armed force under his jurisdiction are eligible for special pay under this section and, when he considers it necessary, may abolish that special pay.

(d)(1) Not more than 5 percent of the number of officers on active duty (other than for training or mobilization in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10)) in an armed force in each of the pay grades O-3 and below, and not more than 10 percent of the number of officers on active duty in an armed force in pay grade O-4, O-5, or O-6, may be paid special pay under this section.

(2) Of the number of officers in the Selected Reserve of the Ready Reserve of an armed force who are not on active duty (other than for training or mobilization in support of a contingency operation), not more than 5 percent of the number of such officers in each of the pay grades O-3 and below, and not more than 10 percent of the number of such officers in pay grade O-4, O-5, or O-6, may be paid special pay under subsection (b).

(e) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction, and by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(f) This section does not apply to a person who is entitled to special pay under section 302, 302a, 302b, or 303 of this title.

### **37 U.S.C. §308. Special pay: reenlistment bonus**

(a)(1) The Secretary concerned may pay a bonus under paragraph (2) to a member of a uniformed service who-

(A) has completed at least 17 months of continuous active duty (other than for training) but not more than 20 years of active duty;

(B) is qualified in a military skill designated as critical by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as service in the Navy; and

(C) reenlists or voluntarily extends the member's enlistment for a period of at least three years-

(i) in a regular component of the service concerned; or

(ii) in a reserve component of the service concerned, if the member is ~~performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10)~~ on active duty performing Active Guard and Reserve functions (as that term is defined in section 101(c)(8) of title 10).

(2) The bonus to be paid under paragraph (1) may not exceed the lesser of the following amounts:

(A) The amount equal to the product of-

(i) 15 times the monthly rate of basic pay to which the member was entitled at the time of the discharge or release of the member; and

(ii) the number of years (or the monthly fractions thereof) of the term of reenlistment or extension of enlistment.

(B) \$90,000.

(3) Any portion of a term of reenlistment or extension of enlistment of a member that, when added to the total years of service of the member at the time of discharge or release, exceeds 24 years may not be used in computing a bonus under paragraph (2)(A).

(4) Notwithstanding paragraph (1)(B), a member who agrees to train and reenlist for service in a military skill which, at the time of that agreement, is designated as critical, may be paid the bonus approved for that skill, at the rate in effect at the time of agreement, upon completion of training and qualification in that skill, if otherwise qualified under this subsection and even if that skill is no longer designated as critical at the time the member becomes eligible for payment of the bonus.

(5) The Secretary of Defense may waive the eligibility requirement in paragraph (1)(B) in the case of a reenlistment or voluntary extension of enlistment by a member of the armed forces that

is entered into as described in this subsection while the member is serving on active duty in Afghanistan, Iraq, or Kuwait in support of Operation Enduring Freedom or Operation Iraqi Freedom.

(b) Bonus payments authorized under this section may be paid in either a lump sum or in installments. If the bonus is paid in installments, the initial payment shall be not less than 50 percent of the total bonus amount.

(c) For the purpose of computing the reenlistment bonus in the case of an officer with prior enlisted service who may be entitled to a bonus under subsection (a), the monthly basic pay of the grade in which he is enlisted, computed in accordance with his years of service computed under section 205 of this title, shall be used instead of the monthly basic pay to which he was entitled at the time of his release from active duty as an officer.

(d) A member who does not complete the term of enlistment for which a bonus was paid to the member under this section, or a member who is not technically qualified in the skill for which a bonus was paid to the member under this section, shall be subject to the repayment provisions of section 303a(e) of this title.

(e) For the purposes of determining the eligibility of a member for a bonus under this section and of computing the amount of that bonus-

(1) any period of enlistment (including any extension of an enlistment) (A) that is incurred by the member for the purpose of continuing to qualify for continuous submarine duty incentive pay under section 301c of this title, and (B) for which no bonus is otherwise payable; or

(2) any unserved period of two years or less of an extension of an enlistment for which no bonus has been paid or for which no bonus is otherwise payable under this section,

may, under regulations prescribed by the Secretary concerned, be considered as part of an immediately subsequent term of reenlistment (or as part of an immediately subsequent voluntary extension of an enlistment).

(f) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(g) No bonus shall be paid under this section with respect to any reenlistment, or voluntary extension of an active-duty enlistment, in the armed forces entered into after December 31, 2018.



37 U.S.C. §308d. Special pay: members of the Selected Reserve assigned to certain high priority units

(a) Under regulations prescribed by 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, a member who is assigned to a high priority unit of the Selected Reserve of the Ready Reserve of an armed force, as designated under subsection (b), and who performs ~~inactive duty for training~~ reserve component duty for compensation under section 206 of this title with such unit may be paid compensation, in addition to the compensation to which the member is otherwise entitled, in an amount not to exceed \$50 for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least four hours, including any such instruction or duty performed on a Sunday or holiday.

(b) The Secretary concerned may designate a unit, for the purposes of subsection (a) and under such terms and conditions as the Secretary considers appropriate, as a high priority unit if that unit has experienced, or reasonably might be expected to experience, critical personnel shortages. The Secretary may vacate a designation made under this subsection at any time he considers the designation no longer necessary.

(c) Additional compensation may not be paid under this section for ~~inactive duty~~ reserve component duty performed after December 31, 2017.

### 37 U.S.C. §316. Special pay: bonus for members with foreign language proficiency

(a) Availability of Bonus.—Subject to subsection (c), the Secretary concerned may pay a bonus under this section to a member of the uniformed services who—

(1) is qualified in a uniformed services specialty requiring proficiency in a foreign language identified by the Secretary concerned as a foreign language in which it is necessary to have personnel proficient because of national defense or public health considerations;

(2) received training, under regulations prescribed by the Secretary concerned, designed to develop a proficiency in such a foreign language;

(3) is assigned to duties requiring a proficiency in such a foreign language; or

(4) is proficient in a foreign language for which the uniformed service may have a critical need, as determined by the Secretary concerned.

(b) Bonus Amount; Time for Payment.—A bonus under subsection (a) may not exceed \$12,000 per one-year certification period under subsection (c). The Secretary concerned may pay the bonus in a single lump sum at the beginning of the certification period or in installments during the certification period. The bonus is in addition to any other pay or allowance payable to a member under any other provision of law.

(c) Certification of Proficiency.—To be eligible to receive a bonus under this section, a member described in subsection (a) must be certified by the Secretary concerned as being proficient in the foreign language for which the bonus is offered. The certification of the member shall expire at the end of the one-year period beginning on the first day of the first month beginning on or after the certification date.

(d) Certification Interrupted by Contingency Operation.—(1) Notwithstanding subsection (c), the Secretary concerned may waive the certification requirement under such subsection and pay a bonus under this section to a member who—

(A) is assigned to duty ~~in connection with a contingency operation~~ in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(B) is unable to schedule or complete the certification required by subsection (c) because of that assignment; and

(C) except for the lack of such certification, satisfies the eligibility requirements under subsection (a).

(2) The Secretary concerned may treat the date on which the member was assigned to duty in connection with the contingency operation as equivalent to a certification date. In the case of a member whose certification will expire during such a duty assignment, the Secretary shall

commence the next one-year certification period on the date on which the prior certification period expires.

(3) A member who is paid a bonus under the authority of this subsection shall complete the certification required by subsection (c) for the foreign language for which the bonus was paid not later than the end of the 180-day period beginning on the date on which the member is released from the assignment in connection with the contingency operation. The Secretary concerned may extend that period for a member in accordance with regulations prescribed under subsection (f).

(4) If a member fails to obtain the required certification under subsection (c) before the end of the period provided under paragraph (3), the Secretary concerned may require the member to repay all or a portion of the bonus in the manner provided in section 303a(e) of this title.

(e) Repayment.—A member who receives a bonus under this section, but who does not satisfy an eligibility requirement specified in paragraph (1), (2), (3), or (4) of subsection (a) for the entire certification period, shall be subject to the repayment provisions of section 303a(e) of this title.

(f) Regulations.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary, by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy, by the Secretary of Health and Human Services for the Commissioned Corps of the Public Health Service, and by the Secretary of Commerce for the National Oceanic and Atmospheric Administration.

### **37 U.S.C. §320. Incentive pay: career enlisted flyers**

(a) **ELIGIBLE CAREER ENLISTED FLYER DEFINED.**—In this section, the term "eligible career enlisted flyer" means an enlisted member of the armed forces who-

(1) is entitled to basic pay under section 204 of this title, or is entitled to pay under section 206 of this title as described in subsection (e) of this section;

(2) holds an enlisted military occupational specialty or enlisted military rating designated as a career enlisted flyer specialty or rating by the Secretary concerned, performs duty as a dropsonde system operator, or is in training leading to qualification and designation of such a specialty or rating or the performance of such duty;

(3) is qualified for aviation service under regulations prescribed by the Secretary concerned; and

(4) satisfies the operational flying duty requirements applicable under subsection (c).

(b) **INCENTIVE PAY AUTHORIZED.**— (1) The Secretary concerned may pay monthly incentive pay to an eligible career enlisted flyer in an amount not to exceed the monthly maximum amounts specified in subsection (d). The incentive pay may be paid as continuous monthly incentive pay or on a month-to-month basis, dependent upon the operational flying duty performed by the eligible career enlisted flyer as prescribed in subsection (c).

(2) Continuous monthly incentive pay may not be paid to an eligible career enlisted flyer after the member completes 25 years of aviation service. Thereafter, an eligible career enlisted flyer may still receive incentive pay on a month-to-month basis under subsection (c)(4) for the frequent and regular performance of operational flying duty.

(c) **OPERATIONAL FLYING DUTY REQUIREMENTS.**— (1) An eligible career enlisted flyer must perform operational flying duties for 6 of the first 10, 9 of the first 15, and 14 of the first 20 years of aviation service, to be eligible for continuous monthly incentive pay under this section.

(2) Upon completion of 10, 15, or 20 years of aviation service, an enlisted member who has not performed the minimum required operational flying duties specified in paragraph (1) during the prescribed period, although otherwise meeting the definition in subsection (a), may no longer be paid continuous monthly incentive pay except as provided in paragraph (3). Payment of continuous monthly incentive pay may be resumed if the member meets the minimum operational flying duty requirement upon completion of the next established period of aviation service.

(3) For the needs of the service, the Secretary concerned may permit, on a case-by-case basis, a member to continue to receive continuous monthly incentive pay despite the member's failure to perform the operational flying duty required during the first 10, 15, or 20 years of aviation service, but only if the member otherwise meets the definition in subsection (a) and has performed at least 5 years of operational flying duties during the first 10 years of aviation service, 8 years of operational flying duties during the first 15 years of aviation service, or 12

years of operational flying duty during the first 20 years of aviation service. The authority of the Secretary concerned under this paragraph may not be delegated below the level of the Service Personnel Chief.

(4) If the eligibility of an eligible career enlisted flyer to continuous monthly incentive pay ceases under subsection (b)(2) or paragraph (2), the member may still receive month-to-month incentive pay for subsequent frequent and regular performance of operational flying duty. The rate payable is the same rate authorized by the Secretary concerned under subsection (d) for a member of corresponding years of aviation service.

(d) MONTHLY MAXIMUM RATES.—The monthly rate of any career enlisted flyer incentive pay paid under this section to a member on active duty shall be prescribed by the Secretary concerned, but may not exceed the following:

Years of aviation service	Monthly rate
4 or less	\$150
Over 4	\$225
Over 8	\$350
Over 14	\$400.

(e) ELIGIBILITY OF RESERVE COMPONENT MEMBERS WHEN PERFORMING ~~Inactive Duty Training~~ RESERVE COMPONENT DUTY.—Under regulations prescribed by the Secretary concerned, when a member of a reserve component or the National Guard, who is entitled to compensation under section 206 of this title, meets the definition of eligible career enlisted flyer, the Secretary concerned may increase the member's compensation by an amount equal to 1/30 of the monthly incentive pay authorized by the Secretary concerned under subsection (d) for a member of corresponding years of aviation service who is entitled to basic pay under section 204 of this title. The reserve component member may receive the increase for as long as the member is qualified for it, for each regular period of instruction or period of appropriate duty, at which the member is engaged for at least two hours, or for the performance of such other equivalent training, instruction, duty or appropriate duties, as the Secretary may prescribe under section 206(a) of this title.

(f) RELATION TO HAZARDOUS DUTY INCENTIVE PAY OR DIVING DUTY SPECIAL PAY.—A member receiving incentive pay under section 301(a) of this title or special pay under section 304 of this title may not be paid special pay under this section for the same period of service.

(g) SAVE PAY PROVISION.—If, immediately before a member receives incentive pay under this section, the member was entitled to incentive pay under section 301(a) of this title, the rate at which the member is paid incentive pay under this section shall be equal to the higher of the monthly amount applicable under subsection (d) or the rate of incentive pay the member was receiving under subsection (b) or (c)(2)(A) of section 301 of this title.

(h) SPECIALTY CODE OF DROPSONDE SYSTEM OPERATORS.—Within the Air Force, the Secretary of the Air Force shall assign to members who are dropsonde system operators a specialty code that identifies such members as serving in a weather specialty.

(i) DEFINITIONS.—In this section:

(1) The term "aviation service" means participation in aerial flight performed, under regulations prescribed by the Secretary concerned, by an eligible career enlisted flyer.

(2) The term "operational flying duty" means flying performed under competent orders while serving in assignments, including an assignment as a dropsonde system operator, in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying duty performed by members in training that leads to the award of an enlisted aviation rating or military occupational specialty designated as a career enlisted flyer rating or specialty by the Secretary concerned.

### **37 U.S.C. §334. Special aviation incentive pay and bonus authorities for officers**

#### **(a) AVIATION INCENTIVE PAY.—**

(1) Incentive pay authorized.-The Secretary concerned may pay aviation incentive pay under this section to an officer in a regular or reserve component of a uniformed service who-

(A) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title;

(B) maintains, or is in training leading to, an aeronautical rating or designation that qualifies the officer to engage in operational flying duty or proficiency flying duty;

(C) engages in, or is in training leading to, frequent and regular performance of operational flying duty or proficiency flying duty;

(D) engages in or remains in aviation service for a specified period; and

(E) meets such other criteria as the Secretary concerned determines appropriate.

(2) Officers not currently engaged in flying duty.-The Secretary concerned may pay aviation incentive pay under this section to an officer who is otherwise qualified for such pay but who is not currently engaged in the performance of operational flying duty or proficiency flying duty if the Secretary determines, under regulations prescribed under section 374 of this title, that payment of aviation incentive pay to that officer is in the best interests of the service.

(b) AVIATION BONUS.—The Secretary concerned may pay an aviation bonus under this section to an officer in a regular or reserve component of a uniformed service who-

(1) is entitled to aviation incentive pay under subsection (a);

(2) has completed any active duty service commitment incurred for undergraduate aviator training or is within one year of completing such commitment;

(3) executes a written agreement to remain on active duty in a regular component or to serve in an active status in a reserve component in aviation service for at least one year; and

(4) meets such other criteria as the Secretary concerned determines appropriate.

#### **(c) MAXIMUM AMOUNT AND METHOD OF PAYMENT.—**

(1) Maximum amount.-The Secretary concerned shall determine the amount of a bonus or incentive pay to be paid under this section, except that-

(A) aviation incentive pay under subsection (a) shall be paid at a monthly rate not to exceed \$1,000 per month; and

(B) an aviation bonus under subsection (b) may not exceed \$35,000 for each 12-month period of obligated service agreed to under subsection (d).

(2) Annual business case for payment of aviation bonus amounts.-

(A) In general.-The Secretary concerned shall determine the amount of the aviation bonus payable under paragraph (1)(B) under agreements entered into under subsection (d) during a fiscal year solely through a business case analysis of the amount required to be paid under such agreements in order to address anticipated manning shortfalls for such fiscal year by aircraft type category.

(B) Budget justification documents.-The budget justification documents in support of the budget of the President for a fiscal year (as submitted to Congress pursuant to section 1105 of title 31) shall set forth for each uniformed service the following:

(i) The amount requested for the payment of aviation bonuses under subsection (b) using amounts authorized to be appropriated for the fiscal year concerned by aircraft type category.

(ii) The business case analysis supporting the amount so requested by aircraft type category.

(iii) For each aircraft type category, whether or not the amount requested will permit the payment during the fiscal year concerned of the maximum amount of the aviation bonus authorized by paragraph (1)(B).

(iv) If any amount requested is to address manning shortfalls, a description of any plans of the Secretary concerned to address such shortfalls by nonmonetary means.

(3) Lump sum or installments.-A bonus under this section may be paid in a lump sum or in periodic installments, as determined by the Secretary concerned.

(4) Fixing bonus amount.-Upon acceptance by the Secretary concerned of the written agreement required by subsection (d), the total amount of the bonus to be paid under the agreement shall be fixed.

(d) WRITTEN AGREEMENT FOR BONUS.—To receive an aviation officer bonus under this section, an officer determined to be eligible for the bonus shall enter into a written agreement with the Secretary concerned that specifies-

(1) the amount of the bonus;

(2) the method of payment of the bonus under subsection (c)(2);

(3) the period of obligated service; and

(4) the type or conditions of the service.



(e) RESERVE COMPONENT OFFICERS PERFORMING ~~Inactive Duty Training~~ RESERVE COMPONENT DUTY.—A reserve component officer who is entitled to compensation under section 206 of this title and who is authorized aviation incentive pay under this section may be paid an amount of incentive pay that is proportionate to the compensation received under section 206 for ~~inactive-duty training reserve component duty~~.

(f) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—

(1) Aviation incentive pay.—Aviation incentive pay paid to an officer under subsection (a) shall be in addition to any other pay and allowance to which the officer is entitled, except that an officer may not receive a payment under such subsection and section 351(a)(2) or 353(a) of this title for the same skill and period of service.

(2) Aviation bonus.—An aviation bonus paid to an officer under subsection (b) shall be in addition to any other pay and allowance to which the officer is entitled, except that an officer may not receive a bonus payment under such subsection and section 332 or 353(b) of this title for the same skill and period of service.

(g) REPAYMENT.—An officer who receives aviation incentive pay or an aviation bonus under this section and who fails to fulfill the eligibility requirements for the receipt of the incentive pay or bonus or complete the period of service for which the incentive pay or bonus is paid, as specified in the written agreement under subsection (d) in the case of a bonus, shall be subject to the repayment provisions of section 373 of this title.

(h) DEFINITIONS.—In this section:

(1) The term "aviation service" means service performed by an officer in a regular or reserve component while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation.

(2) The term "operational flying duty" means flying performed under competent orders by rated or designated regular or reserve component officers while serving in assignments in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying performed by members in training that leads to the award of an aeronautical rating or designation.

(3) The term "proficiency flying duty" means flying performed under competent orders by rated or designated regular or reserve component officers while serving in assignments in which such skills would normally not be maintained in the performance of assigned duties.

(4) The term "officer" includes an individual enlisted and designated as an aviation cadet under section 6911 of title 10.

(i) Termination of Authority.—No agreement may be entered into under this section after December 31, 2019.

### **37 U.S.C. §352. Assignment pay or special duty pay**

(a) ASSIGNMENT OR SPECIAL DUTY PAY AUTHORIZED.—The Secretary concerned may pay assignment or special duty pay under this section to a member of a regular or reserve component of the uniformed services who-

(1) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title; and

(2) performs duties in an assignment, location, or unit designated by, and under the conditions of service specified by, the Secretary concerned.

(b) MAXIMUM AMOUNT AND METHOD OF PAYMENT.—

(1) Lump sum or installments.-Assignment or special duty pay under subsection (a) may be paid monthly, in a lump sum, or in periodic installments other than monthly, as determined by the Secretary concerned. If paid monthly, the Secretary concerned may prorate the monthly amount of the assignment or special duty pay for a member who does not satisfy the eligibility requirement for an entire month to reflect the duration of the member's actual qualifying service during the month.

(2) Maximum monthly amount.-The maximum monthly amount of assignment or special duty pay may not exceed \$5,000.

(3) Maximum lump sum amount.-The amount of a lump sum payment of assignment or special duty pay payable to a member may not exceed the amount equal to the product of-

(A) the maximum monthly rate authorized under paragraph (2) at the time the member enters into a written agreement under subsection (c); and

(B) the number of continuous months in the period for which assignment or special duty pay will be paid pursuant to the agreement.

(4) Maximum installment amount.-The amount of each installment payment of assignment or special duty pay payable to a member on an installment basis may not exceed the amount equal to-

(A) the product of-

(i) a monthly rate specified in the written agreement entered into under subsection (c), which monthly rate may not exceed the maximum monthly rate authorized under paragraph (2) at the time the member enters into the agreement; and

(ii) the number of continuous months in the period for which the assignment or special duty pay will be paid; divided by

(B) the number of installments over such period.

(5) Effect of extension.-If a member extends an assignment or performance of duty specified in an agreement with the Secretary concerned under subsection (c), assignment or special duty pay for the period of the extension may be paid on a monthly basis, in a lump sum, or in installments, consistent with this subsection.

(c) WRITTEN AGREEMENT.—

(1) Discretionary for monthly payments.-The Secretary concerned may require a member to enter into a written agreement with the Secretary in order to qualify for the payment of assignment or special duty pay on a monthly basis. The written agreement shall specify the period for which the assignment or special duty pay will be paid to the member and the monthly rate of the assignment or special duty pay.

(2) Required for lump sum or installment payments.-The Secretary concerned shall require a member to enter into a written agreement with the Secretary in order to qualify for payment of assignment or special duty pay on a lump sum or installment basis. The written agreement shall specify the period for which the assignment or special duty pay will be paid to the member and the amount of the lump sum or each periodic installment.

(d) RESERVE COMPONENT MEMBERS PERFORMING ~~Inactive Duty Training~~ RESERVE COMPONENT DUTY.—A member of a reserve component entitled to compensation under section 206 of this title who is authorized assignment or special duty pay under this section may be paid an amount of assignment or special duty pay that is proportionate to the compensation received by the member under section 206 of this title for ~~inactive-duty training reserve component duty~~.

(e) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Assignment or special duty pay paid to a member under this section is in addition to any other pay and allowances to which the member is entitled.

(f) REPAYMENT.—A member who receives assignment or special duty pay under this section and who fails to fulfill the eligibility requirements under subsection (a) for receipt of such pay shall be subject to the repayment provisions of section 373 of this title.

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after December 31, 2019.

### 37 U.S.C. §353. Skill incentive pay or proficiency bonus

(a) Skill Incentive Pay.-The Secretary concerned may pay a monthly skill incentive pay to a member of a regular or reserve component of the uniformed services who-

(1) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title; and

(2) serves in a career field or skill designated as critical by the Secretary concerned.

(b) Skill Proficiency Bonus.-

(1) Availability; eligible persons.-The Secretary concerned may pay a proficiency bonus to a member of a regular or reserve component of the uniformed services who-

(A) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title or is enrolled in an officer training program; and

(B) is determined to have, and maintains, certified proficiency under subsection (d) in a skill designated as critical by the Secretary concerned or is in training to acquire proficiency in a critical foreign language or expertise in foreign cultural studies or a related skill designated as critical by the Secretary concerned.

(2) Inclusion of certain senior ROTC members.-A proficiency bonus may be paid under this subsection to a student who is enrolled in the Senior Reserve Officers' Training Corps program even though the student is in the first year of the four-year course under the program. During the period covered by the proficiency bonus, the student shall also be entitled to a monthly subsistence allowance under section 209(c) of this title even though the student has not entered into an agreement under section 2103a of title 10. However, if the student receives incentive pay under subsection (g)(2) <sup>1</sup> for the same period, the student may receive only a single monthly subsistence allowance under section 209(c) of this title.

(c) Maximum Amounts and Methods of Payment.-

(1) Skill incentive pay.- (A) Skill incentive pay under subsection (a) may not exceed \$1,000 a month.

(B) If a member does not satisfy the eligibility requirements specified in paragraphs (1) and (2) of subsection (a) for an entire month for receipt of skill incentive pay, the Secretary concerned may prorate the payment amount to reflect the duration of the member's actual qualifying service during the month. A member of a reserve component entitled to compensation under section 206 of this title who is authorized skill incentive pay under subsection (a) may be paid an amount of such pay that is proportionate to the compensation received by the member under section 206 of this title for ~~inactive-duty training~~ reserve component duty.

(2) Proficiency bonus.-A proficiency bonus under subsection (b) may be paid in a lump sum at the beginning of the proficiency certification period or in periodic installments during the proficiency certification period. The amount of the bonus may not exceed \$12,000 for each 12-month period of certification. The Secretary concerned may not vary the criteria or rates for the proficiency bonus paid for officers and enlisted members.

(d) Certified Proficiency for Proficiency Bonus.-

(1) Certification required.-Proficiency in a designated critical skill for purposes of subsection (b) shall be subject to annual certification by the Secretary concerned.

(2) Duration of certification.-A certification period for purposes of subsection (c)(2) shall expire at the end of the one-year period beginning on the first day of the first month beginning on or after the certification date.

(3) Waiver.-Notwithstanding paragraphs (1) and (2), the regulations prescribed to administer this section shall address the circumstances under which the Secretary concerned may waive the certification requirement under paragraph (1) or extend a certification period under paragraph (2).

(e) Written Agreement.-

(1) Discretionary for skill incentive pay.-The Secretary concerned may require a member to enter into a written agreement with the Secretary in order to qualify for the payment of skill incentive pay under subsection (a). The written agreement shall specify the period for which the skill incentive pay will be paid to the member and the monthly rate of the pay.

(2) Required for proficiency bonus.-The Secretary concerned shall require a member to enter into a written agreement with the Secretary in order to qualify for payment of a proficiency bonus under subsection (b). The written agreement shall specify the amount of the proficiency bonus, the period for which the bonus will be paid, and the initial certification or recertification necessary for payment of the proficiency bonus.

(f) Foreign Language Studies in Officer Training Programs.-

(1) Availability of incentive pay.-The Secretary concerned may pay incentive pay to a person enrolled in an officer training program to also participate in an education or training program to acquire proficiency in a critical foreign language or expertise in foreign cultural studies or a related skill designated as critical by the Secretary concerned.

(2) Inclusion of certain senior ROTC members.-Incentive pay may be paid under this subsection to a student who is enrolled in the Senior Reserve Officers' Training Corps program even though the student is in the first year of the four-year course under the program. While the student receives the incentive pay, the student shall also be entitled to a monthly subsistence allowance under section 209(c) of this title even though the student has not entered into an agreement under section 2103a of title 10. However, if the student receives a proficiency bonus under subsection

(b)(2) covering the same month, the student may receive only a single monthly subsistence allowance under section 209(c) of this title.

(3) Critical foreign language defined.-In this section, the term "critical foreign language" includes Arabic, Korean, Japanese, Chinese, Pashto, Persian-Farsi, Serbian-Croatian, Russian, Portuguese, or other language designated as critical by the Secretary concerned.

(g) Repayment.-A member who receives skill incentive pay or a proficiency bonus under this section and who fails to fulfill the eligibility requirement for receipt of the pay or bonus shall be subject to the repayment provisions of section 373 of this title.

(h) Relationship to Other Pays and Allowances.-A member may not be paid more than one pay under this section in any month for the same period of service and skill. A member may be paid skill incentive pay or the proficiency bonus under this section in addition to any other pay and allowances to which the member is entitled, except that a member may not be paid skill incentive pay or a proficiency bonus under this section and hazardous duty pay under section 351 of this title for the same period of service in the same career field or skill.

(i) Termination of Authority.-No agreement may be entered into under this section after December 31, 2019.

**37 U.S.C. §356. Continuation pay: full TSP members with 8 to 12 years of service**

(a) Continuation Pay.-The Secretary concerned shall make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who-

(1) has completed not less than 8 and not more than 12 years of service in a uniformed service; and

(2) enters into an agreement with the Secretary to serve for not less than 3 additional years of obligated service.

(b) Payment Amount.-The Secretary concerned shall determine the payment amount under this section as a multiple of a full TSP member's monthly basic pay. The multiple for a full TSP member who is a member of a regular component or a reserve component, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10) on active duty performing Active Guard and Reserve functions (as that term is defined in section 101(c)(8) of title 10), shall not be less than 2.5 times the member's monthly basic pay. The multiple for a full TSP member who is a member of a reserve component not performing active Guard or Reserve duty not on active duty performing Active Guard and Reserve functions (as so defined) shall not be less than 0.5 times the monthly basic pay to which the member would be entitled if the member were a member of a regular component. The maximum amount the Secretary concerned may pay a member under this section is-

(1) in the case of a member of a regular component-

(A) the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus

(B) at the discretion of the Secretary concerned, the monthly basic pay of the member at 12 years of service multiplied by such number of months (not to exceed 13 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a); and

(2) in the case of a member of a reserve component-

(A) the amount of monthly basic pay to which the member would be entitled at 12 years of service if the member were a member of a regular component multiplied by 0.5; plus

(B) at the discretion of the Secretary concerned, the amount of monthly basic pay described in subparagraph (A) multiplied by such number of months (not to exceed 6 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a).

(c) Additional Discretionary Authority.-In addition to the continuation pay required under subsection (a), the Secretary concerned may provide continuation pay under this subsection to a full TSP member described in subsection (a), and subject to the service agreement referred to in paragraph (2) of such subsection, in an amount determined by the Secretary concerned.

(d) Timing of Payment.-The Secretary concerned shall pay continuation pay under subsection (a) to a full TSP member when the member has completed not less than 8 and not more than 12 years of service in a uniformed service.

(e) Lump Sum or Installments.-A full TSP member may elect to receive continuation pay provided under subsection (a) or (c) in a lump sum or in a series of not more than four payments.

(f) Relationship to Other Pay and Allowances.-Continuation pay under this section is in addition to any other pay or allowance to which the full TSP member is entitled.

(g) Repayment.-A full TSP member who receives continuation pay under this section (a) <sup>1</sup> and fails to complete the obligated service required under such subsection shall be subject to the repayment provisions of section 373 of this title.

(h) Regulations.-Each Secretary concerned shall prescribe regulations to carry out this section.



37 U.S.C. CHAPTER 7—ALLOWANCES OTHER THAN TRAVEL AND TRANSPORTATION ALLOWANCES

Sec.

401. Definitions.

402. Basic allowance for subsistence.

402a. Supplemental subsistence allowance for low-income members with dependents.

403. Basic allowance for housing.

403a. Housing treatment for certain members of the armed forces, and their spouses and other dependents, undergoing a permanent change of station within the United States.

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[404 to 412. Repealed.]

413. Chairman and Vice Chairman of the Joint Chiefs of Staff.

414. Personal money allowance.

415. Uniform allowance: officers; initial allowance.

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417. Uniform allowance: officers; general provisions.

418. Clothing allowance: enlisted members.

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420. Allowances while participating in international sports.

421. Allowances: no increase while dependent is entitled to basic pay.

422. Cadets and midshipmen.

423. Validity of allowance payments based on purported marriages.

424. Band leaders.

425. United States Navy Band; United States Marine Corps Band: allowances while on concert tour.

[426. Repealed.]

427. Family separation allowance.

[428 to 432. Repealed.]

~~433. Allowance for muster duty participating in Ready Reserve muster.~~

433. Allowance for participating in Ready Reserve muster.

433a. Allowance for participation in Ready Reserve screening.

[434, 435. Repealed.]

436. High-deployment allowance: lengthy or numerous deployments; frequent mobilizations.

437. Allowance to cover monthly premium for Servicemembers' Group Life Insurance: members serving in a designated duty assignment.

- 438. Preventive health services allowance.
- 439. Special compensation: members of the uniformed services with catastrophic injuries or illnesses requiring assistance in everyday living.

### **37 U.S.C. §403. Basic allowance for housing**

(a) General Entitlement.—(1) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing at the monthly rates prescribed under this section or another provision of law with regard to the applicable component of the basic allowance for housing. The amount of the basic allowance for housing for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The basic allowance for housing may be paid in advance.

(2) A member of a uniformed service with dependents is not entitled to a basic allowance for housing as a member with dependents unless the member makes a certification to the Secretary concerned indicating the status of each dependent of the member. The certification shall be made in accordance with regulations prescribed by the Secretary of Defense.

(b) Basic Allowance for Housing Inside the United States.—(1) The Secretary of Defense shall prescribe the rates of the basic allowance for housing that are applicable for the various military housing areas in the United States. The rates for an area shall be based on the costs of adequate housing determined for the area under paragraph (2).

(2) The Secretary of Defense shall determine the costs of adequate housing in a military housing area in the United States for all members of the uniformed services entitled to a basic allowance for housing in that area. The Secretary shall base the determination upon the costs of adequate housing for civilians with comparable income levels in the same area. After June 30, 2001, the Secretary may not differentiate between members with dependents in pay grades E-1 through E-4 in determining what constitutes adequate housing for members.

(3)(A) The monthly amount of the basic allowance for housing for an area of the United States for a member of a uniformed service shall be the amount equal to the difference between—

(i) the amount of the monthly cost of adequate housing in that area, as determined by the Secretary of Defense, for members of the uniformed services serving in the same pay grade and with the same dependency status as the member; and

(ii) the amount equal to a specified percentage (determined under subparagraph (B)) of the national average monthly cost of adequate housing in the United States, as determined by the Secretary, for members of the uniformed services serving in the same pay grade and with the same dependency status as the member.

(B) The percentage to be used for purposes of subparagraph (A)(ii) shall be determined by the Secretary of Defense and may not exceed the following:

(i) One percent for months occurring during 2015.

(ii) Two percent for months occurring during 2016.

(iii) Three percent for months occurring during 2017.

(iv) Four percent for months occurring during 2018.

(v) Five percent for months occurring after 2018.

(4) An adjustment in the rates of the basic allowance for housing under this subsection as a result of the Secretary's redetermination of housing costs in an area shall take effect on the same date as the effective date of the next increase in basic pay under section 1009 of this title or other provision of law.

(5) On and after July 1, 2001, the Secretary of Defense shall establish a single monthly rate for members of the uniformed services with dependents in pay grades E-1 through E-4 in the same military housing area. The rate shall be consistent with the rates paid to members in pay grades other than pay grades E-1 through E-4 and shall be based on the following:

(A) The average cost of a two-bedroom apartment in that military housing area.

(B) One-half of the difference between the average cost of a two-bedroom townhouse in that area and the amount determined in subparagraph (A).

(6) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing within an area of the United States, the monthly amount of the allowance for the member may not be reduced as a result of changes in housing costs in the area or the promotion of the member.

(7)(A) Under the authority of this paragraph, the Secretary of Defense may prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof—

(i) is located in an area covered by a declaration by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) that a major disaster exists; or

(ii) contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

(B) The Secretary of Defense shall base the amount of the increase to be made in the rates of basic allowance for housing for an area on a determination by the Secretary of the amount by which the costs of adequate housing for civilians have increased in the area by reason of the disaster or the influx of military personnel, except that the increase may not exceed the amount equal to 20 percent of the rate of basic allowance for housing otherwise prescribed for the area.

(C) A member may be paid a basic allowance for housing at a rate increased under this paragraph only if the member certifies to the Secretary concerned that the member has incurred increased housing costs in the area by reason of the disaster or the influx of military personnel.

(D) Subject to subparagraph (E), an increase in the rates of basic allowance for housing in an area under this paragraph shall remain in effect until the effective date of the first adjustment in rates of basic allowance for housing made for the area pursuant to a redetermination of housing

costs in the area under this subsection that occurs after the date of the increase under this paragraph.

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after December 31, 2019.

(c) Basic Allowance for Housing Outside the United States.—(1) The Secretary of Defense may prescribe an overseas basic allowance for housing for a member of a uniformed service who is on duty outside of the United States. The Secretary shall establish the basic allowance for housing under this subsection on the basis of housing costs in the overseas area in which the member is assigned.

(2) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing in an overseas area and the actual monthly cost of housing for the member is not reduced, the monthly amount of the allowance in an area outside the United States may not be reduced as a result of changes in housing costs in the area or the promotion of the member. The monthly amount of the allowance may be adjusted to reflect changes in currency rates.

(3)(A) In the case of a member of the uniformed services authorized to receive an allowance under paragraph (1), the Secretary concerned may make a lump-sum payment to the member for required deposits and advance rent, and for expenses relating thereto, that are—

(i) incurred by the member in occupying private housing outside of the United States; and

(ii) authorized or approved under regulations prescribed by the Secretary concerned.

(B) Expenses for which a member may be reimbursed under this paragraph may include losses relating to housing that are sustained by the member as a result of fluctuations in the relative value of the currencies of the United States and the foreign country in which the housing is located.

(C) The Secretary concerned shall recoup the full amount of any deposit or advance rent payments made by the Secretary under subparagraph (A), including any gain resulting from currency fluctuations between the time of payment and the time of recoupment.

(d) Basic Allowance for Housing When Dependents Do Not Accompany Member.—(1) A member of a uniformed service with dependents who is on permanent duty at a location described in paragraph (2) may be paid a family separation basic allowance for housing under this subsection at a monthly rate equal to the rate of the basic allowance for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to that location, for members in the same grade at that location without dependents.

(2) A permanent duty location referred to in paragraph (1) is a location—

(A) to which the movement of the member's dependents is not authorized at the expense of the United States under section 476 of this title, and the member's dependents do not reside at or near the location; and

(B) at which quarters of the United States are not available for assignment to the member.

(3) If a member with dependents is assigned to duty in an area that is different from the area in which the member's dependents reside, the member is entitled to a basic allowance for housing as provided in subsection (b) or (c), whichever applies to the member, subject to the following:

(A) If the member's assignment to duty in that area, or the circumstances of that assignment, require the member's dependents to reside in a different area, as determined by the Secretary concerned, the amount of the basic allowance for housing for the member shall be based on the area in which the dependents reside or the member's last duty station, whichever the Secretary concerned determines to be most equitable.

(B) If the member's assignment to duty in that area is under the conditions of a low-cost or no-cost permanent change of station or permanent change of assignment, the amount of the basic allowance for housing for the member shall be based on the member's last duty station if the Secretary concerned determines that it would be inequitable to base the allowance on the cost of housing in the area to which the member is reassigned.

(C) If the member is reassigned for a permanent change of station or permanent change of assignment from a duty station in the United States to another duty station in the United States for a period of not more than one year for the purpose of participating in professional military education or training classes, the amount of the basic allowance for housing for the member may be based on whichever of the following areas the Secretary concerned determines will provide the more equitable basis for the allowance:

(i) The area of the duty station to which the member is reassigned.

(ii) The area in which the dependents reside, but only if the dependents reside in that area when the member departs for the duty station to which the member is reassigned and only for the period during which the dependents reside in that area.

(iii) The area of the former duty station of the member, if different than the area in which the dependents reside.

(4) A family separation basic allowance for housing paid to a member under this subsection is in addition to any other allowance or per diem that the member receives under this title. A member may receive a basic allowance for housing under both paragraphs (1) and (3).

(e) Effect of Assignment to Quarters.—(1) Except as otherwise provided by law, a member of a uniformed service who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service appropriate to the grade, rank, or rating of the member and adequate for the member and dependents of the member, if with dependents, is not entitled to a basic allowance for housing.

(2) A member without dependents who is in a pay grade above pay grade E-6 and who is assigned to quarters in the United States or a housing facility under the jurisdiction of a uniformed service, appropriate to the grade or rank of the member and adequate for the member,

may elect not to occupy those quarters and instead to receive the basic allowance for housing prescribed for the member's pay grade by this section.

(3) A member without dependents who is in pay grade E-6 and who is assigned to quarters of the United States that do not meet the minimum adequacy standards established by the Secretary of Defense for members in such pay grade, or to a housing facility under the jurisdiction of a uniformed service that does not meet such standards, may elect not to occupy such quarters or facility and instead to receive the basic allowance for housing prescribed for the member's pay grade under this section.

(4) The Secretary concerned may deny the right to make an election under paragraph (2) or (3) if the Secretary determines that the exercise of such an election would adversely affect a training mission, military discipline, or military readiness.

(5) A member with dependents who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service may be paid the basic allowance for housing if, because of orders of competent authority, the dependents are prevented from occupying those quarters.

(f) Ineligibility During Initial Field Duty or Sea Duty.—(1) A member of a uniformed service without dependents who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for housing while on that initial field duty unless the commanding officer of the member certifies that the member was necessarily required to procure quarters at the member's expense.

(2)(A) Except as provided in subparagraphs (B) and (C), a member of a uniformed service without dependents who is in a pay grade below pay grade E-6 is not entitled to a basic allowance for housing while the member is on sea duty.

(B) Under regulations prescribed by the Secretary concerned, the Secretary may authorize the payment of a basic allowance for housing to a member of a uniformed service without dependents who is serving in pay grade E-4 or E-5 and is assigned to sea duty. In prescribing regulations under this subparagraph, the Secretary concerned shall consider the availability of quarters for members serving in pay grades E-4 and E-5.

(C) Notwithstanding section 421 of this title, a member of a uniformed service in a pay grade below pay grade E-6 who is assigned to sea duty and is married to another member of a uniformed service is entitled to a basic allowance for housing subject to the limitations of subsection (e).

(3) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall prescribe regulations defining the terms "field duty" and "sea duty" for purposes of this section.

(g) Reserve Members.—(1) A member of a reserve component without dependents who is called or ordered to active duty to attend accession training, in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10); or for a period of more than 30 days, or a retired member without dependents who is ordered to active duty under section 688(a) of title 10

in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or for a period of more than 30 days, may not be denied a basic allowance for housing if, because of that call or order, the member is unable to continue to occupy a residence—

(A) which is maintained as the primary residence of the member at the time of the call or order; and

(B) which is owned by the member or for which the member is responsible for rental payments.

(2) The Secretary concerned may provide a basic allowance for housing to a member described in paragraph (1) at a monthly rate equal to the rate of the basic allowance for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to the location at which the member is serving, for members in the same grade at that location without dependents. The member may receive both a basic allowance for housing under paragraph (1) and under this paragraph for the same month, but may not receive the portion of the allowance authorized under section 474 of this title, if any, for lodging expenses if a basic allowance for housing is provided under this paragraph.

(3) Paragraphs (1) and (2) shall not apply if the member is authorized transportation of household goods under section 476 of this title as part of the call or order to active duty described in such paragraph.

(4) The rate of basic allowance for housing to be paid to the following members of a reserve component shall be equal to the rate in effect for similarly situated members of a regular component of the uniformed services:

(A) A member who is called or ordered to active duty for a period of more than 30 days.

(B) A member who is called or ordered to active duty for a period of 30 days or less in support of a contingency operation.

(5) The Secretary of Defense shall establish a rate of basic allowance for housing to be paid to a member of a reserve component while the member serves on active duty under a call or order to active duty specifying a period of 30 days or less, unless the call or order to active duty is in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(6)(A) This paragraph applies with respect to a member of a reserve component ~~who performs active Guard and Reserve duty (as defined in section 101(d)(6) of title 10)~~ performing Active Guard and Reserve functions (as that term is defined in section 101(c)(8) of title 10).

(B) The rate of basic allowance for housing to be paid to a member described in subparagraph (A) shall be based on the member's permanent duty station, even during instances in which the member is ~~mobilized for service on active duty other than active Guard and Reserve duty called or ordered to active duty is in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10)~~ other than a member on active duty performing Active Guard and Reserve functions (as that term is defined in section 101(c)(8) of title 10).



(C)(i) During transitions in service status ~~from active Guard and Reserve duty to other active duty and back to active Guard and Reserve duty~~ from performing Active Guard and Reserve functions to other active duty and back to performing Active Guard and Reserve functions, or following the start of new periods of service resulting from a change in orders, a member described in subparagraph (A) shall be considered as retaining uninterrupted eligibility to receive a basic allowance for housing in an area as provided for under subsections (b)(6) and (c)(2) so long as the member remains on active duty without a break in service.

(ii) Clause (i) does not apply if the member's permanent duty station changes as a result of orders directing a permanent change in station with the authority for the movement of household goods.

(iii) For purposes of clause (i), a break in active service occurs when one or more calendar days between active service periods do not qualify as active service.

