

1 **SEC. ____ . APPLICATION OF ACQUISITION DEMONSTRATION PROJECT TO**
2 **DEPARTMENT OF THE AIR FORCE EMPLOYEES ASSIGNED TO**
3 **SUPPORT UNITED STATES STRATEGIC COMMAND AND UNITED**
4 **STATES SPACE COMMAND ENTERPRISES.**

5 Chapter 81 of title 10, United States Code, is amended by adding at the end the following
6 new section:

7 **“§1599k. Application of acquisition demonstration project to Department of the Air Force**
8 **employees assigned to support United States Strategic Command and United**
9 **States Space Command enterprises**

10 “(a) IN GENERAL.—For the purposes of the demonstration project authorized by section
11 1762 of this title, the Secretary of Defense may apply the provisions of such section, including
12 any regulations, procedures, waivers, or guidance implementing such section, to an employee of
13 the Department of the Air Force assigned to support United States Strategic Command or United
14 States Space Command, or a joint subordinate component command or center, as if the employee
15 was a member of the acquisition workforce.

16 “(b) NUMBER OF PARTICIPANTS.—Employees participating in the program authorized
17 under this section shall not be subject to the limitation on the number of participants contained in
18 section 1762(c) of this title.

19 “(c) TERMINATION OF AUTHORITY; CONVERSION.—Subsections (g) and (h) of section
20 1762 of this title shall apply to the authority under this section and the employees participating in
21 the program authorized under this section.”.

Section-by-Section Analysis

In line with the President's Management Agenda, the National Security Strategy, and the National Defense Strategy, this proposal will allow the combatant commands to leverage a personnel system with proven success to recruit and retain the best and brightest individuals and enable the combatant commands to compete with the private sector in hiring highly technical personnel to support our national security missions. Today's global strategic environment presents complex challenges to deterring adversary aggression and coercion. State and non-state actors are conducting subversive and destabilizing actions below the levels of armed conflict in all domains to advance their own long-term security goals, reshape the world in their favor, and deny and/or degrade the ability of the United States to defend our own national interests. In today's threat environment, deterrence remains the bedrock of our national defense. To counter our geopolitical gains, our adversaries are expanding threats and integrating conventional, nuclear, space, electromagnetic spectrum, special operations, transportation, logistics, and cyber operations to field an unprecedented range of capabilities and create challenges that require a renewed emphasis on deterrence across the continuum from competition to conflict. While the overall national security mission of the Department of Defense (DoD) has remained constant, the world is changing at a rapid clip, which requires the Department to adapt. The first nation to understand and adopt emerging technologies will have a significant advantage.

To answer our Nation's call to counter these challenges, the Department must grow its intellectual capital. Strategic deterrence and space capabilities enable every facet of society and are central to the American way of life. Our joint teams require the ability to build an agile workforce with the skill sets demanded by today's ever-changing security environment, but currently lack the ability to achieve this goal. The ability to seek out and provide avenues to attract and retain top talent is an essential mission requirement for the combatant commands.

Just as we must revise our systems and processes, we must develop the most critical component of our enterprise – our warfighters. As part of the Total Force, DoD civilians are critical to the Department's ability to meet its mission and stay ahead of the global competition. By leveraging this proven system, we will promote coordination across the entire enterprise and empower our warfighters to act decisively and win. This system provides for higher employee engagement as measured on the Federal Employee Viewpoint Survey. The combatant commands have previously lost highly skilled technical personnel to industry due to our inflexible personnel system and have struggled to make timely job offers to highly qualified individuals across a number of disciplines. For example, United States Space Command (USSPACECOM) is competing for talent in a rapidly growing private space enterprise, whose human resources systems are much faster and more responsive than the Federal Government's processes. Additionally, leveraging this existing personnel system would eliminate grade-specific determination issues and would help our commands quickly flex to meet ever-changing requirements in a strategic environment, which is in a constant state of flux. Finally, there are mechanisms in this proposed personnel system that would help our collective national missions significantly, such as the delegated compensation, voluntarily emeritus programs, and scholastic achievement programs.

This proposal allows the Department to focus on transformational human capital activities in defense of the Nation, specifically focusing on bringing in new and non-traditional talent to help the Department tackle long-standing problems and propel our workforce into the

21st Century. The Department is in danger of falling behind both the private sector and global competitors. Technology innovation is being driven by private companies, which are also appealing to employees' desires to seek challenges, interesting problems, and job satisfaction in addition to high salaries. The Department has a lot invested in weapon system readiness for future battles, and must give the same focus to adapting its civilian workforce for the realities of the fourth industrial revolution. Authorizing the combatant commands to leverage the DoD Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) moves us towards these goals and will help set the stage for the future of civilian personnel management in the Department.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President's Budget that are impacted by this proposal. These costs will only be realized if the combatant commands fully convert to this new system.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
Air Force Civilian Pay Unites States Strategic Command (USSTRATCOM)	\$0.24	\$0.24	\$0.25	\$0.26	\$0.26	Air Force Operations and Maintenance (3400)	01	3400-F-01-20-015D	N/A
Air Force Civilian Pay (USSPACECOM)	\$0.07	\$0.04	\$0.05	\$0.06	\$0.06	Air Force Operations and Maintenance (3400)	01	0103000001 3C/13C; 0105000001 5X/15X	N/A
Total	\$0.31	\$0.28	\$0.30	\$0.32	\$0.32				

Cost Methodology: Cost expense is based on an Air Force (AF) projection for an AcqDemo conversion utilizing personnel currently in place with an effective August 2022 conversion date in FY2023. Additional out year expense shown is the projected 0.1% cost increase for AcqDemo vs. General Schedule for FY2024-FY2027. USSPACECOM has numerous unfilled positions which have no WGI buy in as vacancies while many filled positions at USSTRATCOM are with personnel at Step 10 or 00 of the GS system, which have no WGI buy in conversion expense. Base personnel costs are already programmed across the Future Years Defense Program (FYDP) and are not included in the costs in the above table.

PERSONNEL IMPACT (END STRENGTH OR FTES)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
Air Force (USSTRATCOM)	1095					Civilian Personnel, Air Force	01	3400-F-01-20-015D	N/A
Air Force (USSPACECOM)	520	62	35			Civilian Personnel, Air Force	01	010300000 13C/13C;	N/A

PERSONNEL IMPACT (END STRENGTH OR FTES)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
								010500000 15X/15X	
Total	1615	62	35						

Personnel Methodology: Number of personnel is based on an AF personnel database run conducted by AF AcqDemo Program Office against USSTRATCOM and USSPACECOM Headquarters' assigned unit identifiers on 4 May 2021 for personnel currently on board. This number includes vacancies (positions) projected to be funded across the FYDP.

Changes to Existing Law: This proposal adds a new section to chapter 81 of title 10, United States Code, as set forth in the legislative text above.

1 **SEC. ___. CLARIFICATION OF AUTHORITY TO SOLICIT GIFTS IN SUPPORT OF**
2 **THE MISSION OF THE DEFENSE POW/MIA ACCOUNTING AGENCY**
3 **TO ACCOUNT FOR MEMBERS OF THE ARMED FORCES AND**
4 **DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES LISTED AS**
5 **MISSING.**

6 Section 1501a of title 10, United States Code, is amended—

7 (1) in subsection (e)(1), by inserting “solicit,” after “the Secretary may”; and

8 (2) in subsection (f)(2)—

9 (A) by inserting “solicitation or” after “provide that”; and

10 (B) by striking “acceptance or use” and inserting “solicitation, acceptance,

11 or use”.

[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 1501a of title 10, United States Code, to allow the Department to solicit gifts that would be used to expand accounting for persons missing from designated past conflicts. The Department currently has statutory authority to accept gifts of personal property, services, and money to assist in accounting for missing persons. The Office of Legal Counsel (OLC) within the Department of Justice has concluded that the express authority to accept gifts in statutes similar to section 1501a(e) includes the implied authority to solicit gifts [refer to Memorandum for the Director of Office of Government Ethics from Assistant Attorney General, OLC (January 19, 2001)]. The explicit statutory authorization to solicit gifts (including gifts of service) is necessary for the Department to appropriately implement an effective missing persons accounting program and to change regulations that are not subject to changing policy limitations and legal interpretations. The proposed amendments to subsections (e) and (f) would explicitly authorize the Secretary to solicit gifts to expand accounting for missing persons and enable the Department to more fully utilize its current authority to accept gifts.

Accounting for U.S. personnel who are missing from designated past conflicts is one of the Department’s most unique, but essential missions. Through it, a steadfast commitment is made to those unreturned Department personnel who made the supreme sacrifice and to their waiting families, as well as to current Department personnel to never leave a fallen comrade

behind. The proposal is congruent with the Secretary's priority to properly support our Veterans and their families long after they have served their duty. If enacted, the proposal would provide the Department with the clear authority to solicit gifts that, if received, would provide additional funding to increase the number of missing persons from past conflicts that the Department accounts for annually.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 1501a of title 10, United States Code:

§ 1501a. Public-private partnerships; other forms of support

(a) PUBLIC-PRIVATE PARTNERSHIPS.—The Secretary of Defense may enter into arrangements known as public-private partnerships with appropriate entities outside the Government for the purposes of facilitating the activities of the designated Defense Agency. The Secretary may only partner with foreign governments or foreign entities with the concurrence of the Secretary of State. Any such arrangement shall be entered into in accordance with authorities provided under this section or any other authority otherwise available to the Secretary. Regulations prescribed under subsection (f)(1) shall include provisions for the establishment and implementation of such partnerships. An employee of an entity outside the Government that has entered into a public-private partnership with the designated Defense Agency under this section shall be considered to be an employee of the Federal Government by reason of participation in such partnership only for the purposes of section 552a of title 5 (relating to maintenance of records on individuals).

(b) ACCEPTANCE OF VOLUNTARY PERSONAL SERVICES.—The Secretary of Defense may accept voluntary services to facilitate accounting for missing persons in the same manner as the Secretary of a military department may accept such services under section 1588(a)(9) of this title.

(c) COOPERATIVE AGREEMENTS AND GRANTS.—

(1) IN GENERAL.—The Secretary of Defense may enter into a cooperative agreement with, or make a grant to, a private entity for purposes related to support of the activities of the designated Defense Agency.

(2) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding section 2304(k) of this title, the Secretary may enter such cooperative agreements or grants on a sole-source basis pursuant to section 2304(c)(5) of this title.

(d) USE OF DEPARTMENT OF DEFENSE PERSONAL PROPERTY.—The Secretary may allow a private entity to use, at no cost, personal property of the Department of Defense to assist the entity in supporting the activities of the designated Defense Agency.

(e) ACCEPTANCE OF GIFTS.—

(1) AUTHORITY TO ACCEPT.—Subject to subsection (f)(2), the Secretary may solicit, accept, hold, administer, spend and use any gift of personal property, money or services made on the condition that the gift be used for the purpose of facilitating accounting for missing persons pursuant to section 1501(a)(2)(C) of this title.

(2) GIFT FUNDS.—Gifts and bequests of money accepted under this subsection shall be deposited in the Treasury in the Department of Defense General Gift Fund.

(3) USE OF GIFTS.—Personal property and money accepted under this subsection may be used by the Secretary, and services accepted under this subsection may be performed, without further specific authorization in law.

(4) EXPENSES OF TRANSFER.—The Secretary may pay all necessary expenses in connection with the conveyance or transfer of a gift accepted under this subsection.

(5) EXPENSES OF CARE.—The Secretary may pay or authorize the payment of all reasonable and necessary expenses in connection with the care of a gift accepted under this subsection.

(6) TREATMENT.—For the purposes of Federal income, estate, and gift taxes, any personal property, money, or services accepted under this subsection shall be considered as a gift, devise, or bequest to or for the use of the United States.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to implement this section.

(2) LIMITATION.—Such regulations shall provide that solicitation or acceptance of a gift (including a gift of services) or use of a gift under this section may not occur if the nature or circumstances of the solicitation, acceptance, or use would compromise the integrity, or the appearance of integrity, of any program of the Department of Defense or any individual involved in such program.

(g) DEFINITIONS.—In this section:

(1) COOPERATIVE AGREEMENT.—The term “cooperative agreement” means an authorized cooperative agreement as described in section 6305 of title 31.

(2) GRANT.—The term “grant” means an authorized grant as described in section 6304 of title 31.

(3) GIFT.—The term “gift” includes a devise or bequest.

1 **SEC. ___. CLARIFICATION TO ALLOW TEMPORARILY DESIGNATED STATE**
2 **AIRCRAFT TO OBTAIN NON-PREMIUM AVIATION INSURANCE.**

3 Section 44301(2) of title 49, United States Code, is amended—

4 (1) in subparagraph (A), by striking “and” at the end;

5 (2) in subparagraph (B), by striking the period at the end and inserting “; or”;

6 and

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

8 “(C) an aircraft temporarily designated as a state aircraft of the United
9 States by a department, agency, or instrumentality of the United States
10 Government.”.

[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 44301(2) of title 49, United States Code (U.S.C.), which defines “American aircraft” for purposes of chapter 443 of title 49, U.S.C. (relating to insurance), to include state as well as civil aircraft of the United States.

At present, the issuance of non-premium aviation insurance coverage for aircraft operating under contract to a U.S. Government agency is limited to operations involving an “American aircraft” or a “foreign flag” aircraft. “American aircraft” is defined, in part, as a “civil aircraft of the United States.” As a result, a civil aircraft of the United States that has been temporarily designated as a “state aircraft” by the U.S. Government while operating in international or foreign airspace, or foreign territory, may not be eligible for non-premium insurance coverage. This proposal would revise the definition of “American aircraft” to make clear that “state aircraft” are eligible for coverage.

The Federal Aviation Administration (FAA) administers the non-premium aviation insurance program under chapter 443 of title 49, U.S.C., on behalf of the Department of Transportation. Insurance is issued at the request of another U.S. Government agency to cover the operation of aircraft under contract to that agency, when commercial insurance is not available, or not available on reasonable terms. Although the FAA pays any claims or judgments arising from such insurance coverage, the agency requesting the coverage is required by law to reimburse the FAA for the cost. In the Department of Defense’s (DOD’s) case, reimbursement is made from DOD operation and maintenance funds available to DOD.

The DOD has been the exclusive user of non-premium insurance coverage under chapter 443 since 1991, and such coverage currently is in effect in several regions of the world where commercial insurance coverage is either not available or not available on reasonable terms. Aircraft under contract to the U.S. Government operating throughout the world are civil aircraft unless designated as state aircraft by the U.S. Government, and it is the normal practice of the United States to not make such designations unless required to do so for operational reasons. When such designations are made, any non-premium insurance coverage in effect for that aircraft may cease for the duration of the aircraft's operation as a state aircraft. This may leave the operator without insurance. As a result, operators are often reluctant to agree to perform operations as state aircraft, which may, in turn, have a significant, adverse impact on DOD's ability to provide the Armed Forces with critical support when and where needed. This proposal is designed to remove an air carrier's disincentive to operate as state aircraft. This proposal was recommended by the congressionally created interagency Special Federal Aviation Regulation Working Group in its report submitted to Congress pursuant to section 1748 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 and section 154 of the NDAA for FY 2021.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President's Budget.

Changes to Existing Law: This proposal amends section 44301 of title 49, United States Code, as follows:

§44301. Definitions

In this chapter—

(2) "American aircraft" means—

(A) a civil aircraft of the United States; ~~and~~

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory, or possession of the United States, or a political subdivision of the State, territory, or possession; or

(C) an aircraft temporarily designated as a state aircraft of the United States by a department, agency, or instrumentality of the United States Government.

1 **SEC. ___. DIRECT HIRE AUTHORITY FOR CERTAIN PERSONNEL OF THE**
2 **DEPARTMENT OF DEFENSE.**

3 Section 9905(a) of title 5, United States Code, is amended—

4 (1) in the matter preceding paragraph (1), by inserting “, 3307,” after “3303”; and

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

6 “(12) Any position in support of aircraft operations for which the Secretary
7 determines there is a critical hiring need or shortage of candidates.

8 “(13) Any position in support of the safety of the public, law enforcement, or first
9 response for which the Secretary determines there is a critical hiring need or shortage of
10 candidates.”.

**[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 9905 of title 5, United States Code (U.S.C.), to enable the Secretary of Defense to utilize new direct hire authorities (DHAs) for the following positions: (1) aircraft support operations positions for which the Secretary determines there is a critical hiring need or shortage of candidates; and (2) positions in support of public safety, law enforcement, and first response for which the Secretary determines there is a critical hiring need or shortage of candidates.

The Department of Defense (DoD) has analyzed and documented that there is a severe shortage of candidates for certain aircraft operator and certain first responder positions. As such, the Department approved temporary direct hire for these positions using the authority in 5 U.S.C. 9902(b)(2), pursuant to which the Secretary of Defense secured agreement from the Office of Personnel Management (OPM) to grant a DHA if there is a determination of a severe shortage of candidates or a critical hiring need following OPM’s requirements in title 5, Code of Federal Regulations. However, DoD seeks to consolidate DHA for aircraft operations and first responder positions under its streamlined authority in 5 U.S.C. 9905, as it is a mission imperative to improve the pace at which we respond to and hire qualified applicants who show an interest in DoD employment for these shortage category positions.

DoD’s civilian hiring processes are a national security imperative aligned with the Secretary of Defense’s priority to take care of our people by growing talent and building resilience and readiness. DoD is different from 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 21st century. DoD's civilian workforce is essential to sustaining the viability and capabilities of the All-Volunteer Force – providing critical capabilities that ensure our Soldiers, Sailors, Airmen, Marines, and Guardians are ready to deploy, world-wide, and answer the call of our operational Commanders and the defense of our homeland.

The unique mission, size, and complexity of the DoD civilian workforce, and the role it plays 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 and unlike the United States, the political systems of China and Russia enable them to marshal the entire state's economic and human resources to enhance capabilities in these areas. The Department must be able to access top talent quickly and efficiently with the expertise needed to ensure superior capabilities and relevancy. The Department is competing for talent in multiple fields with a private sector that is unconstrained by overlapping, redundant, and bureaucratic hiring regulations. The 21st 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.

The ability to hire needed talent directly is essential to achieving a new human capital approach, which is in keeping with the 2018 National Defense Strategy (NDS) which calls 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 meet this NDS mandate the Department's efforts are being driven directly by the Deputy Secretary of Defense through the Deputy's Workforce Council (DWC), along with all Service Secretaries and Chiefs. In May 2021, the DWC conducted the first in a series of sessions directed at the issue of modernizing the workforce, which includes DoD's struggle to compete for talent with the private sector. This premise is not speculation and is supported by the Office of the Under Secretary of Defense (Personnel and Readiness) and data from the official DoD program known as Joint Advertising, Market Research & Studies. As noted by the Vice Chairman of the Joint Chiefs of Staff during the DWC, the DoD needs to be responsive to the threats we face from our adversaries and if we can get the right people then we can compete with the threats.

DoD civilians are an essential enabler of our mission capabilities and operational readiness. The NDS directs that the Department undertake a sustained effort to build up its civilian workforce to best serve mission requirements. For the additional occupations proposed for DHA coverage under 5 U.S.C. 9905, the Department has provided objective data that demonstrates consistent difficulty filling certain vacant positions and in a timely manner due to shortages of qualified candidates. The inability to reach top talent for these positions adversely affects the Department's ability to compete with our adversaries.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

Changes to Existing Law: This proposal would amend section 9905 of title 5, United States Code, as follows:

§9905. Direct hire authority for certain personnel of the Department of Defense

(a) IN GENERAL.—The Secretary of Defense may appoint, without regard to the provisions of subchapter I of chapter 33 (other than sections 3303, 3307, and 3328 of such chapter), qualified candidates to any of the following positions in the competitive service in the Department of Defense:

(1) Any position involved with Department maintenance activities, including depot-level maintenance and repair.

(2) Any cyber workforce position.

(3) Any individual in the acquisition workforce that manages any services contracts necessary to the operation and maintenance of programs of the Department.

(4) Any science, technology, or engineering position, including any such position at the Major Range and Test Facilities Base, in order to allow development of new systems and provide for the maintenance of legacy systems.

(5) Any scientific, technical, engineering, or mathematics positions, including technicians, within the defense acquisition workforce, or any category of acquisition positions within the Department designated by the Secretary as a shortage or critical need category.

(6) Any scientific, technical, engineering, or mathematics position, except any such position within any defense Scientific and Technology Reinvention Laboratory, for which a qualified candidate is required to possess a bachelor's degree or an advanced degree, or for which a veteran candidate is being considered.

(7) Any category of medical or health professional positions within the Department designated by the Secretary as a shortage category or critical need occupation.

(8) Any childcare services position for which there is a critical hiring need and a shortage of childcare providers.

(9) Any financial management, accounting, auditing, actuarial, cost estimation, operational research, or business or business administration position for which a qualified candidate is required to possess a finance, accounting, management or actuarial science degree or a related degree, or a related degree of equivalent experience.

(10) Any position, as determined by the Secretary, for the purpose of assisting and facilitating the efforts of the Department in business transformation and management innovation.

(11) Any position in the military housing office of a military installation whose primary function is supervision of military housing covered by subchapter IV of chapter 169 of title 10.

(12) Any position in support of aircraft operations for which the Secretary determines there is a critical hiring need or shortage of candidates.

(13) Any position in support of the safety of the public, law enforcement, or first response for which the Secretary determines there is a critical hiring need or shortage of candidates.

(b) SUNSET.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on September 30, 2025, the authority provided under subsection (a) shall expire.

(2) EXCEPTION.—Paragraph (1) shall not apply to the authority provided under subsection (a) to make appointments to positions described under paragraph (5) of such subsection.

(c) SUSPENSION OF OTHER HIRING AUTHORITIES.—During the period beginning on the effective date of the regulations issued to carry out the hiring authority with respect to positions described in paragraphs (5) through (10) of subsection (a) and ending on the date described in subsection (b)(1), the Secretary of Defense may not exercise or otherwise use any hiring authority provided under the following provisions of law:

(1) Sections 1599c(a)(2) and 1705(h) of title 10.

(2) Sections 1112 and 1113 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1033).

(3) Sections 1110 and 1643(a)(3) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2450 and 2602).

(4) Sections 559 and 1101 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1406 and 1627).

1 **SEC. ____ . ENHANCEMENT OF DEPARTMENT OF DEFENSE CAPABILITIES TO**
2 **PREVENT CONTRACTOR FRAUD.**

3 (a) **WITHHOLDING OF CONTRACTUAL PAYMENTS.**—Subsection (a) of section 4651 of title
4 10, United States Code, is amended—

5 (1) in paragraph (1), by striking “; and” and inserting a semicolon;

6 (2) in paragraph (2)—

7 (A) by striking “clause (1)” and inserting “paragraph (1)”; and

8 (B) by striking the period at the end and inserting a semicolon;

9 (3) by inserting after paragraph (2) the following new paragraphs:

10 “(3) with respect to a contract that could have been terminated under paragraph
11 (1) but for the completion of performance of the contract, the United States is entitled to
12 exemplary damages as set forth in paragraph (2); and

13 “(4) the Secretary of Defense or the Secretary of a military department may, after
14 providing notice to the contractor and pending the determination concerning exemplary
15 damages referred to in paragraph (2), withhold from payments otherwise due to the
16 contractor under any contract between the contractor and the United States an amount not
17 to exceed 10 percent of the total contract award amount.”; and

18 (4) in the matter following paragraph (4), as added by paragraph (3) of this
19 subsection, by striking “clause (1)” and inserting “paragraph (1)”.

20 (b) **BURDEN OF PROOF.**—Paragraph (1) of section 4651(a) of title 10, United States Code,
21 as amended by subsection (a) of this section, is further amended by inserting “and by a
22 preponderance of the evidence” after “after notice and hearing”.

23 (c) **RETENTION OF CERTAIN FUNDS RECOVERED FROM CONTRACTOR FRAUD.**—

1 (1) IN GENERAL.—Chapter 367 of title 10, United States Code, is amended by
2 adding at the end the following new section:

3 **“§ 4755. Retention of certain funds recovered from contractor fraud**

4 “(a) AUTHORITY TO RETAIN FUNDS.— The Secretary of Defense and the Secretaries of
5 the military departments may retain any exemplary damages assessed under section 4651 of this
6 title, or any restitution payments or administrative recoveries from any contractor in connection
7 with any proceeding of fraud, without regard to section 3302 of title 31.

8 “(b) CREDITING OF RECOVERED FUNDS.— The Secretary of Defense and the Secretaries
9 of the military departments shall deposit in a special account in the Treasury established for that
10 Secretary all funds authorized to be retained under subsection (a). Such funds shall remain
11 available until expended.

12 “(c) USE OF FUNDS.—The Secretary of Defense and the Secretaries of the military
13 departments, in consultation with the Inspector General of the Department of Defense or the
14 inspector general of the military department concerned, respectively, may use amounts available
15 in the accounts established under subsection (b) only to carry out activities to prevent fraud,
16 including training, investigations, administrative proceedings, enforcement actions, and other
17 efforts that the Secretary of Defense or the Secretary of a military department determines are
18 likely to directly prevent fraud.”.

19 (2) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of
20 chapter 367 is amended by adding at the end the following new item:

“4755. Retention of certain funds recovered from contractor fraud.”.

**[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 would authorize the Secretary of Defense or the Secretary of a military department to withhold contractual payments pending the resolution of allegations that the contractor offered or gave a gratuity to an officer, official, or employee of the United States to influence a contract. It further authorizes the affected Secretary to assess exemplary damages up to 10 percent of the total contract award amount. The proposal would also permit the Department to retain those exemplary gratuities damages as well as any restitution payments or administrative recoveries that are recovered as a result of contractor fraud. These funds may be deposited into a special Fraud Prevention Fund, which is a newly created fund that the Department can use to prevent fraud.

With respect to the first set of proposed changes, section 4651 as currently written allows the Department of Defense to terminate a breached contract and to assess exemplary damages. However, it is silent on whether the Department may withhold contractual payments for potential assessment as exemplary damages based on preliminary information that a violation occurred. There is no federal court ruling specifically affirming or rejecting the Government's right to withhold exemplary damages under section 4651 (or its predecessor, section 2207). Thus, the Department could be required make contractual payments to a malfasant contractor while the section 4651 proceeding is underway, even if the Department knew that the contractor would immediately disburse all payments received on its Government contract, potentially even to employees or owners personally responsible for an illegal gratuity. In this scenario, there would be no money for the Government to collect as exemplary damages once the procedure required by section 4651 is complete. By incorporating a clear, explicit collection mechanism into the statute, the proposal would provide the Department with an efficient means to hold Government contractors accountable for wrongdoing. Any withholding by the Department would be subject to the Department of Labor's priority for withholding back wages under subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), or chapter 67 of title 41, United States Code (commonly known as the "Service Contract Act of 1965).

In addition, section 4651 as currently written potentially allows the Department to assess exemplary damages only after a contract has been terminated. This can result in the Government having no redress in the event of a tainted contract that has been fully performed. The Government should not be deprived of the remedies provided by section 4651 because of the timing of performance, which is irrelevant to the corruption problem section 4651 seeks to fix. The Government frequently does not become aware of an alleged gratuity until after performance of a contract is complete, and so this aspect of the proposal would close a significant, inadvertent loophole.

Regarding the second objective of the proposal, the Department recovers only some of the money that is lost each year to fraud. Recovered money can only be deposited into a current (or in some cases expired) appropriation. In a significant number of fraud cases, the underlying appropriation is cancelled and therefore any money recovered must go to miscellaneous receipts and is lost to the Department. This is often the result in fraud cases, because cases can take a long time to develop; by the time they get to a resolution, the underlying appropriation is no longer available. Section 3302 of title 31, United States Code, requires all collected money to be deposited in the Treasury and only allows agencies to retain money only if there is specific legal authority to do so.

Where money would normally be deposited into the Treasury, this proposal allows the Department to deposit these funds into a special fund created by the Secretaries of Defense and of each military department that could be used to prevent fraud.

This proposal is consistent with a number of other examples of statutory authority that permit other agencies to retain money received from a non-governmental source. For example, section 1128C of the Social Security Act (42 U.S.C. 1320a-7c) allows the Inspector General of the Department of Health and Human Services to retain money ordered by a court for the costs of conducting investigations. Similarly, section 527 of title 28, United States Code, permits the Department of Justice to place 3 percent of all amounts collected by their civil debt collection litigation into a working capital fund.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

Changes to Existing Law: This proposal would add a new section 4755 to chapter 367 of title 10, United States Code, the full text of which is shown in the legislative language above. This proposal would also amend section 4651 of title 10, United States Code, as follows:

§ 4651. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing and by a preponderance of the evidence, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; ~~and~~

(2) if a contract is terminated under ~~clause~~ paragraph (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned;

(3) with respect to a contract that could have been terminated under paragraph (1) but for the completion of performance of the contract, the United States is entitled to exemplary damages as set forth in paragraph (2); and

(4) the Secretary of Defense or the Secretary of a military department may, after providing notice to the contractor and pending the determination concerning exemplary damages referred to in paragraph (2), withhold from payments otherwise due to the contractor under any contract between the contractor and the United States an amount not to exceed 10 percent of the total contract award amount.

The existence of facts upon which the Secretary makes findings under ~~clause~~ paragraph (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

1 **SEC. __. EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE**
2 **ASSISTANCE TO COUNTER THE ISLAMIC STATE OF IRAQ AND**
3 **SYRIA.**

4 (a) EXTENSION.—Subsection (a) of section 1236 of the Carl Levin and Howard P. “Buck”
5 McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128
6 Stat. 3559), as most recently amended by section 1234 of the James M. Inhofe National Defense
7 Authorization Act for Fiscal Year 2023 (Public Law 117–263), is further amended by striking
8 “December 31, 2023” and inserting “December 31, 2024”.

9 (b) FUNDING.—Subsection (g) of such section 1236 is amended by striking “Overseas
10 Contingency Operations for fiscal year 2023, there are authorized to be appropriated
11 \$358,000,000” and inserting “fiscal year 2024, there are authorized to be appropriated
12 \$241,950,000”.

13 (c) FOREIGN CONTRIBUTIONS.—Subsection (h) of such section 1236 is amended—

14 (1) by striking “CONTRIBUTIONS.—The Secretary” and inserting the following:

15 “CONTRIBUTIONS.—

16 “(1) IN GENERAL.—The Secretary”; and

17 (2) by adding at the end the following new paragraph:

18 “(2) USE OF CONTRIBUTIONS.—The limitations under subsection (a) and
19 subsection (m) shall not apply with respect to the expenditure of foreign contributions in
20 excess of the limitations described in those subsections.”.

21 (d) WAIVER AUTHORITY.—Subsection (o) of such section 1236 is amended—

1 (1) in paragraph (1) in the matter preceding subparagraph (A), by striking
2 “limitation in subsection (a)” and inserting “limitations in subsection (a) or subsection
3 (m)”; and
4 (2) in paragraph (5), by striking “December 31, 2023” and inserting “December
5 31, 2024”.

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

Section-by-Section Analysis

This proposal would extend and modify existing authority under section 1236 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Public Law 113-291) to continue providing support to partner forces in Iraq to defeat the Islamic State of Iraq and Syria (ISIS) and help ensure ISIS cannot resurge.

This authority continues to serve as the principal means for supporting operations “by, with, and through” vetted Government of Iraq (GoI) forces, including the Peshmerga, to achieve the enduring defeat of the ISIS in Iraq. The extension and modification reflects DoD requirements in the current operational environment and the continuing need to enable vetted Iraqi Security Forces (ISF) and Peshmerga forces to ensure the defeat of ISIS and prevent its re-emergence.