(D) Subsections (d)(3) and (o) also apply to a member described in subparagraph (A).

(h) Rental of Public Quarters.—Notwithstanding any other law (including those restricting the occupancy of housing facilities under the jurisdiction of a department or agency of the United States by members, and their dependents, of the armed forces above specified grades, or by members, and their dependents, of the National Oceanic and Atmospheric Administration and the Public Health Service), a member of a uniformed service, and the dependents of the member, may be accepted as tenants in, and may occupy on a rental basis, any of those housing facilities, other than public quarters constructed or designated for assignment to an occupancy without charge by such a member and the dependents of the member, if any. Such a member may not, because of occupancy under this subsection, be deprived of any money allowance to which the member is otherwise entitled for the rental of quarters.

(i) Temporary Housing Allowance While in Travel or Leave Status.—A member of a uniformed service is entitled to a temporary basic allowance for housing (at a rate determined by the Secretary of Defense) while the member is in a travel or leave status between permanent duty stations, including time granted as delay en route or proceed time, when the member is not assigned to quarters of the United States.

(j) Aviation Cadets.—The eligibility of an aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard for a basic allowance for housing shall be determined as if the aviation cadet were a member of the uniformed services in pay grade E-4.

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

(2) The Secretary concerned may make such determinations as may be necessary to administer this section, including determinations of dependency and relationship. When warranted by the circumstances, the Secretary concerned may reconsider and change or modify any such determination. The authority of the Secretary concerned under this subsection may be delegated. Any determination made under this section with regard to a member of the uniformed services is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence.

(3) Parking facilities (including utility connections) provided members of the uniformed services for house trailers and mobile homes not owned by the Government shall not be considered to be quarters for the purposes of this section or any other provision of law. Any fees established by the Government for the use of such a facility shall be established in an amount sufficient to cover the cost of maintenance, services, and utilities and to amortize the cost of construction of the facility over the 25-year period beginning with the completion of such construction.

(l) Temporary Continuation of Allowance for Dependents of Members Dying on Active Duty or Reserve Component Duty.—(1) The Secretary of Defense, or the Secretary of Homeland Security in the case of the Coast Guard when not operating as a service in the Navy, may allow the dependents of a member of the armed forces who dies on active duty or reserve component duty and whose dependents are occupying family housing provided by the Department of Defense, or by the Department of Homeland Security in the case of the Coast Guard, other than on a rental basis on the date of the member's death to continue to occupy such housing without charge for a period of 365 days.

(2) The Secretary concerned may pay a basic allowance for housing (at the rate that is payable for members of the same grade and dependency status as the deceased member for the area where the dependents are residing) to the dependents of a member of the uniformed services who dies while on active duty and whose dependents—

(A) are not occupying a housing facility under the jurisdiction of a uniformed service on the date of the member's death;

(B) are occupying such housing on a rental basis on such date; or

(C) vacate such housing sooner than 365 days after the date of the member's death.

(3) An allowance may be paid under paragraph (2) to the spouse of the deceased member even though the spouse is also a member of the uniformed services. The allowance paid under such paragraph is in addition to any other pay and allowances to which the spouse is entitled as a member.

(4) The payment of the allowance under paragraph (2) shall terminate 365 days after the date of the member's death.

(m) Members Paying Child Support.—(1) A member of a uniformed service with dependents may not be paid a basic allowance for housing at the with dependents rate solely by reason of the payment of child support by the member if—

(A) the member is assigned to a housing facility under the jurisdiction of a uniformed service; or

(B) the member is assigned to sea duty, and elects not to occupy assigned quarters for unaccompanied personnel, unless the member is in a pay grade above E-3.

(2) A member of a uniformed service assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service who is not otherwise authorized a basic allowance for housing and who pays child support is entitled to the basic allowance for housing

differential, except for months for which the amount payable for the child support is less than the rate of the differential. Payment of a basic allowance for housing differential does not affect any entitlement of the member to a partial allowance for quarters under subsection (n).

(3) The basic allowance for housing differential to which a member is entitled under paragraph (2) is the amount equal to the difference between—

(A) the rate of the basic allowance for quarters (with dependents) for the member's pay grade, as such rate was in effect on December 31, 1997, under this section (as in effect on that date); and

(B) the rate of the basic allowance for quarters (without dependents) for the member's pay grade, as such rate was in effect on December 31, 1997, under this section (as in effect on that date).

(4) Whenever the rates of basic pay for members of the uniformed services are increased, the monthly amount of the basic allowance for housing differential computed under paragraph (3) shall be increased by the average percentage increase in the rates of basic pay. The effective date of the increase shall be the same date as the effective date of the increase in the rates of basic pay.

(5) In the case of two members, who have one or more common dependents (and no others), who are not married to each other, and one of whom pays child support to the other, the amount of the basic allowance for housing paid to each member under this section shall be reduced in accordance with regulations prescribed by the Secretary of Defense. The total amount of the basic allowances for housing paid to the two members may not exceed the sum of the amounts of the allowance to which each member would be otherwise entitled under this section.

(n) Partial Allowance for Members Without Dependents.—(1) A member of a uniformed service without dependents who is not entitled to receive a basic allowance for housing under subsection (b), (c), or (d) is entitled to a partial basic allowance for housing at a rate determined by the Secretary of Defense under paragraph (2).

(2) The rate of the partial basic allowance for housing is the partial rate of the basic allowance for quarters for the member's pay grade as such partial rate was in effect on December 31, 1997, under section 1009(c)(2) of this title (as such section was in effect on such date).

(o) Treatment of Low-Cost and No-Cost Moves as Not Being Reassignments.—In the case of a member who is assigned to duty at a location or under circumstances that make it necessary for the member to be reassigned under the conditions of low-cost or no-cost permanent change of station or permanent change of assignment, the member may be treated for the purposes of this section as if the member were not reassigned if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the cost of housing in the area to which the member is reassigned.

### **37 U.S.C. §403b. Cost-of-living allowance in the continental United States**

(a) Payment Authorized.—The Secretary concerned may pay a cost-of-living allowance to the eligible members of a uniformed service under the jurisdiction of the Secretary.

(b) Eligible Members.—The following members are eligible to receive a cost-of-living allowance under this section:

(1) A member assigned to a high cost area in the continental United States.

(2) A member assigned to an unaccompanied tour of duty outside the continental United States if the primary dependent of the member resides in a high cost area in the continental United States.

(3) A member assigned to duty in the continental United States if the Secretary of the uniformed service concerned determines that—

(A) the primary dependent of the member must reside in a high cost area in the continental United States by reason of the member's duty location or other circumstances; and

(B) it would be inequitable for the member's eligibility for the allowance to be determined on the basis of the duty location of the member.

(c) High Cost Area Defined.—An area is a high cost area for a fiscal year for purposes of this section if the uniformed services cost of living for that area for the base period exceeds the average cost of living in the continental United States for such base period by at least the threshold percentage. The Secretary of Defense, in consultation with the other administering Secretaries, shall establish the threshold percentage, except that the threshold percentage may not be less than 8 percent. The administering Secretaries shall prescribe a higher threshold percentage to be applied for a fiscal year when it is necessary to do so in order to ensure that the total amount of the payments of the cost-of-living allowance made to members of the uniformed services under this section for such fiscal year does not exceed the total amount available to all uniformed services for that fiscal year for paying such allowance.

(d) Amount of Allowance.—The cost-of-living allowance that may be paid to a member for a high cost area for a fiscal year shall be the amount that is equal to the product of—

(1) the amount of the average spendable income determined applicable for the regular military compensation level of such member under subsection (g); and

(2) the percentage equal to the excess of—

(A) the percentage by which the uniformed services cost of living for the member's high cost area for the base period exceeds the average cost of living in the continental United States for such base period, over

(B) the threshold percentage applicable to such fiscal year under subsection (c).

(e) Limitation to One Allowance.—If primary dependents of a member reside separately in different high cost areas—

(1) the member may be paid only one cost-of-living allowance under this section; and

(2) the cost-of-living allowance payable to the member shall be the highest of the amounts computed under this section for such high cost areas.

(f) Service Not Covered.—(1) A cost-of-living allowance may not be paid a member under this section for the days authorized for travel of the member in connection with a permanent change of duty station.

(2) A member of a reserve component is not eligible for a cost-of-living allowance under this section unless the member is on active duty under a call or order to active duty that—

(A) specifies a period of 140 days or more; or

(B) states that the call or order to active duty is in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(g) Average Spendable Income.—The Secretary of Defense shall determine, using a methodology and assumptions that the Secretary considers appropriate, the amounts of average spendable income of members of the uniformed services for various ranges of regular military compensation. For purposes of this subsection, spendable income is the total amount of regular military compensation that is available for purchase of goods and services after allocation of amounts for taxes, insurance, housing, gifts and contributions, and savings.

(h) Joint Regulations.—The Secretary of Defense and the other administering Secretaries shall jointly prescribe regulations to carry out this section.

(i) Other Definitions.—In this section:

(1) The term "primary dependent", with respect to a member, means—

(A) the member's spouse; or

(B) in the case of an unmarried member, a dependent described in paragraph (2) or (4) of section 401(a) of this title.

(2) The term "cost of living" means a price index selected by the Secretary of Defense, in consultation with the other administering Secretaries, from among the following indices:

(A) The Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(B) Any other index developed in the private sector that the Secretary of Defense, in consultation with the other administering Secretaries, determines is comparable to the Consumer Price Index and is appropriate for use for purposes of this section.

(3) The term "uniformed services cost of living" means the price index selected as described in paragraph (2) and adjusted as the Secretary of Defense, in consultation with the other administering Secretaries, considers appropriate to reflect variations between expenses of members of the uniformed services (as offset by the basic allowance for subsistence) and the corresponding expenses of persons not members of the uniformed services with regard to the following:

(A) Nonhousing costs (including costs of transportation, goods, and services, taking into consideration savings attributable to use of such military facilities as commissary stores and exchange stores).

(B) Average income tax paid.

(C) Cost of health care.

(4) The term "base period", with respect to a fiscal year, means the 12-month period ending on June 30 of the year in which such fiscal year begins.

(5) The term "administering Secretaries" means the following:

(A) The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy).

(B) The Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) The Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration.

(D) The Secretary of Health and Human Services, with respect to the Public Health Service.

### 37 U.S.C. §415. Uniform allowance: officers; initial allowance

(a) Subject to subsection (b), an officer of an armed force is entitled to an initial allowance of not more than \$400 as reimbursement for the purchase of required uniforms and equipment-

(1) upon first reporting for active duty (other than for training) for a period of more than 90 days;

(2) upon completing at least 14 days of active duty as a member of a reserve component;

(3) upon completing 14 periods, each of which was of at least two hours' duration, of ~~inactive-duty training-reserve component duty~~ as a member of the Ready Reserve; or

(4) upon reporting for the first period of active duty required by section 2121(c) of title 10 as a member of the Armed Forces Health Professions Scholarship program.

(b) An officer who has received an initial uniform reimbursement or allowance under any other law is not entitled to an initial allowance under subsection (a).

(c) An allowance of \$250 for uniforms and equipment may be paid to each commissioned officer of the Public Health Service who is-

(1) on active duty or on ~~inactive-duty training-reserve component duty~~ status; and

(2) required by directive of the Surgeon General to wear a uniform.

An officer is not entitled to more than one allowance under this subsection.

**37 U.S.C. §433. Allowance for ~~muster duty~~ participating in Ready Reserve muster**

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of the Ready Reserve who is not a member of the National Guard or of the Selected Reserve is entitled to an allowance for ~~muster duty performed pursuant to section 12319 of title 10~~ participating in muster pursuant to section 12353(b) of title 10 if the member is engaged in that duty for at least two hours.

(b) The amount of the allowance under this section shall be 125 percent of the amount of the average per diem rate for the United States (other than Alaska and Hawaii) under section 474(d)(2)(A) of this title as in effect on September 30 of the year preceding the year in which the muster duty is performed.

(c) The allowance authorized by this section may not be disbursed in kind. The allowance may be paid to the member before, on, or after the date on which the muster duty is performed, but not later than 30 days after that date. The allowance shall constitute the single, flat-rate monetary allowance authorized for the performance of muster duty and shall constitute payment in full to the member, regardless of grade or rank in which serving, as commutation for travel to the immediate vicinity of the designated muster duty location, transportation, subsistence, and the special or extraordinary costs of enforced absence from home and civilian pursuits, including such absence on weekends and holidays.

(d) A member who performs muster duty is not entitled to compensation for ~~inactive duty training reserve component duty~~ under section 206(a) of this title for the same period.



### **37 U.S.C. §433a. Allowance for participation in Ready Reserve screening**

(a) Allowance Authorized.- (1) Under regulations prescribed by the Secretaries concerned, a member of the Individual Ready Reserve may be paid a stipend for participation in the screening performed pursuant to section 10149 of title 10, in lieu of muster duty performed ~~under section 12319 of title 10~~ pursuant to section 12353(b) of title 10, if such participation is conducted through electronic means.

(2) The stipend paid a member under this section shall constitute the sole monetary allowance authorized for participation in the screening described in paragraph (1), and shall constitute payment in full to the member for participation in such screening, regardless of the grade or rank in which the member is serving.

(b) Maximum Payment.- The aggregate amount of the stipend paid a member of the Individual Ready Reserve under this section in any calendar year may not exceed \$50.

(c) Payment Requirements.- (1) The stipend authorized by this section may not be disbursed in kind.

(2) Payment of a stipend to a member of the Individual Ready Reserve under this section for participation in screening shall be made on or after the date of participation in such screening, but not later than 30 days after such date.

**37 U.S.C. §436. High-deployment allowance: lengthy or numerous deployments; frequent mobilizations**

(a) Monthly Allowance.—The Secretary of the military department concerned may pay a high-deployment allowance to a member of the armed forces under the Secretary's jurisdiction for each month during which the member—

(1) is deployed; and

(2) at any time during that month—

(A) has been deployed for 191 or more consecutive days (or a lower number of consecutive days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness);

(B) has been deployed, out of the preceding 730 days, for a total of 401 or more days (or a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness); or

(C) in the case of a member of a reserve component, is on active duty—

(i) under a call or order to active duty for a period of more than 30 days that is the second (or later) such call or order to active duty (whether voluntary or involuntary) for that member in support of the same contingency operation (as that term is defined in section 101(a)(13) of title 10); or

(ii) for a period of more than 30 days ~~under section 12304b of title 10 or a provision of law referred to in section 101(a)(13)(B) of title 10 in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10)~~, if such period begins within one year after the date on which the member was released from previous service on active duty ~~for a period of more than 30 days under a call or order issued under such a provision of law in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) for a period of more than 30 days.~~

(b) Definition of Deployed.—In this section, the term "deployed", with respect to a member, means that the member is deployed or in a deployment within the meaning of section 991(b) of title 10 (including any definition of "deployment" prescribed under paragraph (4) of that section).

(c) Rate.—The monthly rate of the allowance payable to a member under this section shall be determined by the Secretary concerned, not to exceed \$1,000 per month.

(d) Payment of Claims.—A claim of a member for payment of the high-deployment allowance that is not fully substantiated by the recordkeeping system applicable to the member under section 991(c) of title 10 shall be paid if the member furnishes the Secretary concerned with other evidence determined by the Secretary as being sufficient to substantiate the claim.

(e) Relationship to Other Allowances.—A high-deployment allowance payable to a member under this section is in addition to any other pay or allowance payable to the member under any other provision of law.

(f) National Security Waiver.—No allowance may be paid under this section to a member for any month during which the applicability of section 991 of title 10 to the member is suspended under subsection (d) of that section.

(g) Authority to Exclude Certain Duty Assignments.—The Secretary concerned may exclude members serving in specified duty assignments from eligibility for the high-deployment allowance while serving in those assignments. Any such specification of duty assignments may only be made with the approval of the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness. Specification of a particular duty assignment for purposes of this subsection may not be implemented so as to apply to the member serving in that position at the time of such specification.

(h) Payment From Operation and Maintenance Funds.—The monthly allowance payable to a member under this section shall be paid from appropriations available for operation and maintenance for the armed force in which the member serves.

**37 U.S.C. §437. Allowance to cover monthly premiums for Servicemembers' Group Life Insurance: members serving in a designated duty assignment**

(a) Required Reimbursement for Premium Deduction.—(1) In the case of a member of the armed forces who has insurance coverage for the member under the Servicemembers' Group Life Insurance program under subchapter III of chapter 19 of title 38 and who serves in a designated duty assignment at any time during a month, the Secretary concerned shall pay the member an allowance under this section for that month in an amount equal to the amount of the deduction made under subsection (a)(1) of section 1969 of such title for the amount of Servicemembers' Group Life Insurance coverage held by the member under section 1967 of such title.

(2) In this subsection, the term "designated duty assignment" means a permanent or temporary duty assignment outside the United States or its possessions in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10); in an area that—

(A) has been designated a combat zone; or

(B) is in direct support of an area that has been designated a combat zone.

(b) Notice of Availability of Allowance.—To the maximum extent practicable, in advance of the deployment of a member to a designated duty assignment referred to in subsection (a), the Secretary concerned shall give the member information regarding the following:

(1) The availability of the allowance under this section for members insured under the Servicemembers' Group Life Insurance program.

(2) The ability of members who elected not to be insured under Servicemembers' Group Life Insurance, or elected less than the maximum coverage amount available for such insurance, to obtain insurance, or to obtain additional coverage, as the case may be, under the authority provided in section 1967(c) of title 38.

37 U.S.C. CHAPTER 8—TRAVEL AND TRANSPORTATION ALLOWANCES

***SUBCHAPTER I—TRAVEL AND TRANSPORTATION AUTHORITIES—NEW LAW***

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- ~~495. Funeral honors duty: allowance.~~
495. Funeral honors: allowance.

### 37 U.S.C. §452. Allowable travel and transportation: general authorities

(a) In General.-Except as otherwise prohibited by law, a member of the uniformed services or other authorized traveler may be provided transportation-, lodging-, or meals-in-kind, or actual and necessary expenses of travel and transportation, for, or in connection with, official travel under circumstances as specified in regulations prescribed under section 464 of this title.

(b) Specific Circumstances.-The authority under subsection (a) includes travel under or in connection with, but not limited to, the following circumstances, to the extent specified in regulations prescribed under section 464 of this title:

(1) Temporary duty that requires travel between a permanent duty assignment location and another authorized temporary duty location, and travel in or around the temporary duty location.

(2) Permanent change of station that requires travel between an old and new temporary or permanent duty assignment location or other authorized location.

(3) Temporary duty or assignment relocation related to consecutive overseas tours or in-place-consecutive overseas tours.

(4) Recruiting duties for the armed forces.

(5) Assignment or detail to another Government department or agency.

(6) Rest and recuperative leave.

(7) Convalescent leave.

(8) Reenlistment leave.

(9) Reserve component ~~inactive duty training~~ reserve component duty performed outside the normal commuting distance of the member's permanent residence.

(10) Ready Reserve muster ~~duty~~.

(11) Unusual, extraordinary, hardship, or emergency circumstances.

(12) Presence of family members at a military medical facility incident to the illness or injury of members.

(13) Presence of family members at the repatriation of members held captive.

(14) Presence of non-medical attendants for very seriously or seriously wounded, ill, or injured members.

(15) Attendance at Yellow Ribbon Reintegration Program events.

(16) Missing status, as determined by the Secretary concerned under chapter 10 of this title.

(17) Attendance at or participation in international sports competitions described under section 717 of title 10.

(c) Matters Included.-Travel and transportation allowances which may be provided under subsection (a) include the following:

(1) Allowances for transportation, lodging, and meals.

(2) Dislocation or relocation allowances paid in connection with a change in a member's temporary or permanent duty assignment location.

(3) Other related miscellaneous expenses.

(d) Mode of Providing Travel and Transportation Allowances.-Any authorized travel and transportation may be provided-

(1) as an actual expense;

(2) as an authorized allowance;

(3) in-kind; or

(4) using a combination of the authorities under paragraphs (1), (2), and (3).

(e) Travel and Transportation Allowances When Travel Orders Are Modified, etc.-An authorized traveler whose travel and transportation order or authorization is canceled, revoked, or modified may be allowed actual and necessary expenses or travel and transportation allowances in connection with travel performed pursuant to such order or authorization.

(f) Advance Payments.-An authorized traveler may be allowed advance payments for authorized travel and transportation allowances.

(g) Responsibility for Unauthorized Expenses.-Any unauthorized travel or transportation expense is not the responsibility of the United States.

(h) Relationship to Other Authorities.-The administering Secretary may not provide payment under this section for an expense for which payment may be provided from any other appropriate Government or non-Government entity.



### 37 U.S.C. §474. Travel and transportation allowances: general

(a) Except as provided in subsection (f) and under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation-

(1) upon a change of permanent station, or otherwise, or when away from his designated post of duty regardless of the length of time he is away from that post;

(2) upon appointment, call to active duty, enlistment, or induction, from his home or from the place from which called or ordered to active duty to his first station;

(3) upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty, whether or not he is or will be a member of a uniformed service at the time the travel is or will be performed;

(4) when away from home to perform duty, including duty by a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, in his status as a member of the National Guard, for which he is entitled to, or has waived, pay under this title;

(5) when not on active duty, if assigned to a Reserve school, and attending a reserve training meeting for the purpose of performing duties as an instructor at such meeting, if such meeting is 100 or more miles from the site at which the member would attend ~~paid drills~~ paid periods of reserve component duty of the Reserve school to which he is assigned; and

(6) upon filling a vacancy in a Selected Reserve unit at a duty station that is more than 150 miles from the member's residence if-

(A) during the preceding three years the member was involuntarily separated under other than adverse conditions (as characterized by the Secretary concerned) while assigned to a unit of the Selected Reserve certified by the Secretary concerned as having been adversely affected by force structure reductions during the period beginning on October 1, 2012, and ending on December 31, 2018;

(B) the involuntary separation occurred during the period beginning on October 1, 2012, and ending on December 31, 2018; and

(C) the member is-

(i) qualified in a skill designated as critically short by the Secretary concerned; or

(ii) filling a vacancy in a Selected Reserve unit with a critical manpower shortage, or in a pay grade with a critical manpower shortage in such unit.

(b)(1) The Secretaries concerned may prescribe-

(A) the conditions under which travel and transportation allowances are authorized, including advance payments thereof; and

(B) the allowances for the kinds of travel, but not more than the amounts authorized in this section.

(2) In prescribing such conditions and allowances, the Secretaries concerned shall provide that a member who is performing travel under orders away from his designated post of duty and who is authorized a per diem under clause (2) of subsection (d) shall be paid for the meals portion of that per diem in a cash amount at a rate that is not less than the rate established under section 1011(a) of this title for meals sold to members. The preceding sentence shall not apply with respect to a member on field duty or sea duty (as defined in regulations prescribed under section 403(f)(3) of this title) or a member of a unit with respect to which the Secretary concerned has determined that unit messing is essential to the accomplishment of the unit's training and readiness.

(c)(1) Under uniform regulations prescribed by the Secretaries concerned and as provided in paragraph (2), a member who-

(A) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

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

(C) is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001,

may, not later than one year from the date he is so retired, placed on that list, involuntarily separated, discharged, or released, except as prescribed in regulations by the Secretaries concerned, select his home for the purposes of the travel and transportation allowances authorized by subsection (a).

(2) A member authorized under paragraph (1) to select a home for the purposes of such allowances may select as his home-

(A) any place within the United States;

(B) the place outside the United States from which the member was called or ordered to active duty to his first duty station; or

(C) any other place.

However, if the member selects as his home a place other than a place described in clause (A) or (B) of the preceding sentence, the travel and transportation allowances authorized by subsection (a) may not exceed the allowances which would be payable if the place selected as his home were in the United States (other than Hawaii or Alaska).

(d)(1) The travel and transportation allowances authorized for each kind of travel may not be more than one of the following:

(A) Transportation in kind, reimbursement therefor, or, under regulations prescribed by the Secretaries concerned, when travel by privately owned conveyance is authorized or approved as more advantageous to the Government, a monetary allowance in place of the cost of transportation, at the rates provided in section 5704 of title 5.

(B) Transportation in kind, reimbursement therefor, or a monetary allowance as provided in subparagraph (A), plus a payment in lieu of subsistence as provided in paragraph (2) in an amount sufficient to meet normal and necessary expenses in the area to which travel is performed.

(C) A mileage allowance at a rate per mile prescribed by the Secretaries concerned and based on distances established under subparagraph (A).

(2) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service entitled to travel and transportation allowances under subsection (a) is entitled to any of the following:

(A) A per diem allowance at a rate not to exceed that established by the Secretaries concerned.

(B) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Secretaries concerned.

(C) A combination of payments described in subparagraphs (A) and (B).

(3) A per diem allowance or maximum amount of reimbursement established for purposes of paragraph (2) shall be established, to the extent feasible, by locality.

(4) For travel consuming less than a full day, the payment prescribed by regulation under paragraph (2) shall be allocated in such manner as the Secretaries concerned prescribe.

(5) Effective January 1, 2003, the per diem rates established under paragraph (2)(A) for travel performed in connection with a change of permanent station or for travel described in paragraph (2) or (3) of subsection (a) shall be equal to the standard per diem rates established in the Federal travel regulation for travel within the continental United States of civilian employees and their dependents, unless the Secretaries concerned determine that a higher rate for members is more appropriate.

(e) A member who is on duty with, or is undergoing training for, the Air Mobility Command, the Marine Corps Transport Squadrons, the Fleet Tactical Support Squadrons, the Naval Aircraft Ferrying Squadrons, or any other unit determined by the Secretary concerned to be performing duties similar to the duties performed by such command or squadrons, and who is away from his permanent station, may be paid a per diem in lieu of subsistence in an amount not more than the amount to which he would be entitled if he were performing travel in connection with temporary duty without, in either case, the issuance of orders for specific travel.

(f)(1) The travel and transportation allowances authorized under this section for a member who is separated from the service or released from active duty may be paid or provided only for travel actually performed.

(2)(A) Except as provided in subparagraph (B), a member who is separated from the service or released from active duty and who-

(i) on the date of his separation from the service or release from active duty, has not served on active duty for a period of time equal to at least 90 percent of the period of time for which he initially enlisted or otherwise initially agreed to serve; or

(ii) is separated from the service or released from active duty under other than honorable conditions, as determined by the Secretary concerned;

may be provided travel and transportation under this section only by transportation in kind by the least expensive mode of transportation available or by a monetary allowance that does not exceed the cost to the Government of such transportation in kind.

(B) Subparagraph (A) does not apply to a member-

(i) who is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

(ii) who is separated from the service or released from active duty for a medical condition affecting the member, as determined by the Secretary concerned;

(iii) who is separated from the service or released from active duty because the period of time for which the member initially enlisted or otherwise initially agreed to serve has been reduced by the Secretary concerned and is separated or released under honorable conditions;

(iv) who is discharged under section 1173 of title 10; or

(v) who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001.

(3) For purposes of entitlement to per diem in place of subsistence under subsection (d)(2), a member shall not be considered under subsection (a)(1) to be performing travel under orders away from his designated post of duty if such member-

(A) is an enlisted member serving his first tour of active duty;

(B) has not actually reported to a permanent duty station pursuant to orders directing such assignment; and

(C) is not actually traveling between stations pursuant to orders directing a change of station.

(4)(A) A member may be provided travel and transportation allowances under subsection (a)(6) only with respect to the filling of a vacancy in a Selected Reserve unit one time.

(B) Regulations under this section shall provide that whenever travel and transportation allowances are paid under subsection (a)(6), the cost shall be borne by the unit filling the vacancy.

(g)(1) Subject to paragraph (2), a member of the armed forces accompanying a Member of Congress or a congressional employee on official travel may be authorized reimbursement for actual travel and transportation expenses incurred for such travel.

(2) The reimbursement authorized in paragraph (1) may be paid-

(A) at a rate that does not exceed the rate approved for official congressional travel; and

(B) only when the travel of the member is directed or approved by the Secretary of Defense or the Secretary concerned.

(3) In this subsection:

(A) The term "Member of Congress" means a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(B) The term "congressional employee" means an employee of a Member of Congress or an employee of Congress.

(h) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service entitled to travel and transportation allowances under subsection (a) is entitled to reimbursement for parking fees, ferry fares, and bridge, road, and tunnel tolls actually incurred incident to such travel.

(i)(1) In the case of a member of a reserve component performing active duty for training or ~~inactive duty training~~ reserve component duty who is not otherwise entitled to travel and transportation allowances in connection with such duty under subsection (a), the Secretary concerned may reimburse the member for housing service charge expenses incurred by the member in occupying transient government housing during the performance of such duty. If transient government housing is unavailable or inadequate, the Secretary concerned may provide

the member with lodging in kind in the same manner as members entitled to such allowances under subsection (a).

(2) Any payment or other benefit under this subsection shall be provided in accordance with regulations prescribed by the Secretaries concerned.

(3) The Secretary may pay service charge expenses under paragraph (1) and expenses of providing lodging in kind under such paragraph out of funds appropriated for operation and maintenance for the reserve component concerned. Use of Government charge cards is authorized for payment of these expenses.

(4) Decisions regarding the availability or adequacy of government housing at a military installation under paragraph (1) shall be made by the installation commander.

(j) In this section (except subsection (a)(6)), the term "involuntarily separated" has the meaning given that term in section 1141 of title 10.

(k) No travel and transportation allowance or reimbursement may be provided under this section for travel that begins after the travel authorities transition expiration date.

**37 U.S.C. §474b. Travel and transportation allowances: payment of lodging expenses at temporary duty location during authorized absence of member**

(a) Payment or Reimbursement Authorized.—The Secretary concerned may pay or reimburse a member of the armed forces assigned to temporary duty as described in subsection (b) for lodging expenses incurred by the member at the temporary duty location during an authorized absence of the member from the temporary duty location.

(b) Covered Members.—Subsection (a) applies with respect to a member assigned to temporary duty, for a period of more than 30 days, in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10); or in other specific situations designated by the Secretary concerned if the member—

(1) immediately before the authorized absence, was performing the temporary duty at a location away from the home or permanent duty station of the member;

(2) was receiving a per diem allowance under section 474(a)(4) of this title to cover lodging and subsistence expenses incurred at the temporary duty location because quarters of the United States were not available for assignment to the member at that location; and

(3) before the end of the authorized absence, returns to the duty location.

(c) Payment Limitation.—The amount paid or reimbursed under subsection (a) for a member may not exceed the lesser of—

(1) the actual daily cost of lodging incurred by the member at the temporary duty location during the authorized absence of the member; and

(2) the lodging portion of the applicable daily per diem rate for the temporary duty location.

(d) Authorized Absence Defined.—In this section, the term "authorized absence", with respect to a member, means that the member is in an authorized leave status or that the absence of the member is otherwise authorized under regulations prescribed by the Secretary concerned.

(e) Termination.—No payment or reimbursement may be provided under this section with respect to an authorized absence that begins after the travel authorities transition expiration date.

**37 U.S.C. §478a. Travel and transportation allowances: ~~inactive duty training reserve component duty~~ outside of normal commuting distances**

(a) Allowance Authorized.-The Secretary concerned may reimburse an eligible member of the Selected Reserve of the Ready Reserve for travel expenses for travel to an ~~inactive duty training reserve component duty~~ location to ~~perform inactive duty training reserve component duty~~ when the member is required to commute a distance from the member's permanent residence to ~~inactive duty training reserve component duty~~ location that is outside the normal commuting distance (as determined under the regulations prescribed under subsection (d)) for that commute.

(b) Eligible Members.-To be eligible for reimbursement under subsection (a), a member of the Selected Reserve of the Ready Reserve must be-

(1) qualified in a skill designated as critically short by the Secretary concerned;

(2) assigned to a unit of the Selected Reserve with a critical manpower shortage or in a pay grade in the member's reserve component with a critical manpower shortage; or

(3) assigned to a unit or position that is disestablished or relocated as a result of defense base closure or realignment or another force structure reallocation.

(c) Maximum Reimbursement Amount.- (1) Except as provided by paragraph (2), the amount of reimbursement provided a member under subsection (a) for each round trip to a training location may not exceed \$300.

(2) The Secretary concerned may authorize, on a case-by-case basis, a higher reimbursement amount for a member under subsection (a) when the member-

(A) resides-

(i) in the same State as the training location; and

(ii) outside of an urbanized area with a population of 50,000 or more, as determined by the Bureau of the Census; and

(B) is required to commute to a training location-

(i) using an aircraft or boat on account of limited or nonexistent vehicular routes to the training location or other geographical challenges; or

(ii) from a permanent residence located more than 75 miles from the training location.

(d) Regulations.-The Secretary concerned shall prescribe regulations to carry out this section. Regulations prescribed by the Secretary of a military department shall be subject to the approval of the Secretary of Defense.



(e) Termination.-No reimbursement may be provided under this section for travel that occurs after December 31, 2018.

### **37 U.S.C. §481b. Travel and transportation allowances: travel performed in connection with leave between consecutive overseas tours**

(a) Allowances Authorized.—Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service stationed outside the continental United States who is ordered to a consecutive tour of duty at the same duty station or who is ordered to make a change of permanent station to another duty station outside the continental United States may be paid travel and transportation allowances in connection with authorized leave from his last duty station to a place approved by the Secretary concerned and from that place to his designated post of duty. Such allowances may be paid for the member and for the dependents of the member who are authorized to, and do, accompany him at his duty stations.

(b) Authority to Defer Travel; Limitations.—(1) Under the regulations referred to in subsection (a), a member may defer the travel for which the member is paid travel and transportation allowances under this section until any time before the completion of the consecutive tour at the same duty station or the completion of the tour of duty at the new duty station under the order involved, as the case may be.

(2) If a member is unable to undertake the travel before expiration of the deferral period under paragraph (1) because of duty in connection with a contingency operation (as that term is defined in section 101(a)(13) of title 10), the member may defer the travel until not more than one year after the date on which the member's duty in connection with the contingency operation ends.

(c) Limitation on Allowance Rate.—The allowances prescribed under this section may not exceed the rate authorized under section 474(d) of this title. Authorized travel under this section is performed in a duty status.

(d) Termination.—No travel and transportation allowance may be provided under this section for travel that is authorized after the travel authorities transition expiration date.

### **37 U.S.C. §481f. Travel and transportation allowances: transportation for survivors of deceased member to attend member's burial ceremonies; transportation for survivors of member dying overseas to attend transfer ceremonies**

(a) Allowances Authorized.-(1) The Secretary concerned may provide round trip travel and transportation allowances to eligible relatives of a member of the uniformed services who dies while on active duty or ~~inactive duty-reserve component duty~~ in order that the eligible relatives may attend the burial ceremony of the deceased member at the location determined under subsection (a)(8) of section 1482 of title 10 or attend a memorial service for the deceased member, under circumstances covered by subsection (d) of such section.

(2) The Secretary concerned may provide round trip travel and transportation allowances to eligible relatives of a member of the uniformed services who dies while on active duty in order that the eligible relatives may attend a memorial service for the deceased member that occurs at a location other than the location of the burial ceremony for which travel and transportation allowances are provided under paragraph (1). Travel and transportation allowances may be provided under this paragraph for travel of eligible relatives to only one memorial service for the deceased member concerned.

(3) The Secretary concerned may also provide round trip travel and transportation allowances to an attendant who accompanies an eligible relative provided travel and transportation allowances under paragraph (1) for travel to the burial ceremony if the Secretary concerned determines that-

(A) the accompanied eligible relative is unable to travel unattended because of age, physical condition, or other justifiable reason; and

(B) there is no other eligible relative of the deceased member traveling to the burial ceremony who is eligible for travel and transportation allowances under paragraph (1) and is qualified to serve as the attendant.

(b) Limitation on Amount.-Allowances for travel under subsection (a) may not exceed the rates for two days and the time necessary for such travel.

(c) Eligible Relatives.-(1) The following members of the family of a deceased member of the uniformed services are eligible for the travel and transportation allowances under paragraphs (1) and (2) of subsection (a):

(A) The surviving spouse (including a remarried surviving spouse) of the deceased member.

(B) The child or children of the deceased member (including stepchildren, adopted children, and illegitimate children).

(C) The parent or parents of the deceased member (as defined in section 401(b)(2) of this title).

(D) The sibling or siblings of the deceased member.

(E) The person who directs the disposition of the remains of the deceased member under section 1482(c) of title 10 or, in the case of a deceased member whose remains are commingled and buried in a common grave in a national cemetery, the person who would have been designated under such section to direct the disposition of the remains if individual identification had been made.

(2) If no person described in subparagraphs (A) through (D) of paragraph (1) is provided travel and transportation allowances under paragraph (1) or (2) of subsection (a), the travel and transportation allowances may be provided to one or two other persons who are closely related to the deceased member and are selected by the person referred to in paragraph (1)(E). A person provided travel and transportation allowances under this paragraph is in addition to the person referred to in paragraph (1)(E).

(d) Transportation to Transfer Ceremonies of Members of the Armed Forces Who Die Overseas.-  
(1) The Secretary of the military department concerned may provide round trip transportation to ceremonies for the transfer of a member of the armed forces who dies while located or serving overseas (including during a humanitarian relief operation) to the following:

(A) The primary next of kin of the member.

(B) Two family members (other than primary next of kin) of the member.

(C) One or more additional family members of the member, at the discretion of the Secretary.

(2)(A) For purposes of this subsection, the primary next of kin of a member of the armed forces shall be the eligible relatives of the member specified in subparagraphs (A) through (D) of subsection (c)(1).

(B) The Secretaries of the military departments shall prescribe in regulations the family members of a member of the armed forces who shall constitute family members for purposes of subparagraphs (B) and (C) of paragraph (1). The Secretary of Defense shall ensure that such regulations are uniform across the military departments.

(3) Transportation shall be provided under this subsection by means of Invitational Travel Authorizations.

(4) The Secretary of a military department may, upon the request of the primary next of kin covered by paragraph (1)(A) and at the discretion of the Secretary, provide for the accompaniment of such next of kin in travel under this subsection by a casualty assistance officer or family liaison officer of the military department who shall act as an escort in such accompaniment.

(e) Burial Ceremony Defined.-In this section, the term "burial ceremony" includes the following:

(1) An interment of casketed or cremated remains.

(2) A placement of cremated remains in a columbarium.

(3) A memorial service for which reimbursement is authorized under section 1482(d)(2) of title 10.

(4) A burial of commingled remains that cannot be individually identified in a common grave in a national cemetery.

(f) Regulations.-The Secretaries concerned shall prescribe uniform regulations to carry out this section.

(g) Termination.-No travel and transportation allowance or reimbursement may be provided under this section for travel that begins after the travel authorities transition expiration date.

### 37 U.S.C. §495. Funeral honors ~~duty~~: allowance

(a) Allowance Authorized.—(1) The Secretary concerned may authorize payment of an allowance to a member of the Ready Reserve for any day on which the member performs at least two hours of ~~funeral honors duty pursuant to section 12503 of title 10 or section 115 of title 32 reserve component duty pursuant to section 12353(d)(2)(A)(i) of title 10 or section 553(c)(2)(A)(i) of title 32, to provide honors at the funeral of a veteran.~~

(2) The Secretary concerned may also authorize payment of that allowance to a member of the armed forces in a retired status for any day on which the member serves in a funeral honors detail under section 1491 of title 10, if the time required for service in such detail (including time for preparation) is not less than two hours. The amount of an allowance paid to a member under this paragraph shall be in addition to any other compensation to which the member may be entitled under this title or title 10 or 38.

(b) Amount.—The daily rate of an allowance under this section is \$50.

(c) Termination.—No allowance may be paid under this section for any day after the travel authorities transition expiration date.

### 37 U.S.C. §501. Payments for unused accrued leave

(a) In this section, the term "discharge" means—

(1) in the case of an enlisted member, separation or release from active duty under honorable conditions, termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated), or appointment as an officer;

(2) in the case of an officer, separation or release from active duty under honorable conditions;

(3) in the case of either an officer or an enlisted member, death while on active duty unless the decedent was put to death as lawful punishment for a crime or a military offense;

(4) in the case of an officer or an enlisted member of a reserve component who is not serving on active duty, separation or release from the reserve component under honorable conditions, or death; and

(5) in the case of an enlisted member of a reserve component who is not serving on active duty, termination of enlistment in conjunction with the commencement of a successive enlistment, or appointment as an officer.

(b)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, who has accrued leave to his credit at the time of his discharge, is entitled to be paid in cash or by a check on the Treasurer of the United States for such leave on the basis of the basic pay to which he was entitled on the date of discharge.

(2) Payment may not be made under this subsection to a member who is discharged for the purpose of accepting an appointment or a warrant in any uniformed service.

(3) Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment. However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976.

(4) A member to whom a payment may not be made under this subsection, or a member who reverts from officer to enlisted status, carries the accrued leave standing to his credit from the one status to the other within any uniformed service.

(5) The limitation in the second sentence of paragraph (3) and in subsection (f) shall not apply with respect to leave accrued—

(A) by a member of a reserve component while serving on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(B) by a member of the armed forces in the Retired Reserve while serving on active duty in support of a contingency operation;

(C) by a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps or a member of the Fleet Reserve or Fleet Marine Corps Reserve while the member is serving on active duty in support of a contingency operation; or

(D) by a member of a reserve component while serving on active duty, full-time National Guard duty, or active duty for training for a period of more than 30 days but not in excess of 365 days.

(6) An enlisted member of the armed forces who would lose accumulated leave in excess of 120 days of leave under section 701(f)(1) of title 10 may elect to be paid in cash or by a check on the Treasurer of the United States for any leave in excess so accumulated for up to 30 days of such leave. A member may make an election under this paragraph only once.

(c) Unused accrued leave for which payment is made under subsection (b) is not considered as service for any purpose.

(d)(1) Payments for unused accrued leave under subsections (b) and (g), in the case of a member who dies while on active duty or reserve component duty, or in the case of a member or former member who dies after retirement or discharge and before he receives that payment, shall be made in accordance with section 2771 of title 10. In the case of a member who dies while on active duty or reserve component duty, payment for unused accrued leave under subsections (b) and (g) shall be based upon the unused accrued leave the member carried forward into the leave year during which he died plus the unused leave that accrued to him during that leave year.

(2) The limitations in the second sentence of subsection (b)(3), subsection (f), and the second sentence of subsection (g) shall not apply with respect to a payment made under this subsection.

(e)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration who is discharged under other than honorable conditions forfeits all accrued leave to his credit at the time of his discharge.

(2) The Secretary concerned may require that a member of a uniformed service who is discharged before completing six months of active duty because of a failure to serve satisfactorily (as determined by the Secretary concerned) forfeit all accrued leave to his credit at the time of his discharge.

(f) The number of days upon which payment under subsection (b) or (g) is based may not exceed sixty, less the number of days for which payment has been previously made under such subsections after February 9, 1976. For the purposes of this subsection, the number of days upon which payment may be based shall be determined without regard to any break in service or change in status in the uniformed services.

(g) An officer of the Regular Corps of the Public Health Service, or an officer of the Reserve Corps of the Public Health Service on active duty, who is credited with accumulated and accrued annual leave on the date of his separation, retirement, or release from active duty, shall, if his application for that leave is approved by the Secretary of Health and Human Services, be paid for that leave in a lump-sum on the basis of his basic pay, subsistence allowance, and allowance for quarters whether or not he is receiving that allowance on that date. However, the number of days



upon which the lump-sum payment is based is subject to subsection (f). A lump-sum payment may not be made under this subsection to an officer—

(1) whose appointment expires or is terminated and who, without a break in active service, accepts a new appointment;

(2) who is retired for age in time of war and is continued on, or recalled to, active duty without a break in active service; or

(3) who is transferred to another department or agency of the United States under circumstances in which, by any other law, his leave may be transferred.

In this subsection, the term "accumulated annual leave" means unused accrued annual leave carried forward from one leave year into the next leave year, and the term "accrued annual leave" means the annual leave accruing to an officer during one leave year.

(h) Payment shall be made for all leave accumulated under section 701(g) of title 10 as soon as possible after the name of the person concerned is removed from a missing status, as defined in section 551(2) of this title.