U.S. support for ISF and Peshmerga defeat-ISIS efforts strengthens Iraq’s ability to counter ISIS effectively and liberate their nation from the ISIS threat. Continuing this support will enhance the enduring strategic relationship between the United States and Iraq and help build the security relationship into the future. Section 1236 continues to provide credibility to our commitment to Iraq. The training, equipment, and operational support provided through this authority allowed the GoI to consolidate the gains achieved against ISIS and liberate all the territory ISIS once held. Extension of the program will facilitate the security development necessary for stability in Iraq.

The Administration continues to work with the Government of Iraq to enable their ability to securely and humanely hold Iraqi ISIS fighters in detention facilities. More than 2,000 Iraqi ISIS fighters remain in partner-run detention facilities in Syria; those facilities often lack appropriate security and remain vulnerable to ISIS efforts to break out. Continuing and expanding the authority to waive limitations on the cost of construction projects, including not only the per project limitation but also the aggregate cost limitation per fiscal year would allow for the expedited implementation of projects to support our Iraqi partners’ efforts to expand detention capacity effectively, and would facilitate the secure and humane repatriation of Iraqi ISIS detainees currently in Syria.

Moreover, the Administration is seeking additional foreign contributions in support of these efforts. Modifying the provision to authorize the use of contributions received from foreign partners in support of such imperative construction and repair activities without being

subject to the per project or aggregate cost limitations in the statute would provide necessary flexibility to ensure effective implementation of partner contributions. It would also bring this section in line with its counterpart authority (section 1209 of the NDAA for FY 2015) with respect to foreign contributions received for activities in Syria.

Section 1236 is the only authority that provides the flexibility to support the evolving nature of the fight against ISIS in Iraq, ensure the defeat of ISIS, and achieve U.S. counterterrorism objectives in the region.

Resource Information: Resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2024 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
CTEF – Iraq	\$241.950					CTEF	04	4GTD0000	1002200T
Total	\$241.950								

Changes to Existing Law: This proposal would make the following changes to section 1236 of the National Defense Authorization Act for Fiscal Year 2015:

SEC. 1236. AUTHORITY TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE OF IRAQ AND SYRIA.

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, logistics support, supplies, and services, stipends, infrastructure repair and renovation, small-scale construction of temporary facilities necessary to meet urgent operational or force protection requirements with a cost less than \$4,000,000, and sustainment, to military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces or other local security forces, with a national security mission, and facilitate Coalition efforts to build capacity in our partner forces to counter and defeat any re-emergence of ISIS, through ~~December 31, 2023~~ December 31, 2024, for the following purposes:

- (1) Defending Iraq, its people, allies, and partner nations from the threat posed by the Islamic State of Iraq and Syria (ISIS) and groups supporting ISIS.
- (2) Securing the territory of Iraq.

* * * * *

(g) FUNDING.—Of the amounts authorized to be appropriated for the Department of Defense for ~~Overseas Contingency Operations for fiscal year 2023~~ fiscal year 2024, there are authorized to be appropriated ~~\$358,000,000~~ \$241,950,000 to carry out this section.

(h) AUTHORITY TO ACCEPT CONTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of Defense may accept and retain contributions, including assistance in-kind, from foreign governments, including the Government of Iraq, to provide assistance authorized under subsection (a). Any funds accepted by the Secretary may be credited to the account from which funds are made available for the provision of assistance authorized under subsection (a) and may be used for such purpose until expended.

(2) USE OF CONTRIBUTIONS.—The limitations under subsection (a) and subsection (m) shall not apply with respect to the expenditure of foreign contributions in excess of the limitations described in those subsections.

* * * * *

(m) LIMITATION ON AGGREGATE COST OF CONSTRUCTION, REPAIR, AND RENOVATION PROJECTS.—The aggregate amount of construction, repair, and renovation projects carried out under this section in any fiscal year may not exceed \$30,000,000.

* * * * *

(o) WAIVER AUTHORITY.—

(1) IN GENERAL.—The President may waive the dollar amount ~~limitation~~ limitations in subsection (a) or subsection (m) with respect to a construction, repair, or renovation project for the purposes of providing the support described in paragraph (2) if the President—

(A) determines that the waiver is in the national security interest of the United States; and

(B) submits to the appropriate congressional committees a notification of the exercise of the waiver.

(2) SUPPORT DESCRIBED.—The support described in this paragraph is support relating to temporary humane detention of Islamic State of Iraq and Syria foreign terrorist fighters in accordance with all laws and obligations relating to the provision of such support, including, as applicable—

(A) the law of armed conflict;

(B) internationally recognized human rights;

(C) the principle of non-refoulement;

(D) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and

(E) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST6223)).

(3) NOTICE AND WAIT.—

(A) IN GENERAL.—A project with respect to which the exercise of a waiver under paragraph (1) applies may only be carried out after the end of a 15-day period beginning at the date on which the appropriate congressional committees receive the notification required by paragraph (1)(B).

(B) MATTERS TO BE INCLUDED.—The notification required by paragraph (1)(B) shall include the following:

(i) A detailed plan and cost estimate for the project.

(ii) A certification by the President that facilities and activities relating to the project comply with the laws and obligations described in paragraph (2).

(iii) An explanation of the national security interest addressed by the project.

(C) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this paragraph, the term “appropriate congressional committees” means—

(i) the congressional defense committees; and

(ii) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(4) UPDATE TO PLAN AND COST ESTIMATE.—Upon obligation of any funds to carry out a project with respect to which the exercise of a waiver under paragraph (1) applies, the Secretary of Defense shall submit to the congressional defense committees an update to the plan and cost estimate for the project as required by paragraph (3)(B)(i).

(5) SUNSET.—The waiver authority under this subsection shall expire on ~~December 31, 2023~~ December 31, 2024.

1 SEC . ____ . **EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE**
2 **ASSISTANCE TO VETTED SYRIAN GROUPS AND INDIVIDUALS.**

3 (a) EXTENSION.—Subsection (a) of section 1209 of the Carl Levin and Howard P. “Buck”
4 McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128
5 Stat. 3559), as most recently amended by section 1233 of the James M. Inhofe National Defense
6 Authorization Act for Fiscal Year 2023 (Public Law 117-263), is further amended by striking
7 “December 31, 2023” and inserting “December 31, 2024”.

8 (b) LIMITATION ON COST OF CONSTRUCTION AND REPAIR PROJECTS.—Subsection (1)(3) of
9 such section 1209 is amended—

10 (1) in subparagraph (A) in the matter preceding clause (i), by striking “limitation
11 under paragraph (1)(A) on a per project basis” and inserting “limitations under paragraph
12 (1)”; and

13 (2) in subparagraph (D), by striking “December 31, 2023” and inserting
14 “December 31, 2024”.

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

Section-by-Section Analysis

This proposal would extend and modify existing authority to conduct programs authorized under section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), informed by lessons learned to-date from countering the Islamic State of Iraq and Syria (ISIS) in Syria and Iraq. Moreover, the extension and modification of this authority will provide continued capabilities to maintain continuity in the campaign to defeat ISIS, maintain cohesion with partners and Allies in the Global Coalition to Defeat ISIS, and respond effectively to any ISIS resurgence.

Extension and modification of this authority would afford the necessary resources required to counter ISIS in Syria. This authority provides the means to train and equip vetted Syrian groups and individuals to accomplish U.S. counterterrorism goals. This authority continues to serve as the principal means for continuing counterterrorism and related operations “by, with, and through” vetted Syrian individuals and groups to achieve the enduring defeat of ISIS. The extension and modification reflects DoD requirements in the current operational

environment and the continuing need to enable vetted Syrian groups and individuals to ensure the defeat of ISIS and prevent its re-emergence.

ISIS “Caliphate” in Syria still exist with the intent to regroup, rebuild, and to continue the battle in the future. Countering ISIS now, and in the years ahead, requires capabilities that create an environment in which local partner forces can respond effectively to ISIS, as it shifts its operations to insurgent warfare. ISIS remains focused on maintaining a clandestine, long-term insurgency to undermine local and regional governments, and supports their global ambitions. This authority supports building the capacity and improving operational capabilities of our vetted partners to defeat ISIS, and deliver security to liberated areas in Syria. Additionally, this assistance provides our vetted local forces with essential security components that otherwise would not be available under any existing U.S. program.

More than 10,000 ISIS fighters remain in partner-run detention facilities in Syria. As the January 2022 attack in Hasakah demonstrates, these facilities remain vulnerable to ISIS efforts to break out of those facilities. Guard training and enhanced security measures provided to the vetted partner forces pursuant to section 1209, remain imperative to maintaining the security of these facilities and keeping those ISIS fighters off the battlefield. Continuing and expanding the authority to waive limitations on the cost of construction projects would enable the expedited implementation of projects to construct purpose-built facilities and improve security conditions at these facilities.

These capabilities can only be built by strengthening the security capabilities of our vetted partners in securing territory liberated from ISIS and countering any future ISIS threats. The authority to provide training, equipment, and operational support, allows these partners to consolidate the gains achieved against ISIS and help prevent its reemergence. This authority is instrumental and cost-effective in improving the stability and security of areas liberated from ISIS, as well as the detention of ISIS fighters. Doing so helps reduce malign influence by other actors in liberated areas. The extension and modifications proposed here are intended to increase the effectiveness of our partners in continuing this campaign, in particular, their efforts to detain ISIS fighters in a safe, secure, and humane manner.

Since the inception of our efforts to train and equip the vetted partner forces in Syria, together with our partners, ISIS has lost all the territory it once held in its so-called Caliphate, but we must remain vigilant of any possible resurgence of ISIS and similar organizations. Without these authorities and support to local partners’ counter-ISIS operations, our partners will be challenged to address evolving ISIS threats, maintain sufficient border security, and protect their population, which would result in an environment that fuels instability, exacerbates sectarian divisions, contributes to extremism, and allows outside actors to destabilize the region and places our Homeland (and those of our partners and Allies) at future risk.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2024 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
CTEF – Syria	\$156					CTEF	04	4GTD0000	1002200T
Total	\$156								

Changes to Existing Law: This proposal would make the following changes to section 1209 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291):

SEC. 1209. AUTHORITY TO PROVIDE ASSISTANCE TO VETTED SYRIAN GROUPS AND INDIVIDUALS.

(a) **IN GENERAL.**—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, supplies, stipends, construction and repair of training and associated facilities or other facilities necessary to meet urgent military operational requirements of a temporary nature and sustainment to appropriately vetted Syrian groups and individuals through ~~December 31, 2023~~ December 31, 2024, for the following purposes:

- (1) Defending the Syrian people from attacks by the Islamic State of Iraq and Syria.
- (2) Securing territory formerly controlled by the Islamic State of Iraq and Syria.
- (3) Protecting the United States and its partners and allies from the threats posed by the Islamic State of Iraq and Syria, al Qaeda, and associated forces in Syria.
- (4) Providing appropriate support to vetted Syrian groups and individuals to conduct temporary and humane detention and repatriation of Islamic State of Iraq and Syria foreign terrorist fighters in accordance with all laws and obligations related to the conduct of such operations, including, as applicable—
 - (A) the law of armed conflict;
 - (B) internationally recognized human rights;
 - (C) the principle of non-refoulement;
 - (D) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and
 - (E) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

* * * * *

(1) **LIMITATION ON COST OF CONSTRUCTION AND REPAIR PROJECTS.**—

(1) IN GENERAL.—The cost of construction and repair projects carried out under this section may not exceed, in any fiscal year—

- (A) \$4,000,000 per project; or
- (B) \$20,000,000 in the aggregate.

(2) FOREIGN CONTRIBUTIONS.—The limitation under paragraph (1) shall not apply to the expenditure of foreign contributions in excess of the per-project or aggregate limitation set forth in that paragraph.

amended by adding at the end the following:

(3) WAIVER AUTHORITY.—

(A) IN GENERAL.—The President may waive the ~~limitation~~ limitations under ~~paragraph (1)(A) on a per-project basis~~ paragraph (1) for the purposes of providing support authorized under subsection (a)(4) if the President—

(i) determines that the waiver is in the national security interest of the United States; and

(ii) submits to the appropriate congressional committees a notification of the exercise of the waiver.

(B) NOTICE AND WAIT.—

(i) IN GENERAL.—A project with respect to which the exercise of a waiver under subparagraph (A) applies may only be carried out after the end of a 15-day period beginning at the date on which the appropriate congressional committees receive the notification required by subparagraph (A)(ii).

(ii) MATTERS TO BE INCLUDED.—The notification required by subparagraph (A)(ii) shall include the following:

(I) A detailed plan and cost estimate for the project.

(II) A certification by the President that facilities and activities relating to the project comply with—

(aa) the law of armed conflict;

(bb) internationally recognized human rights;

(cc) the principle of non-refoulement;

(dd) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and

(ee) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST6223)).

(III) An explanation of the national security interest addressed by the project.

(iii) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subparagraph, the term “appropriate congressional committees” means—

(I) the congressional defense committees; and

(II) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(C) UPDATE TO PLAN AND COST ESTIMATE.—Upon obligation of any funds to carry out a project with respect to which the exercise of a waiver under subparagraph (A) applies, the Secretary of Defense shall submit to the congressional defense committees an update to the plan and cost estimate for the project as required by subparagraph (B)(ii)(I).

(D) SUNSET.—The waiver authority under this paragraph shall expire on ~~December 31, 2023~~ December 31, 2024.

* * * * *

1 **SEC ____. EXTENSION AND MODIFICATION OF UKRAINE SECURITY ASSISTANCE**
2 **INITIATIVE.**

3 Section 1250 of the National Defense Authorization Act for Fiscal Year 2016 (Public
4 Law 114-92; 129 Stat. 1068) is amended—

5 (1) in subsection (c)—

6 (A) by redesignating paragraph (6) as paragraph (5); and

7 (B) by adding at the end the following new paragraph (6):

8 “(6) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—Amounts
9 available in a fiscal year to carry out the authority in subsection (a) may be used for
10 programs under that authority that begin in such fiscal year and end not later than the end
11 of the second fiscal year thereafter.”;

12 (2) in subsection (f)—

13 (A) in the matter preceding paragraph (1), by striking “for overseas
14 contingency operations”; and

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

16 “(9) For fiscal year 2024, \$300,000,000.”; and

17 (3) in subsection (h), by striking “December 31, 2024” and inserting “December
18 31, 2027”.

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

Section-by-Section Analysis

This proposal would provide the Department of Defense (DoD) with cross-fiscal year (CFY) authority, allowing the execution of severable Ukraine Security Assistance Initiative (USAI) support to continue for an additional two years. Specifically, CFY authority would enable DoD to conduct severable, contractor-provided services across multiple fiscal years and provide services associated with some equipment deliveries, such as operations and

maintenance training, under the same program that DoD is providing the equipment. Without CFY authority, the provision of equipment and associated defense services/training must be planned and notified across multiple fiscal years, which introduces programmatic risk, as future funding is not guaranteed. The draft language mirrors that which DoD already has for its global train and equip program (10 U.S.C. 333(g)(2)(A)).

This proposal also extends the authorization period of USAI, which would reduce programmatic risk for programs with longer delivery timelines. Although this proposal would create CFY authority and extend the overall authorization, it would not affect the period of availability of funds, which is controlled by the relevant appropriations act. The Department continues to separately seek two-year funds for USAI in order to procure advanced capabilities requiring longer-lead times for contracting.

History: Through USAI, DoD has provided Ukraine with high technology systems previously unavailable to the Armed Forces of Ukraine (AFU). The DoD continues to consider other complex capabilities for future provision to AFU, including air defense, armaments for naval vessels, coastal defense, and counter-unmanned aerial systems. Although these more advanced systems will likely require additional multi-year funding, CFY authority, and a longer authorization period will enhance DoD’s ability to meet Ukraine’s capability needs, while also reducing programmatic risk.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
USAI	300					Operation and Maintenance, Defense-wide	04	4GTD	
Total	300								

Changes to Existing Law: This proposal would amend section 1250 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1068) as follows:

SEC. 1250. UKRAINE SECURITY ASSISTANCE INITIATIVE.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—

(1) IN GENERAL.—Amounts available for a fiscal year under subsection (f) shall be available to the Secretary of Defense, with the concurrence of the Secretary of State, to provide, for the purposes described in paragraph (2), appropriate security assistance and intelligence support, including training, equipment, and logistics support, supplies and services, salaries and stipends, and sustainment, to—

- (A) the military and national security forces of Ukraine; and
- (B) other forces or groups recognized by, and under the authority of, the Government of Ukraine, including governmental entities within Ukraine that are engaged in resisting Russian aggression.