### 37 U.S.C. §552. Pay and allowances; continuance while in a missing status; limitations

(a) A member of a uniformed service who is on active duty or performing ~~inactive-duty training reserve component duty~~, and who is in a missing status, is-

(1) for the period he is in that status, entitled to receive or have credited to his account the same pay and allowances, as defined in this chapter, to which he was entitled at the beginning of that period or may thereafter become entitled; and

(2) for the period, not to exceed one year, required for his hospitalization and rehabilitation after termination of that status, under regulations prescribed by the Secretaries concerned, with respect to incentive pay, considered to have satisfied the requirements of section 301 or section 351(a)(2) of this title so as to entitle him to a continuance of that pay.

However, a member who is performing full-time training duty or other full-time duty without pay, or ~~inactive-duty training reserve component duty~~ with or without pay, is entitled to the pay and allowances to which he would have been entitled if he had been on active duty with pay. Notwithstanding section 1523 of title 10 or any other provision of law, the promotion of a member while he is in a missing status is fully effective for all purposes.

(b) The expiration of a member's term of service while he is in a missing status does not end his entitlement to pay and allowances under subsection (a). Notwithstanding the death of a member while in a missing status, entitlement to pay and allowances under subsection (a) ends on the date-

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of this title or under chapter 76 of title 10.

(c) A member is not entitled to pay and allowances under subsection (a) for a period during which he is officially determined to be absent from his post of duty without authority, and he is indebted to the United States for payments from amounts credited to his account for that period.

(d) A member who is performing full-time training duty or ~~inactive-duty training reserve component duty~~ is entitled to the benefits of this section only when he is officially determined to be in a missing status that results from the performance of duties prescribed by competent authority.

(e) A member in a missing status who is continued in that status under section 555 of this title or under chapter 76 of title 10 is entitled to be credited with pay and allowances under subsection (a).

## 37 U.S.C. CHAPTER 17-MISCELLANEOUS RIGHTS AND BENEFITS

Sec.

901. Wartime pay of officer of armed force exercising command higher than his grade.

902. Pay of crews of wrecked or lost naval vessels.

903. Retired members recalled to active duty; former members.

[904. Repealed.]

905. Reserve officers of the Navy or Marine Corps not on the active-duty list: effective date of pay and allowances.

906. Extension of enlistment: effect on pay and allowances.

907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized.

908. Employment of reserves and retired members by foreign governments.

909. Special and incentive pay: payment at unreduced rates during suspension of personnel laws.

~~910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service.~~

910. Replacement of lost income: reserve component members subject to extended and frequent active duty in support of a contingency operation.

### **37 U.S.C. §909. Special and incentive pay: payment at unreduced rates during suspension of personnel laws**

(a) Authority To Continue Payment at Unreduced Rates.—To ensure fairness and recognize the contributions of members of the armed forces to military essential missions, the Secretary of the military department concerned may authorize members who are involuntarily retained on active duty ~~under section 123 or 12305 of title 10~~ under section 123 or 12311 of title 10 or any other provision of law and who, immediately before retention on active duty, were entitled or eligible for special pay or incentive pay under chapter 5 of this title, to receive that special pay or incentive pay for qualifying service performed during the retention period, without a reduction in the payment rate below the rate the members received immediately before retention on active duty, notwithstanding any requirement otherwise applicable to that special pay or incentive pay that would reduce the payment rate by reason of the years of service of the members.

(b) Suspension During Time of War.—Subsection (a) does not apply with respect to a special pay or incentive pay under chapter 5 of this title, whenever the authority to provide that special pay or incentive pay is suspended by the President or the Secretary of Defense during a time of war.

(c) Qualifying Service Defined.—In this section, the term "qualifying service" means service for which a particular special pay or incentive pay is payable under the authority of a provision of chapter 5 of this title.

**37 U.S.C. §910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service**

**§910. Replacement of lost income: reserve component members subject to extended and frequent active duty in support of a contingency operation**

(a) Payment Required.—The Secretary concerned shall pay to an eligible member of a reserve component of the armed forces an amount equal to the monthly active-duty income differential of the member, as determined by the Secretary, when the total monthly military compensation of the member is less than the average monthly civilian income of the member. The payments shall be made on a monthly basis.

(b) Eligibility.—(1) A member of a reserve component is entitled to a payment under this section for any full month of active duty of the member, when the total monthly military compensation of the member is less than the average monthly civilian income of the member, while the member is on active duty ~~under an involuntary mobilization order in support of a contingency operation~~ (as that term is defined in section 101(a)(13) of title 10), following the date on which the member—

(A) completes 547 continuous days of service on active duty ~~under an involuntary mobilization order in support of a contingency operation~~;

(B) completes 730 cumulative days on active duty ~~under an involuntary mobilization order in support of a contingency operation~~ during the previous 1,826 days; or

(C) is ~~involuntarily mobilized for service on active duty~~ ordered to active duty in support of a contingency operation for a period of 180 days or more within 180 days after the date of the member's separation from ~~a previous period of active duty~~ a previous period of active duty in support of a contingency operation for a period of 180 days or more.

(2) The entitlement of a member of a reserve component to a payment under this section also shall commence or, if previously commenced under paragraph (1), shall continue if the member—

(A) satisfies the required number of days on active duty specified in subparagraph (A) or (B) of paragraph (1) or was ~~involuntarily mobilized~~ ordered to active duty in support of a contingency operation as provided in subparagraph (C) of such paragraph; and

(B) is retained on active duty ~~under subparagraph (A) or (B) of section 12301(h)(1) of title 10~~ under section 12341 of title 10 for a purpose specified in subparagraph (D) or (E) of section 12351(e)(1) of title 10, or under section 541 of title 32 for a purpose specified in subparagraph (D) or (E) of section 551(c)(1) of title 32, because of an injury or illness incurred or aggravated while the member was assigned to duty in an area for which special pay under section 310, or paragraph (1) or (3) of section 351(a), of this title is available.

(3) A civilian employee of the Federal Government who is also a member of a reserve component is not entitled to a payment under this section for any period for which the employee is entitled to—

(A) a differential payment under section 5538 of title 5; or

(B) a comparable benefit under an administratively established program for civilian employees absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services.

(c) Minimum and Maximum Payment Amounts.—(1) A payment under this section shall be made to a member for a month only if the amount of the monthly active-duty income differential for the month is greater than \$50.

(2) Notwithstanding the amount determined under subsection (d) for a member for a month, the monthly payment to a member under this section may not exceed \$3,000.

(d) Monthly Active-Duty Income Differential.—For purposes of this section, the monthly active-duty income differential of a member is the difference between—

(1) the average monthly civilian income of the member; and

(2) the member's total monthly military compensation.

(e) Definitions.—In this section:

(1) The term "average monthly civilian income", with respect to a member of a reserve component, means the amount, determined by the Secretary concerned, of the earned income of the member for either the 12 months preceding the member's mobilization order to active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or the 12 months covered by the member's most recent Federal income tax filing, divided by 12.

(2) The term "total monthly military compensation" means the amount, computed on a monthly basis, of the sum of—

(A) the amount of the regular military compensation (RMC) of the member; and

(B) any amount of special pay or incentive pay and any allowance (other than an allowance included in regular military compensation) that is paid to the member on a monthly basis.

(f) Regulations.—This section shall be administered under regulations to be prescribed by the Secretary of Defense.

(g) Termination.—No payment shall be made to a member under this section for months beginning after December 31, 2019, unless the entitlement of the member to payments under this section commenced on or before that date.

### **37 U.S.C. §1002. Additional training or duty without pay: Reserves and members of National Guard**

(a) A member of the National Guard, or of a reserve component of a uniformed service, may, with his consent, be given additional training or other duty as provided by law, without pay, as may be authorized by the Secretary concerned.

(b)(1) A member who performs training or other duty without pay under subsection (a) may, in the discretion of the Secretary concerned, be authorized the travel and transportation allowances prescribed by section 474(a)–(d), and (f), of this title for travel performed to and from that training or duty, and, during the performance of that training or duty, be furnished with subsistence and quarters in kind or commutation thereof at a rate to be fixed by the Secretary concerned.

(2) If a military technician (dual status), as described in section 10216 of title 10, is performing active duty without pay while on leave from technician employment, as authorized by section 6323(d) of title 5, the Secretary concerned may authorize the payment of a per diem allowance to the military technician in lieu of commutation for subsistence and quarters under paragraph (1).

~~(e) This section does not authorize compensation for work or study performed by a member of a reserve component in connection with correspondence courses of an armed force.~~

(c) This section does not authorize compensation for work or study in connection with correspondence courses of an armed force—

(1) performed by a member of a reserve component other than that authorized by the Secretary concerned under section 12354(b) of title 10; or

(2) performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia.

(d) This section does not apply to a member who is entitled to basic pay under chapter 3 of this title.

# **TITLE 38**

## **Veterans' Benefits**



### 38 U.S.C. §101. Definitions

For the purposes of this title-

(1) The terms "Secretary" and "Department" mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.

(2) The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(3) The term "surviving spouse" means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

(4)(A) The term "child" means (except for purposes of chapter 19 of this title (other than with respect to a child who is an insurable dependent under subparagraph (B) or (C) of section 1965(10) of such chapter) and section 8502(b) of this title) a person who is unmarried and-

(i) who is under the age of eighteen years;

(ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or

(iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution;

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Secretary to be the father of such child. A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran's death living in the veteran's household and was legally adopted by the veteran's surviving spouse before August 26, 1961, or within two years after the veteran's death; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward the person's support from some individual other than the veteran or the veteran's spouse, or from any public or private welfare organization which furnishes services or assistance for children. A person with respect to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally

adopted child, unless and until that decree is rescinded, if the child remains in the custody of the adopting parent or parents during the interlocutory period. A person who has been placed for adoption under an agreement entered into by the adopting parent or parents with any agency authorized under law to so act shall be recognized thereafter as a legally adopted child, unless and until such agreement is terminated, if the child remains in the custody of the adopting parent or parents during the period of placement for adoption under such agreement. A person described in clause (ii) of the first sentence of this subparagraph who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran shall be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of adoption.

(B) For the purposes of subparagraph (A) of this paragraph, in the case of an adoption under the laws of any jurisdiction other than a State (as defined in section 101(20) of this title and including the Commonwealth of the Northern Mariana Islands)-

(i) a person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of such veteran (including for purposes of this subparagraph a Commonwealth Army veteran or new Philippine Scout, as defined in section 3566 of this title) unless such person-

(I) was less than eighteen years of age at the time of adoption;

(II) is receiving one-half or more of such person's annual support from such veteran;

(III) is not in the custody of such person's natural parent, unless such natural parent is such veteran's spouse; and

(IV) is residing with such veteran (or in the case of divorce following adoption, with the divorced spouse who is also an adoptive or natural parent) except for periods during which such person is residing apart from such veteran (or such divorced spouse) for purposes of full-time attendance at an educational institution or during which such person or such veteran (or such divorced spouse) is confined in a hospital, nursing home, other health-care facility, or other institution; and

(ii) a person shall not be considered to have been a legally adopted child of a veteran as of the date of such veteran's death and thereafter unless-

(I) at any time within the one-year period immediately preceding such veteran's death, such veteran was entitled to and was receiving a dependent's allowance or similar monetary benefit under this title for such person; or

(II) for a period of at least one year prior to such veteran's death, such person met the requirements of clause (i) of this subparagraph.

(5) The term "parent" means (except for purposes of chapter 19 of this title) a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less

than one year stood in the relationship of a parent to a veteran at any time before the veteran's entry into active military, naval, or air service or if two persons stood in the relationship of a father or a mother for one year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active military, naval, or air service.

(6) The term "Spanish-American War" (A) means the period beginning on April 21, 1898, and ending on July 4, 1902, (B) includes the Philippine Insurrection and the Boxer Rebellion, and (C) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on April 21, 1898, and ending on July 15, 1903.

(7) The term "World War I" (A) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (B) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.

(8) The term "World War II" means (except for purposes of chapters 31 and 37 of this title) the period beginning on December 7, 1941, and ending on December 31, 1946.

(9) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(10) The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(11) The term "period of war" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(12) The term "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war.

(13) The term "compensation" means a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.

(14) The term "dependency and indemnity compensation" means a monthly payment made by the Secretary to a surviving spouse, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly or other periodic payment made by the Secretary to a veteran because of service, age, or non-service-connected disability, or to a surviving spouse or child of a veteran because of the non-service-connected death of the veteran.

(16) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(17) The term "non-service-connected" means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(18) The term "discharge or release" includes (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(19) The term "State home" means a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living. Such term also includes such a home which furnishes nursing home care for veterans.

(20) The term "State" means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. For the purpose of section 2303 and chapters 34 and 35 of this title, such term also includes the Canal Zone.

(21) The term "active duty" means-

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means-

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, ~~full-time duty under section 316, 502, 503, 504, or 505 of title 32~~ full-time National Guard duty under section 541 or 542 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "~~inactive duty training~~ reserve component duty" means-

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under ~~section 206 of title 37 or any other provision of law~~ section 12343 of title 10;

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under ~~sections 316, 502, 503, 504, or 505 of title 32~~ section 543 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, ~~or (iii)~~ (iii) duty performed as a temporary member of the Coast Guard Reserve, or (iv) work or a course of instruction assigned under section 12344 of title 10.

(24) The term "active military, naval, or air service" includes-

(A) active duty;

(B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and

(C) any period of ~~inactive duty training~~ reserve component duty during which the individual concerned was disabled or died-

(i) from an injury incurred or aggravated in line of duty; or

(ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

(25) The term "Secretary concerned" means-

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard;

(E) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(F) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey.

(26) The term "Reserve" means a member of a reserve component of one of the Armed Forces.

(27) The term "reserve component" means, with respect to the Armed Forces-

(A) the Army Reserve;

(B) the Navy Reserve;

(C) the Marine Corps Reserve;

(D) the Air Force Reserve;

(E) the Coast Guard Reserve;

(F) the Army National Guard of the United States; and

(G) the Air National Guard of the United States.

(28) The term "nursing home care" means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. Such term includes services furnished in skilled nursing care facilities, in intermediate care facilities, and in combined facilities. It does not include domiciliary care.

(29) The term "Vietnam era" means the following:

(A) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

(B) The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.

(30) The term "Mexican border period" means the period beginning on May 9, 1916, and ending on April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(31) The term "spouse" means a person of the opposite sex who is a wife or husband.

(32) The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty-

(A) by an enemy government or its agents, or a hostile force, during a period of war; or

(B) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(33) The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(34) The term "agency of original jurisdiction" means the activity which entered the original determination with regard to a claim for benefits under laws administered by the Secretary.

(35) The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue.

(36) The term "supplemental claim" means a claim for benefits under laws administered by the Secretary filed by a claimant who had previously filed a claim for the same or similar benefits on the same or similar basis.

### 38 U.S.C. §106. Certain service deemed to be active service

(a)(1) Service as a member of the Women's Army Auxiliary Corps for ninety days or more by any woman who before October 1, 1943, was honorably discharged for disability incurred or aggravated in line of duty which rendered her physically unfit to perform further service in the Women's Army Auxiliary Corps or the Women's Army Corps shall be considered active duty for the purposes of all laws administered by the Secretary.

(2) Any person entitled to compensation or pension by reason of this subsection and to employees' compensation based upon the same service under subchapter I of chapter 81 of title 5 must elect which benefit she will receive.

(b) Any person-

(1) who has applied for enlistment or enrollment in the active military, naval, or air service and has been provisionally accepted and directed or ordered to report to a place for final acceptance into such service; or

(2) who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of the person's local draft board and before rejection;

(3) who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service; and

who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty, will, for the purposes of chapters 11, 13, 19, 21, 31, and 39 of this title, and for purposes of determining service-connection of a disability under chapter 17 of this title, be considered to have been on active duty and to have incurred such disability in the active military, naval, or air service.

(c) For the purposes of this title, an individual discharged or released from a period of active duty shall be deemed to have continued on active duty-during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for that individual to proceed to that individual's home by the most direct route, and in any event that individual shall be deemed to have continued on active duty until midnight of the date of such discharge or release.

(d)(1) For the purposes of this title, any individual-

(A) who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or ~~inactive duty training reserve component duty~~; and

(B) who is disabled or dies from an injury or covered disease incurred while proceeding directly to or returning directly from such active duty for training or ~~inactive duty training reserve component duty~~, as the case may be;



shall be deemed to have been on active duty for training or ~~inactive-duty training reserve component duty~~, as the case may be, at the time such injury or covered disease was incurred.

(2) In determining whether or not such individual was so authorized or required to perform such duty, and whether or not such individual was disabled or died from injury or covered disease so incurred, the Secretary shall take into account the hour on which such individual began so to proceed or to return; the hour on which such individual was scheduled to arrive for, or on which such individual ceased to perform, such duty; the method of travel employed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death.

(3) Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

(4) For purposes of this subsection, the term "covered disease" means any of the following:

(A) Acute myocardial infarction.

(B) A cardiac arrest.

(C) A cerebrovascular accident.

(e) Each person who has incurred a disability as a result of an injury or disease described in subsection (b) shall be entitled to the same rights, privileges, and benefits under title 5 as a preference eligible described in section 2108(3)(C) of title 5.

(f) Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001, shall be considered active duty for purposes of all laws administered by the Secretary.

### **38 U.S.C. §1112. Presumptions relating to certain diseases and disabilities**

(a) For the purposes of section 1110 of this title, and subject to the provisions of section 1113 of this title, in the case of any veteran who served for ninety days or more during a period of war-

(1) a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service;

(2) a tropical disease, and the resultant disorders or disease originating because of therapy, administered in connection with such diseases, or as a preventative thereof, becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service, or at a time when standard or accepted treatises indicate that the incubation period thereof commenced during such service;

(3) active tuberculous disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

(4) multiple sclerosis developing a 10 percent degree of disability or more within seven years from the date of separation from such service;

(5) Hansen's disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

(b)(1) For the purposes of section 1110 of this title and subject to the provisions of section 1113 of this title, in the case of a veteran who is a former prisoner of war-

(A) a disease specified in paragraph (2) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service; and

(B) if the veteran was detained or interned as a prisoner of war for not less than thirty days, a disease specified in paragraph (3) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

(2) The diseases specified in this paragraph are the following:

(A) Psychosis.

(B) Any of the anxiety states.

(C) Dysthymic disorder (or depressive neurosis).

(D) Organic residuals of frostbite, if the Secretary determines that the veteran was detained or interned in climatic conditions consistent with the occurrence of frostbite.

(E) Post-traumatic osteoarthritis.

(F) Osteoporosis, if the Secretary determines that the veteran has post-traumatic stress disorder (PTSD).

(3) The diseases specified in this paragraph are the following:

(A) Avitaminosis.

(B) Beriberi (including beriberi heart disease).

(C) Chronic dysentery.

(D) Helminthiasis.

(E) Malnutrition (including optic atrophy associated with malnutrition).

(F) Pellagra.

(G) Any other nutritional deficiency.

(H) Cirrhosis of the liver.

(I) Peripheral neuropathy except where directly related to infectious causes.

(J) Irritable bowel syndrome.

(K) Peptic ulcer disease.

(L) Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure and arrhythmia).

(M) Stroke and its complications.

(c)(1) For the purposes of section 1110 of this title, and subject to the provisions of section 1113 of this title, a disease specified in paragraph (2) of this subsection becoming manifest in a radiation-exposed veteran shall be considered to have been incurred in or aggravated during active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during a period of such service.

(2) The diseases referred to in paragraph (1) of this subsection are the following:

- (A) Leukemia (other than chronic lymphocytic leukemia).
- (B) Cancer of the thyroid.
- (C) Cancer of the breast.
- (D) Cancer of the pharynx.
- (E) Cancer of the esophagus.
- (F) Cancer of the stomach.
- (G) Cancer of the small intestine.
- (H) Cancer of the pancreas.
- (I) Multiple myeloma.
- (J) Lymphomas (except Hodgkin's disease).
- (K) Cancer of the bile ducts.
- (L) Cancer of the gall bladder.
- (M) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).
- (N) Cancer of the salivary gland.
- (O) Cancer of the urinary tract.
- (P) Bronchiolo-alveolar carcinoma.
- (Q) Cancer of the bone.
- (R) Cancer of the brain.
- (S) Cancer of the colon.
- (T) Cancer of the lung.
- (U) Cancer of the ovary.
- (3) For the purposes of this subsection:

(A) The term "radiation-exposed veteran" means (i) a veteran who, while serving on active duty, participated in a radiation-risk activity, or (ii) an individual who, while a member of a reserve

component of the Armed Forces, participated in a radiation-risk activity during a period of active duty for training or ~~inactive duty training~~ reserve component duty.

(B) The term "radiation-risk activity" means any of the following:

(i) Onsite participation in a test involving the atmospheric detonation of a nuclear device (without regard to whether the nation conducting the test was the United States or another nation).

(ii) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) Internment as prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which (as determined by the Secretary) resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans described in clause (ii) of this subparagraph.

(iv) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 73841(14)).

(4) A radiation-exposed veteran who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of compensation to which that veteran is entitled by reason of paragraph (1), but there shall be deducted from payment of such compensation the amount of the payment under that Act.

### **38 U.S.C. §1302. Determination of pay grade**

(a) With respect to a veteran who died in the active military, naval, or air service, such veteran's pay grade shall be determined as of the date of such veteran's death or as of the date of a promotion after death while in a missing status.

(b) With respect to a veteran who did not die in the active military, naval, or air service, such veteran's pay grade shall be determined as of-

(1) the time of such veteran's last discharge or release from active duty under conditions other than dishonorable; or

(2) the time of such veteran's discharge or release from any period of active duty for training or ~~inactive-duty training~~ reserve component duty, if such veteran's death results from service-connected disability incurred during such period and if such veteran was not thereafter discharged or released under conditions other than dishonorable from active duty.

(c) The pay grade of any veteran described in section 106(b) of this title shall be that to which such veteran would have been assigned upon final acceptance or entry upon active duty.

(d) If a veteran has satisfactorily served on active duty for a period of six months or more in a pay grade higher than that specified in subsection (a) or (b) and any subsequent discharge or release from active duty was under conditions other than dishonorable, the higher pay grade shall be used if it will result in greater monthly payments to such veteran's surviving spouse under this chapter. The determination as to whether an individual has served satisfactorily for the required period in a higher pay grade shall be made by the Secretary of the department in which such higher pay grade was held.

(e) The pay grade of any person not otherwise described in this section, but who had a compensable status on the date of such person's death under laws administered by the Secretary, shall be determined by the head of the department under which such person performed the services by which such person obtained such status (taking into consideration such person's duties and responsibilities) and certified to the Secretary. For the purposes of this chapter, such person shall be deemed to have been on active duty while performing such services.

### 38 U.S.C. §1312. Benefits in certain cases of in-service or service-connected deaths

(a) In the case of any veteran-

(1) who dies after December 31, 1956, and is not a fully and currently insured individual (as defined in section 214 of the Social Security Act (42 U.S.C. 414)) at the time of such veteran's death; and

(2) whose death occurs-

(A) while on active duty, active duty for training, or ~~inactive-duty training~~ reserve component duty; or

(B) as the result of a service-connected disability incurred after September 15, 1940; and

(3) who leaves one or more survivors who are not entitled for any month to monthly benefits under section 202 of the Social Security Act (42 U.S.C. 402) on the basis of such veteran's wages and self-employment income but who would, upon application therefore, be entitled to such benefits if such veteran had been fully and currently insured at the time of such veteran's death;

the Secretary shall pay for such month benefits under this section to each such survivor in an amount equal to the amount of the benefits which would have been paid for such month to such survivor under title II of the Social Security Act (42 U.S.C. 401 et seq.), if such veteran had been both fully and currently insured at the time of such veteran's death and if such survivor had filed application therefor on the same date on which application for benefits under this section is filed with the Secretary.

(b) In any case where the amount of dependency and indemnity compensation payable under this chapter to a surviving spouse who has children is less than the amount of pension which would be payable to (1) such surviving spouse, or (2) such children if the surviving spouse were not entitled, under chapter 15 of this title had the death occurred under circumstances authorizing payment of death pension, the Secretary shall pay dependency and indemnity compensation to such surviving spouse in an amount equal to such amount of pension.

### **38 U.S.C. §1720D. Counseling and treatment for sexual trauma**

(a)(1) The Secretary shall operate a program under which the Secretary provides counseling and appropriate care and services to veterans who the Secretary determines require such counseling and care and services to overcome psychological trauma, which in the judgment of a mental health professional employed by the Department, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty, active duty for training, or ~~inactive duty training~~ reserve component duty.

(2)(A) In operating the program required by paragraph (1), the Secretary may, in consultation with the Secretary of Defense, provide counseling and care and services to members of the Armed Forces (including members of the National Guard and Reserves) to overcome psychological trauma described in that paragraph that was suffered by the member while serving on active duty, active duty for training, or ~~inactive duty training~~ reserve component duty.

(B) A member described in subparagraph (A) shall not be required to obtain a referral before receiving counseling and care and services under this paragraph.

(3) In furnishing counseling to an individual under this subsection, the Secretary may provide such counseling pursuant to a contract with a qualified mental health professional if (A) in the judgment of a mental health professional employed by the Department, the receipt of counseling by that individual in facilities of the Department would be clinically inadvisable, or (B) Department facilities are not capable of furnishing such counseling to that individual economically because of geographical inaccessibility.

(b)(1) The Secretary shall give priority to the establishment and operation of the program to provide counseling and care and services under subsection (a). In the case of a veteran eligible for counseling and care and services under subsection (a), the Secretary shall ensure that the veteran is furnished counseling and care and services under this section in a way that is coordinated with the furnishing of such care and services under this chapter.

(2) In establishing a program to provide counseling under subsection (a), the Secretary shall-

(A) provide for appropriate training of mental health professionals and such other health care personnel as the Secretary determines necessary to carry out the program effectively;

(B) seek to ensure that such counseling is furnished in a setting that is therapeutically appropriate, taking into account the circumstances that resulted in the need for such counseling; and

(C) provide referral services to assist veterans who are not eligible for services under this chapter to obtain those from sources outside the Department.

(c) The Secretary shall provide information on the counseling and treatment available under this section. Efforts by the Secretary to provide such information-



(1) shall include availability of a toll-free telephone number (commonly referred to as an 800 number);

(2) shall ensure that information about the counseling and treatment available under this section-

(A) is revised and updated as appropriate;

(B) is made available and visibly posted at appropriate facilities of the Department; and

(C) is made available through appropriate public information services; and

(3) shall include coordination with the Secretary of Defense seeking to ensure that members of the Armed Forces and individuals who are being separated from active military, naval, or air service are provided appropriate information about programs, requirements, and procedures for applying for counseling and treatment under this section.

(d)(1) The Secretary shall carry out a program to provide graduate medical education, training, certification, and continuing medical education for mental health professionals who provide counseling, care, and services under subsection (a).

(2) In carrying out the program required by paragraph (1), the Secretary shall ensure that-

(A) all mental health professionals described in such paragraph have been trained in a consistent manner; and

(B) training described in such paragraph includes principles of evidence-based treatment and care for sexual trauma and post-traumatic stress disorder.

(e) Each year, the Secretary shall submit to Congress an annual report on the counseling, care, and services provided pursuant to this section. Each report shall include data for the year covered by the report with respect to each of the following:

(1) The number of mental health professionals, graduate medical education trainees, and primary care providers who have been certified under the program required by subsection (d) and the amount and nature of continuing medical education provided under such program to such professionals, trainees, and providers who are so certified.

(2) The number of individuals who received counseling and care and services under subsection (a) from professionals and providers who received training under subsection (d), disaggregated by-

(A) veterans;

(B) members of the Armed Forces (including members of the National Guard and Reserves) on active duty; and

(C) for each of subparagraphs (A) and (B)-

(i) men; and

(ii) women.

(3) The number of graduate medical education, training, certification, and continuing medical education courses provided by reason of subsection (d).

(4) The number of trained full-time equivalent employees required in each facility of the Department to meet the needs of individuals requiring treatment and care for sexual trauma and post-traumatic stress disorder.

(5) Such recommendations for improvements in the treatment of individuals with sexual trauma and post-traumatic stress disorder as the Secretary considers appropriate, including specific recommendations for individuals specified in subparagraphs (A), (B), and (C) of paragraph (2).

(6) Such other information as the Secretary considers appropriate.

(f) In this section, the term "sexual harassment" means repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.

## 38 U.S.C. §1965. Definitions

For the purpose of this subchapter—

(1) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration; and

(D) full-time duty as a cadet or midshipman at the United States Military Academy, United States Naval Academy, United States Air Force Academy, or the United States Coast Guard Academy.

(2) The term "active duty for training" means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service;

(C) full-time duty as a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(D) in the case of members of the National Guard or Air National Guard of any State, full-time duty under ~~sections 316, 502, 503, 504, or 505 of title 32, United States Code section 542 of title 32, for a purpose specified in subsections (a) and (b)(1) of section 552 of such title.~~

~~(3) The term "inactive duty training" means—~~

~~(A) duty (other than full-time duty) prescribed or authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) which duty is scheduled in advance by competent authority to begin at a specific time and place; and~~

~~(B) in the case of a member of the National Guard or Air National Guard of any State, such term means duty (other than full-time duty) which is scheduled in advance by competent authority to begin at a specific time and place under sections 316, 502, 503, 504, or 505 of title 32, United States Code.~~

~~(4) The terms "active duty for training" and "inactive duty training" do not include duty performed as a temporary member of the Coast Guard Reserve, and the term "inactive duty training" does not include (A) work or study performed in connection with correspondence courses, or (B) attendance at an educational institution in an inactive status.~~

(3) The term 'reserve component duty' means—

(A) in the case of a member of a reserve component or a member of the National Guard, duty described in section 101(d)(7) of title 10, which duty is scheduled in advance by competent authority to begin at a specific time and place; and

(B) in the case of a commissioned officer of the Reserve corps of the Public Health Service, duty prescribed or authorized (other than full time duty) which duty is scheduled in advance by competent authority to begin at a specific time and place.

(4)(A) The terms 'active duty for training' and 'reserve component duty' do not include duty performed as a temporary member of the Coast Guard Reserve;

(B) the term 'reserve component duty' does not include—

(i) work or study performed in connection with correspondence courses;

(ii) work or a course of instruction assigned under section 12344 of title 10;

(iii) attendance at an educational institution in an inactive status.

(5) The term "member" means—

(A) a person on active duty, active duty for training, or ~~inactive duty training reserve component duty~~ in the uniformed services in a commissioned, warrant, or enlisted rank, or grade, or as a cadet or midshipman of the United States Military Academy, United States Naval Academy, United States Air Force Academy, or the United States Coast Guard Academy;

(B) a person who volunteers for assignment to the Ready Reserve of a uniformed service and is assigned to a unit or position in which such person may be required to perform active duty, or active duty for training, and each year will be scheduled to perform at least twelve periods of ~~inactive duty training reserve component duty~~ that is creditable for retirement purposes under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act);

(C) a person who volunteers for assignment to a mobilization category in the Individual Ready Reserve, ~~as defined in section 12304(i)(1)~~ as described in section 10144(b)(1) of title 10; and

(D) a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises.

(6) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(7) The terms "widow" or "widower" means a person who is the lawful spouse of the insured member at the time of his death.

(8) The term "child" means a legitimate child, a legally adopted child, an illegitimate child as to the mother, or an illegitimate child as to the alleged father, only if (A) he acknowledged the child in writing signed by him; or (B) he has been judicially ordered to contribute to the child's support; or (C) he has been, before his death, judicially decreed to be the father of such child; or (D) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the insured was the informant and was named as father of the child; or (E) proof of paternity is established from service department or other public records, such as school or welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(9) The term "parent" means a father of a legitimate child, mother of a legitimate child, father through adoption, mother through adoption, mother of an illegitimate child, and father of an illegitimate child but only if (A) he acknowledged paternity of the child in writing signed by him before the child's death; or (B) he has been judicially ordered to contribute to the child's support; or (C) he has been judicially decreed to be the father of such child; or (D) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the claimant was the informant and was named as father of the child; or (E) proof of paternity is established from service department or other public records, such as school or welfare agencies, which show that with his knowledge the claimant was named as father of the child. No person who abandoned or willfully failed to support a child during the child's minority, or consented to the child's adoption may be recognized as a parent for the purpose of this subchapter. However, the immediately preceding sentence shall not be applied so as to require duplicate payments in any case in which insurance benefits have been paid prior to receipt in the administrative office established under subsection 1966(b) of this title of sufficient evidence to clearly establish that the person so paid could not qualify as a parent solely by reason of such sentence.

(10) The term "insurable dependent", with respect to a member, means the following:

(A) The member's spouse.

(B) The member's child, as defined in the first sentence of section 101(4)(A) of this title.

(C) The member's stillborn child.

### 38 U.S.C. §1967. Persons insured; amount

(a)(1) Subject to an election under paragraph (2), any policy of insurance purchased by the Secretary under section 1966 of this title shall automatically insure the following persons against death:

(A) In the case of any member of a uniformed service on active duty (other than active duty for training)-

(i) the member; and

(ii) each insurable dependent of the member (other than a dependent who is also a member of a uniformed service and, because of such membership, is automatically insured under this paragraph).

(B) Any member of a uniformed service on active duty for training or ~~inactive duty training~~ reserve component duty scheduled in advance by competent authority.

(C) In the case of any member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title-

(i) the member; and

(ii) each insurable dependent of the member (other than a dependent who is also a member of a uniformed service and, because of such membership, is automatically insured under this paragraph).

(2)(A) A member may elect in writing not to be insured under this subchapter.

(B) A member may elect in writing not to insure the member's spouse under this subchapter.

(3)(A) Subject to subparagraphs (B) and (C), the amount for which a person is insured under this subchapter is as follows:

(i) In the case of a member, \$400,000.

(ii) In the case of a member's spouse, \$100,000.

(iii) In the case of a member's child, \$10,000.

(B) A member may elect in writing to be insured or to insure the member's spouse in an amount less than the amount provided for under subparagraph (A). The member may not elect to insure the member's child in an amount less than \$10,000. The amount of insurance so elected shall, in the case of a member, be evenly divisible by \$50,000 and, in the case of a member's spouse, be evenly divisible by \$10,000.

(C) In no case may the amount of insurance coverage under this subsection of a member's spouse exceed the amount of insurance coverage of the member.

(4)(A) An insurable dependent of a member is not insured under this chapter unless the member is insured under this subchapter.

(B) An insurable dependent who is a child may not be insured at any time by the insurance coverage under this chapter of more than one member. If an insurable dependent who is a child is otherwise eligible to be insured by the coverage of more than one member under this chapter, the child shall be insured by the coverage of the member whose eligibility for insurance under this subchapter occurred first, except that if that member does not have legal custody of the child, the child shall be insured by the coverage of the member who has legal custody of the child.

(5) The insurance shall be effective with respect to a member and the insurable dependents of the member on the latest of the following dates:

(A) The first day of active duty or active duty for training.

(B) The beginning of a period of ~~inactive duty training~~ reserve component duty scheduled in advance by competent authority.

(C) The first day a member of the Ready Reserve meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title.

(D) The date certified by the Secretary to the Secretary concerned as the date Servicemembers' Group Life Insurance under this subchapter for the class or group concerned takes effect.

(E) In the case of an insurable dependent who is a spouse, the date of marriage of the spouse to the member.

(F) In the case of an insurable dependent who is a child, the date of birth of such child or, if the child is not the natural child of the member, the date on which the child acquires status as an insurable dependent of the member.

(b) Any member (other than one who has elected not to be insured under this subchapter for the period or periods of duty involved)-

(1) who, when authorized or required by competent authority, assumes an obligation to perform (for less than thirty-one days) active duty, or active duty for training, or ~~inactive duty training~~ reserve component duty scheduled in advance by competent authority; and

(2) who is rendered uninsurable at standard premium rates according to the good health standards approved by the Secretary, or dies within one hundred and twenty days thereafter, from a disability, or aggravation of a preexisting disability, incurred by such member while proceeding directly to or returning directly from such active duty, active duty for training, or ~~inactive duty training~~ reserve component duty as the case may be;

shall be deemed to have been on active duty, active duty for training, or ~~inactive-duty training~~ reserve component duty, as the case may be, and to have been insured under this subchapter at the time such disability was incurred or aggravated, and if death occurs within one hundred and twenty days thereafter as a result of such disability to have been insured at the time of death. In determining whether or not such individual was so authorized or required to perform such duty, and whether or not such member was rendered uninsurable or died within one hundred and twenty days thereafter from a disability so incurred or aggravated, there shall be taken into account the call or order to duty, the orders and authorizations of competent authority, the hour on which the member began to so proceed or to return, the hour on which such member was scheduled to arrive for, or on which such member ceased to perform such duty; the method of travel employed; such member's itinerary; the manner in which the travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

(c) If a person eligible for insurance under this subchapter is not so insured, or is insured for less than the maximum amount provided for the person under subparagraph (A) of subsection (a)(3), by reason of an election made by a member under subparagraph (B) of that subsection, the person may thereafter be insured under this subchapter in the maximum amount or any lesser amount elected as provided in such subparagraph (B) upon written application by the member, proof of good health of each person (other than a child) to be so insured, and compliance with such other terms and conditions as may be prescribed by the Secretary. Any former member insured under Veterans' Group Life Insurance who again becomes eligible for Servicemembers' Group Life Insurance and declines such coverage solely for the purpose of maintaining such member's Veterans' Group Life Insurance in effect shall upon termination of coverage under Veterans' Group Life Insurance be automatically insured under Servicemembers' Group Life Insurance, if otherwise eligible therefor.

(d) Whenever a member has the opportunity to make an election under subsection (a) not to be insured under this subchapter, or to be insured under this subchapter in an amount less than the maximum amount in effect under paragraph (3)(A)(i) of that subsection, and at such other times periodically thereafter as the Secretary concerned considers appropriate, the Secretary concerned shall furnish to the member general information concerning life insurance. Such information shall include-

(1) the purpose and role of life insurance in financial planning;

(2) the difference between term life insurance and whole life insurance;

(3) the availability of commercial life insurance; and

(4) the relationship between Servicemembers' Group Life Insurance and Veterans' Group Life Insurance.

(e) The effective date and time for any change in benefits under the Servicemembers' Group Life Insurance Program shall be based on the date and time according to the time zone immediately west of the International Date Line.



(f)(1) If a member who is married and who is eligible for insurance under this section makes an election under subsection (a)(2)(A) not to be insured under this subchapter, the Secretary concerned shall notify the member's spouse, in writing, of that election.

(2) In the case of a member who is married and who is insured under this section and whose spouse is designated as a beneficiary of the member under this subchapter, whenever the member makes an election under subsection (a)(3)(B) for insurance of the member in an amount that is less than the maximum amount provided under subsection (a)(3)(A)(i), the Secretary concerned shall notify the member's spouse, in writing, of that election-

(A) in the case of the first such election; and

(B) in the case of any subsequent such election if the effect of such election is to reduce the amount of insurance coverage of the member from that in effect immediately before such election.

(3) In the case of a member who is married and who is insured under this section, if the member makes a designation under section 1970(a) of this title of any person other than the spouse or a child of the member as the beneficiary of the member for any amount of insurance under this subchapter, the Secretary concerned shall notify the member's spouse, in writing, that such a beneficiary designation has been made by the member, except that such a notification is not required if the spouse has previously received such a notification under this paragraph and if immediately before the new designation by the member under section 1970(a) of this title the spouse is not a designated beneficiary of the member for any amount of insurance under this subchapter.

(4) A notification required by this subsection is satisfied by a good faith effort to provide the required information to the spouse at the last address of the spouse in the records of the Secretary concerned. Failure to provide a notification required under this subsection in a timely manner does not affect the validity of any election specified in paragraph (1) or (2) or beneficiary designation specified in paragraph (3).

### 38 U.S.C. §1968. Duration and termination of coverage; conversion

(a) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, to the effect that any insurance thereunder on any member of the uniformed services, and any insurance thereunder on any insurable dependent of such a member, unless discontinued or reduced upon the written request of the insured (or discontinued pursuant to section 1969(a)(2)(B) of this title), shall continue in effect while the member is on active duty, active duty for training, or ~~inactive duty training~~ reserve component duty scheduled in advance by competent authority during the period thereof, or while the member meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title and such insurance shall cease as follows:

(1) With respect to a member on active duty or active duty for training under a call or order to duty that does not specify a period of less than 31 days, insurance under this subchapter shall cease as follows:

(A) 120 days after the separation or release from active duty or active duty for training, unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease on the earlier of the following dates (but in no event before the end of 120 days after such separation or release):

(i) The date on which the insured ceases to be totally disabled.

(ii) The date that is two years after the date of separation or release from such active duty or active duty for training.

(B) At the end of the thirty-first day of a continuous period of (i) absence without leave, (ii) confinement by civil authorities under a sentence adjudged by a civilian court, or (iii) confinement by military authorities under a court martial sentence involving total forfeiture of pay and allowances. Any insurance so terminated as the result of such an absence or confinement, together with any beneficiary designation in effect for such insurance at such termination thereof, shall be automatically revived as of the date the member is restored to active duty with pay or to active duty for training with pay.

(2) With respect to a member on active duty or active duty for training under a call or order to duty that specifies a period of less than 31 days, insurance under this subchapter shall cease at midnight, local time, on the last day of such duty, unless on such date the insured is suffering from a disability incurred or aggravated during such period which, within 120 days after such date, (i) results in death, or (ii) renders the member uninsurable at standard premium rates according to the good health standards approved by the Secretary, in which event the insurance shall continue in force to death, or for 120 days after such date, whichever is the earlier date.

(3) With respect to a member on ~~inactive duty training~~ reserve component duty scheduled in advance by competent authority, insurance under this subchapter shall cease at the end of such scheduled training period, unless at such time the insured is suffering from a disability incurred, or aggravated during such period which, within 120 days after the date of such training, (i)

results in death, or (ii) renders the member uninsurable at standard premium rates according to the good health standards approved by the Secretary in which event the insurance shall continue in force to death, or for 120 days after the date such training terminated, whichever is the earlier date.

(4) With respect to a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title, insurance under this subchapter shall cease 120 days after separation or release from such assignment, unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease on the earlier of the following dates (but in no event before the end of 120 days after separation or release from such assignment):

(A) The date on which the insured ceases to be totally disabled.

(B) The date that is two years after the date of separation or release from such assignment.

(5) With respect to an insurable dependent of the member, insurance under this subchapter shall cease-

(A) 120 days after the date of an election made in writing by the member to terminate the coverage; or

(B) on the earliest of-

(i) 120 days after the date of the member's death;

(ii)(I) in the case of a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title, 120 days after separation or release from such assignment; or

(II) in the case of any other member of the uniformed services, 120 days after the date of the member's separation or release from the uniformed services; or

(iii) 120 days after the termination of the dependent's status as an insurable dependent of the member.

(b)(1) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, that, except as hereinafter provided, Servicemembers' Group Life Insurance which is continued in force after expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title, effective the day after the date such insurance would cease-

(A) shall be automatically converted to Veterans' Group Life Insurance (to insure against death of the member only), subject to (i) the timely payment of the initial premium under terms prescribed by the Secretary, and (ii) the terms and conditions set forth in section 1977 of this title; or

(B) at the election of the member, shall be converted to an individual policy of insurance as described in section 1977(e) of this title upon written application for conversion made to the participating company selected by the member and payment of the required premiums.

(2) Automatic conversion to Veterans' Group Life Insurance under paragraph (1) shall be effective only in the case of an otherwise eligible member or former member who is separated or released from a period of active duty or active duty for training or ~~inactive duty training reserve component duty~~ on or after the date on which the Veterans' Group Life Insurance program (provided for under section 1977 of this title) becomes effective.

(3)(A) In the case of a policy purchased under this subchapter for an insurable dependent who is a spouse, upon election of the spouse, the policy may be converted to an individual policy of insurance under the same conditions as described in section 1977(e) of this title (with respect to conversion of a Veterans' Group Life Insurance policy to such an individual policy) upon written application for conversion made to the participating company selected by the spouse and payment of the required premiums. Conversion of such policy to Veterans' Group Life Insurance is prohibited.

(B) In the case of a policy purchased under this subchapter for an insurable dependent who is a child, such policy may not be converted under this subsection.

### 38 U.S.C. §1969. Deductions; payment; investment; expenses

(a)(1) During any period in which a member, on active duty or active duty for training under a call or order to such duty that does not specify a period of less than thirty-one days, is insured under Servicemembers' Group Life Insurance, there shall be deducted each month from the member's basic or other pay until separation or release from such duty an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(2)(A) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications of (subparagraph (B) or (C) of section 1965(5) of this title, and is insured under a policy of insurance purchased by the Secretary, under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under this policy, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any individual shall be collected by the Secretary concerned from such individual (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made.

(B) If an individual who is required pursuant to subparagraph (A) to make a direct remittance of costs to the Secretary concerned fails to make the required remittance within 60 days of the date on which such remittance is due, such individual's insurance with respect to which such remittance is required shall be terminated by the Secretary concerned. Such termination shall be made by written notice to the individual's official address and shall be effective 60 days after the date of such notice. Such termination of insurance may be vacated if, before the effective date of termination, the individual remits all amounts past due for such insurance and demonstrates to the satisfaction of the Secretary concerned that the failure to make timely remittances was justifiable.

(3) During any fiscal year, or portion thereof, that a member is on active duty or active duty for training under a call or order to such duty that specifies a period of less than thirty-one days, or is authorized or required to perform ~~inactive-duty training-reserve component duty~~ scheduled in advance by competent authority, and is insured under Servicemembers' Group Life Insurance, the Secretary concerned shall collect from the member (by deduction from pay or otherwise) an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(4) Any amount not deducted from the basic or other pay of a member insured under Servicemembers' Group Life Insurance, or collected from the member by the Secretary concerned, if not otherwise paid, shall be deducted from the proceeds of any insurance thereafter payable. The initial monthly amount under paragraph (1) or (2) hereof, or fiscal year amount under paragraph (3) hereof, determined by the Secretary to be charged under this section for Servicemembers' Group Life Insurance may be continued from year to year, except that the

Secretary may redetermine such monthly or fiscal year amounts from time to time in accordance with experience. No refunds will be made to any member of any amount properly deducted from the member's basic or other pay, or collected from the member by the Secretary concerned, to cover the insurance granted under Servicemembers' Group Life Insurance.

(b) For each month for which any member is so insured, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary and certified to the Secretary concerned to be the cost of Servicemembers' Group Life Insurance which is traceable to the extra hazard of duty in the uniformed services. Effective January 1, 1970, such cost shall be determined by the Secretary on the basis of the excess mortality incurred by members and former members of the uniformed services insured under Servicemembers' Group Life Insurance above what their mortality would have been under peacetime conditions as such mortality is determined by the Secretary using such methods and data as the Secretary shall determine to be reasonable and practicable. The Secretary is authorized to make such adjustments regarding contributions from pay appropriations as may be indicated from actual experience.

(c) An amount equal to the first amount due on Servicemembers' Group Life Insurance may be advanced from current appropriations for active-service pay to any such member, which amount shall constitute a lien upon any service or other pay accruing to the person from whom such advance was made and shall be collected therefrom if not otherwise paid. No disbursing or certifying officer shall be responsible for any loss incurred by reason of such advance.

(d)(1) The sums withheld from the basic or other pay of members, or collected from them by the Secretary concerned, under subsection (a) of this section, and the sums contributed from appropriations under subsection (b) of this section, together with the income derived from any dividends or premium rate adjustments received from insurers shall be deposited to the credit of a revolving fund established in the Treasury of the United States. All premium payments and extra hazard costs on Servicemembers' Group Life Insurance and the administrative cost to the Department of insurance issued under this subchapter shall be paid from the revolving fund.

(2) The Secretary is authorized to set aside out of the revolving fund such amounts as may be required to meet the administrative costs to the Department of insurance issued under this subchapter and all current premium payments and extra hazard costs on any insurance policy or policies purchased under section 1966 of this title. The Secretary of the Treasury is authorized to invest in and to sell and retire special interest-bearing obligations of the United States for the account of the revolving fund. Such obligations issued for this purpose shall have maturities fixed with due regard for the needs of the fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligation shall be the multiple of one-eighth of 1 per centum nearest such market yield.

(3) Notwithstanding the provisions of section 1982 of this title, the Secretary shall, from time to time, determine the administrative costs to the Department which in the Secretary's judgment are properly allocable to insurance issued under this subchapter and shall transfer such cost from the revolving fund to the appropriation "General Operating Expenses, Department of Veterans Affairs".

(e) The Secretary of Defense shall prescribe regulations for the administration of the functions of the Secretaries of the military departments under this section. Such regulations shall prescribe such procedures as the Secretary of Defense, after consultation with the Secretary, may consider necessary to ensure that such functions are carried out in a timely and complete manner and in accordance with the provisions of this section, including specifically the provisions of subsection (a)(2) of this section relating to contributions from appropriations made for active duty pay.

(f)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, or by any political subdivision or other governmental authority of a State, on or with respect to any premium paid under an insurance policy purchased under this subchapter.

(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this subchapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this subchapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(g)(1)(A) During any period in which a spouse of a member is insured under this subchapter and the member is on active duty, there shall be deducted each month from the member's basic or other pay until separation or release from active duty an amount determined by the Secretary as the premium allocable to the pay period for providing that insurance coverage. No premium may be charged for providing insurance coverage for a child.

(B) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title and the spouse of the member is insured under a policy of insurance purchased by the Secretary under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary as the share of the cost attributable to insuring the spouse of such member under this policy, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any individual shall be collected by the Secretary concerned from such individual (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made.

(2)(A) The Secretary shall determine the premium amounts to be charged for life insurance coverage for spouses of members under this subchapter.

(B) The premium amounts shall be determined on the basis of sound actuarial principles and shall include an amount necessary to cover the administrative costs to the insurer or insurers providing such insurance.

(C) Each premium rate for the first policy year shall be continued for subsequent policy years, except that the rate may be adjusted for any such subsequent policy year on the basis of the experience under the policy, as determined by the Secretary in advance of that policy year.

(h) Any overpayment of a premium for insurance coverage for an insurable dependent of a member that is terminated under section 1968(a)(5) of this title shall be refunded to the member.



### 38 U.S.C. §1977. Veterans' Group Life Insurance

(a)(1) Except as provided in paragraph (3), Veterans' Group Life Insurance shall be issued in the amounts specified in section 1967(a) of this title. In the case of any individual, the amount of Veterans' Group Life Insurance may not exceed the amount of Servicemembers' Group Life Insurance coverage continued in force after the expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title. No person may carry a combined amount of Servicemembers' Group Life Insurance and Veterans' Group Life Insurance at any one time in excess of the maximum amount for Servicemembers' Group Life Insurance in effect under section 1967(a)(3)(A)(i) of this title.

(2) If any person insured under Veterans' Group Life Insurance again becomes insured under Servicemembers' Group Life Insurance but dies before terminating or converting such person's Veterans' Group Insurance, Veterans' Group Life Insurance shall be payable only if such person is insured under Servicemembers' Group Life Insurance for less than the maximum amount for such insurance in effect under section 1967(a)(3)(A)(i) of this title, and then only in an amount which, when added to the amount of Servicemembers' Group Life Insurance payable, does not exceed such maximum amount in effect under such section.

(3) Not more than once in each five-year period beginning on the one-year anniversary of the date a person becomes insured under Veterans' Group Life Insurance, such person may elect in writing to increase by \$25,000 the amount for which the person is insured if-

(A) the person is under the age of 60; and

(B) the total amount for which the person is insured does not exceed the amount provided for under section 1967(a)(3)(A)(i) of this title.

(b) Veterans' Group Life Insurance shall (1) provide protection against death; (2) be issued on a renewable five-year term basis; (3) have no cash, loan, paid-up, or extended values; (4) except as otherwise provided, lapse for nonpayment of premiums; and (5) contain such other terms and conditions as the Secretary determines to be reasonable and practicable which are not specifically provided for in this section, including any provisions of this subchapter not specifically made inapplicable by the provisions of this section.

(c) The premiums for Veterans' Group Life Insurance shall be established under the criteria set forth in sections 1971(a) and (c) of this title, except that the Secretary may provide for average premiums for such various age groupings as the Secretary may decide to be necessary according to sound actuarial principles, and shall include an amount necessary to cover the administrative cost of such insurance to the company or companies issuing such insurance. Such premiums shall be payable by the insureds thereunder as provided by the Secretary directly to the administrative office established for such insurance under section 1966(b) of this title. In any case in which a member or former member who was mentally incompetent on the date such member or former member first became insured under Veterans' Group Life Insurance dies within one year of such date, such insurance shall be deemed not to have lapsed for nonpayment of premiums and to have been in force on the date of death. Where insurance is in force under

the preceding sentence, any unpaid premiums may be deducted from the proceeds of the insurance. Any person who claims eligibility for Veterans' Group Life Insurance based on disability incurred during a period of duty shall be required to submit evidence of qualifying health conditions and, if required, to submit to physical examinations at their own expense.

(d) Any amount of Veterans' Group Life Insurance in force on any person on the date of such person's death shall be paid, upon the establishment of a valid claim therefor, pursuant to the provisions of section 1970 of this title. However, any designation of beneficiary or beneficiaries for Servicemembers' Group Life Insurance filed with a uniformed service until changed, shall be considered a designation of beneficiary or beneficiaries for Veterans' Group Life Insurance, but not for more than sixty days after the effective date of the insured's Veterans' Group Insurance, unless at the end of such sixty-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than five years after the effective date of the insured's Veterans' Group Life Insurance. Except as indicated above in incompetent cases, after such sixty-day period, any designation of beneficiary or beneficiaries for Veterans' Group Life Insurance to be effective must be by a writing signed by the insured and received by the administrative office established under section 1966(b) of this title.

(e) An insured under Veterans' Group Life Insurance shall have the right at any time to convert such insurance to an individual policy of life insurance upon written application for conversion made to the participating company the insured selects and payment of the required premiums. The individual policy will be issued without medical examination on a plan then currently written by such company which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums in the event the insured performs active duty, active duty for training, or ~~inactive-duty training reserve component duty~~. The Veterans' Group Life Insurance policy converted to an individual policy under this subsection shall terminate on the day before the date on which the individual policy becomes effective. Upon request to the administrative office established under section 1966(b) of this title, an insured under Veterans' Group Life Insurance shall be furnished a list of life insurance companies participating in the program established under this subchapter. In addition to the life insurance companies participating in the program established under this subchapter, the list furnished to an insured under this section shall include additional life insurance companies (not so participating) which meet qualifying criteria, terms, and conditions established by the Secretary and agree to sell insurance to former members in accordance with the provisions of this section.

(f) The provisions of subsections (d) and (e) of section 1971 of this title shall be applicable to Veterans' Group Life Insurance. However, a separate accounting shall be required for each program of insurance authorized under this subchapter. In such accounting, the Secretary is authorized to allocate claims and other costs among such programs of insurance according to accepted actuarial principles.

(g) Any person whose Servicemembers' Group Life Insurance was continued in force after termination of duty or discharge from service under the law as in effect prior to the date on which the Veterans' Group Life Insurance program (provided for under section 1977 of this title)

became effective, and whose coverage under Servicemembers' Group Life Insurance terminated less than four years prior to such date, shall be eligible within one year from the effective date of the Veterans' Group Life Insurance program to apply for and be granted Veterans' Group Life Insurance in an amount equal to the amount of the insured's Servicemembers' Group Life Insurance which was not converted to an individual policy under prior law. Veterans' Group Life Insurance issued under this subsection shall be issued for a term period equal to five years, less the time elapsing between the termination of the applicant's Servicemembers' Group Life Insurance and the effective date on which the Veterans' Group Life Insurance program became effective. Veterans' Group Life Insurance under this subsection shall only be issued upon application to the administrative office established under section 1966(b) of this title, payment of the required premium, and proof of good health satisfactory to that office, which proof shall be submitted at the applicant's own expense. Any person who cannot meet the good health requirements for insurance under this subsection solely because of a service-connected disability shall have such disability waived. For each month for which any eligible veteran, whose service-connected disabilities are waived, is insured under this subsection there shall be contributed to the insurer or insurers issuing the policy or policies from the appropriation "Compensation and Pensions, Department of Veterans Affairs" an amount necessary to cover the cost of the insurance in excess of the premiums established for eligible veterans, including the cost of the excess mortality attributable to such veteran's service-connected disabilities. The Secretary may establish, as the Secretary may determine to be necessary according to sound actuarial principles, a separate premium, age groupings for premium purposes, accounting, and reserves, for persons granted insurance under this subsection different from those established for other persons granted insurance under this section. Appropriations to carry out the purpose of this section are hereby authorized.

(h)(1) Notwithstanding any other provision of law, members of the Individual Ready Reserve and the Inactive National Guard are eligible to be insured under Veterans' Group Life Insurance. Any such member shall be so insured upon submission of an application in the manner prescribed by the Secretary and the payment of premiums as required under this section.

(2) In accordance with subsection (b), Veterans' Group Life Insurance coverage under this subsection shall be issued on a renewable five-year term basis, but the person insured must remain a member of the Individual Ready Reserve or Inactive National Guard throughout the period of the insurance in order for the insurance of such person to be renewed.

(3) For the purpose of this subsection, the terms "Individual Ready Reserve" and "Inactive National Guard" shall have the meanings prescribed by the Secretary in consultation with the Secretary of Defense.

### 38 U.S.C. §2306. Headstones, markers, and burial receptacles

(a) The Secretary shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 2402(a)(4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(4) Any individual described in section 2402(a)(5) of this title who is buried in a veterans' cemetery owned by a State.

(5) Any individual who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(b)(1) The Secretary shall furnish, when requested, an appropriate memorial headstone or marker for the purpose of commemorating an eligible individual whose remains are unavailable. Such a headstone or marker shall be furnished for placement in a national cemetery area reserved for that purpose under section 2403 of this title, a veterans' cemetery owned by a State, or, in the case of a veteran, in a State, local, or private cemetery.

(2) For purposes of paragraph (1), an eligible individual is any of the following:

(A) A veteran.

(B) An individual who dies on or after November 11, 1998, who is the spouse or surviving spouse of a veteran, or the spouse of a member of the Armed Forces serving on active duty, full-time National Guard duty, or reserve component duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's death if such death occurs before October 1, 2024.

(C) An individual who dies on or after November 11, 1998, who is an eligible dependent child of a veteran, or the eligible dependent child of a member of the Armed Forces serving on active duty, full-time National Guard duty, or reserve component duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the child's death if such death occurs before October 1, 2024.

(3) For purposes of paragraph (1), the remains of an individual shall be considered to be unavailable if the individual's remains-

(A) have not been recovered or identified;

(B) were buried at sea, whether by the individual's own choice or otherwise;

(C) were donated to science; or

(D) were cremated and the ashes scattered without interment of any portion of the ashes.

(4) For purposes of this subsection:

(A) The term "veteran" includes an individual who dies in the active military, naval, or air service.

(B) The term "surviving spouse" includes a surviving spouse who had a subsequent remarriage.

(5) For purposes of this section, the term "eligible dependent child" means a child-

(A) who is under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution; or

(B) who is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

(c) A headstone or marker furnished under subsection (a), (b), or (d) of this section may be of any material, including but not limited to marble, granite, bronze, or slate, requested by the person entitled to request such headstone or marker if the material requested is determined by the Secretary (1) to be cost effective, and (2) in a case in which the headstone or marker is to be placed in a national cemetery, to be aesthetically compatible with the area of the cemetery in which it is to be placed.

(d)(1) The Secretary shall furnish, when requested, an appropriate Government headstone or marker at the expense of the United States for the grave of an individual described in paragraph (2) or (5) of subsection (a) who is buried in a private cemetery, notwithstanding that the grave is marked by a headstone or marker furnished at private expense. Such a headstone or marker may be furnished only if the individual making the request for the Government headstone or marker certifies to the Secretary that the headstone or marker will be placed on the grave for which the headstone or marker is requested, or, if placement on the grave is impossible or impracticable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

(2) Any headstone or marker furnished under this subsection shall be delivered by the Secretary directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(3) The headstone or marker furnished under this subsection shall be the headstone or marker selected by the individual making the request from among all the headstones and markers made available by the Government for selection.

(4)(A) In lieu of furnishing a headstone or marker under this subsection to a deceased individual described in subparagraph (B), the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased individual's status as a veteran, to be attached to a headstone or marker furnished at private expense.

(B) A deceased individual described in this subsection is an individual who-

(i) served in the Armed Forces on or after April 6, 1917; and

(ii) is eligible for a headstone or marker furnished under paragraph (1) (or would be so eligible but for the date of the death of the individual).

(5)(A) In carrying out this subsection with respect to a deceased individual described in subparagraph (C), the Secretary shall furnish, upon request, a headstone or marker under paragraph (1) or a medallion under paragraph (4) that signifies the deceased's status as a medal of honor recipient.

(B) If the Secretary furnished a headstone, marker, or medallion under paragraph (1) or (4) for a deceased individual described in subparagraph (C) that does not signify the deceased's status as a medal of honor recipient, the Secretary shall, upon request, replace such headstone, marker, or medallion with a headstone, marker, or medallion, as the case may be, that so signifies the deceased's status as a medal of honor recipient.

(C) A deceased individual described in this subparagraph is a deceased individual who-

(i) served in the Armed Forces on or after April 6, 1917;

(ii) is eligible for a headstone or marker furnished under paragraph (1) or a medallion furnished under paragraph (4) (or would be so eligible for such headstone, marker, or medallion but for the date of the death of the individual); and

(iii) was awarded the medal of honor under section 7271, 8291, or 9271 of title 10 or section 491 of title 14 (including posthumously).

(D) In this paragraph, the term "medal of honor recipient" means an individual who is awarded the medal of honor under section 7271, 8291, or 9271 of title 10 or section 491 of title 14.

(e)(1)(A) The Secretary of Veterans Affairs shall provide an outer burial receptacle for each new grave in an open cemetery under the control of the National Cemetery Administration in which remains are interred in a casket.

(B) The Secretary of the Army may provide an outer burial receptacle for such a grave in the Arlington National Cemetery.

(C) The Secretary of the Interior shall provide an outer burial receptacle for each such a grave in an open national cemetery administered by the National Park Service.

(2) The use of outer burial receptacles in a cemetery under the control of the National Cemetery Administration, in the Arlington National Cemetery, or in a national cemetery administered by the National Park Service shall be in accordance with regulations or procedures approved by the Secretary of Veterans Affairs, the Secretary of the Army, or the Secretary of the Interior, respectively.

(3) Regulations or procedures under paragraph (2) may specify that-

(A) an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and

(B) if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required-

(i) to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and

(ii) to pay the amount of the administrative costs incurred by the Secretary (or the Secretary of the Army with respect to Arlington National Cemetery or the Secretary of the Interior with respect to a national cemetery administered by the National Park Service) in providing the outer burial receptacle in lieu of such grave liner.

(4) Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary (or the Secretary of the Army with respect to Arlington National Cemetery or the Secretary of the Interior with respect to a national cemetery administered by the National Park Service), for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.

(f) The Secretary may furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial of a deceased veteran in a national cemetery or in a

veterans cemetery of a State or tribal organization for which the Department has provided a grant under section 2408 of this title in any case in which the Secretary-

(1) is unable to identify the veteran's next of kin, if any; and

(2) determines that sufficient resources for the furnishing of a casket or urn for such burial are not otherwise available.

(g)(1) When the Secretary has furnished a headstone or marker under subsection (a) for the unmarked grave of an individual, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(2) When the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate memorial headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(h)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

(3) A headstone or marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.

(4) A casket or urn may not be furnished under subsection (f) for burial of a person described in section 2411(b) of this title.



### 38 U.S.C. §2402. Persons eligible for interment in national cemeteries

(a) Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery under the control of the National Cemetery Administration:

(1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).

(2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, ~~inactive-duty training~~ reserve component duty, or undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is-

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is-

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

(5) The spouse, surviving spouse (which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage), minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

(6) Such other persons or classes of persons as may be designated by the Secretary.

(7) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(8) Any individual whose service is described in subsection (a) or (b) of section 107 of this title if such individual at the time of death-

(A) was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(B) resided in the United States.

(9)(A) The parent of a person described in subparagraph (B), if the Secretary determines that there is available space at the gravesite where the person described in subparagraph (B) is interred.

(B) A person described in this subparagraph is a person described in paragraph (1) who-

(i) is a hostile casualty or died from a training-related injury;

(ii) is interred in a national cemetery; and

(iii) at the time of the person's parent's death, did not have a spouse, surviving spouse, or child who is buried or who, upon death, may be eligible for burial in a national cemetery pursuant to paragraph (5).

(10) Any individual-

(A) who-

(i) was naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000 (Public Law 106-207; 8 U.S.C. 1423 note); and

(ii) at the time of the individual's death resided in the United States.

(b) For purposes of subsection (a)(9) of this section:

(1) The term "parent" means a biological father or a biological mother or, in the case of adoption, a father through adoption or a mother through adoption.

(2) The term "hostile casualty" means a person who, as a member of the Armed Forces, dies as the direct result of hostile action with the enemy, while in combat, while going to or returning from a combat mission if the cause of death was directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat, and includes a person killed mistakenly or accidentally by friendly fire directed at a hostile force or what is thought to be a hostile force, but does not include a person who dies

due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the person was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.

(3) The term "training-related injury" means an injury incurred by a member of the Armed Forces while performing authorized training activities in preparation for a combat mission.

### 38 U.S.C. §3002. Definitions

For the purposes of this chapter-

- (1) The term "basic educational assistance" means educational assistance provided under subchapter II of this chapter.
- (2) The term "supplemental educational assistance" means educational assistance provided under subchapter III of this chapter.
- (3) The term "program of education"-
  - (A) has the meaning given such term in section 3452(b) of this title;
  - (B) includes-
    - (i) a preparatory course for a test that is required or used for admission to an institution of higher education; and
    - (ii) a preparatory course for a test that is required or used for admission to a graduate school; and
  - (C) in the case of an individual who is not serving on active duty, includes (i) a full-time program of apprenticeship or of other on-job training approved as provided in clause (1) or (2), as appropriate, of section 3687(a) of this title, and (ii) a cooperative program (as defined in section 3482(a)(2) of this title).
- (4) The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 10143(a) of title 10.
- (5) The term "Secretary of Defense" means the Secretary of Defense, except that it means the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.
- (6) The term "active duty" does not include any period during which an individual (A) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.
- (7) The term "active duty" includes ~~full-time National Guard duty first performed full-time National Guard duty—~~

(A) first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard-; and

(B) first performed after the date of the enactment of this paragraph by a member of the Army National Guard or Air National Guard under section 541 or 542 of title 32.

(8) The term "educational institution" has the meaning given such term in section 3452(c) of this title.

**38 U.S.C. §3011. Basic educational assistance entitlement for service on active duty**

(a) Except as provided in subsection (c) of this section, each individual—

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) who (I) in the case of an individual whose obligated period of active duty is three years or more, serves at least three years of continuous active duty in the Armed Forces, or (II) in the case of an individual whose obligated period of active duty is less than three years, serves at least two years of continuous active duty in the Armed Forces; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; (II) for the convenience of the Government, if, in the case of an individual with an obligated period of service of two years, the individual completes not less than 20 months of continuous active duty under that period of obligated service, or, in the case of an individual with an obligated period of service of at least three years, the individual completes not less than 30 months of continuous active duty under that period of obligated service; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(B) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—

(i) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces; or

(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph; (II) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military

department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; or

(C) as of December 31, 1989, was eligible for educational assistance benefits under chapter 34 of this title and—

(i) was not on active duty on October 19, 1984;

(ii) reenlists or reenters on a period of active duty after October 19, 1984; and

(iii) on or after July 1, 1985, either—

(I) serves at least three years of continuous active duty in the Armed Forces; or

(II) is discharged or released from active duty (aa) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph, (bb) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date, or (cc) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(2) who completes the requirements of a secondary school diploma (or equivalency certificate), or successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree, before applying for benefits under this section; and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) continues on active duty;

(B) is discharged from active duty with an honorable discharge;

(C) is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or

(D) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

(b)(1) Except as provided in paragraph (2), the basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (c)(1) of this section shall be reduced by \$100 for each of the first 12 months that such individual is entitled to such pay.

(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to \$1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.

(3) Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.

(c)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy is not eligible for educational assistance under this section.

(3) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section if the individual enters on active duty—

(A) before October 1, 1996; or

(B) after September 30, 1996, and while participating in such program received more than \$3,400 for each year of such participation.

(d)(1) For purposes of this chapter, any period of service described in paragraphs (2) and (3) of this subsection shall not be considered a part of an obligated period of active duty on which an individual's entitlement to assistance under this section is based.

(2) The period of service referred to in paragraph (1) is any period terminated because of a defective enlistment and induction based on—

(A) the individual's being a minor for purposes of service in the Armed Forces;

(B) an erroneous enlistment or induction; or



(C) a defective enlistment agreement.

(3) The period of service referred to in paragraph (1) is also any period of service on active duty which an individual in the Selected Reserve was ordered to perform under ~~section 12301, 12302, 12304, 12306, or 12307 of title 10 for a period of less than 2 years~~ section 12341 of title 10 for a period of less than 2 years for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of such title for a period of less than 2 years.

(e)(1) Any individual eligible for educational assistance under this section who does not make an election under subsection (c)(1) may contribute amounts for purposes of receiving an increased amount of basic educational assistance as provided for under section 3015(g) of this title. Such contributions shall be in addition to any reductions in the basic pay of such individual under subsection (b).

(2) An individual covered by paragraph (1) may make the contributions authorized by that paragraph at any time while on active duty, but not more frequently than monthly.

(3) The total amount of the contributions made by an individual under paragraph (1) may not exceed \$600. Such contributions shall be made in multiples of \$20.

(4) Contributions under this subsection shall be made to the Secretary of the military department concerned. That Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(f)(1) For the purposes of this chapter, a member referred to in paragraph (2) or (3) of this subsection who serves the periods of active duty referred to in that paragraph shall be deemed to have served a continuous period of active duty the length of which is the aggregate length of the periods of active duty referred to in that paragraph.

(2) This subsection applies to a member who—

(A) after a period of continuous active duty of not more than 12 months, is discharged or released from active duty under subclause (I) or (III) of subsection (a)(1)(A)(ii) of this section; and

(B) after such discharge or release, reenlists or re-enters on a period of active duty.

(3) This subsection applies to a member who after a period of continuous active duty as an enlisted member or warrant officer, and following successful completion of officer training school, is discharged in order to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.

(g) Notwithstanding section 3002(6)(A) of this title, a period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education as described in such section 3002(6)(A) shall not be considered a break in service or a break in a continuous period of active duty of the individual for the purposes of this chapter.

(h)(1) Notwithstanding section 3002(6)(B) of this title, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in subparagraphs (A) and (C) of that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in such subparagraphs.

(2) This subsection applies to a member who—

(A) during the obligated period of active duty on which entitlement to assistance under this section is based, commences pursuit of a course of education—

(i) at a service academy; or

(ii) at a post-secondary school for the purpose of preparation for enrollment at a service academy;

(B) fails to complete the course of education; and

(C) re-enters on a period of active duty.

(i) The Secretary concerned shall inform any member of the Armed Forces who has not completed that member's obligated period of active duty (as described in subsection (a)(1)(A)) and who indicates the intent to be discharged or released from such duty for the convenience of the Government of the minimum active duty requirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

### 38 U.S.C. §3013. Duration of basic educational assistance

(a)(1) Subject to section 3695 of this title and except as provided in paragraph (2) of this subsection, each individual entitled to basic educational assistance under section 3011 of this title is entitled to 36 months of educational assistance benefits under this chapter (or the equivalent thereof in part-time educational assistance).

(2) Subject to section 3695 of this title and subsection (d) of this section, in the case of an individual described in section 3011(a)(1)(A)(ii)(I) or (III) of this title who is not also described in section 3011(a)(1)(A)(i) of this title or an individual described in section 3011(a)(1)(B)(ii)(I) or (III) of this title who is not also described in section 3011(a)(1)(B)(i) of this title, the individual is entitled to one month of educational assistance benefits under this chapter for each month of continuous active duty served by such individual after June 30, 1985, as part of the obligated period of active duty on which such entitlement is based in the case of an individual described in section 3011(a)(1)(A)(ii)(I) or (III) of this title, or in the case of an individual described in section 3011(a)(1)(B)(ii)(I) or (III) of this title, after June 30, 1985.

(b) Subject to section 3695 of this title and subsection (d) of this section, each individual entitled to basic educational assistance under section 3012 of this title is entitled to (1) one month of educational assistance benefits under this chapter for each month of continuous active duty served by such individual after June 30, 1985, as part of the obligated period of active duty on which such entitlement is based in the case of an individual described in section 3012(a)(1)(A) of this title, or in the case of an individual described in section 3012(a)(1)(B) of this title, after June 30, 1985, and (2) one month of educational assistance benefits under this chapter for each four months served by such individual in the Selected Reserve after the applicable date specified in clause (1) of this subsection (other than any month in which the individual served on active duty).

(c)(1) Subject to section 3695 of this title and except as provided in paragraphs (2) and (3) of this subsection, each individual entitled to basic educational assistance under section 3018 of this title is entitled to 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance).

(2) Subject to section 3695 of this title, an individual described in clause (B) or (C) of section 3018(b)(3) of this title whose discharge or release from active duty prevents the reduction of the basic pay of such individual by \$1,200 is entitled to the number of months of assistance under this chapter that is equal to the lesser of—

(A) 36 multiplied by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced under section 3018(c) and the denominator of which is \$1,200; or

(B) the number of months the individual has served on continuous active duty after June 30, 1985.

(3) Subject to section 3695 of this title and subsection (d) of this section, an individual described in clause (B) or (C)(ii) of section 3018(b)(3) of this title (other than an individual

described in paragraph (2) of this subsection) is entitled to the number of months of educational assistance under this chapter that is equal to the number of months the individual has served on continuous active duty after June 30, 1985.

(d) Subject to section 3695 of this title, each individual entitled to educational benefits under section 3018A, 3018B, or 3018C of this title is entitled to the lesser of—

(1) 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance); or

(2) the number of months of such educational assistance (or such equivalent thereof) that is equal to the number of months served by such individual on active duty.

(e) No individual may receive basic educational assistance benefits under this chapter for a period in excess of 36 months (or the equivalent thereof in part-time educational assistance).

(f)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in paragraph (2) shall not—

(A) be charged against any entitlement of any individual under this chapter; or

(B) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of assistance.

(2) Subject to paragraph (3), the payment of the educational assistance allowance referred to in paragraph (1) is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(A) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered to serve on active duty under ~~section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10~~ section 688 of title 10, section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of such title, or section 12342 of such title; or

(B) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered to a new duty location or assignment or to perform an increased amount of work; and

(C) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A) or (B), his or her course pursuit.

(3) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under paragraph (2)(C) of this subsection.

### **38 U.S.C. §3103. Periods of eligibility**

(a) Except as provided in subsection (b), (c), (d), or (e) of this section, a rehabilitation program may not be afforded to a veteran under this chapter after the end of the twelve-year period beginning on the date of such veteran's discharge or release from active military, naval, or air service.

(b)(1) In any case in which the Secretary determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a medical condition of such veteran made it infeasible for such veteran to participate in such a program, the twelve-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program, and such period of eligibility shall again begin to run on the first day following such veteran's recovery from such condition on which it is reasonably feasible, as determined under regulations which the Secretary shall prescribe, for such veteran to participate in such a program.

(2) In any case in which the Secretary determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because—

(A) such veteran had not met the requirement of a discharge or release from active military, naval, or air service under conditions other than dishonorable before (i) the nature of such discharge or release was changed by appropriate authority, or (ii) the Secretary determined, under regulations prescribed by the Secretary, that such discharge or release was under conditions other than dishonorable, or

(B) such veteran's discharge or dismissal was, under section 5303 of this title, a bar to benefits under this title before the Secretary made a determination that such discharge or dismissal is not a bar to such benefits,

the twelve-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program.

(3) In any case in which the Secretary determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because such veteran had not established the existence of a service-connected disability rated at 10 percent or more, the twelve-year period of eligibility shall not run during the period such veteran was so prevented from participating in such a program.

(c) In any case in which the Secretary determines that a veteran is in need of services to overcome a serious employment handicap, such veteran may be afforded a vocational rehabilitation program after the expiration of the period of eligibility otherwise applicable to such veteran if the Secretary also determines, on the basis of such veteran's current employment handicap and need for such services, that an extension of the applicable period of eligibility is necessary for such veteran and—

(1) that such veteran had not previously been rehabilitated to the point of employability;

(2) that such veteran had previously been rehabilitated to the point of employability but (A) the need for such services had arisen out of a worsening of such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran was previously trained in a vocational rehabilitation program under this chapter, or (B) the occupation for which such veteran had been so trained is not suitable in view of such veteran's current employment handicap and capabilities; or

(3) under regulations which the Secretary shall prescribe, that an extension of the period of eligibility of such veteran is necessary to accomplish the purposes of a rehabilitation program for such veteran.

(d) In any case in which the Secretary has determined that a veteran's disability or disabilities are so severe that the achievement of a vocational goal currently is not reasonably feasible, such veteran may be afforded a program of independent living services and assistance in accordance with the provisions of section 3120 of this title after the expiration of the period of eligibility otherwise applicable to such veteran if the Secretary also determines that an extension of the period of eligibility of such veteran is necessary for such veteran to achieve maximum independence in daily living.

(e)(1) The limitation in subsection (a) shall not apply to a rehabilitation program described in paragraph (2).

(2) A rehabilitation program described in this paragraph is a rehabilitation program pursued by a veteran under section 3102(b) of this title.

(f) In any case in which the Secretary has determined that a veteran was prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility otherwise prescribed in this section as a result of being ordered to serve on active duty ~~under section 688, 12301(a), 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of title 10, or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10),~~ such period of eligibility shall not run for the period of ~~such active duty service~~ such duty plus four months.

### **38 U.S.C. §3105. Duration of rehabilitation programs**

(a) In any case in which the Secretary is unable to determine whether it currently is reasonably feasible for a veteran to achieve a vocational goal, the period of extended evaluation under section 3106(c) of this title may not exceed twelve months, except that such period may be extended for additional periods of up to six months each if the Secretary determines before granting any such extension that it is reasonably likely that, during the period of any such extension, a determination can be made whether the achievement of a vocational goal is reasonably feasible in the case of such veteran.

(b)(1) Except as provided in paragraph (2) and in subsection (c), the period of a vocational rehabilitation program for a veteran under this chapter following a determination of the current reasonable feasibility of achieving a vocational goal may not exceed forty-eight months, except that the counseling and placement and postplacement services described in section 3104(a)(2) and (5) of this title may be provided for an additional period not to exceed eighteen months in any case in which the Secretary determines the provision of such counseling and services to be necessary to accomplish the purposes of a rehabilitation program in the individual case.

(2) The period of a vocational rehabilitation program pursued by a veteran under section 3102(b) of this title following a determination of the current reasonable feasibility of achieving a vocational goal may not exceed 12 months.

(c) The Secretary may extend the period of a vocational rehabilitation program for a veteran to the extent that the Secretary determines that an extension of such period is necessary to enable such veteran to achieve a vocational goal if the Secretary also determines—

(1) that such veteran had previously been rehabilitated to the point of employability but (A) such veteran's need for further vocational rehabilitation has arisen out of a worsening of such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran had been so rehabilitated, or (B) the occupation for which such veteran had been so rehabilitated is not suitable in view of such veteran's current employment handicap and capabilities; or

(2) under regulations which the Secretary shall prescribe, that such veteran has a serious employment handicap and that an extension of such period is necessary to accomplish the purposes of a rehabilitation program for such veteran.

(d)(1) Except as provided in paragraph (2), the period of a program of independent living services and assistance for a veteran under this chapter (following a determination by the Secretary that such veteran's disability or disabilities are so severe that the achievement of a vocational goal currently is not reasonably feasible) may not exceed twenty-four months.

(2)(A) The period of a program of independent living services and assistance for a veteran under this chapter may exceed twenty-four months as follows:

(i) If the Secretary determines that a longer period is necessary and likely to result in a substantial increase in the veteran's level of independence in daily living.

(ii) If the veteran served on active duty or full-time National Guard duty during the Post-9/11 Global Operations period and has a severe disability (as determined by the Secretary for purposes of this clause) incurred or aggravated in such service.

(B) In this paragraph, the term "Post-9/11 Global Operations period" means the period of the Persian Gulf War beginning on September 11, 2001, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(e)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of a subsistence allowance and other assistance described in paragraph (2) shall not—

(A) be charged against any entitlement of any veteran under this chapter; or

(B) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of allowance or assistance.

(2) The payment of the subsistence allowance and other assistance referred to in paragraph (1) is the payment of such an allowance or assistance for the period described in paragraph (3) to a veteran for participation in a vocational rehabilitation program under this chapter if the Secretary finds that the veteran had to suspend or discontinue participation in such vocational rehabilitation program as a result of being ordered to serve on active duty ~~under section 688, 12301(a), 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of title 10~~ or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(3) The period for which, by reason of this subsection, a subsistence allowance and other assistance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall be the period of participation in the vocational rehabilitation program for which the veteran failed to receive credit or with respect to which the veteran lost training time, as determined by the Secretary.



### 38 U.S.C. §3231. Entitlement; loan eligibility

(a)(1) Subject to the provisions of section 3695 of this title limiting the aggregate period for which any person may receive assistance under two or more programs of educational or vocational assistance administered by the Department of Veterans Affairs, a participant shall be entitled to a maximum of 36 monthly benefit payments (or their equivalent in the event of part-time benefits).

(2) Except as provided in paragraph (5)(E) of this subsection and in subsection (e) of this section and section 3233 of this title and subject to section 3241 of this title, the amount of the monthly payment to which any eligible veteran is entitled shall be ascertained by (A) adding all contributions made to the fund by the eligible veteran, (B) multiplying the sum by 3, (C) adding all contributions made to the fund for such veteran by the Secretary of Defense, and (D) dividing the sum by the lesser of 36 or the number of months in which contributions were made by such veteran.

(3) Payment of benefits under this chapter may be made only for periods of time during which an eligible veteran is actually enrolled in and pursuing an approved program of education and, except as provided in paragraph (4), only after an eligible veteran has been discharged or released from active duty.

(4) Payment of benefits under this chapter may be made after a participant has completed his or her first obligated period of active duty (which began after December 31, 1976), or 6 years of active duty (which began after December 31, 1976), whichever period is less.

(5)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph—

(i) shall not be charged against the entitlement of any eligible veteran under this chapter; and

(ii) shall not be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of assistance.

(B) The payment of an educational assistance allowance referred to in subparagraph (A) of this paragraph is any payment of a monthly benefit under this chapter to an eligible veteran for pursuit of a course or courses under this chapter if the Secretary finds that the eligible veteran—

(i) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered to serve on active duty under ~~section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10~~ section 688 of title 10, section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of title; or

(ii) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered to a new duty location or assignment or to perform an increased amount of work; and

(iii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) or (ii) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(iii) of this paragraph.

(D) The amount in the fund for each eligible veteran who received a payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall be restored to the amount that would have been in the fund for the veteran if the payment had not been made. For purposes of carrying out the previous sentence, the Secretary of Defense shall deposit into the fund, on behalf of each such veteran, an amount equal to the entire amount of the payment made to the veteran.

(E) In the case of a veteran who discontinues pursuit of a course or courses as described in subparagraph (B) of this paragraph, the formula for ascertaining the amount of the monthly payment to which the veteran is entitled in paragraph (2) of this subsection shall be implemented as if—

(i) the payment made to the fund by the Secretary of Defense under subparagraph (D) of this paragraph, and

(ii) any payment for a course or courses described in subparagraph (B) of this paragraph that was paid out of the fund,

had not been made or paid.

(b) Any enlisted member of the Armed Forces participating in the program shall be eligible to enroll in a course, courses, or program of education for the purpose of attaining a secondary school diploma (or an equivalency certificate), as authorized by section 3491(a) of this title, during the last six months of such member's first enlistment and at any time thereafter.

(c) When an eligible veteran is pursuing a program of education under this chapter by correspondence, such eligible veteran's entitlement shall be charged at the rate of 1 month's entitlement for each month of benefits paid to the eligible veteran (computed on the basis of the formula provided in subsection (a)(2) of this section).

(d)(1) Subject to the provisions of paragraph (2) of this subsection, the amount of the educational assistance benefits paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony may not exceed the lesser of (A) such amount as the Secretary determines, in accordance with regulations which the Secretary shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and the cost of necessary supplies, books, and equipment, or (B) the applicable monthly benefit payment otherwise

prescribed in this section or section 3233 of this title. The amount of the educational assistance benefits payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veteran for any course are paid under any Federal program (other than a program administered by the Secretary) or under any State or local program.

(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(e)(1) Subject to subsection (a)(1) of this section, each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 3241(b) of this title shall be paid educational assistance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No payment may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The entitlement of an eligible veteran pursuing a program of education described in paragraph (1) of this subsection shall be charged at the rate of one month for each amount of educational assistance paid which is equal to the monthly benefit otherwise payable to such veteran (computed on the basis of the formula provided in subsection (a)(2) of this section).

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

## 38 U.S.C. §3301. Definitions

In this chapter:

(1) The term "active duty" has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21)(A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under ~~section 688, 12301(a), 12301(d), 12301(g), 12301(h), 12302, 12304, 12304a, or 12304b of title 10 or section 712 of title 14~~ section 688 of title 10, section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), (c), or (d) of section 12351 of such title, section 12342 of such title, or section 3713 of title 14;

(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, in addition to service described in subparagraph (B), full-time service—

(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) in the National Guard under ~~section 502(f) of title 32~~ section 541 of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(2) The term "entry level and skill training" means the following:

(A) In the case of members of the Army, Basic Combat Training and Advanced Individual Training or One Station Unit Training.

(B) In the case of members of the Navy, Recruit Training (or Boot Camp) and Skill Training (or so-called "A" School).

(C) In the case of members of the Air Force, Basic Military Training and Technical Training.

(D) In the case of members of the Marine Corps, Recruit Training and Marine Corps Training (or School of Infantry Training).

(E) In the case of members of the Coast Guard, Basic Training and Skill Training (or so-called "A" School).

(3) The term "program of education" has the meaning given such term in section 3002, except to the extent otherwise provided in section 3313.

(4) The term "Secretary of Defense" means the Secretary of Defense, except that the term means the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

### 38 U.S.C. §3312. Educational assistance: duration

(a) In General.—Subject to section 3695 and except as provided in subsections (b) and (c), an individual entitled to educational assistance under this chapter is entitled to a number of months of educational assistance under section 3313 equal to 36 months.

(b) Continuing Receipt.—The receipt of educational assistance under section 3313 by an individual entitled to educational assistance under this chapter is subject to the provisions of section 3321(b)(2).

(c) Discontinuation of Education for Active Duty.—

(1) In general.—Any payment of educational assistance described in paragraph (2) shall not—

(A) be charged against any entitlement to educational assistance of the individual concerned under this chapter; or

(B) be counted against the aggregate period for which section 3695 limits the individual's receipt of educational assistance under this chapter.

(2) Description of payment of educational assistance.—Subject to paragraph (3), the payment of educational assistance described in this paragraph is the payment of such assistance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(A)(i) in the case of an individual not serving on active duty, had to discontinue such course pursuit as a result of being called or ordered to serve on active duty under ~~section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10~~ section 688 of title 10, section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of such title; or

(ii) in the case of an individual serving on active duty, had to discontinue such course pursuit as a result of being ordered to a new duty location or assignment or to perform an increased amount of work; and

(B) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A), the individual's course pursuit.

(3) Period for which payment not charged.—The period for which, by reason of this subsection, educational assistance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses from which the individual failed to receive credit or with respect to which the individual lost training time, as determined under paragraph (2)(B).