(2) PURPOSES DESCRIBED.—The purposes described in this paragraph are as follows:

- (A) To enhance the capabilities of the military and other security forces of the Government of Ukraine to defend against further aggression.
- (B) To assist Ukraine in developing the combat capability to defend its sovereignty and territorial integrity.
- (C) To support the Government of Ukraine in defending itself against actions by Russia and Russian-backed separatists.

(b) APPROPRIATE SECURITY ASSISTANCE AND INTELLIGENCE SUPPORT.—For purposes of subsection (a), appropriate security assistance and intelligence support includes the following:

(1) Real time or near real time actionable intelligence, including by lease of such capabilities from United States commercial entities.

(2) Lethal assistance such as anti-armor weapon systems, mortars, crew-served weapons and ammunition, grenade launchers and ammunition, and small arms and ammunition.

(3) Counter-artillery radars, including medium-range and long-range counter-artillery radars that can detect and locate long-range artillery.

(4) Manned and unmanned aerial capabilities, including tactical surveillance systems and fixed and rotary-wing aircraft, such as attack, strike, airlift, and surveillance aircraft.

(5) Cyber capabilities.

(6) Counter-electronic warfare capabilities such as secure communications equipment and other electronic protection systems.

(7) Other electronic warfare capabilities.

(8) Training for critical combat operations such as planning, command and control, small unit tactics, counter-artillery tactics, logistics, countering improvised explosive devices, battle-field first aid, post-combat treatment, and medical evacuation.

(9) Equipment and technical assistance to the State Border Guard Service of Ukraine for the purpose of developing a comprehensive border surveillance network for Ukraine.

(10) Training for staff officers and senior leadership of the military.

(11) Air defense and coastal defense radars, and systems to support effective command and control and integration of air defense and coastal defense capabilities.

(12) Naval mine and counter-mine capabilities.

(13) Littoral-zone and coastal defense vessels.

(14) Coastal defense and anti-ship missile systems.

(15) Training required to maintain and employ systems and capabilities described in paragraphs (1) through (14).

(16) Treatment of wounded Ukrainian soldiers in the United States in medical treatment facilities through the Secretarial Designee Program, including transportation,

lodging, meals, and other appropriate non-medical support in connection with such treatment, and education and training for Ukrainian healthcare specialists such that they can provide continuing care and rehabilitation services for wounded Ukrainian soldiers.

(c) AVAILABILITY OF FUNDS.—

(1) ASSISTANCE FOR UKRAINE.—Not more than 50 percent of the funds available for fiscal year 2023 pursuant to subsection (f)(8) may be used for purposes of subsection (a) until the certification described in paragraph (2) is made.

(2) CERTIFICATION.—

(A) IN GENERAL.—The certification described in this paragraph is a certification by the Secretary of Defense, in coordination with the Secretary of State, that the Government of Ukraine has taken substantial actions to make defense institutional reforms, in such areas as described in subparagraph (B), for purposes of decreasing corruption, increasing accountability, and sustaining improvements of combat capability enabled by assistance under subsection (a).

(B) AREAS DESCRIBED.—The areas described in this subparagraph are—

- (i) strengthening civilian control of the military;
- (ii) enhanced cooperation and coordination with Verkhovna Rada efforts to exercise oversight of the Ministry of Defense and military forces;
- (iii) increased transparency and accountability in defense procurement;
- (iv) improvement in transparency, accountability, sustainment, and inventory management in the defense industrial sector;
- (v) protection of proprietary or sensitive technologies as such technologies relate to foreign military sales or transfers;
- (vi) transformation of command and control structures and roles in line with North Atlantic Treaty Organization principles; and
- (vii) improvement of human resources management, including to support career management reforms, enhanced social support to military personnel and their families, and professional military education systems.

(C) ASSESSMENT.—The certification shall include an assessment of the substantial actions taken to make such defense institutional reforms and the areas in which additional action is needed and a description of the methodology used to evaluate whether Ukraine has made progress in defense institutional reforms relative to previously established goals and objectives.

(3) OTHER PURPOSES.—If in fiscal year 2023 funds are not available for purposes of subsection (a) by reason of the lack of a certification described in paragraph (2), such funds may be used in that fiscal year for the purposes as follows:

(A) Assistance or support to national-level security forces of other Partnership for Peace nations that the Secretary of Defense determines to be appropriate to assist in preserving their sovereignty and territorial integrity against Russian aggression.

(B) Exercises and training support of national-level security forces of Partnership for Peace nations or the Government of Ukraine that the Secretary of

Defense determines to be appropriate to assist in preserving their sovereignty and territorial integrity against Russian aggression.

(4) NOTICE TO CONGRESS.—Not later than 15 days before providing assistance or support under paragraph (3), the Secretary of Defense shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification containing the following:

(A) The recipient foreign country.

(B) A detailed description of the assistance or support to be provided, including—

(i) the objectives of such assistance or support;

(ii) the budget for such assistance or support; and

(iii) the expected or estimated timeline for delivery of such assistance or support.

(C) Such other matters as the Secretary considers appropriate.

~~(6)~~ (5) WAIVER OF CERTIFICATION REQUIREMENT.—The Secretary of Defense, with the concurrence of the Secretary of the State, may waive the certification requirement in paragraph (2) if the Secretary submits to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a written certification, not later than 5 days after exercising the waiver, that doing so is in the national interest of the United States due to exigent circumstances caused by the Russian invasion of Ukraine.

(6) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—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.

(d) UNITED STATES INVENTORY AND OTHER SOURCES.—

(1) IN GENERAL.—In addition to any assistance provided pursuant to subsection (a), the Secretary of Defense is authorized, with the concurrence of the Secretary of State, to make available to the Government of Ukraine weapons and other defense articles, from the United States inventory and other sources, and defense services, and to recover or dispose of such weapons or other defense articles, or to make available such weapons or articles to ally and partner governments to replenish comparable stocks which ally or partner governments have provided to the Government of Ukraine, in such quantity as the Secretary of Defense determines to be appropriate to achieve the purposes specified in subsection (a).

(2) REPLACEMENT.—Amounts for the replacement of any items provided to the Government of Ukraine pursuant to paragraph (1) shall be derived from the amount available pursuant to subsection (a) or amounts authorized to be appropriated for the Department of Defense for overseas contingency operations for weapons procurement.

(3) CONGRESSIONAL NOTIFICATION.—Not later than 10 days before providing replenishment to an ally or partner government pursuant to paragraph (1), the Secretary of Defense shall transmit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification containing the following:

- (A) An identification of the recipient foreign country.
- (B) A detailed description of the articles to be provided, including the dollar value, origin, and capabilities associated with the articles.
- (C) A detailed description of the articles provided to Ukraine to be replenished, including the dollar value, origin, and capabilities associated with the articles.
- (D) The impact on United States stocks and readiness of transferring the articles.
- (E) An assessment of any security, intellectual property, or end use monitoring issues associated with transferring the articles.

(e) CONSTRUCTION OF AUTHORIZATION.—Nothing in this section shall be construed to constitute a specific statutory authorization for the introduction of United States Armed Forces into hostilities or into situations wherein hostilities are clearly indicated by the circumstances.

(f) FUNDING.—From amounts authorized to be appropriated for the fiscal year concerned for the Department of Defense ~~for overseas contingency operations~~, up to the following shall be available for purposes of subsection (a):

- (1) For fiscal year 2016, \$300,000,000.
- (2) For fiscal year 2017, \$350,000,000.
- (3) For fiscal year 2018, \$350,000,000.
- (4) For fiscal year 2019, \$250,000,000.
- (5) For fiscal year 2020, \$300,000,000.
- (6) For fiscal year 2021, \$250,000,000.
- (7) For fiscal year 2022, \$300,000,000.
- (8) For fiscal year 2023, \$800,000,000.
- (9) For fiscal year 2024, \$300,000,000.

(g) CONSTRUCTION WITH OTHER AUTHORITY.—The authority to provide assistance and support pursuant to subsection (a), and the authority to provide assistance and support under subsection (c), is in addition to authority to provide assistance and support under title 10, United States Code, the Foreign Assistance Act of 1961, the Arms Export Control Act, or any other provision of law.

(h) TERMINATION OF AUTHORITY.—Assistance may not be provided under the authority in this section after December 31, ~~2024~~ 2027.

(i) EXTENSION OF REPORTS ON MILITARY ASSISTANCE TO UKRAINE.—Section 1275(e) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3592) is amended by striking “January 31, 2017” and inserting “December 31, 2017”.

(j) EXPEDITED NOTIFICATION REQUIREMENT.—Not later than 15 days before providing assistance or support under subsection (a), or as far in advance as is practicable if the Secretary of Defense determines, on a case-by-case basis, that extraordinary circumstances exist that impact the national security of the United States, the Secretary shall transmit to the congressional

defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification containing a detailed description of the assistance or support to be provided, including—

- (1) the objectives of such assistance or support;
- (2) the budget for such assistance or support; and
- (3) the expected or estimated timeline for delivery of such assistance or support.

1 **SEC. ___. IMPLEMENTATION OF ARRANGEMENTS TO BUILD TRANSPARENCY,**
2 **CONFIDENCE, AND SECURITY.**

3 Section 2241(a) of title 10, United States Code, is amended by adding at the end the
4 following new paragraph:

5 “(8) Travel, transportation, and subsistence expenses for meetings and
6 demonstrations hosted by the Department of Defense for the implementation of the
7 Vienna Document 2011 on Confidence and Security-Building Measures (or any
8 successor arrangement).”.

[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 Vienna Document, a politically important commitment to building transparency, confidence, and security, requires that “[t]he State arranging the event [e.g., air base/military facility visit, weapons demonstration] will cover travel arrangements and expenses from the place of assembly and to the place of departure – possibly the same as the place of assembly – as well as appropriate civil or military board and lodging in a location suitable for carrying out the event.”

Section 1345 of title 31, United States Code, prevents the execution of budgeted funds for travel, board, and lodging expenses of non-U.S. Government personnel and expenditures required by the Vienna Document. The Vienna Document, as a political commitment, does not override the constraint of section 1345.

This proposal would authorize combatant commands and military department to use operation and maintenance (O&M) funding that is already budgeted annually in budgets for arms control and for building transparency, confidence, and security. This proposal seeks to provide a legal basis for the Department of Defense to continue implementation of the Vienna Document. There is no additional budget impact for this proposal, as the money is already budgeted each year in the O&M funding for the combatant commands and the military departments for arms control implementation. This proposal would improve Department of Defense business practices for greater performance and efficiency.

Hosting required Vienna Document events supports the National Defense Strategy and the National Military Strategy, demonstrates U.S. leadership and commitment that deters competitors and assures allies, and is a collateral requirement to sustaining the requisite lethal force posture in Europe (e.g., deploying new weapons systems to Europe triggers Vienna

Document requirement to host a weapons demonstration). Other countries reciprocally pay for U.S. personnel when they host events.

If the United States does not implement the portions of the Vienna Document that contemplate payment for foreign nationals' expenses, we will be out of compliance with our political commitments and subject to political consequences within the Organization for Security and Cooperation in Europe (OSCE), a 57-country international organization that includes the Russian Federation and all NATO allies. Furthermore, failing to host required Vienna Document events cedes to Russia the strategic narrative over the deterioration of European security and arms control, in light of U.S. withdrawals from the Intermediate-range Forces Treaty (INF) and Open Skies Treaty, New START negotiations, and tripartite arms control efforts.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President's Budget.

Changes to Existing Law: This proposal would amend section 2241 of title 10, United States Code, as follows:

§ 2241. Availability of appropriations for certain purposes

(a) OPERATION AND MAINTENANCE APPROPRIATIONS.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the following purposes:

- (1) Morale, welfare, and recreation.
- (2) Modification of personal property.
- (3) Design of vessels.
- (4) Industrial mobilization.
- (5) Military communications facilities on merchant vessels.
- (6) Acquisition of services, special clothing, supplies, and equipment.
- (7) Expenses for the Reserve Officers' Training Corps and other units at educational institutions.

(8) Travel, transportation, and subsistence expenses for meetings and demonstrations hosted by the Department of Defense for the implementation of the Vienna Document 2011 on Confidence and Security-Building Measures (or any successor arrangement).

(b) NECESSARY EXPENSES.—Amounts appropriated to the Department of Defense may be used for all necessary expenses, at the seat of the Government or elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense.

(c) ACTIVITIES OF THE NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE.—Amounts appropriated for operation and maintenance may, under regulations prescribed by the Secretary of Defense, be used by the Secretary for official reception, representation, and advertising activities and materials of the National Committee for Employer Support of the Guard and Reserve to further employer commitments to their employees who are members of a reserve component.

1 **SEC. ____ . IMPROVEMENTS TO USE OF CYBER AND INFORMATION**
2 **TECHNOLOGY WORKFORCE FOR ENTERPRISE INFORMATION**
3 **TECHNOLOGY.**

4 (a) IN GENERAL.—Notwithstanding section 2461 of title 10, United States Code, section
5 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123
6 Stat. 2253), sections 741 or 8042 of the Consolidated Appropriations Act, 2020 (Public Law
7 116-93) or successor provisions, or any other provision of law, the Secretary concerned may
8 transform the cyber and information technology workforce of the military department concerned
9 through reallocation of existing billets and personnel for the transition by that military
10 department to enterprise information technology as a service.

11 (b) AUTHORITY.—The Secretary concerned may—

12 (1) use the appropriate cyber and information technology workforce mix of
13 military, civilian, and contract personnel for enterprise information technology as a
14 service that—

15 (A) leverages both civilian workforce and commercial sector capabilities
16 and sources; and

17 (B) ensures the civilian workforce is aligned to focus on inherently
18 governmental functions, functions closely associated with inherently
19 governmental functions, or critical mission tasks that require action and decision
20 by Government employees, including focus on cyber defense missions in
21 accordance with the national defense strategy; and

22 (2) move, transfer, and realign civilian functions and personnel to leverage
23 innovative commercial information technology practices, services, and technologies.

1 (c) ANNUAL REPORT.—Not later than 30 days after the end of each fiscal year, beginning
2 with fiscal year 2023 and ending with fiscal year 2033, the Secretary concerned shall submit to
3 the congressional defense committees an annual report on use of the authority provided under
4 this section to improve use of the cyber and information technology workforce for enterprise
5 information technology.

6 (d) DEFINITIONS.—In this section:

7 (1) The term “Secretary concerned” means—

8 (A) the Secretary of the Army, with respect to the Department of the
9 Army; and

10 (B) the Secretary of the Air Force, with respect to the Department of the
11 Air Force.

12 (2) The term “enterprise information technology as a service” means an initiative
13 to leverage industry best practices to provide core information technology services at the
14 installation level, across the enterprise, and provide applications, services, and data
15 hosting in the commercial Cloud. The term includes networks, phones, email, cloud
16 hosting services, end user hardware support, and help desk.

Section-by-Section Analysis

Enterprise information technology as a service represents a significant shift in how the Department of the Air Force (DAF) and the Department of the Army currently acquire, deliver, and consume IT services, as well as a large cultural shift and workforce transformation effort. It is a transition to an ‘as-a service’ model, which will allow these departments to buy capabilities, rather than invest in infrastructure that must be routinely replaced. Instead of owning the routers, boxes, and switches, and running the network with Government personnel, the effort is exploring methods to buy the network “as-a-service” and pay on a cost-per-user basis.