### 38 U.S.C. §3511. Duration of educational assistance

(a)(1) Each eligible person, whether made eligible by one or more of the provisions of section 3501(a)(1) of this title, shall be entitled to educational assistance under this chapter—

(A) in the case of a person who first enrolls in a program of education using such entitlement before August 1, 2018, for an aggregate period not in excess of 45 months (or to the equivalent thereof in part-time training); or

(B) in the case of a person who first enrolls in a program of education using such entitlement on or after August 1, 2018, for an aggregate period not in excess of 36 months (or to the equivalent thereof in part-time training).

(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under ~~section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10~~ section 688 of title 10, section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of such title or of being involuntarily ordered to full-time National Guard duty under ~~section 502(f) of title 32~~ section 541 of title 32; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.

(b) If any eligible person pursuing a program of education, or of special restorative training, under this chapter ceases to be an "eligible person" because—

(1) the parent or spouse from whom eligibility is derived is found no longer to have a "total disability permanent in nature", as defined in section 3501(a)(8) of this title,

(2) the parent or spouse from whom eligibility is derived based upon section 3501(a)(1)(C) of this title is no longer listed in one of the categories specified therein,

(3) the spouse, as an eligible person under subparagraph (D) or (E) of section 3501(a)(1) of this title, is divorced, without fault on such person's part, from the person upon whose disability such person's eligibility is based, or

(4) the parent or spouse from whom such eligibility is derived based upon subparagraph (E) of section 3501(a)(1) of this title no longer meets a requirement under clause (i), (ii), or (iii) of that subparagraph,

then such eligible person (if such person has sufficient remaining entitlement) may, nevertheless, be afforded educational assistance under this chapter until the end of the quarter or semester for which enrolled if the educational institution in which such person is enrolled is operated on a quarter or semester system, or if the educational institution is not so operated until the end of the course, or until 12 weeks have expired, whichever first occurs.



### 38 U.S.C. §3512. Periods of eligibility

(a) The educational assistance to which an eligible person whose eligibility is based on the death or disability of a parent or on a parent being listed in one of the categories referred to in section 3501(a)(1)(C) of this title is entitled under section 3511 of this title or subchapter V of this chapter may be afforded the person during the period beginning on the person's eighteenth birthday, or on the successful completion of the person's secondary schooling, whichever first occurs, and ending on the person's twenty-sixth birthday, except that—

(1) if the person is above the age of compulsory school attendance under applicable State law, and the Secretary determines that the person's best interests will be served thereby, such period may begin before the person's eighteenth birthday;

(2) if the person has a mental or physical handicap, and the Secretary determines that the person's best interests will be served by pursuing a program of special restorative training or a specialized course of vocational training approved under section 3536 of this title, such period may begin before the person's eighteenth birthday, but not before the person's fourteenth birthday;

(3) if the Secretary first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or if the death of the parent from whom eligibility is derived occurs, after the eligible person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (4) or (5) applies) such period shall end 8 years after the date that is elected by that person to be the beginning date of entitlement under section 3511 of this title or subchapter V of this chapter if—

(A) the Secretary approves that beginning date;

(B) the eligible person elects that beginning date by not later than the end of the 60-day period beginning on the date on which the Secretary provides written notice to that person of that person's opportunity to make such election, such notice including a statement of the deadline for the election imposed under this subparagraph; and

(C) that beginning date—

(i) in the case of a person whose eligibility is based on a parent who has a service-connected total disability permanent in nature, is the date determined pursuant to subsection (d), or any date between the two dates described in subsection (d); and

(ii) in the case of a person whose eligibility is based on the death of a parent, is between—

(I) the date of the parent's death; and

(II) the date of the Secretary's decision that the death was service-connected;

(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement

shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;

(5) if the person serves on duty with the Armed Forces as an eligible person after the person's eighteenth birthday but before the person's twenty-sixth birthday, then such period shall end 8 years after the person's first discharge or release from such duty with the Armed Forces (excluding from such 8 years all periods during which the eligible person served on active duty before August 1, 1962, pursuant to (A) a call or order thereto issued to the person as a Reserve after July 30, 1961, or (B) an extension of enlistment, appointment, or period of duty with the Armed Forces pursuant to section 2 of Public Law 87-117); however, in no event shall such period be extended beyond the person's thirty-first birthday by reason of this paragraph;

(6) if the person becomes eligible by reason of a parent being listed in one of the categories referred to in section 3501(a)(1)(C) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (5) applies) such period shall end eight years after the date on which the person becomes eligible by reason of such provisions, but in no event shall such period be extended beyond the person's thirty-first birthday by reason of this paragraph;

(7)(A) if such person is enrolled in an educational institution regularly operated on the quarter or semester system and such period ends during a quarter or semester, such period shall be extended to the end of the quarter or semester; or

(B) if such person is enrolled in an educational institution operated on other than a quarter or semester system and such period ends after a major portion of the course is completed, such period shall be extended to the end of the course, or until 12 weeks have expired, whichever first occurs; and

(8) if the person is pursuing a preparatory course described in section 3002(3)(B) of this title, such period may begin on the date that is the first day of such course pursuit, notwithstanding that such date may be before the person's eighteenth birthday, except that in no case may such person be afforded educational assistance under this chapter for pursuit of secondary schooling unless such course pursuit would otherwise be authorized under this subsection.

(b)(1)(A) Except as provided in subparagraph (B), (C), or (D), a person made eligible by subparagraph (B) or (D) of section 3501(a)(1) of this title or a person made eligible by the disability of a spouse under section 3501(a)(1)(E) of this title may be afforded educational assistance under this chapter during the 10-year period beginning on the date (as determined by the Secretary) the person becomes an eligible person within the meaning of section 3501(a)(1)(B), 3501(a)(1)(D)(i), 3501(a)(1)(D)(ii), or 3501(a)(1)(E) of this title. In the case of a surviving spouse made eligible by clause (ii) of section 3501(a)(1)(D) of this title, the 10-year period may not be reduced by any earlier period during which the person was eligible for educational assistance under this chapter as a spouse made eligible by clause (i) of that section.

(B) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph may, subject to the Secretary's approval, elect a later beginning date for the 10-year period than would otherwise be applicable to the person under that subparagraph. The beginning date so

elected may be any date between the beginning date determined for the person under subparagraph (A) and whichever of the following dates applies:

(i) The date on which the Secretary notifies the veteran from whom eligibility is derived that the veteran has a service-connected total disability permanent in nature.

(ii) The date on which the Secretary determines that the veteran from whom eligibility is derived died of a service-connected disability.

(iii) The date on which the Secretary notifies the member of the Armed Forces from whom eligibility is derived that the member has a total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service.

(C) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(B) of this title by reason of the death of a person on active duty may be afforded educational assistance under this chapter during the 20-year period beginning on the date (as determined by the Secretary) such person becomes an eligible person within the meaning of such section.

(D) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(D)(i) of this title by reason of a service-connected disability that was determined to be a total disability permanent in nature not later than three years after discharge from service may be afforded educational assistance under this chapter during the 20-year period beginning on the date the disability was so determined to be a total disability permanent in nature, but only if the eligible person remains the spouse of the disabled person throughout the period.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any eligible person (as defined in section 3501(a)(1)(B), (C), (D), or (E) of this title) whose eligibility is based on the death or disability of a spouse or on a spouse being listed in one of the categories referred to in section 3501(a)(1)(C) of this title who was prevented from initiating or completing such person's chosen program of education within such period because of a physical or mental disability which was not the result of such person's own willful misconduct, such person shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Secretary determines, from the evidence, that such person was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted under the exception in the preceding sentence, the delimiting period will again begin running on the first day following such eligible person's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Secretary shall prescribe, for such eligible person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(c)(1) Notwithstanding subsection (a) and subject to paragraph (2), an eligible person may be afforded educational assistance beyond the age limitation applicable to the person under such subsection if—

(A) the person suspends pursuit of such person's program of education after having enrolled in such program within the time period applicable to such person under such subsection;

(B) the person is unable to complete such program after the period of suspension and before attaining the age limitation applicable to the person under such subsection; and

(C) the Secretary finds that the suspension was due to either of the following:

(i) The actions of the person as the primary provider of personal care services for a veteran or member of the Armed Forces under section 1720G(a) of this title.

(ii) Conditions otherwise beyond the control of the person.

(2) Paragraph (1) shall not apply with respect to the period of an individual as a primary provider of personal care services if the period concludes with the revocation of the individual's designation as such a primary provider under section 1720G(a)(7)(D) of this title.

(3) Educational assistance may not be afforded a person under paragraph (1) after the earlier of—

(A) the age limitation applicable to the person under subsection (a), plus a period of time equal to the period the person was required to suspend pursuit of the person's program of education as described in paragraph (1); or

(B) the date of the person's thirty-first birthday.

(d) The term "first finds" as used in this section means the effective date of the rating or date of notification to the person from whom eligibility is derived establishing a service-connected total disability permanent in nature whichever is more advantageous to the eligible person.

(e) No person made eligible by section 3501(a)(1)(C) of this title based on a spouse being listed in one of the categories referred to in section 3501(a)(1)(C) of this title may be afforded educational assistance under this chapter beyond 10 years after the date on which the spouse was so listed.

[(f) Repealed. [Pub. L. 108–183, title III, §306\(f\)\(2\), Dec. 16, 2003, 117 Stat. 2661 .](#)]

[(g) Repealed. [Pub. L. 107–103, title I, §108\(b\)\(2\), Dec. 27, 2001, 115 Stat. 985 .](#)]

(h) Notwithstanding any other provision of this section, if an eligible person, during the delimiting period otherwise applicable to such person under this section, serves on active duty pursuant to an order to active duty issued under ~~section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10~~ section 688 of title 10, section 12341 of such title for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of such title, or is involuntarily ordered to full-time National Guard duty under ~~section 502(f) of title 32~~ section 541 of title 32, such person shall be granted an extension of such delimiting period for the length of time equal to the period of such active duty plus four months.

### 38 U.S.C. §3679. Disapproval of courses

[Bracket (highlighted in grey for easy identification) reflect an amendment made by § 105 of the Harry W. Colmery Veterans Education Assistance Act of 2017; Public Law 115-48, Aug 16, 2017, with an effective date of August 1, 2020]

(a)(1) Except as provided by paragraph (2), any course approved for the purposes of this chapter which fails to meet any of the requirements of this chapter shall be immediately disapproved by the Secretary or the appropriate State approving agency. An educational institution which has its courses disapproved by the Secretary or a State approving agency will be notified of such disapproval by a certified or registered letter of notification and a return receipt secured.

(2) In the case of a course of education that would be subject to disapproval under paragraph (1) solely for the reason that the Secretary of Education withdraws the recognition of the accrediting agency that accredited the course, the Secretary of Veterans Affairs, in consultation with the Secretary of Education, and notwithstanding the withdrawal, may continue to treat the course as an approved course of education under this chapter for a period not to exceed 18 months from the date of the withdrawal of recognition of the accrediting agency, unless the Secretary of Veterans Affairs or the appropriate State approving agency determines that there is evidence to support the disapproval of the course under this chapter. The Secretary shall provide to any veteran enrolled in such a course of education notice of the status of the course of education.

(b) Each State approving agency shall notify the Secretary of each course which it has disapproved under this section. The Secretary shall notify the State approving agency of the Secretary's disapproval of any educational institution under chapter 31 of this title.

(c)(1) Notwithstanding any other provision of this chapter and subject to paragraphs (3) through (6), the Secretary shall disapprove a course of education provided by a public institution of higher learning if the institution charges tuition and fees for that course for covered individuals who are pursuing the course with educational assistance under chapter 30 or 33 of this title while living in the State in which the institution is located at a rate that is higher than the rate the institution charges for tuition and fees for that course for residents of the State in which the institution is located, regardless of the covered individual's State of residence.

(2) For purposes of this subsection, a covered individual is any individual as follows:

(A) A veteran who was discharged or released from a period of not fewer than 90 days of service in the active military, naval, or air service less than three years before the date of enrollment in the course concerned.

(B) An individual who is entitled to assistance under-

(i) section [~~3311(b)(9)~~ 3311(b)(8)] of this title; or

(ii) section 3319 of this title by virtue of the individual's relationship to-

(I) a veteran described in subparagraph (A); or

(II) a member of the uniformed services described in section 3319(b) of this title who is serving on active duty or full-time National Guard duty.

(3) If after enrollment in a course of education that is subject to disapproval under paragraph (1) by reason of paragraph (2)(A) or (2)(B) a covered individual pursues one or more courses of education at the same public institution of higher learning while remaining continuously enrolled (other than during regularly scheduled breaks between courses, semesters or terms) at that institution of higher learning, any course so pursued by the covered individual at that institution of higher learning while so continuously enrolled shall also be subject to disapproval under paragraph (1).

(4) It shall not be grounds to disapprove a course of education under paragraph (1) if a public institution of higher learning requires a covered individual pursuing a course of education at the institution to demonstrate an intent, by means other than satisfying a physical presence requirement, to establish residency in the State in which the institution is located, or to satisfy other requirements not relating to the establishment of residency, in order to be charged tuition and fees for that course at a rate that is equal to or less than the rate the institution charges for tuition and fees for that course for residents of the State.

(5) The Secretary may waive such requirements of paragraph (1) as the Secretary considers appropriate.

(6) Disapproval under paragraph (1) shall apply only with respect to educational assistance under chapters 30 and 33 of this title.

(d) Notwithstanding any other provision of this chapter, the Secretary or the applicable State approving agency shall disapprove a course of education described in paragraph (14) or (15) of section 3676(c) of this title unless the educational institution providing the course of education-

(1) publicly discloses any conditions or additional requirements, including training, experience, or examinations, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation; and

(2) makes each disclosure required by paragraph (1) in a manner that the Secretary considers prominent (as specified by the Secretary in regulations prescribed for purposes of this subsection).

### **38 U.S.C. §3681. Limitations on educational assistance**

(a) No educational assistance allowance granted under chapter 30, 34, 35, or 36 of this title or 106 or 107 of title 10, or subsistence allowance granted under chapter 31 of this title shall be paid to any eligible person (1) who is on active duty or full-time National Guard duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service; or (2) who is attending a course of education or training paid for under chapter 41 of title 5.

(b) No person may receive benefits concurrently under two or more of the provisions of law listed below:

(1) Chapters 30, 31, 32, 34, 35, and 36 of this title.

(2) Chapters 106 and 107 and section 510 of title 10.

(3) Section 903 of the Department of Defense Authorization Act, 1981 (Public Law 96–342, 10 U.S.C. 2141 note).

(4) The Hostage Relief Act of 1980 (Public Law 96–449, 5 U.S.C. 5561 note).

(5) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399).

### 38 U.S.C. §3684. Reports by veterans, eligible persons, and institutions; reporting fee

(a)(1) Except as provided in paragraph (2) of this subsection, the veteran or eligible person and the educational institution offering a course in which such veteran or eligible person is enrolled under chapter 31, 32, 33, 34, 35, or 36 of this title shall, without delay, report to the Secretary, in the form prescribed by the Secretary, such enrollment and any interruption or termination of the education of each such veteran or eligible person. The date of such interruption or termination will be the last date of pursuit, or, in the case of correspondence training, the last date a lesson was serviced by a school.

(2)(A) In the case of a program of independent study pursued on less than a half-time basis in an educational institution, the Secretary may approve a delay by the educational institution in reporting the enrollment or reenrollment of an eligible veteran or eligible person until the end of the term, quarter, or semester if the educational institution requests the delay and the Secretary determines that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of such program.

(B) An educational institution which, pursuant to subparagraph (A) of this paragraph, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(3)(A) Subject to subparagraph (B) of this paragraph, an educational institution offering courses on a term, quarter, or semester basis may certify the enrollment of a veteran who is not on active duty or full-time National Guard duty, or of an eligible person, in such courses for more than one term, quarter, or semester at a time, but not for a period extending beyond the end of a school year (including the summer enrollment period).

(B) Subparagraph (A) of this paragraph shall not apply with respect to any term, quarter, or semester for which the veteran or eligible person is enrolled on a less than half-time basis and shall not be construed as restricting the Secretary from requiring that an educational institution, in reporting an enrollment for more than one term, quarter, or semester, specify the dates of any intervals within or between any such terms, quarters, or semesters.

(4) A course offered by an educational institution that does not begin on the first day of an academic term, but does begin seven or fewer days after such day, shall be treated as beginning on such day for purposes of this section.

(5) For purposes of this subsection, the term "educational institution" may include a group, district, or consortium of separately accredited educational institutions located in the same State that are organized in a manner that facilitates the centralized reporting of the enrollments in such group, district, or consortium of institutions.

(b) The Secretary, prior to making payment of a reporting fee to an educational institution, as provided for in subsection (c) of this section, shall require such institution to certify that it has exercised reasonable diligence in determining whether such institution or any course offered by such institution approved for the enrollment of veterans or eligible persons meets all of the



applicable requirements of chapters 31, 34, 35, and 36 of this title and that it will, without delay, report any failure to meet any such requirement to the Secretary.

(c)(1) The Secretary may pay to any educational institution, or to the sponsor of a program of apprenticeship, furnishing education or training under either this chapter or chapter 31, 34, or 35 of this title, a reporting fee which will be in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or sponsor of a program of apprenticeship is required to submit to the Secretary by law or regulation.

(2) Such reporting fee shall be computed for each calendar year by multiplying \$16 by the number of eligible veterans or eligible persons enrolled under this chapter or chapter 31, 34, or 35 of this title. The reporting fee shall be paid to such educational institution or sponsor of a program of apprenticeship as soon as feasible after the end of the calendar year for which it is applicable.

(3) No reporting fee payable to an educational institution under this subsection shall be subject to offset by the Secretary against any liability of such institution for any overpayment for which such institution may be administratively determined to be liable under section 3685 of this title unless such liability is not contested by such institution or has been upheld by a final decree of a court of appropriate jurisdiction.

(4) Any reporting fee paid to an educational institution or sponsor of a program of apprenticeship after the date of the enactment of the Post-9/11 Veterans Educational Assistance Improvements Act of 2011 (Public Law 111-377)-

(A) shall be utilized by such institution or sponsor solely for the making of certifications required under this chapter or chapter 31, 34, or 35 of this title or for otherwise supporting programs for veterans; and

(B) with respect to an institution that has 100 or more enrollees described in paragraph (2) may not be used for or merged with amounts available for the general fund of the educational institution or sponsor of a program of apprenticeship.

(5) The reporting fee payable under this subsection shall be paid from amounts appropriated for readjustment benefits.

(d) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall ensure that the Department provides personnel of educational institutions who are charged with submitting reports or certifications to the Secretary under this section with assistance in preparing and submitting such reports or certifications.

### 38 U.S.C. §3694. Use of other Federal agencies

(a) In General.-In carrying out the Secretary's functions under this chapter or chapter 34 or 35 of this title, the Secretary may utilize the facilities and services of any other Federal department or agency. Any such utilization shall be pursuant to proper agreement with the Federal department or agency concerned; and payment to cover the cost thereof shall be made either in advance or by way of reimbursement, as may be provided in such agreement.

(b) Coordination of Information Among the Departments of Veterans Affairs, Defense, and Labor With Respect to On-Job Training.-At the time of a servicemember's discharge or release ~~from active duty service~~ from active duty or full-time National Guard duty, the Secretary of Defense shall furnish to the Secretary such pertinent information concerning each registered apprenticeship pursued by the servicemember during the ~~period of active duty service~~ period of such duty of the servicemember. The Secretary, in conjunction with the Secretary of Labor, shall encourage and assist States and private organizations to give credit to servicemembers for the registered apprenticeship program so pursued in the case of any related apprenticeship program the servicemember may pursue as a civilian.

### 38 U.S.C. §3697A. Educational and vocational counseling

(a) The Secretary shall make available to an individual described in subsection (b) of this section, upon such individual's request, counseling services, including such educational and vocational counseling and guidance, testing, and other assistance as the Secretary determines necessary to aid the individual in selecting-

(1) an educational or training objective and an educational institution or training establishment appropriate for the attainment of such objective; or

(2) an employment objective that would be likely to provide such individual with satisfactory employment opportunities in the light of the individual's personal circumstances.

(b) For the purposes of this section, the term "individual" means an individual who-

(1) is eligible for educational assistance under chapter 30, 31, 32, or 33 of this title or chapter 106 or 107 of title 10;

(2) was discharged or released from active duty or full-time National Guard duty under conditions other than dishonorable if not more than one year has elapsed since the date of such last discharge or release from active duty or full-time National Guard duty; or

(3) is serving on active duty or full-time National Guard duty in any State with the Armed Forces and is within 180 days of the estimated date of such individual's discharge or release from active duty or full-time National Guard duty under conditions other than dishonorable, including those who are making a determination of whether to continue as members of the Armed Forces.

(c) In any case in which the Secretary has rated the individual as being incompetent, the counseling services described in subsection (a) of this section shall be required to be provided to the individual before the selection of a program of education or training.

(d) At such intervals as the Secretary determines necessary, the Secretary shall make available information concerning the need for general education and for trained personnel in the various crafts, trades, and professions. Facilities of other Federal agencies collecting such information shall be utilized to the extent the Secretary determines practicable.

(e) The Secretary shall take appropriate steps (including individual notification where feasible) to acquaint all individuals described in subsection (b) of this section with the availability and advantages of counseling services under this section.

### 38 U.S.C. §4211. Definitions

As used in this chapter—

(1) The term "special disabled veteran" means—

(A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under section 3106 of this title to have a serious employment handicap; or

(B) a person who was discharged or released from active duty because of service-connected disability.

(2) The term "veteran of the Vietnam era" means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(3) The term "disabled veteran" means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(4) The term "eligible veteran" means a person who—

(A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

(B) was discharged or released from active duty because of a service-connected disability;

(C) as a member of a reserve component under an order to active duty pursuant to ~~section 12301(a), (d), or (g), 12302, or 12304 of title 10, served on active duty section 12341 of title 10 for a purpose specified in subsection (a), (b)(2), (b)(3), or (d)(1) of section 12351 of such title, or section 12342 of such title~~ during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge; or

(D) was discharged or released from active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10).

(5) The term "department or agency" means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5 and the United States Postal Service and the Postal Regulatory Commission, and the term "department, agency, or instrumentality in the executive branch" includes the United States Postal Service and the Postal Regulatory Commission.

(6) The term "recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

### 38 U.S.C. §4303. Definitions

For the purposes of this chapter—

(1) The term "Attorney General" means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

(2) The term "benefit", "benefit of employment", or "rights and benefits" means the terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest (including wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) The term "employee" means any person employed by an employer. Such term includes any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 4319(c) of this title.

(4)(A) Except as provided in subparagraphs (B) and (C), the term "employer" means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities, including—

(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) the Federal Government;

(iii) a State;

(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311.

(B) In the case of a National Guard technician employed under section 709 of title 32, the term "employer" means the adjutant general of the State in which the technician is employed.

(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4318.

(D)(i) Whether the term "successor in interest" applies with respect to an entity described in subparagraph (A) for purposes of clause (iv) of such subparagraph shall be determined on a case-by-case basis using a multi-factor test that considers the following factors:

- (I) Substantial continuity of business operations.
- (II) Use of the same or similar facilities.
- (III) Continuity of work force.
- (IV) Similarity of jobs and working conditions.
- (V) Similarity of supervisory personnel.
- (VI) Similarity of machinery, equipment, and production methods.
- (VII) Similarity of products or services.

(ii) The entity's lack of notice or awareness of a potential or pending claim under this chapter at the time of a merger, acquisition, or other form of succession shall not be considered when applying the multi-factor test under clause (i).

(5) The term "Federal executive agency" includes the United States Postal Service, the Postal Regulatory Commission, any nonappropriated fund instrumentality of the United States, any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5, and any military department (as that term is defined in section 102 of title 5) with respect to the civilian employees of that department.

(6) The term "Federal Government" includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

(7) The term "health plan" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(8) The term "notice" means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(9) The term "qualified", with respect to an employment position, means having the ability to perform the essential tasks of the position.

(10) The term "reasonable efforts", in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

(11) Notwithstanding section 101, the term "Secretary" means the Secretary of Labor or any person designated by such Secretary to carry out an activity under this chapter.

(12) The term "seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(13) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority ~~and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and includes active duty, active duty for the purpose of training, initial active duty for training, reserve component duty, full-time National Guard duty, full-time National Guard duty for the purpose of training,~~ a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, ~~and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.~~

(14) The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

(15) The term "undue hardship", in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard ~~when engaged in active duty for training inactive duty training, or full-time National Guard duty when engaged in active duty, full-time National Guard duty, or reserve component duty,~~ the commissioned corps of the Public Health Service, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency



Assistance Act, and any other category of persons designated by the President in time of war or national emergency.

### 38 U.S.C. §4312. Reemployment rights of persons who serve in the uniformed services

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to ~~section 10147 of title 10, under section 502(a) or 503 of title 32, section 12352(c) or 12353(a) of title 10, or section 552(a) or 553(a) of title 32,~~ or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

~~(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;~~

~~(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;~~

~~(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;~~

(A) ordered to or retained on active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(B) ordered to or retained on active duty under section 2127, 2128, 2308, 2309, or 2314 of title 14;

(C) retained on active duty pursuant to section 123, 671a, 671b, or 12311 of title 10, because of a war or national emergency declared by the President or the Congress;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

~~(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or~~

~~(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.~~

(E) ordered to full-time National Guard duty in support, as determined by the Secretary of Defense, of a critical mission or requirement of the uniformed services.

(d)(1) An employer is not required to reemploy a person under this chapter if—

(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable;

(B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313, such employment would impose an undue hardship on the employer; or

(C) the employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(2) In any proceeding involving an issue of whether—

(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances,

(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 would impose an undue hardship on the employer, or

(C) the employment referred to in paragraph (1)(C) is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period,

the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

(A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer—

(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.

(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

(2)(A) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B)

of paragraph (1)) or submit an application for reemployment with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

(3) A person who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(f)(1) A person who submits an application for reemployment in accordance with subparagraph (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that—

(A) the person's application is timely;

(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304.

(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4318(a)(2)(A).

(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

### **38 U.S.C. §4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service**

(a) A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

(b)(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—

(A) deemed to be on furlough or leave of absence while performing such service; and

(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

(2)(A) Subject to subparagraph (B), a person who—

(i) is absent from a position of employment by reason of service in the uniformed services, and

(ii) knowingly provides written notice of intent not to return to a position of employment after service in the uniformed service,

is not entitled to rights and benefits under paragraph (1)(B).

(B) For the purposes of subparagraph (A), the employer shall have the burden of proving that a person knowingly provided clear written notice of intent not to return to a position of employment after service in the uniformed service and, in doing so, was aware of the specific rights and benefits to be lost under subparagraph (A).

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

(4) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to paragraph (1) to the extent other employees on furlough or leave of absence are so required.

(5) The entitlement of a person to coverage under a health plan is provided for under section 4317.

(6) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4318.

(c) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause—

(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

(d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. No employer may require any such person to use vacation, annual, or similar leave during such period of service.

~~(e)(1) An employer shall grant an employee who is a member of a reserve component an authorized leave of absence from a position of employment to allow that employee to perform funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.~~

~~(2) For purposes of section 4312(e)(1) of this title, an employee who takes an authorized leave of absence under paragraph (1) is deemed to have notified the employer of the employee's intent to return to such position of employment.~~



# **TITLE 42**

## **The Public Health and Welfare**

## **Section 202 of the Social Security Act (42 U.S.C. 402)**

### **42 U.S.C. §402. Old-age and survivors insurance benefit payments**

#### ***(a) Old-age insurance benefits***

Every individual who-

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(l) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with-

(A) in the case of an individual who has attained retirement age (as defined in section 416(l) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(l) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w), such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

#### ***(b) Wife's insurance benefits***

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife-

(A) has filed application for wife's insurance benefits,

(B)(i) has attained age 62, or

(ii) in the case of a wife, has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with-

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(l) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of-

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(l) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs-

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q), such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries-

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d),

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife-

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

***(c) Husband's insurance benefits***

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband-

(A) has filed application for husband's insurance benefits,

(B)(i) has attained age 62, or

(ii) in the case of a husband, has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a husband's insurance benefit for each month, beginning with-

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(l) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of-

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(l) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q), such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(3) In the case of any divorced husband who marries-

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d), by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), shall not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband-

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

***(d) Child's insurance benefits***

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child-

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual-

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with-

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs-

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of-

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month;

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22-

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of-

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the



end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and-

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries-

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he-

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or  
(ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began (i) before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability, or (ii) after the close of the 84th month following

the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title, or (if later) the earlier of-

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection-

(A) A "full-time elementary or secondary school student" is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a "full-time elementary or secondary school student" if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary school student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence <sup>1</sup>) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An "elementary or secondary school" is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a "full-time elementary or secondary school student" or "intends to continue to be in full-time attendance at an elementary or secondary school", within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of-

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child-

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and

(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

(10) For purposes of paragraph (1)(H)-

(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).

***(e) Widow's insurance benefits***

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife-

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits,

(ii) was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and-

(I) has attained retirement age (as defined in section 416(l) of this title),

(II) is not entitled to benefits under subsection (a) or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which she elects to receive widow's insurance benefits (subject to reduction as provided in subsection (q)), or

(iii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(l) of this title), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with-

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof-

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(l) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event

earlier than the first month occurring after the 36 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (k)(5), subsection (q), and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount-

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of-

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and

(notwithstanding the provisions of paragraph (3) of such subsection (w)) the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w).

(D) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q)) is greater than-

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q)) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if-

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months-

(i) throughout which she has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which her application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under subchapter XVI, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection-

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title



(or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

***(f) Widower's insurance benefits***

(1) The widower (as defined in section 416(g) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widower or such surviving divorced husband-

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of the title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widower's insurance benefits,

(ii) was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and-

(I) has attained retirement age (as defined in section 416(l) of this title),

(II) is not entitled to benefits under subsection (a) or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by him with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he elects to receive widower's insurance benefits (subject to reduction as provided in subsection (q)), or

(iii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(l) of this title), and

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,

shall be entitled to a widower's insurance benefit for each month, beginning with-

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof-

(i) the first month after his waiting period (as defined in paragraph (5)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) <sup>1</sup> of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(l) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (k)(5), subsection (q), and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount-

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of-

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w).

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q)) is greater than-

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q)) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if-

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widower or surviving divorced husband, is the earliest period of five consecutive calendar months-

(i) throughout which he has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which his application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under subchapter XVI, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g)

of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection-

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Commissioner of Social Security under an agreement referred to in such section 1382e(a) of this title (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

***(g) Mother's and father's insurance benefits***

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent-

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a spouse's insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died,

(E) at the time of filing such application has in his or her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent-

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s)) be entitled to a mother's or father's insurance benefit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse's insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Such mother's or father's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries-

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h), or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s), not be terminated by reason of such marriage.

***(h) Parent's insurance benefits***

(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual, if such parent-

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed

application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits,

shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which-

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 403(a) of this title) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries-

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s), not be terminated by reason of such marriage.

***(i) Lump-sum death payments***

Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount (as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to the repeal of the minimum benefit provisions), or an amount equal to \$255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Commissioner of Social Security to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid-

(1) to a widow (as defined in section 416(c) of this title) or widower (as defined in section 416(g) of this title) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual's death; or

(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual's death.

No payment shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred



while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 410(l)(1) of this title are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

***(j) Application for monthly insurance benefits***

(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to-

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application for a benefit under subsection (e) or (f), and satisfies paragraph (1)(B) of such subsection by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.

Any benefit under this subchapter for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Commissioner of Social Security has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) for any month prior to the month in which he or she files an application for benefits under that subsection if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q).

(B)(i) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 423(d) of this title), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iii) As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for monthly insurance benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of-

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

***(k) Simultaneous entitlement to benefits***

(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual,

shall be deemed entitled, subject to the provisions of paragraph (2) of this subsection, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child's insurance benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month. Such child's insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child's insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) (without the application of section 403(a) of this title) or subsection (m) if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 403(a) of this title) than the benefit which would be applicable if such child were entitled on the wages and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child's insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(3) applies) who, under the preceding provisions of this section and under the provisions of section 423 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3) or (f)(3) applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(2), and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q)).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3) or (f)(3) applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q), and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

(4) Any individual who, under this section and section 423 of this title, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this subchapter shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) (as determined after application of the provisions of subsection (q) and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity-

(i) such service did not constitute "employment" as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted "employment" as so defined solely by reason of-

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of \$0.10, shall be rounded to the next higher multiple of \$0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted "employment" as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security)

and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

***(l) Entitlement to survivor benefits under railroad retirement provisions***

If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

***(m) Repealed. Pub. L. 97-35, title XXII, §2201(b)(10), Aug. 13, 1981, 95 Stat. 831***

***(n) Termination of benefits upon removal of primary beneficiary***

(1) If any individual is (after September 1, 1954) removed under section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, then, notwithstanding any other provisions of this subchapter-

(A) no monthly benefit under this section or section 423 of this title shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Commissioner of Social Security is notified by the Attorney General or the Secretary of Homeland Security that such individual has been so removed, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 403(b), (c), and (d) of this title shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2)(A) In the case of the removal of any individual under any of the paragraphs of section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, the revocation and setting aside of citizenship of any individual under section 1451 of title 8 in any case in which the revocation and setting aside is based on conduct described in section 1182(a)(3)(E)(i) of title 8 (relating to participation in Nazi persecution), or

the renunciation of nationality by any individual under section 1481(a)(5) of title 8 pursuant to a settlement agreement with the Attorney General where the individual has admitted to conduct described in section 1182(a)(3)(E)(i) of title 8 (relating to participation in Nazi persecution) occurring after December 18, 2014, the Attorney General or the Secretary of Homeland Security shall notify the Commissioner of Social Security of such removal, revocation and setting aside, or renunciation of nationality not later than 7 days after such removal, revocation and setting aside, or renunciation of nationality (or, in the case of any such removal, revocation and setting aside, of <sup>2</sup> renunciation of nationality that has occurred prior to December 18, 2014, not later than 7 days after December 18, 2014).

(B)(i) Not later than 30 days after December 18, 2014, the Attorney General shall certify to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Commissioner of Social Security has been notified of each removal, revocation and setting aside, or renunciation of nationality described in subparagraph (A).

(ii) Not later than 30 days after each notification with respect to an individual under subparagraph (A), the Commissioner of Social Security shall certify to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that such individual's benefits were terminated under this subsection.

(3) For purposes of paragraphs (1) and (2) of this subsection-

(A) an individual against whom a final order of removal has been issued under section 1227(a)(4)(D) of title 8 on grounds of participation in Nazi persecution shall be considered to have been removed under such section as of the date on which such order became final;

(B) an individual with respect to whom an order admitting the individual to citizenship has been revoked and set aside under section 1451 of title 8 in any case in which the revocation and setting aside is based on conduct described in section 1182(a)(3)(E)(i) of title 8 (relating to participation in Nazi persecution), concealment of a material fact about such conduct, or willful misrepresentation about such conduct shall be considered to have been removed as described in paragraph (1) as of the date of such revocation and setting aside; and

(C) an individual who pursuant to a settlement agreement with the Attorney General has admitted to conduct described in section 1182(a)(3)(E)(i) of title 8 (relating to participation in Nazi persecution) and who pursuant to such settlement agreement has lost status as a national of the United States by a renunciation under section 1481(a)(5) of title 8 shall be considered to have been removed as described in paragraph (1) as of the date of such renunciation.

(4) In the case of any individual described in paragraph (3) whose monthly benefits are terminated under paragraph (1)-

(A) no benefits otherwise available under this section based on the wages and self-employment income of any other individual shall be paid to such individual for any month after such termination; and

(B) no supplemental security income benefits under subchapter XVI shall be paid to such individual for any such month, including supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66 <sup>3</sup>

***(o) Application for benefits by survivors of members and former members of uniformed services***

In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 5105 of title 38, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

***(p) Extension of period for filing proof of support and applications for lump-sum death payment***

In any case in which there is a failure-

(1) to file proof of support under subparagraph (B) of subsection (h)(1), or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i), or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security.

***(q) Reduction of benefit amounts for certain beneficiaries***

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by-

(A)  $\frac{5}{9}$  of 1 percent of such amount if such benefit is an old-age insurance benefit,  $\frac{25}{36}$  of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit, or  $\frac{19}{40}$  of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(l) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to-

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(l) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be reduced by the sum of-

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of-

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's,



husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If-

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

(5)(A) No wife's or husband's insurance benefit shall be reduced under this subsection-

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he or she elects to receive wife's or husband's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife's or husband's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)-

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife's or husband's insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(l) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which he or she would have been entitled had he or she been entitled for such month to mother's or father's insurance benefits on the basis of his or her deceased spouse's (or deceased former spouse's) wages and self-employment income.

(6) For purposes of this subsection, the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period-

(A) beginning-

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding-

(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife's or husband's insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow's or widower's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 403(a) of this title and before application of section 415(g) of this title. If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of \$0.10, it shall be increased to the next higher multiple of \$0.10.

(9) The amount of the reduction for early retirement specified in paragraph (1)-

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Commissioner of Social Security such that-

(i) the amount of the reduction at early retirement age as defined in section 416(l) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance

amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined-

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 416(l) of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this subchapter and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).

***(r) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife's or husband's insurance benefits***

(1) If an individual is eligible for a wife's or husband's insurance benefit (except in the case of eligibility pursuant to clause (ii) of subsection (b)(1)(B) or subsection (c)(1)(B), as appropriate), in any month for which the individual is entitled to an old-age insurance benefit, such individual shall be deemed to have filed an application for wife's or husband's insurance benefits for such month.

(2) If an individual is eligible (but for subsection (k)(4)) for an old-age insurance benefit in any month for which the individual is entitled to a wife's or husband's insurance benefit (except in the case of entitlement pursuant to clause (ii) of subsection (b)(1)(B) or subsection (c)(1)(B), as

appropriate), such individual shall be deemed to have filed an application for old-age insurance benefits-

(A) for such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

***(s) Child over specified age to be disregarded for certain benefit purposes unless disabled***

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child's insurance benefits under subsection (d) for any month, and who has attained the age of 16 but is not in such month under a disability (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4),<sup>1</sup> (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B),<sup>1</sup> (f)(3)(B), and (g)(6)(B) <sup>1</sup> of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

***(t) Suspension of benefits of aliens who are outside United States; residency requirements for dependents and survivors***

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual who is not a citizen or national of the United States for any month which is-

(A) after the sixth consecutive calendar month during all of which the Commissioner of Social Security finds, on the basis of information furnished to the Commissioner by the Attorney General or information which otherwise comes to the Commissioner's attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and under which-

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) of this subsection shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 1, 1956.

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if-

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or ~~inactive-duty training-reserve component duty~~ (as those terms are defined in section 410(l) (2) and (3) of this title) as a member of a uniformed service (as defined in section 410(m) of this title), or (ii) as the result of a disease or injury which the Secretary of Veterans Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 410(l)(2) of this title), or an injury which he determines was incurred or aggravated in line of duty while on ~~inactive-duty training-reserve component duty~~ (as defined in section 410(l)(3) of this title), as a member of a uniformed service (as defined in section 410(m) of this title), if the Secretary of Veterans Affairs determines that such individual was discharged or released from the period of such active duty or ~~inactive-duty training-reserve component duty~~ under conditions other than dishonorable, and if the Secretary of Veterans Affairs certifies to the Commissioner of Social Security his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1) of this subsection, of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) of this subsection, be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 403 of this title shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Commissioner of Social Security such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Commissioner of Social Security in obtaining such other information as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection.

(9) No payments shall be made under part A of subchapter XVIII with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title, for any month beginning after June 30, 1968,

to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) meets the residency requirements of this paragraph with respect to those benefits only if-

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3)), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of-

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.



(D) An individual entitled to benefits under subsection (h) meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3)) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

***(u) Conviction of subversive activities, etc.***

(1) If any individual is convicted of any offense (committed after August 1, 1956) under-

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII for any such month, there shall not be taken into account-

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1) of this subsection, been imposed with respect to any individual, the Attorney General shall notify the Commissioner of Social Security of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) of this subsection is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

***(v) Waiver of benefits***

(1) Notwithstanding any other provisions of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of

subchapter XVIII, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(2) Notwithstanding any other provision of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII to the extent based on-

(A) his wages for and after the calendar year following the calendar year in which occurs the failure to meet the requirements of section 1402(g) or 3127 of the Internal Revenue Code of 1986 on which the cessation of such exemption is based, and

(B) his self-employment income for and after the taxable year in which occurs such failure.

***(w) Increase in old-age insurance benefit amounts on account of delayed retirement***

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by-

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months-

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(l) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

(B) with respect to which-

(i) such individual was a fully insured individual (as defined in section 414(a) of this title),

(ii) such individual either was not entitled to an old-age insurance benefit or, if so entitled, did not receive benefits pursuant to a request under subsection (z) by such individual that benefits not be paid, and

(iii) such individual was not subject to a penalty imposed under section 1320a-8a of this title.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 403(a) of this title.

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 415(a) of this title as in effect in December 1978, or section 415(a)(1)(C)(i) of this title as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under section 415(a) of this title (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(6) For purposes of paragraph (1)(A), the "applicable percentage" is-

(A) 1/12 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) 1/4 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus 1/24 of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) 2/3 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

***(x) Limitation on payments to prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees***

(1)(A) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month ending with or during or beginning with or during a period of more than 30 days throughout all of which such individual-

(i) is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of a criminal offense,

(ii) is confined by court order in an institution at public expense in connection with-

(I) a verdict or finding that the individual is guilty but insane, with respect to a criminal offense,

(II) a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

(III) a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence),

(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding,

(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(v) is violating a condition of probation or parole imposed under Federal or State law.

(B)(i) For purposes of clause (i) of subparagraph (A), an individual shall not be considered confined in an institution comprising a jail, prison, or other penal institution or correctional facility during any month throughout which such individual is residing outside such institution at no expense (other than the cost of monitoring) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

(ii) For purposes of clauses (ii) and (iii) of subparagraph (A), an individual confined in an institution as described in such clause (ii) shall be treated as remaining so confined until-

(I) he or she is released from the care and supervision of such institution, and

(II) such institution ceases to meet the individual's basic living needs.

(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that-

(I) a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

(II) the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(iv) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that-

(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

(II) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 423 of this title.

(3)(A) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Commissioner of Social Security, upon written request, the name and social security account number of any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section.

(B)(i) The Commissioner shall enter into an agreement under this subparagraph with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or comprising any other institution a purpose of which is to confine individuals as described in paragraph (1)(A)(ii). Under such agreement-

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the first, middle, and last names, Social Security account numbers or taxpayer identification numbers, prison assigned inmate numbers, last known addresses, dates of birth, confinement commencement dates, dates of release or anticipated dates of release, dates of work release, and, to the extent available to the institution, such other identifying information concerning the individuals confined in the institution as the Commissioner may require for the purpose of carrying out paragraph (1) and clause (iv) of this subparagraph and other provisions of this subchapter; and

(II) the Commissioner shall pay to the institution, with respect to information described in subclause (I) concerning each individual who is confined therein as described in paragraph (1)(A), who receives a benefit under this subchapter for the month preceding the first month of such confinement, and whose benefit under this subchapter is determined by the Commissioner to be not payable by reason of confinement based on the information provided by the institution, \$400 (subject to reduction under clause (ii)) if the institution furnishes the information to the Commissioner within 30 days after the date such individual's confinement in such institution begins, or \$200 (subject to reduction under clause (ii)) if the institution furnishes the information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 1382(e)(1)(I) of this title.

(iii) There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, such sums as may be necessary to enable the Commissioner to make payments to institutions required by clause (i)(II).

(iv) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under this paragraph to any agency administering a Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program, for statistical and research activities conducted by Federal and State agencies, and to the Secretary of the Treasury for the purposes of tax administration, debt collection, and identifying, preventing, and recovering improper payments under federally funded programs.

(v)(I) The Commissioner may disclose information received pursuant to this paragraph to any officer, employee, agent, or contractor of the Department of the Treasury whose official duties require such information to assist in the identification, prevention, and recovery of improper payments or in the collection of delinquent debts owed to the United States, including payments certified by the head of an executive, judicial, or legislative paying agency, and payments made to individuals whose eligibility, or continuing eligibility, to participate in a Federal program (including those administered by a State or political subdivision thereof) is being reviewed.

(II) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, the Secretary of the Treasury may compare information disclosed under subclause (I) with any other personally identifiable information derived from a Federal system of records or

similar records maintained by a Federal contractor, a Federal grantee, or an entity administering a Federal program or activity, and may redisclose such comparison of information to any paying or administering agency and to the head of the Federal Bureau of Prisons and the head of any State agency charged with the administration of prisons with respect to inmates whom the Secretary of the Treasury has determined may have been issued, or facilitated in the issuance of, an improper payment.

(III) The comparison of information disclosed under subclause (I) shall not be considered a matching program for purposes of section 552a of title 5.

(C) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this subchapter, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that-

(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A); and

(ii) the location or apprehension of the beneficiary is within the officer's official duties.

***(y) Limitation on payments to aliens***

Notwithstanding any other provision of law, no monthly benefit under this subchapter shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

***(z) Voluntary suspension***

(1)(A) Except as otherwise provided in this subsection, any individual who has attained retirement age (as defined in section 416(l) of this title) and is entitled to old-age insurance benefits may request that payment of such benefits be suspended-

(i) beginning with the month following the month in which such request is received by the Commissioner, and

(ii) ending with the earlier of the month following the month in which a request by the individual for a resumption of such benefits is so received or the month following the month in which the individual attains the age of 70.

(2) An individual may not suspend such benefits under this subsection, and any suspension of such benefits under this subsection shall end, effective with respect to any month in which the individual becomes subject to-

(A) mandatory suspension of such benefits under subsection (x);

(B) termination of such benefits under subsection (n);

(C) a penalty under section 1320a–8a of this title imposing nonpayment of such benefits; or

(D) any other withholding, in whole or in part, of such benefits under any other provision of law that authorizes recovery of a debt by withholding such benefits.

(3) In the case of an individual who requests that such benefits be suspended under this subsection, for any month during the period in which the suspension is in effect-

(A) no retroactive benefits (as defined in subsection (j)(4)(B)(iii)) shall be payable to such individual;

(B) no monthly benefit shall be payable to any other individual on the basis of such individual's wages and self-employment income; and

(C) no monthly benefit shall be payable to such individual on the basis of another individual's wages and self-employment income.



## **Section 210 of the Social Security Act (42 U.S.C. 410)**

### **40 U.S.C. §410. Definitions relating to employment**

For the purposes of this subchapter-

#### ***(a) Employment***

The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(6) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 433 of this title; except that, in the case of service performed after 1950, such term shall not include-

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) Service performed by a child under the age of 18 in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if-

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service-

(A) would be excluded from the term "employment" for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who-

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause-

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 5323(e)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs-

(C) service performed as the President or Vice President of the United States,

(D) service performed-

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service-

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual-

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 2157 of title 50, or the Federal Employees' Retirement System Open Enrollment Act of 1997 <sup>1</sup> to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980 [22 U.S.C. 4071i], to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act [22 U.S.C. 4071 et seq.];

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed-

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of-

(A) service included under an agreement under section 418 of this title,

(B) service which, under subsection (k), constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this subchapter-

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5); except that the provisions of this subparagraph shall not be applicable to service performed-

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed-

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than \$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 411(c)(2)(E) of this title as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term "retirement system" has the meaning given such term by section 418(b)(4) of this title;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1986 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of-

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government-

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], except service which constitutes "employment" under subsection (r);

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which-

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Repealed. [Pub. L. 113-295, div. A, title II, §221\(a\)\(99\)\(C\)\(ii\), Dec. 19, 2014, 128 Stat. 4052](#).

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 1101(a)(15)(H)(ii) of title 8;

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be;

(20) Service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which-

(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration-

(i) which does not exceed \$100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,



but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) Domestic service in a private home of the employer which-

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

***(b) Included and excluded service***

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a).

***(c) American vessel***

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

***(d) American aircraft***

The term "American aircraft" means an aircraft registered under the laws of the United States.

***(e) American employer***

(1) The term "American employer" means an employer which is (A) the United States or any instrumentality thereof, (B) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (C) an individual who is a resident of the United States, (D) a partnership, if two-thirds or more of the partners are residents of the United States, (E) a trust, if

all of the trustees are residents of the United States, or (F) a corporation organized under the laws of the United States or of any State.

(2)(A) If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated as an American employer with respect to such services performed by such employee.

(B) For purposes of this paragraph-

(i) The term "domestically controlled group of entities" means a controlled group of entities the common parent of which is a domestic corporation.

(ii) The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1) of the Internal Revenue Code of 1986, except that-

(I) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(II) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563 of such Code.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3) of such Code) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(C) Subparagraph (A) shall not apply to any services to which paragraph (1) of section 3121(z) of the Internal Revenue Code of 1986 does not apply by reason of paragraph (4) of such section.

***(f) Agricultural labor***

The term "agricultural labor" includes all service performed-

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) <sup>2</sup> of title 12, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business.

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

***(g) Farm***

The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

***(h) State***

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

***(i) United States***

The term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

***(j) Employee***

The term "employee" means-

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person-

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

***(k) Covered transportation service***

(1) Except as provided in paragraph (2) of this subsection, all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if-

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who-

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C) of this paragraph.

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection-

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this subchapter, and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

***(l) Service in uniformed services***

(1) Except as provided in paragraph (4), the term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include-

(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed after December 1987 by an individual as a member of a uniformed service on ~~inactive duty training reserve component duty~~.

(2) The term "active duty" means "active duty" as described in paragraph (21) of section 101 of title 38, except that it shall also include "active duty for training" as described in paragraph (22) of such section.

(3) The term "~~inactive duty training reserve component duty~~" means "~~inactive duty training reserve component duty~~" as described in paragraph (23) of such section 101.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Commissioner of Social Security,<sup>3</sup> with respect to all such service which is so creditable.

(B) In any case where benefits under this subchapter are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Commissioner of Social Security, the Commissioner of Social Security shall certify no further benefits for payment under this subchapter on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Commissioner of Social Security prior to the end of the month in which the Commissioner receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Commissioner of Social Security shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A) of this paragraph, and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

***(m) Member of a uniformed service***

The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the

National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes-

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service-

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act [50 U.S.C. 3801 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

***(n) Crew leader***

The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

***(o) Peace Corps volunteer service***

The term "employment" shall, notwithstanding the provisions of subsection (a), include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.].

***(p) Medicare qualified government employment***

(1) For purposes of sections 426 and 426-1 of this title, the term "medicare qualified government employment" means any service which would constitute "employment" as defined in subsection (a) of this section but for the application of the provisions of-

(A) subsection (a)(5), or

(B) subsection (a)(7), except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed-

(A) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(B) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(D) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training, or

(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than \$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year.

As used in this paragraph, the terms "State" and "political subdivision" have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if-

(A) such service would be excluded from the term "employment" for purposes of this section if paragraph (1)(B) did not apply;

(B) such service is performed by an individual-



(i) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(ii) who is a bona fide employee of that employer on March 31, 1986, and

(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(C) the employment relationship with that employer has not been terminated after March 31, 1986.

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)-

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph (A).

***(q) Treatment of real estate agents and direct sellers***

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

***(r) Service in employ of international organizations by certain transferred Federal employees***

(1) For purposes of this subchapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5 shall constitute "employment" if-

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted "employment" as defined in subsection (a), and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

(2) For purposes of this subsection:

(A) The term "Federal agency" means an agency, as defined in section 3581(1) of title 5.

(B) The term "international organization" has the meaning provided such term by section 3581(3) of title 5.

## [§1631 of the Social Security Act \[scroll down 26 pages\]](#)

### [42 U.S.C. §1383. Procedure for payment of benefits](#)

#### *(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations*

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed \$10).

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)(I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's "representative payee") for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this clause.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II, subchapter VIII, or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(V) obtain information concerning whether such person is a person described in section 1382(e)(4)(A) of this title;

(VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II, subchapter VIII, or this subchapter; and

(VII) determine whether such person has been convicted (and not subsequently exonerated), under Federal or State law, of a felony provided under clause (xv), or of an attempt or a conspiracy to commit such a felony.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section

405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(VI) of this title;

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration;

(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction;

(V) such person is a person described in section 1382(e)(4)(A) of this title;

(VI) except as provided in clause (xvii), such person has previously been convicted (and not subsequently exonerated) as described in clause (ii)(VII); or

(VII) such person's benefits under this title, title II, or title VIII are certified for payment to a representative payee during the period for which the individual's benefits would be certified for payment to another person.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in subparagraph (I));

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c).

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(xiv) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 1382(e)(4)(A) of this title,

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(xv) The felony crimes provided under this clause, whether an offense under State or Federal law, are the following:

(I) Human trafficking, including as prohibited under sections 1590 and 1591 of title 18, United States Code.

(II) False imprisonment, including as prohibited under section 1201 of title 18, United States Code.

(III) Kidnapping, including as prohibited under section 1201 of title 18, United States Code.

(IV) Rape and sexual assault, including as prohibited under sections 2241, 2242, 2243, and 2244 of title 18, United States Code.

(V) First-degree homicide, including as prohibited under section 1111 of title 18, United States Code.

(VI) Robbery, including as prohibited under section 2111 of title 18, United States Code.

(VII) Fraud to obtain access to government assistance, including as prohibited under sections 287, 1001, and 1343 of title 18, United States Code.

(VIII) Fraud by scheme, including as prohibited under section 1343 of title 18, United States Code.

(IX) Theft of government funds or property, including as prohibited under section 641 of title 18, United States Code.

(X) Abuse or neglect, including as prohibited under sections 111, 113, 114, 115, 116, or 117 of title 18, United States Code.

(XI) Forgery, including as prohibited under section 642 and chapter 25 (except section 512) of title 18, United States Code.

(XII) Identity theft or identity fraud, including as prohibited under sections 1028 and 1028A of title 18, United States Code.

The Commissioner of Social Security may promulgate regulations to provide for additional felony crimes under this clause.

(xvi)(I) For the purpose of carrying out the activities required under clause (ii) as part of the investigation under clause (i)(I), the Commissioner may conduct a background check of any individual seeking to serve as a representative payee under this subsection and may disqualify from service as a representative payee any such individual who fails to grant permission for the Commissioner to conduct such a background check.

(II) The Commissioner may revoke certification of payment of benefits under this subsection to any individual serving as a representative payee on or after January 1, 2019 who fails to grant permission for the Commissioner to conduct such a background check.

(xvii)(I) With respect to any person described in subclause (II)—

(aa) clause (ii)(VII) shall not apply; and

(bb) the Commissioner may grant an exemption from the provisions of clause (iii)(VI) if the Commissioner determines that such exemption is in the best interest of the individual entitled to benefits.

(II) A person is described in this subclause if the person—

(aa) is the custodial parent of a minor child for whom the person applies to serve;

(bb) is the custodial spouse of the beneficiary for whom the person applies to serve;

(cc) is the custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, for whom the person applies to serve;

(dd) is the custodial court appointed guardian of the beneficiary for whom the person applies to serve;

(ee) is the custodial grandparent of a minor grandchild for whom the person applies to serve;

(ff) is the parent who was previously representative payee for his or her minor child who has since turned 18 and continues to be eligible for such benefit; or

(gg) received a presidential or gubernatorial pardon for the relevant conviction.”.

(C)(i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.



(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv)(I) Clause (i) shall not apply in any case where the representative payee is—

(aa) a parent, or other individual who is a legal guardian of, a minor child entitled to such payment who primarily resides in the same household;

(bb) a parent of an individual entitled to such payment who is under a disability who primarily resides in the same household; or

(cc) the spouse of the individual entitled to such payment.

(II) the Commissioner of Social Security shall establish and implement procedures as necessary for the Commissioner to determine the eligibility of such parties for the exemption provided in subclause (I). The Commissioner shall prescribe such regulations as may be necessary to determine eligibility for such exemption.

(v) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(vi) In any case in which the person described in clause (i) or (v) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (v), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(D)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) \$25.00 per month (\$50.00 per month in any case in which an individual is described in subparagraph (A)(ii)(II)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner of Social

Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of \$1.00 shall be rounded to the nearest multiple of \$1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(I) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) or 1007 of this title concurrently to 5 or more individuals; and

(II) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from subclause (II) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(E) Restitution.—In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. In any case in which a representative payee that—

(i) is not an individual (regardless of whether it is a "qualified organization" within the meaning of subparagraph (D)(ii)); or

(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II, subchapter VIII, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F)(i)(I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

(II) Benefits described in this subclause are past-due monthly benefits under this subchapter (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g) and payment of attorney fees under subsection (d)(2)(B)) that exceeds the product of—

(aa) 6, and

(bb) the maximum monthly benefit payable under this subchapter to an eligible individual.

(ii)(I) A representative payee shall use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II).

(II) An allowable expense described in this subclause is an expense for—

(aa) education or job skills training;

(bb) personal needs assistance;

(cc) special equipment;

(dd) housing modification;

(ee) medical treatment;

(ff) therapy or rehabilitation; or

(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and

(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied.

(IV) This clause shall continue to apply to funds in the account after the child has reached age 18, regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this subchapter to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66).

(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).

(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II or subchapter VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 405(j) of this title, or section 1007 of this title in any case in which—

(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 405(j)(10) of this title); or

(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

(I) the number of the reviews;

(II) the results of such reviews;

(III) the number of cases in which the representative payee was changed and why;

(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(V) the number of cases discovered in which there was a misuse of funds;

(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(VIII) such other information as the Commissioner deems appropriate.

(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(I) For purposes of this paragraph, the term "certified community-based nonprofit social service agency" means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the

State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits for the month following the date the application is filed and who is faced with financial emergency a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility, which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) that an individual is entitled to benefits based on disability or blindness under this subchapter and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this subchapter pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this subchapter, unless payment of such benefits was fraudulently obtained.

(9) Benefits under this subchapter shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.

(10)(A) If an individual is eligible for past-due monthly benefits under this subchapter in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g) and payment of attorney fees under subsection (d)(2)(B)) equals or exceeds the product of—

(i) 3, and

(ii) the maximum monthly benefit payable under this subchapter to an eligible individual (or, if appropriate, to an eligible individual and eligible spouse),

then the payment of such past-due benefits (after any such reimbursement to a State and payment of attorney fees under subsection (d)(2)(B)) shall be made in installments as provided in subparagraph (B).

(B)(i) The payment of past-due benefits subject to this subparagraph shall be made in not to exceed 3 installments that are made at 6-month intervals.

(ii) Except as provided in clause (iii), the amount of each of the first and second installments may not exceed an amount equal to the product of clauses (i) and (ii) of subparagraph (A).

(iii) In the case of an individual who has—

(I) outstanding debt attributable to—

(aa) food,

(bb) clothing,

(cc) shelter, or

(dd) medically necessary services, supplies or equipment, or medicine; or

(II) current expenses or expenses anticipated in the near term attributable to—

(aa) medically necessary services, supplies or equipment, or medicine, or

(bb) the purchase of a home, and

such debt or expenses are not subject to reimbursement by a public assistance program, the Secretary under subchapter XVIII, a State plan approved under subchapter XIX, or any private



entity legally liable to provide payment pursuant to an insurance policy, pre-paid plan, or other arrangement, the limitation specified in clause (ii) may be exceeded by an amount equal to the total of such debt and expenses.

(C) This paragraph shall not apply to any individual who, at the time of the Commissioner's determination that such individual is eligible for the payment of past-due monthly benefits under this subchapter—

(i) is afflicted with a medically determinable impairment that is expected to result in death within 12 months; or

(ii) is ineligible for benefits under this subchapter and the Commissioner determines that such individual is likely to remain ineligible for the next 12 months.

(D) For purposes of this paragraph, the term "benefits under this subchapter" includes supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

*(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Commissioner*

(1)(A) Whenever the Commissioner of Social Security finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 402(i) of this title) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

(B) The Commissioner of Social Security (i) shall make such provision as the Commissioner finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (ii) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving monthly benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), in amounts

which in the aggregate do not exceed (for any month) the lesser of (I) the amount of his or their benefit under this subchapter for that month or (II) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding payments under subchapter II when recovery is made from subchapter II payments pursuant to section 1320b-17 of this title and excluding income excluded pursuant to section 1382a(b) of this title), and in the case of an individual or eligible spouse to whom a lump sum is payable under this subchapter (including under section 1382e(a) of this title or under an agreement entered into under section 212(a) of Public Law 93-66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or the lump sum payment, unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Commissioner of Social Security determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (ii) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (i) of such sentence. In making for purposes of this subparagraph a determination of whether an adjustment or recovery would defeat the purpose of this subchapter, the Commissioner of Social Security shall require an individual to provide authorization for the Commissioner to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act [12 U.S.C. 3415]) from any financial institution (within the meaning of section 1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act [12 U.S.C. 3401(2)]) held by the institution with respect to such individual whenever the Commissioner determines that the record is needed in connection with a determination with respect to such adjustment or recovery, under the terms and conditions established under subsection (e)(1)(B).

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this subchapter (including any State supplementation payment paid by the Commissioner of Social Security) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(3)(A) When any payment of more than the correct amount is made on behalf of an individual who is a represented minor beneficiary for a month in which such individual is in foster care under the responsibility of a State and the State is the representative payee of such individual, the State shall be liable for the repayment of the overpayment, and there shall be no adjustment of payments to, or recovery by the United States from, such individual.

(B) For purposes of this paragraph, the term “represented minor beneficiary”, with respect to an individual for a month, means a child (as defined for purposes of section 475(8) entitled to benefits under this title for such month whose benefits are certified for payment to a representative payee.

(4) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1382(a) of this title by \$50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Commissioner of Social Security finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(5)(A) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(B) For purposes of subparagraph (A), the term "delinquent amount" means an amount—

(i) in excess of the correct amount of payment under this subchapter;

(ii) paid to a person after such person has attained 18 years of age; and

(iii) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(6) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II, see section 1320a–6 of this title.

(7) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(8)(A) In the case of payment of less than the correct amount of benefits to or on behalf of any individual, no payment shall be made to such individual pursuant to this subsection during any period for which such individual—

(i) is not an eligible individual or eligible spouse under section 1382(e)(1) of this title because such individual is an inmate of a public institution that is a jail, prison, or other penal

institution or correctional facility the purpose of which is to confine individuals as described in clause (ii) or (iii) of section 402(x)(1)(A) of this title, or

(ii) is not an eligible individual or eligible spouse under section 1382(e)(4) of this title,

until such person is no longer considered an ineligible individual or ineligible spouse under section 1382(e)(1) or 1382(e)(4) of this title.

(B) Nothing in subparagraph (A) shall be construed to limit the Commissioner's authority to withhold amounts, make adjustments, or recover amounts due under this subchapter, subchapter II, or subchapter VIII that would be deducted from a payment that would otherwise be payable to such individual but for such subparagraph.

*(c) Hearing to determine eligibility or amount of benefits; subsequent application; time within which to request hearing; time for determinations of Commissioner pursuant to hearing; judicial review*

(1)(A) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner's findings of fact and such decision. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in subparagraph (A), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse

determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(ii) In any notice of an adverse determination with respect to which a review may be requested under subparagraph (A), the Commissioner of Social Security shall describe in clear and specific language the effect on possible eligibility to receive payments under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Commissioner of Social Security after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner's final determinations under section 405 of this title.

*(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations*

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II.

(2)(A) The provisions of section 406 of this title (other than subsections (a)(4) and (d) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II, except that such section shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2) <sup>1</sup> the phrase "(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II made pursuant to section 1320a-6(a) of this title)" for the parenthetical phrase contained therein;

(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase "paragraph (7)(A) or (8)(A) of section 1383(a) of this title or the requirements of due process of law" for the phrase "subsection (g) or (h) of section 423 of this title";

(iii) by substituting, in subsection (a)(2)(C)(i), the phrase "under subchapter II" for the phrase "under subchapter XVI";

(iv) by substituting, in subsection (b)(1)(A), the phrase "pay the amount of such fee" for the phrase "certify the amount of such fee for payment" and by striking, in subsection (b)(1)(A), the phrase "or certified for payment";

(v) by substituting, in subsection (b)(1)(B)(ii), the phrase "deemed to be such amounts as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II made pursuant to section 1320a-6(a) of this title" for the phrase "determined before any applicable reduction under section 1320a-6(a) of this title"; <sup>2</sup> and

(vi) by substituting, in subsection (e)(1)—

(I) "subparagraphs (B) and (C) of section 1383(d)(2) of this title" for "the preceding provisions of this section"; and

(II) "subchapter XVI" for "this subchapter".

(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under subsection (g) and reduced by the amount of any reduction in benefits under this subchapter or subchapter II pursuant to section 1320a-6(a) of this title), or

(ii) the amount of past-due benefits available after any applicable reductions under subsection (g) and section 1320a-6(a) of this title.

(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed \$75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003<sup>3</sup> take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.

(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(D) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

*(e) Administrative requirements prescribed by Commissioner; criteria; reduction of benefits to individual for noncompliance with requirements; payment to homeless*

(1)(A) The Commissioner of Social Security shall, subject to subparagraph (B) and subsection (j), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B)(i) The requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to section 6103(l)(7) of the Internal Revenue Code of 1986, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(l)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

(ii)(I) The Commissioner of Social Security may require each applicant for, or recipient of, benefits under this subchapter to provide authorization by the applicant or recipient (or by any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient for such benefits) for the Commissioner to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act [12 U.S.C. 3415]) from any financial institution (within the meaning of section

1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act [12 U.S.C. 3401(2)]) held by the institution with respect to the applicant or recipient (or any such other person) whenever the Commissioner determines the record is needed in connection with a determination with respect to such eligibility or the amount of such benefits.

(II) Notwithstanding section 1104(a)(1) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(1)], an authorization provided by an applicant or recipient (or any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient) pursuant to subclause (I) of this clause shall remain effective until the earliest of—

(aa) the rendering of a final adverse decision on the applicant's application for eligibility for benefits under this subchapter;

(bb) the cessation of the recipient's eligibility for benefits under this subchapter;  
or

(cc) the express revocation by the applicant or recipient (or such other person referred to in subclause (I)) of the authorization, in a written notification to the Commissioner.

(III)(aa) An authorization obtained by the Commissioner of Social Security pursuant to this clause shall be considered to meet the requirements of the Right to Financial Privacy Act [12 U.S.C. 3401 et seq.] for purposes of section 1103(a) of such Act [12 U.S.C. 3403(a)], and need not be furnished to the financial institution, notwithstanding section 1104(a) of such Act [12 U.S.C. 3404(a)].

(bb) The certification requirements of section 1103(b) of the Right to Financial Privacy Act [12 U.S.C. 3403(b)] shall not apply to requests by the Commissioner of Social Security pursuant to an authorization provided under this clause.

(cc) A request by the Commissioner pursuant to an authorization provided under this clause is deemed to meet the requirements of section 1104(a)(3) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(3)] and the flush language of section 1102 of such Act [12 U.S.C. 3402].

(IV) The Commissioner shall inform any person who provides authorization pursuant to this clause of the duration and scope of the authorization.

(V) If an applicant for, or recipient of, benefits under this subchapter (or any such other person referred to in subclause (I)) refuses to provide, or revokes, any authorization made by the applicant or recipient for the Commissioner of Social Security to obtain from any financial institution any financial record, the Commissioner may, on that basis, determine that the applicant or recipient is ineligible for benefits under this subchapter, determine that adjustment or recovery on account of an overpayment with respect to the applicant or recipient would not defeat the purpose of this subchapter, or both.



(iii)(I) The Commissioner of Social Security may require each applicant for, or recipient of, benefits under this subchapter to provide authorization by the applicant, recipient or legal guardian (or by any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient for such benefits) for the Commissioner to obtain from any payroll data provider (as defined in section 1320e-3(c)(1) of this title) any record held by the payroll data provider with respect to the applicant or recipient (or any such other person) whenever the Commissioner determines the record is needed in connection with a determination of initial or ongoing eligibility or the amount of such benefits.

(II) An authorization provided by an applicant, recipient or legal guardian (or any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient) under this clause shall remain effective until the earliest of—

(aa) the rendering of a final adverse decision on the applicant's application for eligibility for benefits under this subchapter;

(bb) the cessation of the recipient's eligibility for benefits under this subchapter;

(cc) the express revocation by the applicant, or recipient (or such other person referred to in subclause (I)) of the authorization, in a written notification to the Commissioner; or

(dd) the termination of the basis upon which the Commissioner considers another person's income and resources available to the applicant or recipient.

(III) The Commissioner of Social Security is not required to furnish any authorization obtained pursuant to this clause to the payroll data provider.

(IV) The Commissioner shall inform any person who provides authorization pursuant to this clause of the duration and scope of the authorization.

(V) If an applicant for, or recipient of, benefits under this subchapter (or any such other person referred to in subclause (I)) refuses to provide, or revokes, any authorization required by subclause (I), paragraph (2)(B) and paragraph (10) shall not apply to such applicant or recipient beginning with the first day of the first month in which he or she refuses or revokes such authorization.

(C) For purposes of making determinations under section 1382(e) of this title, the requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) of this paragraph shall require each administrator of a nursing home, extended care facility, or intermediate care facility, within 2 weeks after the admission of any eligible individual or eligible spouse receiving benefits under this subchapter, to transmit to the Commissioner a report of the admission.

(2)(A) In the case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Commissioner of Social Security under paragraph (1), or delay by any individual in

submitting a report as so required, the Commissioner of Social Security (in addition to taking any other action the Commissioner may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by—

- (i) \$25 in the case of the first such failure or delay,
- (ii) \$50 in the case of the second such failure or delay, and
- (iii) \$100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

(B) For purposes of subparagraph (A), the Commissioner of Social Security shall find that good cause exists for the failure of, or delay by, an individual in submitting a report of an event or change in circumstances relevant to eligibility for or amount of benefits under this subchapter in any case where—

(i) the individual (or another person referred to in paragraph (1)(B)(iii)(I)) has provided authorization to the Commissioner to access payroll data records related to the individual; and

(ii) the event or change in circumstance is a change in the individual's employer.

(3) The Commissioner of Social Security shall provide a method of making payments under this subchapter to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(4) A translation into English by a third party of a statement made in a foreign language by an applicant for or recipient of benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(6) In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(A) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(B) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(7)(A)(i) The Commissioner of Social Security shall immediately redetermine the eligibility of an individual for benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(ii) When redetermining the eligibility, or making an initial determination of eligibility, of an individual for benefits under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(B) For purposes of subparagraph (A), similar fault is involved with respect to a determination if—

(i) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(ii) information that is material to the determination is knowingly concealed.

(C) If, after redetermining the eligibility of an individual for benefits under this subchapter, the Commissioner of Social Security determines that there is insufficient evidence to support such eligibility, the Commissioner of Social Security may terminate such eligibility and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(8)(A) The Commissioner of Social Security shall request the Immigration and Naturalization Service or the Centers for Disease Control to provide the Commissioner of Social Security with whatever medical information, identification information, and employment history either such entity has with respect to any alien who has applied for benefits under this subchapter to the extent that the information is relevant to any determination relating to eligibility for such benefits under this subchapter.

(B) Subparagraph (A) shall not be construed to prevent the Commissioner of Social Security from adjudicating the case before receiving such information.

(9) Notwithstanding any other provision of law, the Commissioner shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this paragraph referred to as the "Service"), furnish the Service with the name and address of, and other identifying information on, any individual who the Commissioner knows is not lawfully present in the United States, and shall ensure that each agreement entered into under section 1382e(a) of this title with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is not lawfully present in the United States.

(10) An individual who has authorized the Commissioner of Social Security to obtain records from a payroll data provider under paragraph (1)(B)(iii) (or on whose behalf another person described in subclause (I) of such paragraph has provided such authorization) shall not be subject to a penalty under section 1320a-8a of this title for any omission or error with respect to such individual's wages as reported by the payroll data provider.

*(f) Furnishing of information by Federal agencies*

The head of any Federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

*(g) Reimbursement to States for interim assistance payments*

(1) Notwithstanding subsection (d)(1) and subsection (b) as it relates to the payment of less than the correct amount of benefits, the Commissioner of Social Security may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Commissioner of Social Security and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93-66 which the Commissioner of Social Security makes on behalf of a State (or political subdivision thereof), that the Commissioner of Social Security has determined to be due with respect to the individual at the time the Commissioner of Social Security makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3). A cash advance made pursuant to subsection (a)(4)(A) shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs (A) during the period, beginning with the month following the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Commissioner of Social Security which shall provide—

(A) that if the Commissioner of Social Security makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) shall not be applicable to any disagreement concerning payment by the Commissioner of Social Security to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

*(h) Payment of certain travel expenses*

The Commissioner of Social Security shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1382c(e) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

*(i) Unnegotiated checks; notice to Commissioner; payment to States; notice to States; investigation of payees*

(1) The Secretary of the Treasury shall, on a monthly basis, notify the Commissioner of Social Security of all benefit checks issued under this subchapter which include amounts representing State supplementary payments as described in paragraph (2) and which have not

been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Commissioner of Social Security shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1382e(a) of this title and under section 212(b) of Public Law 93–66 which is included in all such benefit checks not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Commissioner of Social Security, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Commissioner of Social Security shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

*(j) Application and review requirements for certain individuals*

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months (or 24 consecutive months, in the case of such an individual whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to ~~section 12301(d) or 12302 of title 10, United States Code, or section 502(f) of title 32, United States Code~~, section 12341 or 12342 of title 10, United States Code, or full-time National Guard duty pursuant to section 541 or 542 of title 32, United States Code),

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section, or has filed a request for reinstatement of eligibility under subsection (p)(2) and been determined to be eligible for reinstatement.

(2)(A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible (other than pursuant to a request for reinstatement under subsection (p)) for benefits under section 1382 or 1382h(a) of this title

for a month that follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and section 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

***(k) Notifications to applicants and recipients***

The Commissioner of Social Security shall notify an individual receiving benefits under section 1382 of this title on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1382h of this title—

(1) at the time of the initial award of benefits to the individual under section 1382 of this title (if the individual has attained the age of 18 at the time of such initial award), and

(2) at the earliest time after an initial award of benefits to an individual under section 1382 of this title that the individual's earned income for a month (other than income excluded pursuant to section 1382a(b) of this title) is \$200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of \$200 or more per month.

***(l) Special notice to blind individuals with respect to hearings and other official actions***

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of blindness is entitled (under subsection (c) or otherwise) to receive

notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this subchapter on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

*(m) Pre-release procedures for institutionalized persons*

The Commissioner of Social Security shall develop a system under which an individual can apply for supplemental security income benefits under this subchapter prior to the discharge or release of the individual from a public institution.

*(n) Concurrent SSI and supplemental nutrition assistance applications by institutionalized individuals*

The Commissioner of Social Security and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply at the same time for participation in the supplemental nutrition assistance program authorized under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

*(o) Notice requirements*

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.



*(p) Reinstatement of eligibility on the basis of blindness or disability*

(1)(A) Eligibility for benefits under this subchapter shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of eligibility shall be in accordance with the terms of this subsection.

(B) An individual is described in this subparagraph if—

(i) prior to the month in which the individual files a request for reinstatement—

(I) the individual was eligible for benefits under this subchapter on the basis of blindness or disability pursuant to an application filed therefor; and

(II) the individual thereafter was ineligible for such benefits due to earned income (or earned and unearned income) for a period of 12 or more consecutive months;

(ii) the individual is blind or disabled and the physical or mental impairment that is the basis for the finding of blindness or disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of blindness or disability that gave rise to the eligibility described in clause (i);

(iii) the individual's blindness or disability renders the individual unable to perform substantial gainful activity; and

(iv) the individual satisfies the nonmedical requirements for eligibility for benefits under this subchapter.

(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was eligible for a benefit under this subchapter (including section 1382h of this title) prior to the period of ineligibility described in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) through (iv) of paragraph (1)(B).

(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not eligible for reinstated benefits under this subsection.

(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of section 1382c(a)(4) of this title shall apply.

(4)(A) Eligibility for benefits reinstated under this subsection shall commence with the benefit payable for the month following the month in which a request for reinstatement is filed.

(B)(i) Subject to clause (ii), the amount of the benefit payable for any month pursuant to the reinstatement of eligibility under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) The benefit under this subchapter payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) Except as otherwise provided in this subsection, eligibility for benefits under this subchapter reinstated pursuant to a request filed under paragraph (2) shall be subject to the same terms and conditions as eligibility established pursuant to an application filed therefor.

(5) Whenever an individual's eligibility for benefits under this subchapter is reinstated under this subsection, eligibility for such benefits shall be reinstated with respect to the individual's spouse if such spouse was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements for eligibility for such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated eligibility of the spouse to the same extent that they apply to the reinstated eligibility of such individual.

(6) An individual to whom benefits are payable under this subchapter pursuant to a reinstatement of eligibility under this subsection for twenty-four months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) to be eligible for such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be eligible for provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under paragraph (1) or (3) of subsection (c).

(B)(i) Except as otherwise provided in clause (ii), the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual under this subchapter with the same kind and amount of income.

(ii) If the individual has a spouse who was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements of section 1382c(b) of this title except requirements related to the filing of an application, the amount of a provisional benefit for a month shall equal the amount of the

monthly benefit that would be payable to an eligible individual and eligible spouse under this subchapter with the same kind and amount of income.

(C)(i) Provisional benefits shall begin with the month following the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual's eligibility for reinstated benefits;

(II) the fifth month following the month for which provisional benefits are first payable under clause (i); or

(III) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not eligible for reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

(8) For purposes of this subsection other than paragraph (7), the term "benefits under this subchapter" includes State supplementary payments made pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66.

# **TITLE 50**

## **War and National Defense**

## §6 of the Military Selective Service Act

### 50 U.S.C. §3806. Deferments and exemptions from training and service

#### *(a) In general*

(1) Commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Environmental Science Services Administration; <sup>1</sup> cadets, United States Military Academy; midshipmen, United States Naval Academy; cadets, United States Air Force Academy; cadets, United States Coast Guard Academy; midshipmen, Merchant Marine Reserve, members of the United States Navy Reserve; students enrolled in an officer procurement program at military colleges the curriculum of which is approved by the Secretary of Defense; members of the reserve components of the Armed Forces and the Coast Guard, while on active duty; and foreign diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls and other consular agents of foreign countries who are not citizens of the United States, and members of their families, and persons in other categories to be specified by the President who are not citizens of the United States, shall not be required to be registered under section 3802 of this title and shall be relieved from liability for training and service under section 3803 of this title, except that aliens admitted for permanent residence in the United States shall not be so exempted: *Provided*, That any alien lawfully admitted for permanent residence as defined in paragraph (20) of section 1101(a) of title 8 and who by reason of occupational status is subject to adjustment to nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of such section 1101(a) but who executes a waiver in accordance with section 1257(b) of title 8 of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status, shall be subject to registration under section 3802 of this title, but shall be deferred from induction for training and service for so long as such occupational status continues. Any person who subsequent to June 24, 1948, serves on active duty for a period of not less than twelve months in the armed forces of a nation with which the United States is associated in mutual defense activities as defined by the President, may be exempted from training and service, but not from registration, in accordance with regulations prescribed by the President, except that no such exemption shall be granted to any person who is a national of a country which does not grant reciprocal privileges to citizens of the United States: *Provided*, That any active duty performed prior to June 24, 1948, by a person in the armed forces of a country allied with the United States during World War II and with which the United States is associated in such mutual defense activities, shall be credited in the computation of such twelve-month period: *Provided further*, That any person who is in a medical, dental, or allied specialist category not otherwise deferred or exempted under this subsection shall be liable for registration and training and service until the thirty-fifth anniversary of the date of his birth.

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service while on active duty and assigned to staff the various offices and bureaus of the Public Health Service, including the National Institutes of Health, or assigned to the Coast Guard, the Bureau of Prisons, Department of Justice, the Environmental Protection Agency, or the Environmental Science Services Administration <sup>1</sup> or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.], shall not be required to be registered under section 3802 of this title and

shall be relieved from liability for training and service under section 3803 of this title. Notwithstanding the preceding sentence, commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who, prior to June 30, 1967, had been detailed or assigned to duty other than that specified in the preceding sentence shall not be required to be registered under section 3802 of this title and shall be relieved from liability for training and service under section 3803 of this title.

*(b) Persons who served during World War II*

(1) No person who served honorably on active duty between September 16, 1940, and June 24, 1948, for a period of twelve months or more, or between December 7, 1941, and September 2, 1945, for a period in excess of ninety days, in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, the Public Health Service, or the armed forces of any country allied with the United States in World War II prior to September 2, 1945, shall be liable for induction for training and service under this chapter, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948.

(2) No person who served honorably on active duty between September 16, 1940, and June 24, 1948, for a period of ninety days or more but less than twelve months in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, the Public Health Service, or the armed forces of any country allied with the United States in World War II prior to September 2, 1945, shall be liable for induction for training and service under this chapter, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948, if—

(A) the local board determines that he is regularly enlisted or commissioned in any organized unit of a reserve component of the armed force in which he served, provided such unit is reasonably accessible to such person without unduly interrupting his normal pursuits and activities (including attendance at a college or university in which he is regularly enrolled), or in a reserve component (other than in an organized unit) of such armed force in any case in which enlistment or commission in an organized unit of a reserve component of such armed force is not available to him; or

(B) the local board determines that enlistment or commission in a reserve component of such armed force is not available to him or that he has voluntarily enlisted or accepted appointment in an organized unit of a reserve component of an armed force other than the armed force in which he served.

Nothing in this paragraph shall be deemed to be applicable to any person to whom paragraph (1) of this subsection is applicable.

(3) Except as provided in section 3805(a) of this title, and notwithstanding any other provision of this Act, no person who (A) has served honorably on active duty after September 16, 1940, for a period of not less than one year in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard, or (B) subsequent to September 16, 1940, was discharged for the convenience of the Government after having served honorably on active duty for a period of not less than six months in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard, or (C) has served for a period of not less than twenty-four months (i) as a commissioned officer in the Public Health Service or (ii) as a commissioned officer in the Coast and Geodetic Survey,

shall be liable for induction for training and service under this Act, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948.

(4) No person who is honorably discharged upon the completion of an enlistment pursuant to section 3803(c) of this title shall be liable for induction for training and service under this chapter, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948.

(5) For the purposes of computation of the periods of active duty referred to in paragraphs (1), (2), or (3) of this subsection, no credit shall be allowed for—

(A) periods of active duty training performed as a member of a reserve component pursuant to an order or call to active duty solely for training purposes;

(B) periods of active duty in which the service consisted solely of training under the Army specialized training program, the Army Air Force college training program, or any similar program under the jurisdiction of the Navy, Marine Corps, or Coast Guard;

(C) periods of active duty as a cadet at the United States Military Academy or United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, or in a preparatory school after nomination as a principal, alternate, or candidate for admission to any of such academies; or

(D) periods of active duty in any of the armed forces while being processed for entry into or separation from any educational program or institution referred to in paragraphs (B) or (C);

*(c) Persons who were members of Ready Reserve of any Reserve component of the Armed Forces, Army National Guard, or Air National Guard on February 1, 1951, and persons who enlist in Ready Reserve of any Reserve component of the Armed Forces, Army National Guard, or Air National Guard*

(1) Persons who, on February 1, 1951, were members of organized units of the federally recognized National Guard, the federally recognized Air National Guard, the Officers' Reserve Corps, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, the Coast Guard Reserve, or the Public Health Service Reserve, shall, so long as they continue to be such members and satisfactorily participate in scheduled drills and training periods required training pursuant to sections 12352(c) and 12353(a) of title 10, United States Code, or sections 552(a) and 553(a) of title 32, United States Code, as prescribed by the Secretary of Defense, be exempt from training and service by induction under the provisions of this chapter, but shall not be exempt from registration unless on active duty.

(2)(A) Any person, other than a person referred to in subsection (d) of this section, who—

(i) prior to the issuance of orders for him to report for induction; or

(ii) prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any organized unit of the

National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction under this chapter; or

(iii) prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction under this chapter;

enlists or accepts appointment, before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard, shall be deferred from training and service under this chapter so long as he serves satisfactorily as a member of an organized unit of such Reserve or National Guard in accordance with section 10147 of title 10 or section 502 of title 32 the training prescribed in sections 12352(c) and 12353(a) of title 10, United States Code, or sections 552(a) and 553(a) of title 32, United States Code, as the case may be, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense. Enlistments or appointments under subparagraphs (ii) and (iii) of this clause may be accepted notwithstanding the provisions of section 3813(d) of this title. Notwithstanding the provisions of subsection (h) of this section, no person deferred under this clause who has completed six years of such satisfactory service as a member of the Ready Reserve or National Guard, and who during such service has performed active duty for training with an armed force for not less than twelve consecutive weeks, shall be liable for induction for training and service under this Act, except after a declaration of war or national emergency made by the Congress after August 9, 1955. In no event shall the number of enlistments or appointments made under authority of this paragraph in any fiscal year in any Reserve component of the Armed Forces or in the Army National Guard or the Air National Guard cause the personnel strength of such Reserve component or the Army National Guard or the Air National Guard, as the case may be, to exceed the personnel strength for which funds have been made available by the Congress for such fiscal year.

(B) A person who, under any provision of law, is exempt or deferred from training and service under this Act by reason of membership in a reserve component, the Army National Guard, or the Air National Guard, as the case may be, shall, if he becomes a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be, continue to be exempt or deferred to the same extent as if he had not become a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be, so long as he continues to serve satisfactorily.

(C) Except as provided in subsection (b) and the provisions of this subsection, no person who becomes a member of a reserve component after February 1, 1951, shall thereby be exempt from registration or training and service by induction under the provisions of this Act.

(D) Notwithstanding any other provision of this Act, the President, under such rules and regulations as he may prescribe, may provide that any person enlisted or appointed after October 4, 1961, in the Ready Reserve of any reserve component of the Armed Forces (other than under section 12103 of title 10), the Army National Guard, or the Air National Guard, prior to attaining age of twenty-six years, or any person enlisted or appointed in the Army National Guard or the



Air National Guard or enlisted in the Ready Reserve of any reserve component prior to attaining the age of eighteen years and six months and deferred under the prior provisions of this paragraph as amended by the Act of October 4, 1961, Public Law 87-378 (75 Stat. 807), or under section 1013 of this title, who fails to serve satisfactorily during his obligated period of service as a member of such Ready Reserve or National Guard or the Ready Reserve of another reserve component or the National Guard of which he becomes a member, may be selected for training and service and inducted into the armed force of which such reserve component is a part, prior to the selection and induction of other persons liable therefor.