The restrictions of section 2461 of title 10, United States Code, specify that no function performed by DoD civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition. When

coupled with section 325 of the FY2010 NDAA and annual appropriations Act provisions that prohibit Government agencies from converting civilian functions to contract performance without conducting public-private competitions, the result limits the DAF and the Army from being able to take advantage of opportunities to improve Information Technology (IT) capabilities to optimize lethality and readiness while maximizing fiscal efficiency and organizational agility.

Consequently, this proposal seeks relief from section 2461 of title 10, United States Code, section 325 of the FY2010 NDAA, and associated annual appropriations Act provisions to enable the Department of the Army and Department of the Air Force to directly move, transfer, and realign civilian functions in order to leverage advanced commercial ingenuity, innovation, and best practices in cyber and information technology.

Our world is entering a new age of technological discovery and advancement. Big data analytics and the Internet of Things are transforming societies and economies, and expanding the power of information and knowledge, fueling a revolution in how we fight and evolving the character of war. Victory in combat will depend less on individual capabilities, and more on the integrated strengths of a connected network of weapons, sensors, and analytic tools now that information technology underpins virtually every critical DoD mission or business system. To compete, deter, and win over our great power adversaries, the DAF and the Army are forging more digital organizations that embrace the potential of this data-driven revolution and prepare us for future conflict environments steeped in shared information, powered by rapid decision-making, and synergistic, interconnected, mutually supporting reform efforts: IT architecture, data management, and business operations reform.

Years of limited funding and legacy acquisition approaches have left the DAF and Army with an outdated portfolio of enterprise IT services. This has had significant impacts to mission effectiveness in the form of network outages, system degradation, and process inefficiencies. The virtual attack surface for our adversaries is greatly increased and puts our national security at risk. Sustaining this infrastructure has placed outsized demands on a military and civilian cyber workforce that has succeeded despite the circumstances. This workforce has not been organized, trained, or equipped to face the modern cyber adversary and defend our critical mission and business capabilities.

Rapid IT evolution drives not only opportunity, but also risk. Our adversaries leverage technology advancements to present ever-evolving attack vectors against our capabilities, oftentimes exploiting our inability to keep pace. This is not singularly a technical challenge. Our industrial age talent management processes put our cyber defenders and capability developers at a marked disadvantage. Acquisition processes and legal barriers to public-private partnerships and collaboration prevent many leap-ahead capabilities from taking hold in the DAF and Army. Together, these shortfalls leave the Services with a strategic gap between the IT processes and capabilities in place to protect and defend weapons systems.

The DAF and Army are conducting technical feasibility assessments of alternative delivery models, leveraging successes with cloud initiatives such as Cloud Hosted Enterprise Services and the Cloud One to explore alternative delivery models for enterprise IT services at

the installation level (also known within the DAF as the “Risk Reduction Effort”). All civilian employees will continue to perform the functions identified in their present position descriptions during the current technical feasibility assessment/Risk Reduction Effort. The technical feasibility assessment is currently ongoing and is expected to conclude during fiscal year 2022 or early fiscal year 2023.

IT workforce conversions will be required to fully leverage existing commercial solutions, which may implicate section 2461 of title 10. The ongoing technical feasibility assessments will determine the optimal level of conversion and total workforce mix necessary to implement the commercial solutions. Current law prohibits the conversion of civilian positions and restricts the DAF’s and the Army’s ability to implement optimum commercial IT service solutions. There can be no serious question that IT workforce conversions will be required to fully leverage existing commercial solutions. The ongoing technical feasibility assessments will determine the optimal level of conversion necessary, not whether conversion will take place. We have no shortage of recent examples to show negative operational impacts from our current in-house approach to global Enterprise IT service delivery. The Department of the Air Force and the Department of the Army are at turning points with our legacy IT infrastructures. Aged and unreliable, our current digital undercarriage can no longer support the cutting-edge operational capabilities our Nation requires. The COVID-19 pandemic has underscored the critical need for the Departments to deliver an effective, innovative, and secure IT environment through modernizing outdated infrastructure with proven commercial solutions.

Additionally, numerous cyber-workforce related investments have been deferred or partially funded due to the manpower-intensive infrastructure we have fielded. The current cyber and information technology workforce is not positioned to effect this transformation. Difficult and consequential choices must be made in the upcoming strategic planning cycles as to which future investment strategies best enable establishing the underlying infrastructure our digital transformation strategy demands. Making these choices without the policy headroom necessary to consider all human capital options will significantly constrain the DAF’s and the Army’s flexibility to achieve optimal operational outcomes. Further, this relief will give the Services greater opportunity to achieve the DOD’s Information Technology Modernization goals. The DAF has partnered with the Army and this legislative relief will be leveraged by multiple Services. If Congress does not grant the requested relief before the end of the technical feasibility assessment, which ends in FY2022, the DAF and the Army will be restricted to executing partial solutions that will drive additional costs to integrate with legacy services while delaying the availability of the modern infrastructure that Joint All Domain Command and Control demands. The remainder of the technical feasibility assessments are focused on how the commercial delivery model will be integrated into the DAF and Army network. If we are forced to wait until the solutions have presented themselves before we begin analyzing the accompanying workforce changes, our technical and human capital debts will continue to grow. Failure to enact this legislative proposal during the FY2024 legislative cycle will substantially limit our ability to aggressively implement the service delivery approaches proven during the technical feasibility assessment. These delays will drive additional costs, limit our ability to robustly implement cyber defense and mission assurance for our critical systems, and delay the modern infrastructure necessary to achieve Joint All Domain Command and Control.

The DAF and the Army plans to repurpose all affected civilians into cyber defense and mission assurance roles. As a result, the Departments do not intend to decrease civilian FTEs or increase spending on retirement benefits as a result of this proposal. While we recognize the value of the restrictions set forth in section 2461, this proposal would authorize the services to improve use of the cyber and information technology workforce by reducing barriers that inhibit the development of the most effective total force in meeting critical mission requirements. It also allows DoD to determine if the IT service provider positions and personnel fit coherently into the enterprise-wide architecture and processes. It allows the services to prioritize the workforce to shift from IT service delivery and information assurance to mission assurance, cyberspace defense, artificial intelligence and security. Nonetheless, due to the DAF's and Army's recognition of the merit of section 2461, this proposal ensures that appropriate oversight and additional safeguards are in place for the transformation of the civilian workforce by requiring the DAF and Army to produce an annual report to Congress that identifies civilian workforce impacts resulting from the workforce transformation.

Resource Information: This proposal is expected to achieve significant cost savings in the long term. If this proposal is not implemented, civilian personnel cannot be transferred from basic IT tasks to cybersecurity/mission defense tasks, and the DAF will need to increase its manpower to fulfill the requirements for cyber defense and mission assurance roles. Since the estimated cost of manpower supporting the cyber/mission assurance mission (line six of table 1) is significantly higher than the cost of manpower performing basic IT functions (line two of table 1), and the other associated costs (lines three through five of table 1) are minimal, authorizing these personnel transfers would lead to significant savings (line one of table 1).

Table 1: Net change to DAF costs due to EITaaS related transfers:

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Cost of as-a-service based IT capabilities to enable civilian personnel transfers	15.55	15.61	15.92	16.24	16.56	Operation and Maintenance, Air Force		011Z	
Cost of updating Position Descriptions	0.01	0.01	0.01	0.01	0.0	Operation and Maintenance, Air Force		011Z/ 012D	
Training cost of transferring civilian personnel to cyber roles	1.32	1.33	1.36	1.38	0.0	Operation and Maintenance, Air Force		012D	
Cost of writing annual report	0.01	0.01	0.01	0.01	0.01	Operation and Maintenance, Air Force		011Z	
Savings from not needing to augment force with contractor cyber defense personnel	-44.29	-44.46	-45.35	-46.26	-47.18	Operation and Maintenance, Air Force		012D	
Army does not intend to use this authority at this time.									
Total	-27.38	-27.49	-28.04	-28.60	-30.60	Operation and Maintenance, Air Force		011Z	

Table 2: Anticipated number of DAF Civilian FTEs to be transferred from basic IT tasks (e.g., system patching, troubleshooting) to cyber defense and mission assurance roles:

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Anticipated number of Civilian FTEs to be transferred from basic IT tasks to cyber defense and mission assurance roles	127	125	125	125	0

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

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

4 Section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year
5 2019 (Public Law 115–232; 10 U.S.C. 1781 note) is amended by adding at the end the following:

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

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

Section-by-Section Analysis

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

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

This proposal would resolve the conflict between these statutory requirements by authorizing DoD, under section 5038 of title 18, United States Code, to receive information on incidents of PSB-CY from law enforcement organizations. Subsequent DoD policy will clarify that information collected from juvenile delinquency proceedings under this proposal would be

limited to data necessary to meet the requirements of section 1089(b)(7) of the NDAA for FY 2019.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget. Adoption of this proposal would allow the Department to comply with existing requirements.

Changes to Existing Law: This proposal would amend section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 1781 note) as follows:

* * * * *

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

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

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

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

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

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

(4) Each review shall be conducted—

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

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

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

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

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

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

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

(A) a description of the allegation;

(B) whether or not the review is completed;

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

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

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

1 **SEC. ____. MILITARY INTELLIGENCE COLLECTION AND ANALYSIS**

2 **PARTNERSHIPS.**

3 (a) USE OF APPROPRIATED FUNDS.—The Director of the Defense Intelligence Agency
4 may use not more than \$10,000,000 of appropriated funds available to the Defense Intelligence
5 Agency for each fiscal year to pay for the expenses of partnerships with foreign countries,
6 regional organizations with defense, intelligence, or security components, and security alliances
7 of which the United States is a member for military intelligence collection and analysis activities.

8 (b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—Notwithstanding any other
9 provision of law, the Director may use funds other than appropriated funds to pay for the
10 expenses of partnerships with foreign countries, regional organizations with defense or security
11 components, and security alliances of which the United States is a member for military
12 intelligence collection and analysis activities, except that—

13 (1) no such funds may be expended, in whole or in part, by or for the benefit of the
14 Defense Intelligence Agency for a purpose for which Congress had previously denied
15 funds;

16 (2) proceeds from the sale of military intelligence collection and analysis items
17 may be used only to purchase replacement items similar to the items that are sold; and

18 (3) the authority provided by this subsection may not be used to acquire items or
19 services for the principal benefit of the United States.

20 (c) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES.—Notwithstanding any other provision
21 of law, the Director may exercise the authority under this section to pay for, or otherwise
22 facilitate, the logistic support, supplies, and services associated with partnerships with foreign

1 countries, regional organizations with defense or security components, and security alliances of
2 which the United States is a member.

3 (d) COORDINATION WITH SECRETARY OF STATE.—The Director of the Defense
4 Intelligence Agency shall coordinate the military intelligence collection and analysis activities
5 funded pursuant to this section with the Secretary of State.

6 (e) COORDINATION WITH DIRECTOR OF NATIONAL INTELLIGENCE.— The Director of the
7 Defense Intelligence Agency shall coordinate the military intelligence collection and analysis
8 activities funded pursuant to this section with the Director of National Intelligence.

9 (f) MILITARY INTELLIGENCE COLLECTION AND ANALYSIS ACTIVITY DEFINED.—In this
10 section, the term “military intelligence collection and analysis activity” means—

11 (1) the conduct of a combined human intelligence and counterintelligence
12 activity;

13 (2) the collection, processing, exploitation, analysis, and dissemination of all-
14 source intelligence;

15 (3) the conduct of a foreign defense intelligence liaison relationship or defense
16 intelligence exchange program; or

17 (4) the research, development, acquisition, and sustainment of an information
18 technology system or telecommunication capability in support of an activity described in
19 paragraph (1), (2), or (3).

20 (g) SUNSET.—

21 (1) IN GENERAL.—Subject to paragraph (2), the authority to carry out this section
22 shall terminate on the date that is five years after the date of the enactment of this Act.

1 (2) EXCEPTION.— A military intelligence collection and analysis activity for
2 which funds have been obligated under this section before the date on which the authority
3 to carry out this section terminates under paragraph (1) may continue until the completion
4 of the activity.

Section-by-Section Analysis

This proposal would provide the Director of the Defense Intelligence Agency (DIA) with authority that is similar to the statutory authority of the National Geospatial-Intelligence Agency (NGA) (10 U.S.C. 443) and the National Security Agency (NSA) (10 U.S.C. 421) to use funds to support foreign partnerships.

The proposed authority will enable DIA to satisfy certain mission requirements by authorizing: (1) the use of appropriated funds to pay for expenses associated with combined military intelligence collection and analysis activities; (2) the acceptance and use of other than appropriated funds (*i.e.*, foreign partner funds) to pay for expenses associated with combined military intelligence collection and analysis activities, and; (3) the use of this authority to pay for the logistic support, supplies, and services associated with partnerships with foreign countries, regional organizations with defense or security components, and security alliances of which the United States is a member. The proposed authority will offer DIA flexibility and agility when working with its foreign partners on time-sensitive DIA mission requirements.

The proposed authority serves as an initial step in furtherance of DIA’s ability to work more closely with its foreign partners to gain intelligence advantage. The dollar limitation in subsection (a) and the sunset in subsection (g) limit the scope of the proposed initial authority to allow DIA and Congress to determine whether a permanent authority is warranted. DIA will report to the Secretary of Defense, the Office of the Director of National Intelligence (ODNI), the Department of State, and Congress on implementation of this authority and its effect on DIA’s intelligence mission capabilities prior to expiration of this authority.

This proposal advances the Department of Defense’s (DoD) priority of enhancing intelligence and security integration with U.S. allies, including the Commonwealth Allies. This proposal also enables DIA to fully implement the DoD focus on strategic partnerships by enabling the agency to draw upon foreign partner capabilities and shared practices and technologies that will ultimately benefit DIA’s mission.

DIA would use this authority to integrate analysis and collection to meet the shared operational needs and priorities of the Defense Intelligence Enterprise and its foreign partners. For example, DIA’s Machine-assisted Analytic Rapid-repository System (MARS) is a multi-year program to transform current foundational military intelligence databases into an environment with the capacity to use machine learning and artificial intelligence to automate database processes and rapidly synthesize big data. The Five Eyes partners, including the United States, intend to socialize common requirements and pursue interoperability between each partner’s

respective information technology (IT) systems and the data exchanged between those IT systems. The proposal would expand DIA’s ability to analyze and implement shared interoperability and integration goals, enabling MARS to deliver foundational military intelligence at machine speed to the United States and its allies.

DIA’s annual funding will be based upon amounts appropriated to cover such activities. The number of resources needed (up to \$10M) will be driven annually on an as-needed basis by mission requirements that require assistance from our foreign partners.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation From	Budget Activity	BLI/SAG	Program Element
Funds for Military Intelligence and Analysis Partnerships	\$6	\$8	\$10	\$10	\$10	Operation and Maintenance, Defense-Wide	Will depend upon DIA Office exercising authority.	Will depend upon DIA Office exercising authority.	Will depend upon DIA Office exercising authority.
Total	\$6	\$8	\$10	\$10	\$10	--	--	--	--

Changes to Existing Law: None

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 United States and foreign forces through distributed simulation**
5 **and networked technology”;**

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 new item:

“346. Mission training of United States 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 amend section 346 of title 10, United States Code (title 10) to authorize the Secretary of Defense to utilize mission training through distributed simulation (MTDS) activities in military training with friendly foreign forces. MTDS seeks to incorporate live friendly foreign forces into a virtual training environment in lieu of simulated or contractor representation of those forces to enhance interoperability and encourage further strategic partnerships with key allies and partners.

The modification to this authority is consistent with the consolidation of security cooperation authorities into chapter 16 of 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 would 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 (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.

Section 321 of title 10 allows for training with allies and partners, but it only allows for the payment of incremental expenses for “developing” countries in most circumstances. Section 333 of

title 10 also has a broad training authority, but it is tied to institutional capacity-building requirements, which are unnecessary for many of our partners that would be involved in MTDS. 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 for “live” training in complex environments, increasingly utilized with the F-35.