*(d) Persons who enroll in Armed Forces Officers' Candidate Schools*

(1) Within such numbers as may be prescribed by the Secretary of Defense, any person who (A) has been or may hereafter be selected for enrollment or continuance in the senior division, Reserve Officers' Training Corps, or the Air Reserve Officers' Training Corps, or the Naval Reserve Officers' Training Corps, or the naval and Marine Corps officer candidate training program established by the Act of August 13, 1946 (60 Stat. 1057), as amended, or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or appointed an ensign, United States Navy Reserve, while undergoing professional training; (B) agrees, in writing, to accept a commission, if tendered, and to serve, subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Homeland Security with respect to the United States Coast Guard), not less than two years on active duty after receipt of a commission; and (C) agrees to remain a member of a regular or reserve component until the eighth anniversary of the receipt of a commission in accordance with his obligation under the first sentence of section 651 of title 10, or until the sixth anniversary of the receipt of a commission in accordance with his obligation under the second sentence of section 651 of title 10, shall be deferred from induction under this chapter until after completion or termination of the course of instruction and so long as he continues in a regular or reserve status upon being commissioned, but shall not be exempt from registration. Such persons, except those persons who have previously completed an initial period of military training or an equivalent period of active military training and service, shall be required while enrolled in such programs to complete a period of training equal (as determined under regulations approved by the Secretary of Defense or the Secretary of Homeland Security with respect to the United States Coast Guard) in duration and type of training to an initial period of military training. There shall be added to the obligated active commissioned service of any person who has agreed to perform such obligatory service in return for financial assistance while attending a civilian college under any such training program a period of not to exceed one year. Except as provided in paragraph (5), upon the successful completion by any person of the required course of instruction under any program listed in clause (A) of the first sentence of this paragraph, such person shall be tendered a commission in the appropriate reserve component of the Armed Forces if he is otherwise qualified for such appointment. If, at the time of, or subsequent to, such appointment, the armed force in which such person is commissioned does not require his service on active duty in fulfillment of the obligation undertaken by him in compliance with clause (B) of the first sentence of this paragraph, such person shall be ordered to active duty for training with such armed force in the grade in which he was commissioned for a period of active duty for training of not more than six months (not including duty performed under ~~section 10147 of title 10, United States Code~~ section 12352(c) of title 10, United States Code, or section 552(a) of title

32, United States Code), as determined by the Secretary of the military department concerned to be necessary to qualify such person for a mobilization assignment. Upon being commissioned and assigned to a reserve component, such person shall be required to serve therein, or in a reserve component of any other armed force in which he is later appointed, until the eighth anniversary of the receipt of such commission pursuant to the provisions of this section. So long as such person performs satisfactory service, as determined under regulations prescribed by the Secretary of Defense, he shall be deferred from training and service under the provisions of this Act. If such person fails to perform satisfactory service, and such failure is not excused under regulations prescribed by the Secretary of Defense, his commission may be revoked by the Secretary of the military department concerned.

(2) In addition to the training programs enumerated in paragraph (1) of this subsection, and under such regulations as the Secretary of Defense (or the Secretary of the Treasury with respect to the United States Coast Guard) may approve, the Secretaries of the military departments and the Secretary of the Treasury are authorized to establish officer candidate programs leading to the commissioning of persons on active duty. Any person heretofore or hereafter enlisted in the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve who thereafter has been or may be commissioned therein upon graduation from an Officers' Candidate School of such Armed Force shall, if not ordered to active duty as a commissioned officer, be deferred from training and service under the provisions of this Act so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned. If such person fails to perform satisfactory service in such unit, and such failure is not excused under such regulations, his commission may be revoked by such Secretary.

(3) Nothing in this subsection shall be deemed to preclude the President from providing, by regulations prescribed under subsection (h) of this section, for the deferment from training and service of any category or categories of students for such periods of time as he may deem appropriate.

(4) Omitted

(5) Notwithstanding paragraph (1), upon the successful completion by any person of the required course of instruction under any Reserve Officers' Training Corps program listed in clause (A) of the first sentence of paragraph (1) and subject to the approval of the Secretary of the military department having jurisdiction over him, such person may, without being relieved of his obligation under that sentence, be tendered, and accept, a commission in the National Oceanic and Atmospheric Administration instead of a commission in the appropriate reserve component of the Armed Forces. If he does not serve on active duty as a commissioned officer of the National Oceanic and Atmospheric Administration for at least six years, he shall, upon discharge therefrom, be tendered a commission in the appropriate reserve component of the Armed Forces, if he is otherwise qualified for such appointment, and, in fulfillment of his obligation under the first sentence of paragraph (1), remain a member of a reserve component until the sixth anniversary of the receipt of his commission in the National Oceanic and Atmospheric Administration. While a member of a reserve component he may, in addition to as otherwise provided by law, be ordered to active duty for such period that, when added to the

period he served on active duty as a commissioned officer of the National Oceanic and Atmospheric Administration, equals two years.

*(e) Aviation cadet applicants*

Fully qualified and accepted aviation cadet applicants of the Army, Navy, or Air Force who have signed an agreement of service shall, in such numbers as may be designated by the Secretary of Defense, be deferred, during the period covered by the agreement but not to exceed four months, from induction for training and service under this chapter but shall not be exempt from registration.

*(f) Elected officials*

The Vice President of the United States; the governors of the several States, Territories, and possessions, and all other officials chosen by the voters of the entire State, Territory, or possession; members of the legislative bodies of the United States and of the several States, Territories, and possessions; judges of the courts of record of the United States and of the several States, Territories, possessions, and the District of Columbia shall, while holding such offices, be deferred from training and service under this chapter in the armed forces of the United States.

*(g) Ministers of religion and students preparing for ministry*

(1) Regular or duly ordained ministers of religion, as defined in this chapter, shall be exempt from training and service, but not from registration, under this chapter.

(2) Students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been preenrolled, shall be deferred from training and service, but not from registration, under this chapter. Persons who are or may be deferred under the provisions of this subsection shall remain liable for training and service in the Armed Forces under the provisions of section 3803(a) of this title until the thirty-fifth anniversary of the date of their birth. The foregoing sentence shall not be construed to prevent the exemption or continued deferment of such persons if otherwise exempted or deferrable under any other provision of this Act.

*(h) Persons employed in occupations necessary to national health, safety, or interest*

Except as otherwise provided in this subsection the President is authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces of any or all categories of persons whose employment in industry, agriculture, or other occupations or employment, or whose continued service in an Office (other than an Office described in subsection (f)) under the United States or any State, territory, or possession, or the District of Columbia, or whose activity in study, research, or medical, dental, veterinary, optometric, osteopathic, scientific, pharmaceutical, chiropractic, chiropodial, or other endeavors is found to be necessary to the maintenance of the national health, safety, or interest: *Provided*, That no person within any such category shall be deferred except upon the basis of his individual status: *Provided further*, That persons who are or may be deferred under the provisions of this

section shall remain liable for training and service in the Armed Forces under the provisions of section 3803(a) of this title until the thirty-fifth anniversary of the date of their birth. This proviso shall not be construed to prevent the continued deferment of such persons if otherwise deferrable under any other provisions of this Act. The President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces (1) of any or all categories of persons in a status with respect to persons (other than wives alone, except in cases of extreme hardship) dependent upon them for support which renders their deferment advisable, and (2) of any or all categories of those persons found to be physically, mentally, or morally deficient or defective. For the purpose of determining whether or not the deferment of any person is advisable, because of his status with respect to persons dependent upon him for support, any payments of allowances which are payable by the United States to the dependents of persons serving in the Armed Forces of the United States shall be taken into consideration, but the fact that such payments of allowances are payable shall not be deemed conclusively to remove the grounds for deferment when the dependency is based upon financial considerations and shall not be deemed to remove the ground for deferment when the dependency is based upon other than financial considerations and cannot be eliminated by financial assistance to the dependents. Except as otherwise provided in this subsection, the President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces of any or all categories of persons who have children, or wives and children, with whom they maintain a bona fide family relationship in their homes. No deferment from such training and service in the Armed Forces shall be made in the case of any individual except upon the basis of the status of such individual. There shall be posted in a conspicuous place at the office of each local board a list setting forth the names and classifications of those persons who have been classified by such local board. The President may, in carrying out the provisions of this chapter, recommend criteria for the classification of persons subject to induction under this chapter, and to the extent that such action is determined by the President to be consistent with the national interest, recommend that such criteria be administered uniformly throughout the United States whenever practicable; except that no local board, appeal board, or other agency of appeal of the Selective Service System shall be required to postpone or defer any person by reason of his activity in study, research, or medical, dental, veterinary, optometric, osteopathic, scientific, pharmaceutical, chiropractic, chiropodial, or other endeavors found to be necessary to the maintenance of the national health, safety, or interest solely on the basis of any test, examination, selection system, class standing, or any other means conducted, sponsored, administered, or prepared by any agency or department of the Federal Government, or any private institution, corporation, association, partnership, or individual employed by an agency or department of the Federal Government.

*(i) High school students*

(1) Any person who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order for induction shall, upon the facts being presented to the local board, have his induction postponed (A) until the time of his graduation therefrom, or (B) until he attains the twentieth anniversary of his birth, or (C) until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest. Notwithstanding the preceding sentence, any person who attains the twentieth anniversary of his birth after beginning his last academic year of high school shall have his induction postponed

until the end of that academic year if and so long as he continues to pursue satisfactorily a full-time course of instruction.

(2) Any person who while satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution is ordered to report for induction under this chapter, shall, upon the appropriate facts being presented to the local board, have his induction postponed (A) until the end of the semester or term, or academic year in the case of his last academic year, or (B) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier.

*(j) Persons conscientiously opposed to war*

Nothing contained in this chapter shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this chapter, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 3803(b) of this title such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 3811 of this title, to have knowingly failed or neglected to perform a duty required of him under this chapter. The Director shall be responsible for finding civilian work for persons exempted from training and service under this subsection and for the placement of such persons in appropriate civilian work contributing to the maintenance of the national health, safety, or interest.

*(k) Cessation of cause for exemption or deferment*

No exception from registration, or exemption or deferment from training and service, under this chapter, shall continue after the cause therefor ceases to exist.

*(l) Absence of parental consent*

Notwithstanding any other provisions of law, no person between the ages of eighteen and twenty-one shall be discharged from service in the armed forces of the United States while this chapter is in effect because such person entered such service without the consent of his parent or guardian.

*(m) Conviction of a criminal offense*

No person shall be relieved from training and service under this chapter by reason of conviction of a criminal offense, except where the offense of which he has been convicted may be punished by death, or by imprisonment for a term exceeding one year.

***(n) Review of occupational deferment***

In the case of any registrant whose principal place of employment is located outside the appeal board area in which the local board having jurisdiction over the registrant is located, any occupational deferment made under subsection (h) of this section may, within five days after such deferment is made, be submitted for review and decision to the appeal board having jurisdiction over the area in which is located the principal place of employment of the registrant. Such decision of the appeal board shall be final unless modified or changed by the President, and such decision shall be made public.

***(o) Person with father, mother, brother, or sister killed or in missing status while serving***

Except during the period of a war or a national emergency declared by Congress, no person may be inducted for training and service under this chapter unless he volunteers for such induction—

(1) if the father or the mother or a brother or a sister of such person was killed in action or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in line of duty during such service, or

(2) during any period of time in which the father or the mother or a brother or a sister of such person is in a captured or missing status as a result of such service.

As used in this subsection, the term "brother" or "sister" means a brother of the whole blood or a sister of the whole blood, as the case may be.

## §10 of the Military Selective Service Act

### 50 U.S.C. §3809. Selective Service System

#### ***(a) Establishment; construction; appointment of Director; termination and reestablishment of Office of Selective Service Records***

(1) There is established in the executive branch of the Government an agency to be known as the Selective Service System, and a Director of Selective Service who shall be the head thereof.

(2) The Selective Service System shall include a national headquarters, at least one State headquarters in each State, Territory, and possession of the United States, and in the District of Columbia, and the local boards, appeal boards, and other agencies provided for in subsection (b)(3) of this section.

(3) The Director shall be appointed by the President.

(4) The functions of the Office of Selective Service Records (established by the Act of March 31, 1947) and of the Director of the Office of Selective Service Records are transferred to the Selective Service System and the Director of Selective Service, respectively. The personnel, property, records, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Office of Selective Service Records are transferred to the Selective Service System. The Office of Selective Service Records shall cease to exist upon the taking effect of the provisions of this chapter: *Provided*, That, effective upon the termination of this chapter and notwithstanding such termination in other respects, (A) the said Office of Selective Service Records is reestablished on the same basis and with the same functions as obtained prior to June 24, 1948, (B) said reestablished Office shall be responsible for liquidating any other outstanding affairs of the Selective Service System, and (C) the personnel, property, records, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Selective Service System shall be transferred to such reestablished Office of Selective Service Records.

#### ***(b) Administrative provisions***

The President is authorized to undertake the following:

(1) To prescribe the necessary rules and regulations to carry out the provisions of this chapter.

(2) To appoint, upon recommendation of the respective governor or comparable executive official, a State director of the Selective Service System for each headquarters in each State, Territory, and possession of the United States and for the District of Columbia, who shall represent the governor and be in immediate charge of the state headquarters of the Selective Service System: *Provided*, That no State director shall serve concurrently in an elected or appointed position of a State or local government; to employ such number of civilians, and, subject to subsection (e), to order to active duty under section 12342 of title 10, United States Code, with their consent and to assign to the Selective Service System such officers of the selective-service section of the State headquarters and headquarters detachments and such other officers of the federally recognized National Guard of the United States or other armed forces

personnel (including personnel of the reserve components thereof), as may be necessary for the administration of the national and of the several State headquarters of the Selective Service System.

(3) To create and establish within the Selective Service System civilian local boards, civilian appeal boards, and such other civilian agencies, including agencies of appeal, as may be necessary to carry out its functions with respect to the registration, examination, classification, selection, assignment, delivery for induction, and maintenance of records of persons registered under this chapter, together with such other duties as may be assigned under this chapter: *Provided*, That no person shall be disqualified from serving as a counselor to registrants, including service as Government appeal agent, because of his membership in a Reserve component of the Armed Forces. He shall create and establish one or more local boards in each county or political subdivision corresponding thereto of each State, territory, and possession of the United States, and in the District of Columbia. The local board and/or its staff shall perform their official duties only within the county or political subdivision corresponding thereto for which the local board is established, or in the case of an intercounty board, within the area for which such board is established, except that the staffs of local boards in more than one county of a State or comparable jurisdiction may be collocated or one staff may serve local boards in more than one county of a State or comparable jurisdiction when such action is approved by the Governor or comparable executive official or officials. Each local board shall consist of three or more members to be appointed by the President from recommendations made by the respective Governors or comparable executive officials. In making such appointments after September 28, 1971, the President is requested to appoint the membership of each local board so that to the maximum extent practicable it is proportionately representative of the race and national origin of those registrants within its jurisdiction, but no action by any local board shall be declared invalid on the ground that any board failed to conform to any particular quota as to race or national origin. No citizen shall be denied membership on any local board or appeal board on account of sex. After December 31, 1971, no person shall serve on any local board or appeal board who has served on any local board or appeal board for a period of more than 20 years. Notwithstanding any other provision of this paragraph, an intercounty local board consisting of at least one member from each component county or corresponding subdivision may, with the approval of the Governor or comparable executive official or officials, be established for an area not exceeding five counties or political subdivisions corresponding thereto within a State or comparable jurisdiction when the President determines, after considering the public interest involved, that the establishment of such local board area will result in a more efficient and economical operation. Any such intercounty local board shall have within its area the same power and jurisdiction as a local board has in its area. A local board may include among its members any citizen otherwise qualified under Presidential regulations, provided he is at least eighteen years of age. No member of any local board shall be a member of the Armed Forces of the United States, but each member of any local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction, and each intercounty local board shall have at least one member from each county or political subdivision corresponding thereto included within the intercounty local board area. Such local boards, or separate panels thereof each consisting of three or more members, shall, under rules and regulations prescribed by the President, have the power within the respective jurisdictions of such local boards to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion



for, or exemption or deferment from, training and service under this chapter, of all individuals within the jurisdiction of such local boards. The decisions of such local board shall be final, except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe. There shall be not less than one appeal board located within the area of each Federal judicial district in the United States and within each Territory and possession of the United States, and such additional separate panels thereof, as may be prescribed by the President. Appeal boards within the Selective Service System shall be composed of civilians who are citizens of the United States and who are not members of the armed forces. The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President. The President, upon appeal or upon his own motion, shall have power to determine all claims or questions with respect to inclusion for, or exemption or deferment from training and service under this chapter, and the determination of the President shall be final. No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under section 3811 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction or for civilian work in the case of a registrant determined to be opposed to participation in war in any form: *Provided*, That such review shall go to the question of the jurisdiction herein reserved to local boards, appeal boards, and the President only when there is no basis in fact for the classification assigned to such registrant. No person who is a civilian officer, member, agent, or employee of the Office of Selective Service Records or the Selective Service System, or of any local board or appeal board or other agency of such Office or System, shall be excepted from registration or deferred or exempted from training and service, as provided for in this chapter, by reason of his status as such civilian officer, member, agent, or employee.

(4) To appoint, and to fix, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, the basic pay of such officers, agents, and employees as he may deem necessary to carry out the provisions of this chapter, however, any officer of the armed forces or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this chapter (except to offices or positions on local boards or appeal boards established or created pursuant to subsection (b)(3)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the armed forces or as such officer or employee in any department or agency of the United States.

(5) To utilize the services of any or all departments and any and all officers or agents of the United States, and to accept the services of all officers and agents of the several States, Territories, and possessions, and subdivisions thereof, and the District of Columbia, and of private welfare organizations, in the execution of this chapter.

(6) To purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies upon orders placed by the Director of the Government Publishing Office or upon waivers issued in accordance with section 504 of title 44, and to obtain by purchase, loan, or gift such equipment and supplies for the Selective Service System, as he may deem necessary to carry out the provisions of this chapter, with or without advertising or formal contract.

(7) To prescribe eligibility, rules, and regulations governing the release for service in the armed forces, or for any other special service established pursuant to this chapter, of any person convicted of a violation of any of the provisions of this chapter.

(8) Subject to the availability of funds appropriated for such purpose, to procure such space as he may deem necessary to carry out the provisions of this chapter and the Act of March 31, 1947.

(9) Subject to the availability of funds appropriated for such purposes, to determine the location of such additional temporary installations as he may deem essential; to utilize and enlarge such existing installations; to construct, install, and equip, and to complete the construction, installation, and equipment of such buildings, structures, utilities, and appurtenances (including the necessary grading and removal, repair or remodeling of existing structures and installations), as may be necessary to carry out the provisions of this chapter; and, in order to accomplish the purpose of this chapter, to acquire lands, and rights pertaining thereto, or other interests therein, for temporary use thereof, by donation or lease, and to prosecute construction thereon prior to the approval of the chapter by the Attorney General as required by sections 3111 and 3112 of title 40.

(10) Subject to the availability of funds appropriated for such purposes, to utilize, in order to provide and furnish such services as may be deemed necessary or expedient to accomplish the purposes of this chapter, such personnel of the armed forces and of Reserve components thereof with their consent, and such civilian personnel, as may be necessary. For the purposes of this chapter, the provisions of section 14 of the Federal Employees' Pay Act of 1946 (Public Law 390, Seventy-ninth Congress) with respect to the maximum limitations as to the number of civilian employees shall not be applicable to the Department of the Army, the Department of the Navy, or the Department of the Air Force.

***(c) Delegation of President's authority***

The President is authorized to delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority.

***(d) Acceptance of gifts and voluntary services***

In the administration of this chapter, gifts of supplies, equipment, and voluntary services may be accepted.

***(e) Assignment of armed forces personnel***

The total number of armed forces personnel assigned to the Selective Service System under subsection (b)(2) at any time may not be less than the number of such personnel determined by the Director of Selective Service to be necessary, but not to exceed 745 persons, except that the President may assign additional armed forces personnel to the Selective Service System during a time of war or a national emergency declared by Congress or the President.

***(f) Settlement of travel claims, etc.***

The Director is authorized to make final settlement of individual claims, for amounts not exceeding \$500, for travel and other expenses of uncompensated personnel of the Office of Selective Service Records, or the Selective Service System, incurred while in the performance of official duties, without regard to other provisions of law governing the travel of civilian employees of the Federal Government.

***(g) Reports to Congress***

The Director of Selective Service shall submit to the Congress annually a written report covering the operation of the Selective Service System and such report shall include, by States, information as to the number of persons registered under this Act; the number of persons inducted in to the military service under this Act; and the number of deferments granted under this Act and the basis for such deferments; and such other specific kinds of information as the Congress may from time to time request.

***(h) Maintenance of System after institution of all volunteer program for meeting manpower needs***

The Selective Service system <sup>1</sup> shall be maintained as an active standby organization, with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency (including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces), and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency.

## §16 of the Military Selective Service Act

### 50 U.S.C. §3814. Definitions

When used in this chapter-

(a) The term "between the ages of eighteen and twenty-six" shall refer to men who have attained the eighteenth anniversary of the day of their birth and who have not attained the twenty-sixth anniversary of the day of their birth; and other terms designating different age groups shall be construed in a similar manner.

(b) The term "United States", when used in a geographical sense, shall be deemed to mean the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "armed forces" shall be deemed to include the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard.

(d) The term "district court of the United States" shall be deemed to include the courts of the United States for the Territories and possessions of the United States.

(e) The term "local board" shall be deemed to include an intercounty local board in the case of any registrant who is subject to the jurisdiction of an intercounty local board.

(f) The term "Director" shall be deemed to mean the Director of the Selective Service System.

(g)(1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

(h) The term "organized unit", when used with respect to a reserve component, shall be deemed to mean a unit in which the members thereof are required satisfactorily to participate in scheduled drills and training periods training pursuant to sections 12352(c) and 12353(a) of title 10, United States Code, or sections 552(a) and 553(a) of title 32, United States Code, as prescribed by the Secretary of Defense.

(i) The term "reserve components of the armed forces" shall, unless the context otherwise requires, be deemed to include the federally recognized National Guard of the United States, the federally recognized Air National Guard of the United States, the Officers' Reserve Corps, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Navy Reserve, the Marine Corps Reserve, and the Coast Guard Reserve, and shall include, in addition to the foregoing, the Public Health Service Reserve when serving with the armed forces.

## §101 of the Servicemembers Civil Relief Act

### 50 U.S.C. §3911. Definitions

For the purposes of this chapter:

#### *(1) Servicemember*

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

#### *(2) Military service*

The term "military service" means—

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

~~(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;~~

(ii) in the case of a member of the National Guard, service under a call or order to full-time National Guard duty as that term is defined in section 101(d)(5) of title 10, United States Code;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

#### *(3) Period of military service*

The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

#### *(4) Dependent*

The term "dependent", with respect to a servicemember, means—

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code);  
or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this chapter.

**(5) Court**

The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

**(6) State**

The term "State" includes—

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

**(7) Secretary concerned**

The term "Secretary concerned"—

(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

**(8) Motor vehicle**

The term "motor vehicle" has the meaning given that term in section 30102(a)(6) of title 49, United States Code.<sup>1</sup>

**(9) Judgment**

The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

## §207 of the Servicemembers Civil Relief Act

### 50 U.S.C. §3937. Definitions

#### §207. Maximum rate of interest on debts incurred before military service

(a) Interest rate limitation.

(1) Limitation to 6 percent. An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent –

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

(B) during the period of military service, in the case of any other obligation or liability.

(2) Forgiveness of interest in excess of 6 percent. Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal. The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation.

(1) Written notice to creditor. In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty or full-time National Guard duty. Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection. A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) Definitions.<sup>6</sup> In this section:

(1) Interest. The term “interest” includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.



(2) Obligation or liability. The term “obligation or liability” includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(e) Penalty. Whoever knowingly violates subsection (a) shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.<sup>7</sup>

## §305. of the Servicemembers Civil Relief Act

### 50 U.S.C. §3955. 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~~ active duty, full-time National Guard duty, or reserve component duty (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, 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.

## §703 of the Servicemembers Civil Relief Act

### 50 U.S.C. §4023. Professional liability protection

#### *(a) Applicability*

This section applies to a servicemember who—

(1) after July 31, 1990, is ordered to active duty ~~(other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10 or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10; and~~

(2) immediately before receiving the order to active duty or full-time National Guard duty—

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty or full-time National Guard duty unless the premiums are paid for such coverage for such period.

#### *(b) Suspension of coverage*

##### *(1) Suspension*

Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

##### *(2) Premiums for suspended contracts*

A professional liability insurance carrier—

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

##### *(3) Nonliability of carrier during suspension*

A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

*(4) Certain claims considered to arise before suspension*

For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty or full-time National Guard duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

*(c) Reinstatement of coverage*

*(1) Reinstatement required*

Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

*(2) Time and premium for reinstatement*

The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty or full-time National Guard duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

*(3) Period of reinstated coverage*

The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

*(d) Increase in premium*

*(1) Limitation on premium increases*

An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

*(2) Exception*

Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

*(e) Continuation of coverage of unaffected persons*

This section does not—

(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

*(f) Stay of civil or administrative actions*

*(1) Stay of actions*

A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

(A) the action was commenced during the period of the suspension;

(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

*(2) Date of commencement of action*

Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

*(g) Effect of suspension upon limitations period*

In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

*(h) Death during period of suspension*

If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

*(i) Definitions*

For purposes of this section:

*(1) Active duty*

The term "active duty" has the meaning given that term in section 101(d)(1) of title 10.

(2) FULL-TIME NATIONAL GUARD DUTY.—The term ‘full-time National Guard duty’ has the meaning given that term in section 101(d)(5) of title 10, United States Code.

*(23) Profession*

The term "profession" includes occupation.

*(34) Professional*

The term "professional" includes occupational.



## §690 of the National Defense Authorization Act for Fiscal Year 2006 [515a of the Servicemembers Civil Relief Act]

### 50 U.S.C. §3916

#### **§690. Information for members of the Armed Forces and their dependents on rights and protections of the Servicemembers Civil Relief Act [Sec. 515a]**

(a) Outreach to members. The Secretary concerned shall provide to each member of the Armed Forces under the jurisdiction of the Secretary pertinent information on the rights and protections available to members and their dependents under the Servicemembers Civil Relief Act.

(b) Time of provision. The information required to be provided under subsection (a) to a member shall be provided at the following times:

(1) During the initial orientation training of the members.

(2) In the case of a member of a reserve component, during the initial orientation training of the member ~~and when the member is mobilized or otherwise individually called or ordered to active duty for a period of more than one year, and when the member is—~~

“(A) called or ordered to active duty or full-time National Guard duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code); or

“(B) otherwise individually called or ordered to active duty or full-time National Guard duty for a period of more than one year.”.

(3) At such other times as the Secretary concerned considers appropriate.

(c) Outreach to dependents. The Secretary concerned may provide to the adult dependents of members under the jurisdiction of the Secretary pertinent information on the rights and protections available to members and their dependents under the Servicemembers Civil Relief Act.

(d) Definitions. In this section, the terms “dependent” and “Secretary concerned” have the meanings given such terms in section 101 of the Servicemembers Civil Relief Act [50 U.S.C. App. §511].

1 **SEC. \_\_\_\_ . REORGANIZATION OF CERTAIN ALLOWANCES OTHER THAN**  
2 **TRAVEL AND TRANSPORTATION ALLOWANCES.**

3 (a) PER DIEM FOR DUTY OUTSIDE THE CONTINENTAL UNITED STATES.—

4 (1) TRANSFER TO CHAPTER 7.—Section 475 of title 37, United States Code, is  
5 transferred to chapter 7 of such title, inserted after section 403b, and redesignated as  
6 section 405.

7 (2) REPEAL OF TERMINATION PROVISION.—Section 405 of title 37, United  
8 States Code, as added by paragraph (1), is amended by striking subsection (f).

9 (b) ALLOWANCE FOR FUNERAL HONORS DUTY.—

10 (1) TRANSFER TO CHAPTER 7.—Section 495 of title 37, United States Code, is  
11 transferred to chapter 7 of such title, inserted after section 433a, and redesignated as  
12 section 435.

13 (2) REPEAL OF TERMINATION PROVISION.—Section 435 of title 37, United  
14 States Code, as added by paragraph (1), is amended by striking subsection (c).

15 (d) CLERICAL AMENDMENTS.—

16 (1) CHAPTER 7.—The table of sections at the beginning of chapter 7 of title  
17 37, United States Code, is amended—

18 (A) by inserting after the item relating to section 403b the following  
19 new item:

“405. Travel and transportation allowances: per diem while on duty outside the continental United States.”;

20 (B) by inserting after the item relating to section 433a the following  
21 new item:

“435. Funeral honors duty: allowance.”.

1 (2) CHAPTER 8.—The table of sections at the beginning of chapter 8 of title  
2 37, United States Code, is amended by striking the items relating to sections 475 and  
3 495.

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

### **Section-by-Section Analysis**

This proposal would make two technical amendments to title 37, United States Code (U.S.C.). These amendments would enable the Department of Defense (DoD) to transfer these two relevant provisions from chapter 8 of that title back to chapter 7; both provisions were transferred out of chapter 7 by recent legislation. This proposal would ensure that the Department could continue to make these payments/reimbursements without issue.

This language would transition the authority to pay per diem to a uniformed services member who is on duty outside the continental United States (OCONUS) from section 475 of title 37, U.S.C., back to chapter 7 of title 37, U.S.C. The authority was removed from chapter 7 of title 37, U.S.C., by section 621 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (P.L. 112-81), and was renumbered and placed in chapter 8 of title 37, U.S.C. This authority, which relates to paying station allowances for uniformed members stationed outside the continental United States, is set to expire when the travel authorities in chapter 8, subchapter III of title 37, U.S.C., expire. Although this authority is prescribed as OCONUS Cost of Living Allowance and OCONUS Temporary Lodging Allowance in chapter 9 of the Joint Travel Regulations, as station allowances they are not prescribed under section 464 of title 37, U.S.C., which is now cited by section 453 of title 37, U.S.C. (the language that provides authority for travel and transportation allowances). The authority is set to expire in 2021; therefore, this proposal would transfer the authority back to its relevant title 37 chapter without allowing it to expire.

Furthermore, this language would transition the authority to reimburse Armed Forces reserve component members an allowance for performing funeral honors duty from section 495 of title 37, U.S.C., back to chapter 7 of title 37, U.S.C. The authority was transferred from chapter 7 of title 37, U.S.C., to chapter 8 of title 37, U.S.C., by section 621 of the NDAA for FY14 (P.L. 113-66). This authority was implemented in DoD 7000.14-R Financial Management Regulation, Volume 7A, Chapter 58, and was not implemented in the Joint Travel Regulations (as it concerns a pay allowance, not a travel allowance). Therefore, this authority is not prescribed in regulations under section 464 of title 37, U.S.C., which is now cited by section 453 of title 37, U.S.C., as providing the authority to reimburse Armed Forces members for travel in such circumstances. The authority is set to expire in 2021; therefore, this proposal would transfer the authority back to its relevant title 37 chapter without allowing it to expire.

**Budget Implications:** As this proposal would only maintain the Department’s ability to pay these expenses, it would result in no added cost to DoD. The resources reflected in the table below are funded within the FY 2020 President’s Budget.

Effect of amendment to section 405 of title 37, United States Code (Per diem while on duty outside the continental United States): The proposed legislation would result in no added cost to the Department because the anticipated \$1.556B in annual expenditure is offset by the estimated \$1.556B of removing the section from chapter 8 of title 37, U.S.C.

Effect of amendment to section 475 of title 37, United States Code (Per diem while on duty outside the continental United States): The proposed legislation would result in no added cost to the Department because the anticipated \$1.556B that would be saved is offset by the estimated \$1.556B in expenditures under chapter 7 of title 37, U.S.C.

Effect of amendment to section 435 of title 37, United States Code (Funeral honors duty: allowance): The proposed legislation would result in no added cost to the Department because the anticipated \$95.5M in annual expenditure is offset by the estimated \$95.5M of removing the section from chapter 8 of title 37, U.S.C.

Effect of amendment to section 495 of title 37, United States Code (Funeral honors duty: allowance): The proposed legislation would result in no added cost to the Department because the anticipated \$95.5M that would be saved is offset by the estimated \$95.5M in expenditures under chapter 7 of title 37 of U.S.C.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army	\$571.8	\$571.8	\$571.8	\$571.8	\$571.8	Military Personnel, Army
Navy	\$422.2	\$422.2	\$422.2	\$422.2	\$422.2	Military Personnel, Navy
Marine Corps	\$216.2	\$216.2	\$216.2	\$216.2	\$216.2	Military Personnel, Marine Corps
Air Force	\$346.0	\$354.6	\$363.5	\$372.6	\$381.9	Military Personnel, Air Force
<b>Total</b>	<b>\$1,556.2</b>	<b>\$1,564.8</b>	<b>\$1,573.7</b>	<b>\$1,582.8</b>	<b>\$1,592.1</b>	

<b>NUMBER OF PERSONNEL AFFECTED</b>					
	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Army	82,314	82,314	82,314	82,314	82,314
Navy	51,688	51,688	51,688	51,688	51,688
Marine Corps	26,990	26,990	26,990	26,990	26,990
Air Force	117,566	118,741	119,929	121,128	122,339
<b>Total</b>	<b>278,558</b>	<b>279,733</b>	<b>280,921</b>	<b>282,120</b>	<b>283,331</b>

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>

Army National Guard	24.9	25.2	18.1	11.7	11.8	Operation and Maintenance, Army National Guard
Army National Guard	48.3	48.4	48.8	49.6	50.4	National Guard, Personnel, Army
Army Reserve	.8	.8	.9	.9	.9	Operation and Maintenance, Army Reserve
Army Reserve	6.9	6.9	7.0	7.1	7.2	Reserve Personnel, Army
Navy	13.1	13.1	13.1	13.1	13.1	Reserve Personnel, Navy
Marine Corps	.8	.8	.8	.8	.8	Reserve Personnel, Marine Corps
Air Force Reserve	.5	.5	.5	.5	.6	Reserve Personnel, Air Force
Air National Guard	.15	.15	.16	.16	.16	National Guard Personnel, Air Force
<b>Total</b>	95.5	95.9	89.4	83.9	85	

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Army National Guard	(24.9)	(25.2)	(18.1)	(11.7)	(11.8)	Operation and Maintenance, Army National Guard
Army National Guard	(48.3)	(48.4)	(48.8)	(49.6)	(50.4)	National Guard Personnel, Army
Army Reserve	(.8)	(.8)	(.9)	(.9)	(.9)	Operation and Maintenance, Army Reserve
Army Reserve	(6.9)	(6.9)	(7.0)	(7.1)	(7.2)	Reserve Personnel, Army
Navy	(13.1)	(13.1)	(13.1)	(13.1)	(13.1)	Reserve Personnel, Navy
Marine Corps	(.8)	(.8)	(.8)	(.8)	(.8)	Reserve Personnel, Marine Corps
Air Force Reserve	(.5)	(.5)	(.5)	(.5)	(.6)	Reserve Personnel, Air Force
Air National Guard	(.15)	(.15)	(.16)	(.16)	(.16)	National Guard Personnel, Air Force
<b>Total</b>	(95.5)	(95.9)	(89.4)	(83.9)	(85)	

<b>NUMBER OF PERSONNEL AFFECTED</b>					
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Army	133,548	131,740	130,314	129,033	127,839
Navy	3,206	3,206	3,206	3,206	3,206
Marine Corps	1,605	1,605	1,605	1,605	1,605
Air Force	726	734	741	748	756
<b>Total</b>	139,085	137,285	135,866	134,592	133,406

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

### TITLE 37, UNITED STATES CODE

**§475 405. Travel and transportation allowances: per diem while on duty outside the continental United States**

(a) PER DIEM AUTHORIZED.—Without regard to the monetary limitation of this title, the Secretary concerned may pay a per diem to a member of the uniformed services who is on duty outside of the continental United States, whether or not the member is in a travel status. The Secretary may pay the per diem in advance of the accrual of the per diem.

(b) DETERMINATION OF PER DIEM.—In determining the per diem to be paid under this section, the Secretary concerned shall consider all elements of the cost of living to members of the uniformed services under the Secretary's jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

(c) TREATMENT OF HOUSING COST AND ALLOWANCE.—Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section.

(d) UNUSUAL OR EXTRAORDINARY EXPENSES.—(1) The Secretary concerned may reimburse a member of the uniformed services on duty as described in subsection (a) or (e) for an unusual or extraordinary expense incurred by the member incident to such duty that—

(A) is directly related to the conditions or location of the duty or the location of the member's dependents;

(B) is of a nature or a magnitude not normally incurred by members of the uniformed services on duty inside the continental United States; and

(C) is not included in the per diem determined under subsection (b) as payable to the member under subsection (a) or (e).

(2) Any reimbursement provided to a member under paragraph (1) is in addition to a per diem payable to that member under subsection (a) or (e).

(e) PAYMENT OF ALLOWANCE BASED ON OVERSEAS LOCATION OF DEPENDENTS.—In the case of a member assigned to duty inside the continental United States whose dependents continue to reside outside the continental United States, the Secretary concerned may pay the member a per diem under this section based on the location of the dependents and provide reimbursement under subsection (d) for an unusual or extraordinary expense incurred by the dependents if the Secretary determines that such payment or reimbursement is in the best interest of the member or the member's dependents and in the best interest of the United States.

~~(f) Termination.—During and after the travel authorities expiration date, no per diem may be paid under this section for any period.~~

\*\*\*\*\*

**§495 435. Funeral honors duty: allowance**

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary concerned may authorize payment of an allowance to a member of the Ready Reserve for any day on which the member performs at

least two hours of funeral honors duty pursuant to section 12503 of title 10 or section 115 of title 32.

(2) The Secretary concerned may also authorize payment of that allowance to a member of the armed forces in a retired status for any day on which the member serves in a funeral honors detail under section 1491 of title 10, if the time required for service in such detail (including time for preparation) is not less than two hours. The amount of an allowance paid to a member under this paragraph shall be in addition to any other compensation to which the member may be entitled under this title or title 10 or 38.

(b) AMOUNT.—The daily rate of an allowance under this section is \$50.

~~(c) Termination.—No allowance may be paid under this section for any day after the travel authorities transition expiration date.~~

1 **SEC. \_\_\_\_. REPEAL OF HARDSHIP EXEMPTION FROM ABSENTEE VOTING**  
2 **REQUIREMENTS APPLICABLE TO STATES.**

3 Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C.  
4 20302) is amended—

5 (1) in subsection (a)(8)(A), by striking “except as provided in subsection (g),”;

6 (2) by striking subsection (g); and

7 (3) by redesignating subsections (h) and (i) as subsections (g) and (h),

8 respectively.

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

**Section-by-Section Analysis**

This proposal will repeal the hardship exemption provision of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The provision currently provides a waiver of the 45-day deadline for a State to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter, if the State proves that the State cannot comply with the deadline due to an undue hardship created by (1) the date of the State’s primary election; (2) a delay in generating ballots due to a legal contest; or (3) a prohibition in the State’s constitution. The States must also provide a comprehensive plan that provides absent uniformed services voters and overseas voters (UOCAVA voters) sufficient time to receive and submit the absentee ballots they have requested in time to be counted in the Federal general election.. States must apply to the Secretary of Defense (who serves as the Presidential designee under Executive Order 12642) to receive this waiver. Then, in consultation with Department of Justice, the Department of Defense must expeditiously review and respond to the State’s waiver application.

The recent experience of the Department of Defense with the hardship exemption provision shows that it provides marginal benefits for the Department to review the relative merits of a waiver request. In 2010, the States were first required to adjust respective election calendars to accommodate the 45-day ballot transmittal requirement to voters covered under UOCAVA. Today, approximately eight years after the enactment of the Military and Overseas Voter Empowerment Act, which amended UOCAVA to include this 45 day requirement, the Department of Justice is best positioned to monitor compliance with the requirement rather than consideration of a waiver to Federal law. Since 2010, 15 States have applied for a waiver, and a majority of them were denied. Experience has proven that the Department of Justice has the necessary tools and is better positioned ensure the intent of the law through their compliance role. The current process runs counter to the Department’s overall mission of providing assistance to State and local election officials in complying with provisions in UOCAVA.



Repealing the hardship exemption provision would strengthen the protections of UOCAVA by ensuring that the 45-day deadline is the standard that all States must meet, even if it requires changing the date of their primary elections or experiencing unforeseen legal contests. A uniform, nationwide standard ensures that all uniformed services and overseas voters are afforded its benefits equally. It also will relieve the Department's direct engagement in the electoral process as the period for States to adjust respective election calendars in response to the initial requirement under the Military and Overseas Voter Empowerment Act has passed, leaving this as a compliance mechanism better suited for direct enforcement by the Department of Justice.

The Senate Rules Committee and the House Administration Committee oversee Federal elections legislation. These Committees should be informed should the proposal reach Congress.

**Budget Implications:** This proposal has insignificant budget impact. All incidental savings are accounted for within Fiscal Year (FY) 2020 President's Budget.

**Changes to Existing Law:** This proposal would make the following changes to section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20302):

#### **SEC. 20302. STATE RESPONSIBILITIES.**

**(a) In general.**—Each State shall-

\* \* \* \* \*

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter-

(A) ~~except as provided in subsection (g),~~ in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office-

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

\* \* \* \* \*

#### **(g) ~~Hardship exemption~~**

~~(1) In general.—If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include—~~

~~(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;~~

~~(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;~~

~~(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and~~

~~(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes-~~

~~(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;~~

~~(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and~~

~~(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.~~

~~(2) Approval of waiver request.—After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:~~

~~(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.~~

~~(B) One or more of the following issues creates an undue hardship for the State:~~

~~(i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).~~

~~(ii) The State has suffered a delay in generating ballots due to a legal contest.~~

~~(iii) The State Constitution prohibits the State from complying with such subsection.~~

~~(3) Timing of waiver.—~~

~~(A) In general.—Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.~~

~~(B) Exception.—If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.~~

~~(4) Application of waiver.—A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has submitted a request under paragraph (1) with respect to such election.~~

**(h) (g) Tracking marked ballots.**—The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent

uniformed services voter or overseas voter has been received by the appropriate State election official.

**(i) (h) Prohibiting refusal to accept applications for failure to meet certain requirements.**—A State shall not refuse to accept and process any otherwise valid voter registration application or absentee ballot application (including the official post card form prescribed under section 20301 of this title) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

- (1) Notarization requirements.
- (2) Restrictions on paper type, including weight and size.
- (3) Restrictions on envelope type, including weight and size.

1 **SEC. \_\_\_\_. REVISION TO REQUIREMENT TO USE FIXED-PRICED CONTRACTS**  
2 **FOR FOREIGN MILITARY SALES.**

3 Effective October 1, 2019, section 830 of the National Defense Authorization Act for  
4 Fiscal Year 2017 (22 U.S.C. 2762 note) is amended—

5 (1) in the heading, by striking “**FIRM FIXED-PRICE**” and inserting  
6 “**APPROPRIATE TYPE**”;

7 (2) in subsection (a), by striking “require” and all that follows and inserting  
8 “ensure the Department of Defense has the necessary contract type options available to  
9 allow for the flexibility needed for trade-offs between cost and performance, where  
10 appropriate for foreign military sales, with the concurrence of the Secretary of State.”;

11 (3) by striking subsections (b) and (c); and

12 (4) by redesignating subsection (d) as subsection (b).

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

### **Section-by-Section Analysis**

This proposal is a top Acquisition and Sustainment efficiency initiative 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. Revising section 830 of the National Defense Authorization Act for Fiscal Year 2017 relating to Firm Fixed-Price Contracts for Foreign Military Sales (FMS) to remove the term “firm fixed price.” To ensure the integrity of the contracting process and to yield products of high quality and lower cost, the choice of appropriate contract types should lie within the purview of the Department. Each procurement is very situationally dependent, and a number of factors must be taken into account to determine the best contract type to use. Confining our acquisition team to one contract type allows little flexibility for needed trade-offs between cost and performance. This change has no impact on the approval of an FMS sale executed through a signed Letter of Offer and Acceptance (LOA) by both parties to the FMS sale; rather it addresses the selection of the contract vehicle to implement the already approved FMS sale.

The Security Assistance Management Manual (SAMM), section C6.3.1. Compliance with DoD Regulations and Procedures, requires acquisition for FMS to be IAW DoD regulations to ensure foreign customers receive the same benefits and protections that apply to DoD

procurements which is a principal reason why foreign governments prefer to procure through FMS channels. See: <http://www.samm.dsca.mil/chapter/chapter-6#C6.3>.

**Budget Implications:** No budget implications.

**Changes to Existing Law:** This proposal would make the following changes to section 830 of the NDAA FY 2017, as amended by section 812 of the NDAA FY 2018.