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 necessitate a flexible global authority, as well as specified authorization to allow for the inclusion of the types of partner activities that MTDS requires.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)								
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG
MTDS	15.0	15.0	15.0	15.0	15.0	Operation and Maintenance, Air Force	01	11D (Air Operations Training)
Total	15.0	15.0	15.0	15.0	15.0			

Changes to Existing Law: This proposal would amend section 346 of title 10, United States Code, as follows:

~~§ 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 United States 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. ___. MODIFICATION OF CALCULATION METHOD FOR BASIC ALLOWANCE**
2 **FOR HOUSING TO MORE ACCURATELY ASSESS HOUSING COSTS**
3 **OF JUNIOR SERVICE MEMBERS.**

4 Section 403(b)(5) of title 37, United States Code, is amended, in the second sentence, by
5 striking “and shall be based on the following:” and all that follows before the period at the end of
6 subparagraph (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 would enhance the authority of the Department of Defense to ensure junior Service members living off-base receive an adequate and equitable basic allowance for housing (BAH) to meet their needs. It would provide for methodological parity among military pay grades and greater flexibility to adequately respond to the housing estimation challenges posed by rapidly changing housing market conditions across the nation. More specifically, this proposal would address recent congressional concerns about the ability of the Department to determine equitable BAH rates at remote duty stations where the availability of local commercial rental housing is limited. It would replace outdated statutory calculation mandates affecting junior Service members while preserving the primary intent of the original statute. Finally, it would ensure that all junior Service members receive BAH rates based on the cost of adequate local housing for families.

In the two-plus decades since the inception of the BAH program (and the adoption of the statutory language in 37 U.S.C. 403(b)(5)(A) and (B)), the quality and scope of available housing market data and estimation tools have expanded in a significant way. At the same time, changing demographic, housing construction, and housing preference trends have dramatically altered the landscape of housing markets across the country. The Department has kept pace with these changes through continual assessment and modernization of its BAH housing market estimation techniques in accordance with industry standard practices. Through such methods, the Department has dramatically increased the housing sample sizes, and thus the reliability of data used to estimate rental housing costs for its Service members in recent years. The Department is confident in its current ability to set accurate BAH rates for the vast majority of locations and pay grades across the nation.

However, the current language of 37 U.S.C. 403(b)(5)(A) and (B) precludes the Department from making necessary modernizations to housing cost estimate methodologies for junior pay grades, and thus creates inequity in BAH’s calculation methodologies between E–1 through E–4 “with dependent” rates and all other pay grades. To illustrate, the current statute ties E–1 through E–4 pay grade housing compensation to the costs of two specific housing types:

two-bedroom townhomes and two-bedroom apartments. It stipulates that the Department must set a housing allowance for E-1 through E-4 members based on the average cost of a two-bedroom apartment in that military housing area, or based on one-half of the difference between the average cost of a two-bedroom townhouse in that area and the average cost of a two-bedroom apartment in that area.

The explicit linkage between BAH rates and housing type, however, can lead to issues in areas with low availability of that type of housing. Due to the heterogeneity in construction trends and housing type distribution among different housing markets, two-bedroom townhomes or two-bedroom apartments in a given housing market may not (and often do not) exist locally in large quantities. Thus, the available housing stock for these housing types cannot support the collection of a statistically significant housing cost sample from which to set BAH rates. This can lead to a widening of the BAH sample margin of error for these specific pay grades, resulting in the chance that BAH rates do not reflect the local housing cost for these E-1 through E-4 members. Accordingly, this proposal updates these static pay grade-to-housing profile linkages to allow for the adoption of a more dynamic, sample size-resistant methodology that better reflects the cost of local housing for junior Service members.

Specifically, this proposal remedies the problems described above by removing the mandatory linkage of E-1 through E-4 pay grades to specific housing types. This change enables the Department to calculate E-1 through E-4 BAH rates for any local housing market without relying on low sample size or otherwise subpar data. This improvement will enhance the reliability of BAH rates for junior Service members (even in the most remote or hard-to-price housing markets) and ensure cost estimate methods for E-1 through E-4 members do not fall behind those used to set rates for all other pay grades.

To replace the currently prescribed housing linkages, the Department plans to set future E-1 through E-4 BAH rates using the nationwide average percentage difference in BAH rates between E-4 and E-5 pay grades. For example, if the average nationwide percentage difference between E-4 and E-5 rates has been 90 percent under the current statutory requirements, E-1 through E-4 “with dependent” rates for each military housing area would be set at 90 percent of each local E-5 “with dependent” BAH rate. Using this average difference technique preserves the intent behind the current statute language; it captures the intended “bump” or “surplus” (i.e., rates slightly higher than the average housing costs of civilians with comparable incomes) for E-1 through E-4 “with-dependent” BAH rates to ensure BAH rates are adequate for junior Service members families.

In this way, no matter what type or quantity of housing is available in a given market, Service members in E-1 through E-4 pay grades would receive a housing allowance reflective of the costs of that type of housing. BAH rates for junior pay grades would no longer depend on the availability of a certain type of home.

In summary, this proposal would ensure improved accuracy of BAH rate estimations in even the most remote or challenging housing markets; it would reduce the Department’s reliance on low sample size housing samples to set BAH rates; it would ensure E-1 through E-4

members are treated equitably; and it would maintain a high housing adequacy standard for E–1 through E–4 members thereby preserving the original intent of 37 U.S.C. 403(b)(5).

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY)2024 President’s Budget that are impacted by this proposal.

A study of the previous three years of BAH data showed that BAH rates for E–1 through E–4 members were, on average, approximately 90 percent of the BAH rates for E–5 members. As such, to produce a program cost estimate of the change, the Department re-calculated 2022 BAH rates for E–1 through E–4 members using the percentage difference calculation methodology described above and 90 percent of E–5 rates as the threshold value. The results of this study show a slight increase in average BAH rates for E–1 through E–4 pay grades and a budget increase of corresponding scale.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
Army	14.396	15.014	15.508	16.144	16.822	Military Personnel, Army	01, 02	25, 80	
Army Reserve	1.216	1.261	1.308	1.357	1.414	Reserve Personnel, Army	01	90	
Army National Guard	1.956	2.015	2.101	2.143	2.233	National Guard Personnel, Army	01	90	
Navy	25.717	33.973	35.632	37.706	39.289	Military Personnel, Navy	01, 02	25, 80	
Navy Reserve	1.209	1.569	1.633	1.693	1.765	Reserve Personnel, Navy	01	90	
Marine Corps	(2.218)	(2.323)	(2.434)	(2.547)	(2.654)	Military Personnel, Marine Corps	01, 02	25, 80	
USMC Reserve	(0.093)	(0.097)	(0.102)	(0.106)	(0.111)	Reserve Personnel, Marine Corps	01	90	
Air Force	10.836	16.952	17.675	18.321	19.091	Military Personnel, Air Force	01, 02	25, 80	
Air Force Reserve	0.598	0.970	1.016	1.058	1.103	Reserve Personnel, Air Force	01	90	
Air National Guard	1.485	2.306	2.387	2.483	2.588	National Guard Personnel, Air Force	01	90	
Total	55.102	70.670	74.724	78.252	81.540				

Changes to Existing Law: This proposal would amend section 403 of title 37, United States Code, as follows:

§ 403. Basic allowance for housing

* * * * *

(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, 2022.

(8)(A) The Secretary of Defense may prescribe a temporary adjustment in the current rates of basic allowance for housing for a military housing area or a portion thereof (in this paragraph, "BAH rates") if the Secretary determines that the actual costs of adequate housing for civilians in that military housing area or portion thereof differs from the current BAH rates by more than 20 percent.

(B) Any temporary adjustment in BAH rates under this paragraph shall remain in effect only until the effective date of the first adjustment of BAH rates for the affected military housing area that occurs after the date of the adjustment under this paragraph.

(C) This paragraph shall cease to be effective on September 30, 2022.

* * * * *

1 **SEC. ___. ONE-YEAR EXTENSION OF TEMPORARY AUTHORITY TO GRANT**
2 **ALLOWANCES, BENEFITS, AND GRATUITIES TO CIVILIAN**
3 **PERSONNEL ON OFFICIAL DUTY IN A COMBAT ZONE.**

4 Paragraph (2) of section 1603(a) of the Emergency Supplemental Appropriations Act for
5 Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109–234; 120
6 Stat. 443), as added by section 1102 of the Duncan Hunter National Defense Authorization Act
7 for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4616) and as most recently amended by
8 section 1103 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023
9 (Public Law 117–263), is further amended by striking “2024” and inserting “2025”.

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

Section-by-Section Analysis

This proposal would extend through Fiscal Year 2025 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

This authority has been granted since 2006 to provide certain allowances, benefits, and gratuities to individuals on official duty in Pakistan or a combat zone. The extension of the authority would ensure that employees receive benefits promptly and for the periods of time when the conditions warrant the designation of a combat zone. This is a provision that applies to all Federal agencies, not just the Department of Defense, and is necessary to incentivize and support all Federal civilian employees taking assignments in Pakistan or a combat zone.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)					
Program	FY 2024	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	\$7.440	Operation and Maintenance, Army	Multiple	Multiple	

Navy	\$2.394	Operation and Maintenance, Navy	Multiple	Multiple	
Air Force	\$0.396	Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	\$0.432	Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
DCMA	\$0.198	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DISA	\$0.072	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DCAA	\$0.018	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
OSD	\$0.054	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DFAS	\$0.018	Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
WHS	\$0.000	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
Joint Staff	\$0.000	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
Total	\$11.022				

PERSONNEL IMPACT (END STRENGTH)					
Program	FY 2024	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	201	Operation and Maintenance, Army	Multiple	Multiple	
Navy	133	Operation and Maintenance, Navy	Multiple	Multiple	
Air Force	22	Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	24	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DCMA	11	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DISA	4	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DCAA	1	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
OSD	3	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DFAS	1	Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
Total	400				

Cost Methodology: Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table above. The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (i.e., death gratuity equal to EX-II (\$203,700 in 2022)); and payment of commercial roundtrip travel for Rest and Recuperation (R&R) breaks (up to three per year for employees deployed for 12 consecutive months and home leave). Specifically, the total cost for the death gratuity is calculated based on the assumption that there is one civilian death per Component during the two-year period. Payment of commercial roundtrip travel for R&R is based on the estimated number of currently deployed civilians who will remain deployed for 12 consecutive months, and thus are entitled to up to three R&R breaks and home leave. Estimates of the number of employees are: Army – 201; Navy – 133; Air Force – 22; Defense Agencies – 44. The average cost for each roundtrip travel for R&R is \$18,000. Note that deployments dropped significantly since the last submission of this proposal. However, for those that remain in Pakistan or a combat zone, the authority is still necessary.

Changes to Existing Law: This proposal would amend section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443) as follows:

SEC. 1603. (a) IN GENERAL.—(1) During fiscal years 2006 (including the period beginning on October 1, 2005, and ending on June 15, 2006), 2007, and 2008 the head of an agency may, in the agency head’s discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Iraq or Afghanistan.

(2) During fiscal years 2009 through ~~2024~~ 2025, the head of an agency may, in the agency head’s discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

(b) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect the authority of the head of an agency under any other provision of law.

(c) APPLICABILITY OF CERTAIN AUTHORITIES.—Section 912(a) of the Internal Revenue Code of 1986 shall apply with respect to amounts received as allowances or otherwise under this section in the same manner as section 912 of the Internal Revenue Code of 1986 applies with respect to amounts received by members of the Foreign Service as allowances or otherwise under chapter 9 of title I of the Foreign Service Act of 1980.

1 **SEC. ___. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE ANNUAL**
2 **LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION**
3 **ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING**
4 **OVERSEAS.**

5 Subsection (a) of section 1101 of the Duncan Hunter National Defense Authorization Act
6 for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as most recently amended by section
7 1102 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public
8 Law 117–263), is further amended by striking “through 2023” and inserting “through 2024”.

[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 has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAA's, most recently section 1102 of the FY 2023 NDAA. The provision is currently in effect through calendar year 2023. The authority under that section is similar to that previously provided in the NDAA's since FY 2006.

This proposal would provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in an overseas location in direct support of, or directly related to, a military operation, including a contingency operation, or an operation in response to a national emergency declared by the President.

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2024, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)					
Program	FY 2024	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	\$0.280	Operation and Maintenance, Army	Multiple	Multiple	
Navy	\$0.023	Operation and Maintenance, Navy	Multiple	Multiple	
USMC	\$0.011	Operation and Maintenance, USMC	Multiple	Multiple	
Air Force	\$0.026	Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	\$0.020	Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
DCMA	\$0.009	Operation and Maintenance, Defense-wide	Multiple	Multiple	
DISA	\$0.003	Operation and Maintenance, Defense-wide	Multiple	Multiple	
DCAA	\$0.001	Operation and Maintenance, Defense-wide	Multiple	Multiple	
OSD	\$0.003	Operation and Maintenance, Defense-wide	Multiple	Multiple	
DFAS	\$0.001	Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
Total	\$0.377				

Cost Methodology: The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2018, the additional cost for overtime in excess of the annual premium pay limitation was approximately \$2.65 million. This number was used to determine the estimated amount for FY 2024 since the actual number is unknown due to the recently changed mission. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2024, but the above scenario

illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

PERSONNEL IMPACT (END STRENGTH)					
Program	FY 2024	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	278	Operation and Maintenance, Army	Multiple	Multiple	
Navy	23	Operation and Maintenance, Navy	Multiple	Multiple	
USMC	11	Operation and Maintenance, USMC OCO	Multiple	Multiple	
Air Force	26	Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	20	Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
DCMA	9	Operation and Maintenance, Defense-wide	Multiple	Multiple	
DISA	3	Operation and Maintenance, Defense-wide	Multiple	Multiple	
DCAA	1	Operation and Maintenance, Defense-wide	Multiple	Multiple	
OSD	3	Operation and Maintenance, Defense-wide	Multiple	Multiple	
DFAS	1	Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
Total	375				

Changes to Existing Law: This proposal would amend section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615) as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During calendar years 2009 ~~through 2023~~ through 2024, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location in direct support of, or directly related to—

- (1) a military operation, including a contingency operation; or
- (2) an operation in response to a national emergency declared by the President.

(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.

(c) ADDITIONAL PAY NOT CONSIDERED BASIC PAY.—To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

(d) REGULATIONS.—The Director of the Office of Personnel Management may issue regulations to ensure appropriate consistency among heads of executive agencies in the exercise of authority granted by this section.

1 **SEC. ____ . ONE-YEAR EXTENSION OF CERTAIN EXPIRING BONUS AND SPECIAL**
2 **PAY AUTHORITIES.**

3 (a) **AUTHORITIES RELATING TO RESERVE FORCES.**—Section 910(g) of title 37, United
4 States Code, relating to income replacement payments for reserve component members
5 experiencing extended and frequent mobilization for active duty service, is amended by striking
6 “December 31, 2023” and inserting “December 31, 2024”.

7 (b) **TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS.**—The following
8 sections of title 10, United States Code, are amended by striking “December 31, 2023” and
9 inserting “December 31, 2024”:

10 (1) Section 2130a(a)(1), relating to nurse officer candidate accession program.

11 (2) Section 16302(d), relating to repayment of education loans for certain health
12 professionals who serve in the Selected Reserve.

13 (c) **AUTHORITIES RELATING TO NUCLEAR OFFICERS.**—Section 333(i) of title 37, United
14 States Code, is amended by striking “December 31, 2023” and inserting “December 31, 2024”.

15 (d) **AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY,**
16 **AND BONUS AUTHORITIES.**—The following sections of title 37, United States Code, are amended
17 by striking “December 31, 2023” and inserting “December 31, 2024”:

18 (1) Section 331(h), relating to general bonus authority for enlisted members.

19 (2) Section 332(g), relating to general bonus authority for officers.

20 (3) Section 334(i), relating to special aviation incentive pay and bonus authorities
21 for officers.

22 (4) Section 335(k), relating to special bonus and incentive pay authorities for
23 officers in health professions.

24 (5) Section 336(g), relating to contracting bonus for cadets and midshipmen
25 enrolled in the Senior Reserve Officers’ Training Corps.

26 (6) Section 351(h), relating to hazardous duty pay.

27 (7) Section 352(g), relating to assignment pay or special duty pay.

28 (8) Section 353(i), relating to skill incentive pay or proficiency bonus.

29 (9) Section 355(h), relating to retention incentives for members qualified in
30 critical military skills or assigned to high priority units.

31 (e) AUTHORITIES TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE
32 FOR HOUSING.— Section 403(b) of title 37, United States Code, is amended—

33 (1) in paragraph (7)(E), relating to temporary BAH rate increases for areas
34 covered by a major disaster declaration or containing an installation experiencing a
35 sudden influx of military personnel, by striking “December 31, 2023” and inserting
36 “December 31, 2024”; and

37 (2) in paragraph (8)(C), relating to temporary BAH rate increases for localities
38 where actual housing costs differ from current BAH rates by more than 20 percent, by
39 striking “September 30, 2023” and inserting “December 31, 2024”.

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

Section-by-Section Analysis

This proposal would extend certain expiring bonus and special pay authorities.

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2024. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member’s average monthly civilian income and the member’s total monthly military compensation.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2024. The Reserve components historically have found it challenging to meet the required manning in the health care professions. These incentives, which target nurse and critical health care profession skills, are essential to meet required manning levels. The financial assistance and health professions loan repayment programs have proven to be powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending these authorities is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2024. These incentives enable the Navy to attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets, and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Subsection (d) of this proposal would extend through December 31, 2024, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (e) of this proposal would extend through December 31, 2024, the authorities of the Secretary of Defense to prescribe a temporary increase in the rates of basic allowance for housing for a military housing area or portion thereof (1) if the military housing area or portion is located in an area covered by a declaration by the President that a major disaster exists, (2) if the military housing area or portion 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, or (3) if the costs of rental housing in the military housing area or portion increase more than 20 percent above the current basic allowance for housing rates.

EXTENSION AUTHORITIES FOR RESERVE FORCES:

Resource Information: Subsection (a) of this proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget. The authority is needed if the military departments need to involuntarily mobilize reserve component members when a crisis develops.

EXTENSION OF TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS:

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget request that are impacted by subsection (b) of this proposal. The amendments made by subsection (b) will extend critical accession and retention incentive programs, which the military departments fund annually.

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation To	Budget Activity	BLI/SAG	Program Element
Army	0	0	0	0	0	Military Personnel, Army	01	40	
Army Res	954	954	954	954	954	Reserve Personnel, Army	01	120	
Army National Guard	454	454	454	454	454	National Guard Personnel, Army	01	90	
Navy	0	0	0	0	0	Military Personnel, Navy;	01	40	
Navy Res	85	85	85	85	85	Reserve Personnel, Navy	01	120	
Air Force	0	0	0	0	0	Military Personnel, Air Force	01	40	
AF Res	176	176	176	176	176	Reserve Personnel, Air Force	01	120	
Air National Guard	25	25	25	25	25	National Guard Personnel, Air Force	01	90	
Total	1,694	1,694	1,694	1,694	1,694				

RESOURCE REQUIREMENTS (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation To	Budget Activity	BLI/SAG	Program Element
Army	0	0	0	0	0	Military Personnel, Army	01	40	
Army Res	\$19.7	\$19.7	\$19.7	\$19.7	\$19.7	Reserve Personnel, Army	01	120	
Army National Guard	\$18.5	\$18.5	\$18.5	\$18.5	\$18.5	National Guard Personnel, Army	01	90	
Navy	0	0	0	0	0	Military Personnel, Navy;	01	40	

Navy Res	\$1.2	\$1.2	\$1.2	\$1.2	\$1.2	Reserve Personnel, Navy	01	120	
Air Force	0	0	0	0	0	Military Personnel, Air Force	01	40	
AF Res	\$4.2	\$4.2	\$4.2	\$4.2	\$4.2	Reserve Personnel, Air Force	01	120	
Air National Guard	\$0.6	\$0.6	\$0.6	\$0.6	\$0.6	National Guard Personnel, Air Force	01	90	
Total	\$44.2	\$44.2	\$44.2	\$44.2	\$44.2				

Values reflect FY2023 estimate in the Services FY2023 Budget Estimate.

EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget request that are impacted by subsection (c) of this proposal. The amendment made by subsection (c) will extend the critical accession and retention incentive programs the Navy funds each year. The Army and Air Force are not authorized in the statute to pay these bonuses.

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation To	Budget Activity	BLI/SAG	Program Element
Navy	3,984	3,989	3,994	4,026	4,024	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)	
Navy Res	200	200	200	200	200	Reserve Personnel, Navy	01	90	
Total	4,184	4,189	4,194	4,226	4,226				

RESOURCE REQUIREMENTS (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation To	Budget Activity	BLI/SAG	Program Element
Navy	\$98	\$98.2	\$98.4	\$99.8	\$99.9	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)	
Navy Res	\$3	\$3	\$3	\$3	\$3	Reserve Personnel, Navy	01	90	
Total	\$101	\$101.2	\$101.4	\$102.8	\$102.9				

Values reflect FY2023 estimate in the Services FY2023 Budget Estimate.

EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget request that are impacted by subsection (d) of this proposal. The amendments made by subsection (d) will extend the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted and officer bonuses, aviation bonuses and incentives, non-physician health professions pays, hazardous duty pays, assignment and special duty pays, skill incentive pays, and critical skill retention bonuses. The table does not include the nuclear officer pays, which are located above.

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation To	Budget Activity	BLI/SA G	Program Element
Army	267,519	267,519	267,519	267,519	267,519	Military Personnel, Army	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
ARNG	92,681	92,681	92,681	92,681	92,681	National Guard Personnel, Army	01	90	
USAR	59,078	59,078	59,078	59,078	59,078	Reserve Personnel, Army	01	90	
Navy	306,920	306,920	306,920	306,920	306,920	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USNR	8,894	8,894	8,894	8,894	8,894	Reserve Personnel, Navy	01	90	
Marine Corps	50,869	50,869	50,869	50,869	50,869	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USMCR	977	977	977	977	977	Reserve Personnel, Marine Corps	01	90	
Air Force	158,731	158,731	158,731	158,731	158,731	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Air National Guard	6,445	6,445	6,445	6,445	6,445	National Guard Personnel, Air Force	01	120	
AF Res	14,312	14,312	14,312	14,312	14,312	Reserve Personnel, Air Force	01	90	

Space Force	849	849	849	849	849	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Total	966,426	966,426	966,426	966,426	966,426				

RESOURCE REQUIREMENTS (\$ MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation To	Budget Activity	BLI/SAG	Program Element
Army	\$1,259.2	\$1,259.2	\$1,259.2	\$1,259.2	\$1,259.2	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)	
ARNG	\$292.5	\$292.5	\$292.5	\$292.5	\$292.5	National Guard Personnel, Army	01	90	
USAR	\$239.2	\$239.2	\$239.2	\$239.2	\$239.2	Reserve Personnel, Army	01	90	
Navy	\$1,721.8	\$1,721.8	\$1,721.8	\$1,721.8	\$1,721.8	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USNR	\$92.6	\$92.6	\$92.6	\$92.6	\$92.6	Reserve Personnel, Navy	01	90	
Marine Corps	\$273.2	\$273.2	\$273.2	\$273.2	\$273.2	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USMCR	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	Reserve Personnel, Marine Corps	01	90	
Air Force	\$1,139.6	\$1,139.6	\$1,139.6	\$1,139.6	\$1,139.6	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Air National Guard	\$109.9	\$109.9	\$109.9	\$109.9	\$109.9	National Guard Personnel, Air Force	01	90	
AF Res	\$84.3	\$84.3	\$84.3	\$84.3	\$84.3	Reserve Personnel, Air Force	01	120	
Space Force	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Total	\$5,226.3	\$5,226.3	\$5,226.3	\$5,226.3	\$5,226.3				

Values reflect FY2023 estimate in the Services FY2023 Budget Estimate.

EXTENSION OF AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING:

Resource information: Subsection (e) of this proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget. However, the authority is required in cases of disasters, for locations containing an installation that experiences a sudden influx of military personnel, and for locations where rental housing costs increase more than 20 percent above the current basic allowance for housing rates. Subsection (e) will extend the Secretary of Defense authorities to temporarily increase basic allowance for housing rates.

Changes to Existing Laws: This proposal would amend 10 USC and 37 USC as follows:

TITLE 10, UNITED STATES CODE

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2023~~ December 31, 2024, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than \$20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed \$10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2023~~ December 31, 2024.

TITLE 37, UNITED STATES CODE

§ 331. General bonus authority for enlisted members

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 332. General bonus authority for officers

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 333. Special bonus and incentive pay authorities for nuclear officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 334. Special aviation incentive pay and bonus authorities for officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 335. Special bonus and incentive pay authorities for officers in health professions

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2023~~ December 31, 2024.

§ 351. Hazardous duty pay

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2023~~ December 31, 2024.

§ 352. Assignment pay or special duty pay

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 353. Skill incentive pay or proficiency bonus

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2023~~ December 31, 2024.

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2023~~ December 31, 2024, and no agreement under this section may be entered into after that date.

§ 403. Basic allowance for housing

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—***

(7)(A) ***

(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, 2023~~ December 31, 2024.

(8)(A) ***

(C) This paragraph shall cease to be effective on ~~September 30, 2023~~ December 31, 2024.

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2023~~ December 31, 2024, unless the entitlement of the member to payments under this section is commenced on or before that date.

1 **SEC. ____ . PAYMENT TO ENVIRONMENTAL PROTECTION AGENCY OF**
2 **STIPULATED PENALTIES IN CONNECTION WITH NAVAL AIR**
3 **STATION MOFFETT FIELD, CALIFORNIA.**

4 (a) **AUTHORITY TO TRANSFER FUNDS.—**

5 (1) **TRANSFER AMOUNT.—**The Secretary of the Navy may transfer an amount of
6 not more than \$438,250 to the Hazardous Substance Superfund established under
7 subchapter A of chapter 98 of the Internal Revenue Code of 1986, in accordance with
8 section 2703(f) of title 10, United States Code. Any such transfer shall be made without
9 regard to section 2215 of such title.

10 (2) **SOURCE OF FUNDS.—**Any transfer under this subsection shall be made using
11 funds authorized to be appropriated by this Act or otherwise made available for fiscal
12 year 2024 for the Department of Defense Base Closure Account established by section
13 2906(a) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C.
14 2687 note).

15 (b) **PURPOSE OF TRANSFER.—**A transfer under subsection (a) shall be for the purpose of
16 satisfying a stipulated penalty assessed by the Environmental Protection Agency on May 4,
17 2018, regarding former Naval Air Station, Moffett Field, California, under the Federal Facility
18 Agreement for Naval Air Station, Moffett Field, which was entered into between the Navy and
19 the Environmental Protection Agency in 1990 pursuant to section 120 of the Comprehensive
20 Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620).

21 (c) **ACCEPTANCE OF PAYMENT.—**If the Secretary of the Navy makes a transfer under
22 subsection (a), the Administrator for the Environmental Protection Agency shall accept the
23 amount transferred as payment in full of the penalty referred to in subsection (b).

Section-by-Section Analysis

This proposal would authorize the Secretary of the Navy to transfer funds from the Department of the Navy (DON) Base Closure Account to the Hazardous Substances Superfund account as payment for a stipulated penalty assessed by the Environmental Protection Agency (EPA). On May 4, 2018, EPA Region Nine assessed a stipulated penalty in the amount of \$477,500 for the DON’s failure to operate, maintain, monitor, and report on a certain groundwater remedy pursuant to a schedule included in a Federal Facility Agreement (as amended) executed under the Comprehensive Environmental Response, Compensation, and Liability Act Section 120, executed September 1990. The Navy disputed EPA’s penalty assessment. During dispute resolution, the Navy and EPA reached a final settlement, and the Navy agreed to pay a modified stipulated penalty of \$438,250.

Section 2703(f), title 10, U.S. Code, prohibits military departments from using accounts established for environmental restoration to pay fines or penalties for noncompliance, unless the act or omission leading to the fine or penalty arises from an activity funded by such account(s), and Congress specifically authorizes the payment. While the activity is appropriately tied to DON Base Closure Account restoration expenditures, there is no congressional authorization to pay the modified stipulated penalty at this time. Thus, this proposal is necessary to enable the DON to pay the modified stipulated penalty assessed by the USEPA.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
BRAC	.438	0	0	0	0	0516, DoD Base Closure Account (consolidated)	06	1080	0208004N
Total	.438	0	0	0	0	0516, DoD Base Closure Account (consolidated)	06	1080	0208004N

Changes to Existing Law: This proposal makes no changes to existing law.

1 **SEC. ___. PERMANENT AUTHORITY OF THE SECRETARY OF TRANSPORTATION**
 2 **TO ISSUE NON-PREMIUM AVIATION INSURANCE.**

3 Section 44310 of title 49, United States Code, is amended—
 4 (1) in subsection (a), by striking “(a) IN GENERAL.—”; and
 5 (2) by striking 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 would repeal section 44310(b) of title 49, United States Code, to make permanent the authority of the Secretary of Transportation to provide aviation insurance and reinsurance upon the request of another United States Government agency. This authority has been extended by Congress, usually in four- or five-year increments, on multiple occasions since the current aviation insurance program’s inception in 1958 and is currently due to expire on September 30, 2023. However, on several occasions, this authority has lapsed or come very close to lapsing, placing at risk the ability of the Department of Defense (DOD) to obtain contract air services in time of war or other contingency. Insurance issued under the authority of chapter 443 of title 49, United States Code, is essential during activation of the Civil Reserve Air Fleet, as well as other contingencies in which commercial insurance is either unavailable or unavailable at reasonable prices, in order to meet national defense needs. The lack of insurance in such circumstances would cripple the DOD’s ability to transport personnel and materiel in a timely manner, substantially impeding the effectiveness of the response to a contingency or natural disaster.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

Within DOD, this program is used primarily by the Air Force and has resulted in average outlays of \$2.9 million annually since 2010.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Aviation Insurance	\$2.9	\$2.9	\$2.9	\$2.9	\$2.9	Operation and Maintenance, Air Force	04	959/42G	N/A

Cost Methodology: Pursuant to a 2013 agreement between the Secretary of Defense and the Secretary of Transportation, countersigned by the President, and as required by section 44305(b) of title 49, United States Code, DOD must indemnify the Federal Aviation Administration (FAA) for all claims paid under insurance policies issued by the FAA at DOD’s request. The source of funds to pay such claims is specified in section 9514(b) of title 10, United States Code, as “any funds available to the Department of Defense for operation and maintenance...”. It is impossible to predict when such claims may arise, as well as the amount of such claims. From FY 2010 through FY 2022, DOD has reimbursed the FAA for adjudicated claims in excess of \$37 million, an average of \$2.9 million per year. However, between the program’s inception in FY 1958 and FY 2008, there were no major claims. In addition, the cost avoidance to DOD by providing insurance under this authority rather than reimbursing air carriers for unreasonably priced commercial insurance is similarly difficult to quantify but may in some instances more than offset the amount paid in claims. Due to the nature of this program, outlays are only made as a result of a claim, so a historical average is used in the budget estimation.

Changes to Existing Law: This proposal would amend section 44310 of title 49, United States Code, as follows:

§44310. Ending effective date

~~(a) IN GENERAL.—~~The authority of the Secretary of Transportation to provide insurance and reinsurance under any provision of this chapter other than section 44305 is not effective after December 11, 2014.

~~(b) INSURANCE OF UNITED STATES GOVERNMENT PROPERTY.—~~The authority of the Secretary of Transportation to provide insurance and reinsurance for a department, agency, or instrumentality of the United States Government under section 44305 is not effective after September 30, 2023.

1 **SEC. ____ . REMOVAL OF WASHINGTON HEADQUARTERS SERVICES DIRECT**
2 **SUPPORT FROM PERSONNEL LIMITATION ON THE OFFICE OF**
3 **THE SECRETARY OF DEFENSE.**

4 Section 143(b) of title 10, United States Code, is amended by striking “(including Direct
5 Support Activities of that Office and the Washington Headquarters Services of the Department
6 of Defense)”.