**SEC. 830. REQUIREMENT TO USE ~~FIRM FIXED PRICE APPROPRIATE TYPE~~ CONTRACTS FOR FOREIGN MILITARY SALES**

(a) ~~REQUIREMENT.~~—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations to ~~require the use of firm fixed price contracts for foreign military sales.~~ ensure the Department of Defense has the necessary contract type options available to allow for the flexibility needed for trade-offs between cost and performance, where appropriate for foreign military sales, with the concurrence of the Secretary of State.

(b) ~~EXCEPTIONS.~~—The regulations prescribed pursuant to subsection (a) shall include exceptions that may be exercised if the foreign country that is the counterparty to a foreign military sale—

- ~~(1) has established in writing a preference for a different contract type; or~~
- ~~(2) requests in writing that a different contract type be used for a specific foreign military sale.~~

(c) ~~WAIVER AUTHORITY.~~—The regulations prescribed pursuant to subsection (a) shall include a waiver that may be exercised by the Secretary of Defense or his designee if the Secretary or his designee determines on a case by case basis that a different contract type is in the best interest of the United States and American taxpayers.

(d) ~~PILOT PROGRAM FOR ACCELERATION OF FOREIGN MILITARY SALES.~~—

(1) ~~IN GENERAL.~~—The Secretary of Defense shall establish a pilot program to reform and accelerate the contracting and pricing processes associated with full rate production of major weapon systems for no more than 10 foreign military sales contracts by—

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

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

(2) ~~DETERMINATION OF SAME OR SIMILAR PRODUCT.~~—The Secretary of Defense and the Secretary of State shall jointly determine whether a product is considered to be a similar product for the purposes of this pilot program.

(3) ~~WAIVER OF COST OR PRICING CERTIFICATION.~~—The Secretary of Defense may waive the certification requirement under section 2306a(a)(2) of title 10, United States Code, if the Secretary determines that the Federal Government has sufficient data and information regarding the reasonableness of the price.

(4) EXPIRATION OF AUTHORITY.—Authority for the pilot program under this subsection expires on January 1, 2020.

1 **SEC. \_\_\_\_. STREAMLINED DIRECT HIRING AUTHORITY FOR DEPARTMENT OF**  
2 **DEFENSE POSITIONS.**

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

5 **“§1599i. Streamlined direct hiring authority for Department of Defense positions**

6 “(a) AUTHORITY.—Without regard to subchapter I of chapter 33 of title 5, the Secretary  
7 of Defense may, under the conditions described in subsection (b), recruit and appoint qualified  
8 candidates to positions in the competitive service to support Department of Defense national  
9 security missions.

10 “(b) CONDITIONS.—(1) In exercising the authority in subsection (a), the Secretary shall  
11 ensure that the representation of veterans within the Department of Defense civilian workforce  
12 (as of the last fiscal year ending before the start of a calendar year) remains at a percentage at  
13 least equal to the average percentage at which veterans are represented in all Federal agencies,  
14 exclusive of the Department of Defense.

15 “(2) In the event the representation of veterans in the Department’s civilian workforce  
16 falls below the level required in paragraph (1), the Secretary—

17 “(A) shall recruit and appoint using hiring authorities other than the authority  
18 provided by subsection (a) until the representation of veterans in the Department’s  
19 civilian workforce is consistent with the condition in paragraph (1); and

20 “(B) shall develop and maintain a staffing plan to address any shortage of veteran  
21 representation in the civilian workforce not consistent with the condition in paragraph  
22 (1).

23 “(c) REQUIREMENTS.—The Secretary shall ensure that—

1 “(1) merit factors are the basis for selecting individuals for positions; and

2 “(2) there is transparency, accountability, and auditability in hiring processes.

3 “(d) COVERED POSITIONS.—The positions covered by this section shall be at the General  
4 Schedule grade 15 level (or equivalent) and below.

5 “(e) REGULATIONS.—(1) The Secretary shall issue regulations to carry out this section.

6 “(2) During the period beginning on the date of implementation of these regulations and  
7 ending on the sunset date specified in subsection (g), all existing direct hire authorities specific to  
8 the Department of Defense for competitive service positions, as determined by the Secretary,  
9 shall not be effective.

10 “(f) DEFINITIONS.—In this section—

11 “(1) the term ‘employee’ has the meaning given that term in section 2105 of title  
12 5; and

13 “(2) the term ‘veteran’ has the meaning given that term in section 2108 of title 5.

14 “(g) SUNSET.—Effective on December 31, 2025, the authority provided by this section  
15 shall expire.”.

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

“1599i. Streamlined direct hiring authority for Department of Defense positions.”.

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

### **Section-by-Section Analysis**

This proposal would provide a streamlined direct hiring authority (DHA) to the Secretary of Defense to recruit and appoint qualified candidates to any competitive service position within the Department of Defense (DoD) as long as the representation of veterans within the Department’s civilian workforce remains at a percentage at least equal to the average percentage representation for all Federal agencies, excluding the Department of Defense. In the event the



representation of veterans in the Department's civilian workforce falls below the level required by the legislation, the Secretary may then use only competitive, special, and direct or expedited hiring authorities, or appropriate noncompetitive hiring authorities, and must develop and maintain an annual staffing plan to achieve and rectify veteran civilian workforce shortages.

Streamlining and simplifying the Department's civilian hiring processes is a national security imperative aligned with the Secretary of Defense's initiative to reform its business practices to enhance lethality and maximize taxpayer value. DoD is unique among other federal agencies in its national security mission and the size and scope of its operations. The 1970's era one-size-fits-all federal hiring framework is ill-suited for the dynamic national security challenges of the 21<sup>st</sup> century. Indeed, the Department's lethality and readiness are not just a function of our service members. DoD's civilian workforce is essential to sustaining the viability and capabilities of the All-Volunteer Force – among other things providing the critical equipment maintenance; weapons acquisition and sustainment; base support, logistics and engineering expertise; family support programs; business operations; and medical care that ensure our Soldiers, Sailors, Airmen, and Marines are ready to deploy, world-wide, and answer the call of our operational Commanders. To that end, the Secretary of Defense specifically called out "hiring practices for the civilian workforce" as an area necessary for review to enhance the readiness and lethality of the Department.

DoD's civilian workforce represents essentially every facet of the American economy. DoD civilians are scientists, engineers, technicians, and analysts. They are welders, mechanics, and electricians. They are doctors, nurses, social workers, teachers, child care providers, police officers, and firefighters who take care of our men and women in uniform and their families and our installations. They run and manage military installations, and take care of the facilities where our Soldiers, Sailors, Airmen, and Marines live and train. They are logistical specialists, truck drivers, and loadmasters who move warfighting equipment into and out of combat zones to support our warfighters. They are air traffic controllers, store clerks and cashiers, and deans and professors in DoD institutions of higher learning. They are accountants, human resource specialists, and contract specialists who provide the support to all of the foregoing.

The unique mission, size, and complexity of the DoD civilian workforce, and the role they play in supporting the warfighter, necessitates a lean, flexible, responsive, and expeditious hiring framework that will ensure speed of relevance, rather than a prescriptive patchwork of one-size-fits-all federal hiring regulations. Our near peer competitors and adversaries are working to rapidly narrow our military's competitive advantage across multiple domains to include cyber, space, and electronic warfare. Unlike the U.S., China and Russia's political systems enable them to martial the entire state's economic and human resources to enhance capabilities in these areas. The Department must be able to quickly and efficiently access top talent with the expertise needed to ensure superior capabilities and relevancy in these and other critical areas. The Department is competing for talent in these cutting edge fields with a private sector that is unconstrained by overlapping, redundant, and bureaucratic hiring regulations. The 21<sup>st</sup> century security environment is less predictable, more dynamic, and calls for a human capital framework that can be responsive to emerging missions where competition for private sector talent is fierce.

As a prime example, the President has directed DoD to “establish a Space Force as the sixth branch of the Armed Forces.” In carrying out that the direction, the Department has undertaken to outline a new approach to managing all the personnel in the space community, including military members and civilian employees across all appropriate DoD Components. The ability to hire needed talent directly is essential to this new approach. In the 2018 *National Defense Strategy (NDS)*, the Secretary of Defense called for the Department to “*explore streamlined, non-traditional pathways to bring critical skills into service, expanding access to outside expertise, and devising new public-private partnerships to work with small companies, start-ups, and universities.*” To start-up the Space Force, there will be a need to front-load talent, which will exceed existing talent-acquisition approaches. The new U.S. Space Command will require a level of human capital agility unavailable within the existing DoD human capital management paradigm. The speed of change in this highly technical arena will drive a near-constant flow of expertise into and out of the Command as projects begin, meet maturity, and replaced by more effective and efficient technological approaches to meeting mission requirements. In the tasking to establish a new human-capital approach, the Department has been afforded a tremendous opportunity to establish a more agile and responsive paradigm that can then serve as the baseline for a follow-on strategy to expand the benefits of such an approach Department-wide. The Department as a whole can no longer afford hiring timelines that exceed the most expeditious means for hiring critical and exceptionally qualified talent.

The 2018 NDS further states that “*A modern, agile, information-advantaged Department also requires a motivated, diverse, and highly skilled civilian workforce, sufficiently sized and appropriately resourced. DoD civilians are an essential enabler of our mission capabilities and operational readiness.*” The NDS further directs that the Department undertake a sustained effort to build-up its civilian workforce to best serve mission requirements. Lengthy hiring times for civilian personnel not only cost the Department talent, but also lead to sub-optimal Total Force solutions: when decision-makers are unable to bring civilians onboard in a timely manner, they will turn to other, less cost-effective workforce solutions.

In DoD, every dollar spent on unnecessary or unproductive bureaucracy detracts from DoD's ability to sustain our warfighters. DoD needs flexibility to manage HR systems for results in order to deliver both talent and savings in support of the national defense mission.

To this end, the Department needs a direct hiring authority that is streamlined, and that may be further delegated to DoD Components to accomplish their mission objectives. The proposal would also allow the Secretary to waive the provisions of chapter 33 of title 5, U.S.C., regarding examination, selection, and placement of individuals in the civil service, in order to achieve these objectives. Such streamlined authority would also serve to clarify and untangle overlapping and differing authorities for ease of understanding and use by human resource practitioners and managers.

This proposed authority, which is conditional on maintaining significant veterans representation within the DoD civilian workforce, would streamline the hiring process and reduce time-to-hire by authorizing direct hire for all DoD positions, eliminating the need to use traditional hiring authorities, such as competitive examining and the myriad of direct and expedited hiring authorities granted to the Department. As a result, the Department would

streamline, simplify, and standardize hiring processes, and utilize direct hiring for the efficient and expeditious hiring of quality candidates for positions critical to national security mission needs, all the while ensuring veteran hiring representation and targets are met.

The proposal would also suspend application of all of the Department's specific direct hiring authorities to clarify and simplify the hiring process. In addition, the proposal includes a sunset date of December 31 2025, so the Department, the Office of Personnel Management, and Congress can evaluate the effectiveness of this revised, broad, direct hiring authority.

In recent National Defense Authorization Acts (NDAAs), the Department has been granted a number of civilian human resource authorities, including competitive service DHAs targeted to specific DoD positions, organizational entities, and functional areas. While such authorities have allowed for additional flexibility and efficiency in hiring qualified candidates, each direct hiring authority was developed and enacted independently and as a stand-alone authority, rather than within a strategic and holistic framework to address overall DoD direct hiring needs. Consequently, many DHA provisions differ with regard to scope of coverage, allowable waivers of sections of title 5, United States Code (U.S.C.), restrictions on numbers of employees that can be hired using the DHA, and other requirements for usage; others overlap with other newly enacted or otherwise existing hiring authorities, including Expedited Hiring Authorities (EHA). Further, many of the individual DHAs have different expiration dates, challenging the Department's ability to effectively manage its civilian workforce. The lack of centralized DoD planning and coordination to assess the Department's hiring needs and the necessity of new authorities, to include DHAs where appropriate, has had the effect of placing the Department in a reactive rather than strategic posture concerning its hiring needs. As a result, the Department's hiring policies are piecemeal, complex, confusing, and difficult to administer.

In addition, the multitude of civilian human resource authorities enacted within a short period of time has challenged the Department's ability to quickly and effectively adapt its hiring policies and procedures to be consistent with the new authorities. DoD and its components are under pressure to immediately implement and use the authorities upon enactment; this is exacerbated by the short duration of some authorities, e.g., two fiscal years. Multiple new DHAs have resulted in a significant culture change from traditional Federal hiring practices, and present several challenges, including the availability of so many authorities for use; understanding the distinctions between traditional Office of Personnel Management (OPM) DHAs and those granted to DoD through legislation; and the ability to ensure compliance with various statutory limitations and requirements, e.g., allocations of positions and reporting. Such challenges have increased the variability and complexity in hiring and challenge human resources staff and hiring managers to understand, communicate, and effectively utilize each authority. DoD hiring policies and processes must be as expeditious, clear, and concise as possible to enable DoD Components to acquire new talent when needed.

This proposal is designed to ensure adherence to merit system principles, transparency, and accountability, requiring the Secretary of Defense to promulgate regulations to implement use of the authority. The Department consistently maintains a high percentage of veterans in its civilian workforce representation, and we anticipate that would continue while fully utilizing the

proposed authority; however, the proposal builds in measures to address any shortfalls in veteran hiring. That said, compared to the rest of the Federal Government, DoD employs record numbers of prior military. Even with the use of DHAs, DoD has steadily increased representation of veterans to the current 48.5% of the DoD civilian workforce, which has resulted in the Department being recognized as the leader in veteran hiring. The Government-wide representation of veterans is 22.8% (exclusive of DoD).

**Budget Implications:** This proposal has no significant budget impact. Incidental savings are accounted for within the Fiscal Year (FY) 2020 President's Budget. The authority would supersede existing hiring authorities that are already available for use by the Department. In utilizing the authority, the DoD and any DoD Component would be hiring individuals within its pre-existing budget authority for civilian personnel salaries. In other words, the authority would enable DoD to more expeditiously hire individuals it otherwise would have sought to hire under a different legal authority to fill an existing authorized requirement.

**Changes to Existing Law:** This proposal would add a section to title 10, United States Code, as set forth above.

1 **SEC. \_\_\_\_. SUPERVISION AND ADMINISTRATION COSTS OF SMALL-SCALE**  
2 **CONSTRUCTION FOR PROGRAMS TO BUILD CAPACITY OF**  
3 **FOREIGN SECURITY FORCES.**

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

6 “(3) SUPERVISION AND ADMINISTRATION COSTS OF SMALL-SCALE  
7 CONSTRUCTION.—Amounts available in a fiscal year to carry out the authority in  
8 subsection (a) may be obligated for supervision and administration costs of the  
9 Department of Defense associated with small-scale construction carried out under such  
10 authority at the time a reimbursable order for such construction is accepted, including  
11 costs associated with labor provided by the Department of Defense and any other costs  
12 incurred by the Department of Defense in carrying out the small-scale construction.”.

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

**Section-by-Section Analysis**

The purpose of this proposed legislation is to add language to section 333, of title 10, United States Code that would authorize DoD construction agents to obligate all estimated supervision and administration (S&A) costs during the period of availability of the funds authorized for the construction project.

This legislative proposal would clarify that DoD may use O&M funds to perform S&A services throughout the life of the project until the funds cancel. The proposal also aims to align 10 U.S.C. 333 with other existing construction authorities that allow for the obligation of all estimated S&A costs at the outset of the project. If accepted, this proposal would authorize construction agents to obligate all S&A costs upon implementation of the Letter of Offer and Acceptance. It would allow for better forecasting of S&A costs, and ensure that the funds would be available for continued U.S. Government oversight of construction, contract administration, and quality assurance. In addition, adopting this proposal would eliminate the necessity of executing follow-on cases with additional funds, and would allow S&A costs arising from the warranty and maintenance period to be captured in the total project cost at the outset rather than budgeted and notified to Congress separately in future fiscal years.

The U.S. Army Corps of Engineers (USACE) is unable to expend Operation and Maintenance (O&M) funds authorized under 10 U.S.C. 333 to pay for S&A costs for small-scale construction projects beyond the funds' period of availability due to general fiscal law limitations that require current year funds to be used for bona fide needs of the current fiscal year. In the case of S&A expenses, the bona fide need for the S&A activities does not arise until the S&A activities take place. Therefore, current-year funds must be obligated to pay for S&A costs each fiscal year as construction progresses. These restrictions create significant challenges to executing small-scale construction projects since current year funds must be available and allocated to pay for S&A expenses, and therefore require re-notification to Congress for a given construction project each time the funds being used to carry out S&A activities for that project expire.

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

These provisions are exceptions to the fiscal law principle that the Government may only obligate current year funds for employee labor costs. They also allow for the obligation of funds in a manner that is consistent with the requirement of the Economy Act (31 U.S.C. 1535(d)(1)) that funds be obligated to perform services before the end of the period of availability of the appropriation or must be returned to the requesting agency by ensuring that the funds for S&A have been obligated during their period of availability.

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

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

RESOURCE REQUIREMENTS (\$BILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Defense Security Cooperation Agency	\$1.50	\$1.20	\$1.20	\$1.20	\$1.30	Operation and Maintenance, Defense Wide(0100) – Security Cooperation Account
Total	\$1.50	\$1.20	\$1.20	\$1.20	\$1.30	--

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

**§333. Foreign security forces: authority to build capacity**

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

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

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

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

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

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

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

(c) TYPES OF CAPACITY BUILDING.—

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

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

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

(B) Institutional capacity building.

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

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

(d) LIMITATIONS.—

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) FUNDING.—

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

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

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

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

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

Amounts available in a fiscal year to carry out the authority in subsection (a) may be obligated for supervision and administration costs of the Department of Defense associated with small-scale construction carried out under such authority at the time a reimbursable order for such construction is accepted, including costs associated with labor provided by the Department of Defense and any other costs incurred by the Department of Defense in carrying out the small-scale construction.

1 **SEC. \_\_\_\_. REVISIONS TO DEPARTMENT OF DEFENSE AUTHORITY FOR JOINT**  
2 **TASK FORCES TO SUPPORT LAW ENFORCEMENT AGENCIES**  
3 **CONDUCTING COUNTERTERRORISM AND COUNTER**  
4 **TRANSNATIONAL ORGANIZED CRIME ACTIVITIES.**

5 (a) CODIFICATION IN TITLE 10.—Chapter 15 of title 10, United States Code, is amended  
6 by adding at the end a new section consisting of—

7 (1) a heading as follows:

8 **“§285. Authority for joint task forces to support law enforcement agencies conducting**  
9 **counterterrorism and counter transnational organized crime activities”**; and

10 (2) a text consisting of the text of section 1022 of the National Defense  
11 Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 271 note).

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

“285. Authority for joint task forces to support law enforcement agencies conducting counterterrorism and  
counter transnational organized crime activities.”.

14 (c) REVISIONS.—Section 285 of title 10, United States Code, as added by subsection (a),  
15 is amended—

16 (1) in subsection (b), by striking “During fiscal years 2006 through 2020, funds  
17 for drug interdiction” and inserting “Funds for drug interdiction”;

18 (2) in subsection (d)—

19 (A) by striking “(d) CONDITIONS.—(1)” and all that follows through

20 “(2)(A) Support” and inserting “(d) CONDITIONS.—(1) Support”; and

1 (B) by striking “(B) The Secretary of Defense may waive the requirements  
2 of subparagraph (A)” and inserting “(2) The Secretary may waive the  
3 requirements of paragraph (1)”; and

4 (3) by striking subsection (e) and inserting the following new subsection:

5 “(e) DEFINITIONS.—(1) In this section, the term ‘transnational organized crime’ has the  
6 meaning given such term in section 284(i) of this title.

7 “(2) For purposes of applying the definition of transnational organized crime under  
8 paragraph (1) to this section, the term ‘illegal means’, as it appears in such definition, includes  
9 the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural  
10 resources and wildlife, trade in illegal drugs and weapons, and other forms of illegal means  
11 determined by the Secretary of Defense.”.

12 (d) REPEAL.—Section 1022 of the National Defense Authorization Act for Fiscal Year  
13 2004 (Public Law 108-136; 10 U.S.C. 271 note) is repealed.

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

### **Section-by-Section Analysis**

This proposal would codify and make permanent the authorities provided in section 1022 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004 (Public Law 108-136, as amended) (referred to as “section 1022”). For over a decade, section 1022 has provided the Department of Defense (DoD) the authority to use funds from the drug interdiction and counter-drug activities account to enable joint task forces that support law enforcement agencies conducting counter-drug activities to also provide support to law enforcement agencies conducting counter-terrorism or counter-transnational organized crime activities. Since section 1022 was first enacted in November 2003, the authority has been reauthorized eight times. In the FY 2015 NDAA, section 1022 was reauthorized for a period of five years and was expanded to also authorize support to joint task forces conducting counter-transnational organized crime activities. The authority is set to expire at the end of FY 2020.

Section 1022 has been particularly useful in authorizing DoD analytical support to disrupt the financial resources of terrorists, transnational criminal organizations, and other threat networks that derive revenue from illicit trafficking. Details of support authorized under section

1022 have been reported to Congress annually through a classified report. Section 1022(d) requires that counterterrorism or counter-transnational organized crime activities must “relate significantly” to counterdrug objectives, unless the Secretary of Defense issues a waiver that providing such support is “vital to the national security interests of the United States.” This provision allows DoD to support the most critical national security requirements, while preserving the integrity of the counterdrug appropriation for activities to disrupt the flow of cocaine, heroin, and other dangerous drugs and precursor chemicals bound for the United States. Codifying section 1022 would facilitate long-term planning and budgeting, and would enhance the efforts of the Combatant Commanders to confront the persistent national security threat posed to the United States and our allies and partners by the nexus among drugs, terrorism, and transnational organized crime.

Finally, this provision would repeal the condition that support under this authority may only be provided within the area of responsibility of a given joint task force. Many of the illicit threat networks this authority was designed to counter operate globally, conducting their operations in multiple countries and regions, which often span multiple geographic combatant commands’ areas of responsibility. Furthermore, many of the joint task forces currently designated to provide support pursuant to section 1022, such as U.S. Special Operations Command and the Narcotics and Transnational Organized Crime Support Center (NTC), by design, do not have a specific geographic area of responsibility. We, therefore, believe this provision is no longer necessary and could unnecessarily restrict DoD support for transregional law enforcement investigations.

**Budget Implications:** The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President’s Budget. There are no additional resources required to implement this authority. All costs will be absorbed within the annual appropriations of the Counternarcotics Central Transfer Account.

Funds used under this authority will be taken from the Drug Interdiction and Counter-Drug Activities, Defense appropriation.

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Drug Interdiction and Counter Drug Activities, Defense	\$35	\$35	\$37	\$39	\$39	Central Transfer Account
Total	\$35	\$35	\$37	\$39	\$39	

This proposed change would only make permanent the latitude and scope of activities already permitted by section 1022. Funding levels in the Department’s Central Transfer Account would not be affected.

**Changes to Existing Law:** This proposal would transfer the text of section 1022 of the National Defense Authorization Act for Fiscal Year 2004 into a new section 285 of title 10, United States Code, and amend such section as follows:

**~~SEC. 1022. AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT~~**

**~~TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.~~**

**§285. Authority for joint task forces to support law enforcement agencies conducting counterterrorism and counter transnational organized crime activities**

(a) Authority.-A joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities or counter-transnational organized crime activities.

(b) Availability of Funds.~~During fiscal years 2006 through 2020, funds for drug interdiction~~ Funds for drug interdiction and counter-drug activities that are available to a joint task force to support counter-drug activities may also be used to provide the counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

(c) Annual Report.-Not later than December 31 of each year in which the authority in subsection (a) is in effect, the Secretary of Defense shall submit to the congressional defense committees a report setting forth, for the one-year period ending on the date of such report, the following:

(1) An assessment of the effect on counter-drug, counter-transnational organized crime, and counter-terrorism activities and objectives of using counter-drug funds of a joint task force to provide counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

(2) A description of the type of support and any recipient of support provided under subsection (a), and a description of the objectives of such support.

(3) A list of current joint task forces exercising the authority under subsection (a).

(4) A certification by the Secretary of Defense that any support provided under subsection (a) during such one-year period was provided in compliance with the requirements of subsection (d).

~~(d) Conditions. (1) Any support provided under subsection (a) may only be provided in the geographic area of responsibility of the joint task force.~~

~~(2)(A) Support~~ (d) Conditions.—(1) Support for counter-terrorism or counter-transnational organized crime activities provided under subsection (a) may only be provided if the Secretary of Defense determines that the objectives of using the counter-drug funds of any joint task force to provide such support relate significantly to the objectives of providing support for counter-drug activities by that joint task force or any other joint task force.

~~(B) The Secretary of Defense may waive the requirements of subparagraph (A)~~ (2) The Secretary may waive the requirements of paragraph (1) if the Secretary determines that such a waiver is vital to the national security interests of the United States. The Secretary shall promptly submit to the congressional defense committees notice in writing of any waiver issued under this subparagraph, together with a description of the vital national security interests associated with the support covered by such waiver.

(e) Definitions.-~~(1) In this section, the term “transnational organized crime” has the~~

meaning given such term in section 284(i) of ~~title 10, United States Code~~ this title.

(2) For purposes of applying the definition of transnational organized crime under paragraph (1) to this section, the term “illegal means”, as it appears in such definition, includes the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural resources and wildlife, trade in illegal drugs and weapons, and other forms of illegal means determined by the Secretary of Defense.

1 **SEC. \_\_. TRAINING WITH FRIENDLY FOREIGN COUNTRIES.**

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

4 (1) in paragraph (1)—

5 (A) by striking “may train with” and inserting “may train, or train with,”;  
6 and

7 (B) by striking “security forces” and inserting “national security forces”;  
8 and

9 (2) in paragraph (2)—

10 (A) by striking “may train only with” and inserting “may only train, or  
11 train with,”; and

12 (B) by inserting “or, with the concurrence of the Secretary of State, other  
13 national security forces” before the semicolon at the end.

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

16 (c) SELECTION OF FOREIGN PARTNERS.—Section 321(c) of such title is amended by  
17 striking “(c) PURPOSE OF TRAINING AND EXERCISES.—” and all that follows through “(2)  
18 SELECTION OF FOREIGN PARTNERS.—Training” and inserting “(c) SELECTION OF FOREIGN  
19 PARTNERS.—Training”.

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

22 “(e) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Not later than 90 days after the  
23 end of each fiscal year in which training is conducted under the authority of subsection (a), the



1 Secretary of Defense shall brief the Committees on Armed Services of the Senate and the House  
2 of Representatives on the use of the authority during such fiscal year, including each country  
3 with which training under the authority was conducted and the types of training provided.”.

4 (f) REGULATIONS.—Section 321 of such title is amended by striking subsection (f).

### Section-by-Section Analysis

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

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

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

Finally, the requirement for prescribing regulations is removed, consistent with section 1202(b) of the FY2016 National Defense Authorization Act as well as section 1241 of the FY2017 NDAA enacting a new chapter for defense security cooperation (chapter 16). OSD Policy is developing enduring security cooperation guidance that will cover all security cooperation activities; specific regulations for section 321 would be rendered obsolete by the overarching chapter 16 guidance currently in development.

**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 section would make the following changes to section 321 of title 10, United States Code:

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

(a) Training Authorized.-

(1) Training with foreign forces generally.-The armed forces under the jurisdiction of the Secretary of Defense ~~may train with~~ may train, or train with, the military forces or other ~~security forces~~ national security forces of a friendly foreign country if the Secretary determines that it is in the national security interest of the United States to do so.

(2) Limitation on training of general purpose forces.-The general purpose forces of the United States armed forces ~~may train only with~~ may only train, or train with, the military forces of a friendly foreign country or, with the concurrence of the Secretary of State, other national security forces.

(3) Training to support mission essential tasks.-Any training conducted pursuant to paragraph (1) shall, to the maximum extent practicable, support the mission essential tasks for which the unit of the United States armed forces participating in such training is responsible.

(4) Elements of training.-Any training conducted pursuant to paragraph (1) shall, to the maximum extent practicable, include elements that promote-

- (A) observance of and respect for human rights and fundamental freedoms; and
- (B) respect for legitimate civilian authority within the foreign country concerned.

(b) Authority To Pay Training and Exercise Expenses.-The Secretary of a military department or the commander of a combatant command may pay, or authorize payment for, any of the following expenses:

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

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

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

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

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

~~(c) Purpose of Training and Exercises.-~~

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

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

(d) Availability of Funds for Activities That Cross Fiscal Years.-Amounts available for the authority to pay expenses in subsection (b) for a fiscal year may be used to pay expenses under that subsection for training and exercises that begin in such fiscal year but end in the next fiscal year.

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

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

~~(f) Regulations.—~~

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

~~(2) Elements. The regulations required under this section shall provide the following:~~

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

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

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

1 **SEC. \_\_\_\_. AUTHORITY TO PROVIDE TRAVEL AND TRANSPORTATION**  
2 **ALLOWANCES IN CONNECTION WITH TRANSFER CEREMONIES**  
3 **OF DEPARTMENT OF DEFENSE AND COAST GUARD CIVILIAN**  
4 **EMPLOYEES WHO DIE OVERSEAS.**

5 (a) TRAVEL AND TRANSPORTATION ALLOWANCES.—

6 (1) IN GENERAL.—Subchapter II of chapter 75 of title 10, United States Code, is  
7 amended by adding at the end the following new section:

8 **“§1492. Authority to provide travel and transportation allowances in connection with**  
9 **transfer ceremonies of Department of Defense and Coast Guard civilian**  
10 **employees who die overseas**

11 “The Secretary of the military department concerned, the agency head of a Defense  
12 Agency or Department of Defense Field Activity, or the Secretary of Homeland Security, as  
13 appropriate, may provide round trip travel and transportation allowances in connection with  
14 ceremonies for the transfer of a Department of Defense or Coast Guard civilian employee who  
15 dies while located or serving overseas to eligible relatives and provide for the accompaniment of  
16 such persons to the same extent as the Secretary of Defense may provide such travel and  
17 transportation allowances and accompaniment services to such persons with respect to a  
18 deceased service member under chapter 8 of title 37.”.

19 (2) CLERICAL AMENDMENT.—The table of chapters at the beginning of such subchapter is  
20 amended by adding at the end the following new item:

“Sec. 1492. Authority to provide travel and transportation allowances in connection with transfer ceremonies of  
Department of Defense and Coast Guard civilian employees who die overseas.”.

21 (b) TECHNICAL AMENDMENTS.—Section 481f(d) of title 37, United States Code, is  
22 amended—

1 (1) in the subsection heading, by striking “TRANSPORTATION TO” and inserting  
 2 “TRAVEL AND TRANSPORTATION ALLOWANCES IN CONNECTION WITH”; and  
 3 (2) in paragraph (1) in the matter preceding subparagraph (A), by striking  
 4 “transportation to” and inserting “travel and transportation allowances in connection  
 5 with”.

**Section-by-Section Analysis**

This proposal amends title 10, U.S.C., by adding a section that would extend and enhance authority to ensure transportation parity with military members and civilian employees. It is the Department of Defense’s intent to provide similar assistance for its civilian employees. Enhancement of this authority would afford the Secretaries of the military departments, the heads of Defense Agencies and Department of Defense Field Activities, and the Secretary of Homeland Security to provide transportation to eligible family members to transfer ceremonies of civilian employees who die overseas. Civilian employees are an integral part of the DoD team and are at risk of losing their lives while serving their country alongside the military team members.

Currently, section 481f(d) of title 37, U.S.C, authorizes transportation to specified family members of service members who die while serving overseas. This amendment would remedy an inequity among survivors of members of the Armed Forces and survivors of civilian employees who may die while conducting the same mission together.

**Budget Implications:** The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2020 President’s Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Army	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	Operation and Maintenance, Army
Navy	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	Operation and Maintenance, Navy
Marine Corps	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	Operation and Maintenance, Marine Corps
Air Force	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	Operation and Maintenance, Air Force
Coast Guard	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance
4th Estate	\$0.01	\$0.01	\$0.01	\$0.01	\$0.01	Operation and Maintenance, Defense wide
Total	\$0.078	\$0.078	\$0.078	\$0.078	\$0.078	--

The table above details resource requirements associated with the proposal based on the projected number of civilian deaths required to go to Dover Air Force Base for a medical legal investigation, with three family members per decedent traveling at an estimated cost of \$1,000 each. We anticipate that this will impact an additional 84 family members each year based on

casualty statistics of civilian employees who die overseas and are transported to the Dover Port Mortuary.

**Changes to Existing Law:** This proposal would add a new section to title 10, United States Code, as set forth above. In addition, this proposal would make the following changes to title 37, United States Code:

**§481f. Travel and transportation allowances: transportation for survivors of deceased member to attend member's burial ceremonies; transportation for survivors of member dying overseas to attend transfer ceremonies**

\*\*\*\*\*

(d) ~~TRANSPORTATION TO~~ TRAVEL AND TRANSPORTATION ALLOWANCES IN CONNECTION WITH TRANSFER CEREMONIES OF MEMBERS OF THE ARMED FORCES WHO DIE OVERSEAS.-(1) The Secretary of the military department concerned may provide round trip ~~transportation to~~ travel and transportation allowances in connection with ceremonies for the transfer of a member of the armed forces who dies while located or serving overseas (including during a humanitarian relief operation) to the following:

- (A) The primary next of kin of the member.
- (B) Two family members (other than primary next of kin) of the member.
- (C) One or more additional family members of the member, at the discretion of the Secretary.

(2)(A) For purposes of this subsection, the primary next of kin of a member of the armed forces shall be the eligible relatives of the member specified in subparagraphs (A) through (D) of subsection (c)(1).

(B) The Secretaries of the military departments shall prescribe in regulations the family members of a member of the armed forces who shall constitute family members for purposes of subparagraphs (B) and (C) of paragraph (1). The Secretary of Defense shall ensure that such regulations are uniform across the military departments.

(3) Transportation shall be provided under this subsection by means of Invitational Travel Authorizations.

(4) The Secretary of a military department may, upon the request of the primary next of kin covered by paragraph (1)(A) and at the discretion of the Secretary, provide for the accompaniment of such next of kin in travel under this subsection by a casualty assistance officer or family liaison officer of the military department who shall act as an escort in such accompaniment.

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1 **SEC. \_\_\_\_. EXCLUSION OF UNITED STATES SPACE COMMAND FROM FISCAL**  
2 **YEAR 2020 AND 2021 HEADQUARTERS COST CEILINGS.**

3 The amounts expended on United States Space Command shall be excluded from the  
4 calculation of the amounts that may be obligated and expended on major headquarters activities  
5 pursuant to section 931 of the John S. McCain National Defense Authorization Act for Fiscal  
6 Year 2019 (Public Law 115–232) and major Department of Defense headquarters activities  
7 pursuant to section 346(b) of the National Defense Authorization Act for Fiscal Year 2016 (10  
8 U.S.C. 111 note).

**Section-by-Section Analysis**

This proposal would exclude U.S. Space Command (USSPACECOM) headquarters activities from Major Department of Defense Headquarters Activities (MHA) ceiling calculations and limits for FY20 and FY21. Such latitude will enable the DoD to provide personnel and resources for USSPACECOM headquarters activities over a timeframe necessary for the successful establishment and maturation to Full Operational Capability (FOC) of the new Command without impacting the DoD’s ability to plan and provide adequate resources for other MHA activities simultaneously. Consistent with U.S. law, the DoD is establishing U.S. Space Command to focus on planning and executing space warfighting operations in order to protect U.S. national interests. The establishment of USSPACECOM will increase the ability of the U.S. joint force to project power and influence, seek to reduce decision timelines associated with the conduct of space operations, and enhance the command and control of the commander responsible for defending U.S. interests in space. USSPACECOM will be singularly focused on leading global joint space warfighting operations.

The John S. McCain National Defense Authorization Act for Fiscal Year 2019 identifies a specific cost limit percentage for each DoD organization as “The average percentage of the amount authorized to be appropriated for the DoD per fiscal year, during the 10 fiscal years ending with FY2018 that has been expended on major headquarters activities.” This legislation does not account for the addition of necessary MHA structure for the creation of a new combatant command. Without the adoption of this proposal, the Department would be unable to provide adequate and timely resources for USSPACECOM while maintaining the Department’s path to meet Congress’s MHA cost limit targets in FY21.

**Budget Implications:** The DoD is not requesting additional funding authority above the current DoD topline to resource USSPACECOM. Currently, the DoD is performing a manpower analysis to determine the manpower and resources necessary to mature USSPACECOM beyond establishment to FOC. Once completed in spring of 2019, the analysis will allow the DoD to program for any required adjustments in an FY21 budget request. Given the changes to MHA

ceiling calculations outlined in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, combined with the ongoing manpower analysis, the Department requires the flexibility in MHA ceiling limits to align resources to meet warfighting requirements. This proposal would have no impact to the MHA ceiling for activities outside of USSPACECOM. The table below is an estimate of USSPACECOM MHA resources which would be exempted from MHA restrictions. These estimates will continue to be refined based on the results of the ongoing manpower analysis.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
<b>USSPACECOM Civilian Personnel</b>	28.4	47.3	56.7	75.6	85	Operation and Maintenance, Air Force
<b>USSPACECOM Military Personnel</b>	0	15.0	25.1	30.1	40.1	Military Personnel, Air Force
<b>USSPACECOM Military Personnel</b>	0	10.1	16.8	20.2	26.7	Military Personnel, Army
<b>USSPACECOM Military Personnel</b>	0	7.3	12.1	14.5	19.3	Military Personnel, Navy
<b>USSPACECOM Military Personnel</b>	0	2.0	3.3	4.0	5.3	Military Personnel, Marine Corps
<b>USSPACECOM Contracts</b>	27.2	42	27.2	16	16	Operation and Maintenance, Air Force
<b>Total</b>	<b>55.6</b>	<b>123.7</b>	<b>141.2</b>	<b>160.4</b>	<b>192.4</b>	

<b>Personnel REQUIREMENTS</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
<b>USSPACECOM Civilian Personnel</b>	194	323	388	517	581	Operation and Maintenance, Air Force
<b>USSPACECOM Military Personnel</b>	0*	94	156	187	250	Military Personnel, Air Force
<b>USSPACECOM Military Personnel</b>	0*	60	100	120	160	Military Personnel, Army
<b>USSPACECOM Military Personnel</b>	0*	46	76	91	122	Military Personnel, Navy
<b>USSPACECOM Military Personnel</b>	0*	13	21	25	34	Military Personnel, Marine Corps
<b>USSPACECOM Contractor Force</b>	101	150	101	47	47	Operation and Maintenance, Air Force
<b>Total</b>	<b>295</b>	<b>686</b>	<b>842</b>	<b>987</b>	<b>1,194</b>	

\* Excludes transfer of 120 military personnel from USSTRATCOM

**Changes to Existing Law: None**



1 **SEC. \_\_\_\_. LIMITATION ON APPLICATION OF VETERANS' PREFERENCE FOR**  
2 **PERMANENT EMPLOYEES IN COMPETITIVE EXAMINING.**

3 (a) OPM REGULATIONS.—Section 1302 of title 5, United States Code, is amended by  
4 adding at the end the following new subsection:

5 “(e) Preference may not be given pursuant to subsection (b) or (c) in certification for  
6 appointment, or in appointment, through a competitive examination in the case of a  
7 preference eligible who is an employee who has a permanent appointment in the competitive  
8 service.”.

9 (b) ADDITIONAL POINTS ON EXAMINATIONS FOR PREFERENCE ELIGIBLES.—Section  
10 3309 of such title is amended—

11 (1) by inserting “(a)” before “A preference eligible”; and

12 (2) by adding at the end the following new subsection:

13 “(b) Preference may not be given through competitive examination to a preference  
14 eligible who has a permanent appointment in the competitive service.”.

15 (c) ALTERNATIVE RANKING AND SELECTION PROCEDURES.—Section 3319 of such  
16 title is amended—

17 (1) in subsection (b), by inserting before the period at the end of the first  
18 sentence the following: “, except preference-eligibles who have permanent  
19 appointments in the competitive service”;

20 (2) by striking subsection (d); and

21 (3) by redesignating subsection (e) as subsection (d).

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

**Section-by-Section Analysis**

This proposal would amend 5 USC § 1302, 5 USC § 3309, and 5 USC § 3319 to provide veterans' preference under competitive examining only to those preference eligibles who are not currently appointed permanently in the competitive service.

The National Defense Authorization Act for Fiscal Year (FY) 2010 required the Department of Defense (DoD) to develop a new performance appraisal system and to redesign procedures for use within DoD to make appointments to positions within the competitive service, and authorized the Secretary of Defense, at his discretion, to establish a Civilian Workforce Incentive Fund. In accordance with Executive Order (E.O.) 13522, DoD involved bargaining unit employees through their union representatives in the design and implementation of the new personnel authorities. This collaborative labor-management initiative came to be known as "New Beginnings," and involved the creation of three joint labor-management design teams. The Hiring Flexibilities Design Team recommended limiting the use of veterans' preference to preference eligibles not currently employed on a full-time permanent appointment in the Federal Government.

Employment in the Federal service is subject to merit system principles and veterans' preference. Merit system principles are found under 5 USC § 2301 and state "Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."

Veterans' preference provides special consideration to qualified veterans seeking Federal service who apply to vacancies open to all applicants, such as open competitive announcements or direct hire authorities. Preference eligibles are awarded points (5 or 10) or placed at the top of the quality category for which they are ranked and cannot be passed over to select a non-preference candidate. Under current regulations, veterans' preference does not apply to internal merit promotion actions such as promotion, reassignment, change-to-lower grade, or reinstatement. However, when veterans who are on a permanent appointment in the Federal service apply for positions to be filled under competitive examining, they receive veterans' preference and consideration for employment in the same manner as if they were not employed. This has the effect of limiting consideration of other candidates who do not receive preference, including those who may be more highly qualified and other veterans seeking their first Federal job. This limits the ability to attract new candidates from external competition open to the general public, inhibiting the agency's ability to acquire new talent.

DoD leads the Federal Government in the hiring of veterans. Over 48 percent of DoD's civilian workforce has prior military service. Given the large veteran population in DoD, the balance between merit system principles and veterans' preference has shifted to disproportionately favor veterans' preference. The increased hiring of veterans affects the quality and diversity of the DoD workforce and appears inconsistent with the intent of merit system principles. For example, in 2008, 15 percent of military members were females. The smaller female population in the military results in diminished gender diversity among the veteran population subsequently exercising veterans' preference.

Amending the law to provide veterans' preference under competitive examining to those preference eligibles who are not currently appointed permanently in the competitive service complies better with the intent of merit systems principles.

This proposal also strikes 5 USC § 3319(d), which requires each agency that establishes a category rating system under 5 U.S.C. § 3319 to submit to Congress, in each of the 3 years following the establishment, a report containing certain information. The Office of Personnel Management has advised that the reports were required only during the initial 3 years of implementing category rating procedures. Some agencies began to use category rating in 2003. Other agencies began to use category rating in 2010, when a presidential memorandum required its use. At this time, agencies are no longer required to adhere to the reporting requirements of 5 U.S.C. § 3319(d).

**Budget Implications:** No budget implications.

**Changes to Existing Law:** This proposal would make the following changes to title 5, United States Code:

### **§1302. Regulations**

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title.

(e) Preference may not be given pursuant to subsection (b) or (c) in certification for appointment, or in appointment, through a competitive examination in the case of a preference eligible who is an employee who has a permanent appointment in the competitive service.

### **§3309. Preference eligibles; examinations; additional points for**

(a) A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

- (1) a preference eligible under section 2108 (3)(C)–(G) of this title—10 points;
- and
- (2) a preference eligible under section 2108 (3)(A)–(B) of this title—5 points.

(b) Preference may not be given through competitive examination to a preference eligible who has a permanent appointment in the competitive service.

### **§3319. Alternative ranking and selection procedures**

(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104 (a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles, except preference-eligibles who have permanent appointments in the competitive service. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317 (b) or 3318 (b), as applicable, are satisfied.

~~(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—~~

- ~~(1) the number of employees hired under that system;~~
- ~~(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and~~
- ~~(3) the way in which managers were trained in the administration of that system.~~

~~(e)~~ (d) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.