[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 remove direct support positions of the Washington Headquarters Services (WHS), supporting the staff of the Office of the Secretary of Defense (OSD), from a personnel limitation that applies to OSD. Section 143 of title 10, United States Code, establishes a limitation on the number of military and civilian personnel in OSD, but counts the direct support from WHS against the OSD workforce levels. The arbitrary inclusion of WHS support against the OSD limit prevents OSD from utilizing the full workforce levels allowed for core OSD functions (exacerbating current issues with needed capacity increases in OSD). Moreover, WHS, as a Department of Defense (DoD) Field Activity, is a separate entity whose mission and functions are distinct from OSD. The inclusion of WHS personnel in limitations on OSD staffing arbitrarily distorts OSD personnel levels (as measured against the statutory limit) and adversely impacts assignment and employment of capacity within OSD. Additionally, the WHS direct support to OSD is comprised of core WHS functions that support elements other than OSD (e.g., financial management for the Pentagon Force Protection Agency, Defense Legal Services Agency, and Office of Local Defense Community Cooperation). And, all the other Defense Agencies and DoD Field Activities that provide support to OSD are not counted in the OSD limit because “Direct Support Activities” are not officially tracked.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

Changes to Existing Law: This proposal would amend section 143 of title 10, United States Code, as follows:

§ 143. Office of the Secretary of Defense personnel: limitation

(a) PERMANENT LIMITATION ON OSD PERSONNEL.—The number of OSD personnel may not exceed 4,300.

(b) OSD PERSONNEL DEFINED.—For purposes of this section, the term “OSD personnel” means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in the Office of the Secretary of Defense ~~(including Direct Support Activities of that Office and the Washington Headquarters Services of the Department of Defense).~~

(c) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, the Office of the Secretary of Defense in order to comply with this section, the Secretary of Defense may not reassign functions solely in order to evade the requirements contained in this section.

1 **SEC. __. REPEAL OF IMPOSITION OF TAX ON CERTAIN FOREIGN**
2 **PROCUREMENT.**

3 (a) REPEAL.—Chapter 50 of subtitle D of the Internal Revenue Code of 1986 is repealed.

4 (b) CLERICAL AMENDMENT.—The table of chapters for subtitle D of the Internal Revenue
5 Code of 1986 is amended by striking the item relating to chapter 50.

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

Section-by-Section Analysis

This proposal would repeal chapter 50 of the Internal Revenue Code of 1986, which consists solely of section 5000C, an imposition of a 2 percent tax on a “foreign person” that receives a specified Federal procurement payment when the foreign person is an entity owned, in whole or in part, by a foreign government.

The Department of Defense (DoD), in some rare circumstances, must rely on contracts with companies owned by a foreign government for certain critical commodities, most notably in the U.S. Central Command (USCENTCOM) area of responsibility (AOR), where the Command may be dependent on such foreign companies for needed commodities, in particular, fuel. For example, the Government of Kuwait requires DoD to procure all fuel from Kuwait Petroleum Company, a pseudo-commercial entity wholly owned by the State of Kuwait. This fuel is critical to execute USCENTCOM missions in support of U.S. national security interests.

Imposing such a tax on these foreign government-owned sources may impede DoD’s ability to acquire critical commodities or services that are necessary to support national security interests. This is especially true for required sources that are government-owned entities, viewed by our AOR partners by extension as a tax on those sovereign States; this is anathema to those partners and the Department has received strong objections from those partners to imposition of the tax. In addition, DoD has negotiated international agreements with many countries in the USCENTCOM AOR, including Kuwait and UAE, that exempt U.S. forces from all custom duties, taxes, and similar charges; navigation, landing, and port fees; fees associated with the use of electromagnetic spectrum; and charges for access to and use of host nation areas and facilities. Enforcing compliance with these exemptions can be challenging. USCENTCOM has been particularly challenged to enforce tax exemptions in light of recent laws in the Gulf Cooperation Council countries, including Kuwait and UAE, imposing a value-added tax (VAT). It is, at best, counterproductive to demand U.S. forces be exempt from the VAT at the same time imposing a tax on those partners.

Additionally, there is considerable “abandonment” angst in the USCENTCOM AOR caused by the re-focus of the United States defense strategy toward China and Russia. Charging

a tax on our AOR partners at this sensitive time will cause significant damage to our defense relationships in the region.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

Component Contact for OMB: Ms. Katherine McCormack, USCENCOM CCLA, 571-256-7459, Katherine.e.mccormack.civ@mail.mil or Mr. Jon Shaw, 813-529-0313, jonathan.f.shaw.civ@mail.mil

Changes to Existing Law: This proposal would repeal chapter 50 of the Internal Revenue Code of 1986 as follows:

~~CHAPTER 50—FOREIGN PROCUREMENT~~

~~Sec. 5000C. Imposition of tax on certain foreign procurement.~~

~~SEC. 5000C. IMPOSITION OF TAX ON CERTAIN FOREIGN PROCUREMENT.~~

~~(a) IMPOSITION OF TAX.— There is hereby imposed on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment.~~

~~(b) SPECIFIED FEDERAL PROCUREMENT PAYMENT.— For purposes of this section, the term “specified Federal procurement payment” means any payment made pursuant to a contract with the Government of the United States for— “(1) the provision of goods, if such goods are manufactured or produced in any country which is not a party to an international procurement agreement with the United States, or “(2) the provision of services, if such services are provided in any country which is not a party to an international procurement agreement with the United States.~~

~~(c) FOREIGN PERSON.— For purposes of this section, the term “foreign person” means any person other than a United States person.~~

~~(d) ADMINISTRATIVE PROVISIONS.—~~

~~(1) WITHHOLDING.— The amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed by this section on such payment.~~

~~(2) OTHER ADMINISTRATIVE PROVISIONS.— For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.~~

1 **SEC. __. SHARING OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF**
2 **VETERANS AFFAIRS RESOURCES RELATING TO ARMED FORCES**
3 **RETIREMENT HOME.**

4 Section 1513 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 413) is
5 amended by adding at the end the following new subsection:

6 “(e) COLLABORATION BETWEEN DEPARTMENTS OF DEFENSE AND VETERANS AFFAIRS.—

7 The Secretary of Defense and the Secretary of Veterans Affairs shall enter into agreements and
8 contracts in accordance with section 8111 of title 38, United States Code, for the following
9 purposes:

10 “(1) Depositing in the Armed Forces Retirement Home Trust Fund payments or
11 reimbursements for care or services furnished by the Retirement Home to beneficiaries of
12 the Department of Defense or Department of Veterans Affairs, as the case may be.

13 “(2) Improving the access to, and quality and cost effectiveness of, the health care
14 provided to residents of the Retirement Home.”.

**[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 better integrate Armed Forces Retirement Home (AFRH) resident access to earned health benefits from the military health system and Veterans Health Administration, and address AFRH’s financial solvency by facilitating payment for health services that residents could otherwise obtain through these benefit programs.

Currently AFRH is mandated by section 1513 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 413) to provide “on site primary care, medical care, and a continuum of long-term care services” including “appropriate nonacute medical and dental services.” While the section encourages Department of Defense (DoD) and Department of Veterans Affairs (VA) sharing of “secondary and tertiary hospital care” when not available at AFRH, there is no provision for AFRH to recoup costs for any of these services despite AFRH residents’ health benefits coverage through programs administered by both departments. AFRH expends over \$21 million per year on healthcare services, some of which overlaps with services that could be obtained through DoD or VA channels. These expenses draw from the AFRH Trust Fund, which

is funded through resident fees, military pay withholding and fines and forfeitures, and in recent years general fund appropriations. Congress directed DoD and AFRH to present proposals that would replenish the trust fund without cutting services provided to AFRH residents.

Additionally, there is minimal health coordination among all three agencies, which causes residents to obtain care outside of AFRH where they can access their benefits and receive better coordination of care and more comprehensive services, increasing demand on military and VA health facilities in Washington, D.C. and Gulfport/Biloxi, Mississippi.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Defense Health Program	4.0	4.0	4.0	4.0	4.0	DHP-CHS (0130D 030)	01		
Total	4.0	4.0	4.0	4.0	4.0				

Changes to Existing Law: This proposal would make the following changes to section 1513 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 413):

SEC. 1513. [24 U.S.C. 413] SERVICES PROVIDED TO RESIDENTS.

(a) SERVICES PROVIDED.—Except as provided in subsections (b), (c), and (d), a resident of the Retirement Home shall receive the services authorized by the Chief Operating Officer.

(b) MEDICAL AND DENTAL CARE.—The Retirement Home shall provide for the overall health care needs of residents in a high quality and cost-effective manner, including on site primary care, medical care, and a continuum of long-term care services. The services provided residents of the Retirement Home shall include appropriate nonacute medical and dental services, pharmaceutical services, and transportation of residents, which shall be provided at no cost to residents. Secondary and tertiary hospital care for residents that is not available at a facility of the Retirement Home shall, to the extent available, be obtained by agreement with the Secretary of Veterans Affairs or the Secretary of Defense in a facility administered by such Secretary. Except as provided in subsection (d), the Retirement Home shall not be responsible for the costs incurred for such care by a resident of the Retirement Home who uses a private medical facility for such care. The Retirement Home may not construct an acute care facility.

(c) AVAILABILITY OF PHYSICIANS AND DENTISTS.—(1) In providing for the health care needs of residents at a facility of the Retirement Home under subsection (b), the Retirement Home shall have a physician and a dentist—

- (A) available at the facility during the daily business hours of the facility; and
- (B) available on an on-call basis at other times.

(2) The physicians and dentists required by this subsection shall have the skills and experience suited to residents of the facility served by the physicians and dentists.

(3) To ensure the availability of health care services for residents of a facility of the Retirement Home, the Chief Operating Officer, in consultation with the Medical Director, shall establish uniform standards, appropriate to the medical needs of the residents, for access to health care services during and after the daily business hours of the facility.

(d) TRANSPORTATION TO MEDICAL CARE OUTSIDE RETIREMENT HOME FACILITIES.—(1) With respect to each facility of the Retirement Home, the Retirement Home shall provide daily scheduled transportation to nearby medical facilities used by residents of the facility. The Retirement Home may provide, based on a determination of medical need, unscheduled transportation for a resident of the facility to any medical facility located not more than 30 miles from the facility for the provision of necessary and urgent medical care for the resident.

(2) The Retirement Home may not collect a fee from a resident for transportation provided under this subsection.

(e) COLLABORATION BETWEEN DEPARTMENTS OF DEFENSE AND VETERANS AFFAIRS.—
The Secretary of Defense and the Secretary of Veterans Affairs shall enter into agreements and contracts in accordance with section 8111 of title 38, United States Code, for the following purposes:

(1) Depositing in the Armed Forces Retirement Home Trust Fund payments or reimbursements for care or services furnished by the Retirement Home to beneficiaries of the Department of Defense or Department of Veterans Affairs, as the case may be.

(2) Improving the access to, and quality and cost effectiveness of, the health care provided to residents of the Retirement Home.

1 **SEC. ____ . SELECTED RESERVE AND READY RESERVE ORDER TO ACTIVE DUTY**
2 **TO RESPOND TO A SIGNIFICANT CYBER INCIDENT.**

3 Section 12304 of title 10, United States Code, is amended—

4 (1) in subsection (a) in the heading, by striking “AUTHORITY” and inserting
5 “OPERATIONAL MISSIONS AND CERTAIN OTHER EMERGENCIES”;

6 (2) by redesignating subsections (c) through (j) as subsections (d) through (k),
7 respectively;

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

9 “(c) SIGNIFICANT CYBER INCIDENTS.—The Secretary of Defense may, without the
10 consent of the member affected, order any unit, and any member not assigned to a unit organized
11 to serve as a unit, of the Selected Reserve or Individual Ready Reserve to active duty for a
12 continuous period of not more than 365 days when the Secretary of Defense determines it is
13 necessary to augment the active forces for a Department of Defense response to a covered
14 incident.”;

15 (4) in paragraph (1) of subsection (d), as redesignated by paragraph (2) of this
16 section, by inserting “or subsection (c)” after “subsection (b)”;

17 (5) in subsection (h) (as so redesignated)—

18 (A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B),
19 respectively;

20 (B) by striking “Whenever any” and inserting “(1) Whenever any”; and

21 (C) by adding at the end the following new paragraph:

22 “(2) Whenever any unit of the Selected Reserve or any member of the Selected
23 Reserve not assigned to a unit organized to serve as a unit, or any member of the

1 Individual Ready Reserve, is ordered to active duty under authority of subsection (c), the
2 service of all units or members so ordered to active duty may be terminated by—

3 “(A) order of the Secretary of Defense, or

4 “(B) law.”; and

5 (6) in subsection (k) (as so redesignated)—

6 (A) by redesignating paragraph (2) as paragraph (3); and

7 (B) by inserting after paragraph (1) the following new paragraph:

8 “(2) The term ‘covered incident’ means—

9 “(A) a cyber incident involving a Department of Defense information
10 system, or a breach of a Department of Defense system that involves personally
11 identifiable information, that the Secretary of Defense determines is likely to
12 result in demonstrable harm to the national security interests, foreign relations, or
13 the economy of the United States, or to the public confidence, civil liberties, or
14 public health and safety of the American people;

15 “(B) a cyber incident or collection of related cyber incidents that the
16 President determines is likely to result in demonstrable harm to the national
17 security interests, foreign relations, or economy of the United States or to the
18 public confidence, civil liberties, or public health and safety of the people of the
19 United States; or

20 “(C) a significant incident declared pursuant to section 2233 of the
21 Homeland Security Act of 2002 (6 U.S.C. 677b).”.

[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 12304 of title 10, United States Code, to authorize the Secretary of Defense to order units and members of the Ready Reserve, without the consent of the members, to active duty. The activation of these reserve units and members would be to participate in a Department of Defense (DoD) response to a significant cyber incident, including DoD support, as requested by the Department of Homeland Security in response to a significant cyber incident pursuant to a request for assistance under the section 1535 of title 31, United States Code (commonly referred to as the 'Economy Act'), or other legal reimbursable mechanisms, as applicable.

This proposal is intended to address the growing cyber threat, as well as recommendations from Congress and the Cyberspace Solarium Commission, that the DoD increase its cyber force capacity and leverage reserve component (RC) personnel more effectively. This new authority would assist the Department in planning for how to respond to a significant cyber incident by providing clarity over the ability to access RC personnel in carrying out that response.

Although this proposal would not grow the cyber mission force and would not provide authority for new missions, it would provide enhanced access to the existing DoD cyber force (i.e., RC units and members of the DoD cyber force) when DoD missions require additional forces. This enhanced access would make additional capacity available to the Department when DoD needs to respond to a significant cyber incident affecting DoD personnel, assets, installations, and operations, including the DoD Information Network (DoDIN), or support the request of another Federal department or agency to assist in that department or agency's response to a significant cyber incident.

This new authority is necessary because unless a significant cyber incident is directly related to a declaration of war or national emergency, the Secretary of Defense would have to rely on other, less effective options, such as: (1) a temporary presidential authorization to mobilize RC forces pursuant to section 12304(a) for a named operational mission; (2) determining if the Secretaries of the Military Departments programmed and budgeted, and were appropriated funds by Congress, to use section 12304b of title 10, United States Code, to mobilize RC forces; (3) seeking volunteers (i.e., Section 12301(d) of Title 10, U.S. Code, and section 502(f) of title 32, United States Code), as well as the consent of Governors when the volunteers are National Guard personnel. Seeking volunteers and the consent of Governors for an emerging crisis involving a significant cyber incident would pose potentially critical risks (e.g., loss of operational security and delays in, and insufficient personnel or duration for, the Department's response). This proposal would eliminate such risks by establishing an additional activation authority.

By establishing this new authority in section 12304, this proposal would ensure that RC members are eligible for the appropriate benefits and entitlements when mobilized to respond to a significant cyber incident (e.g., pre-mobilization health care; transitional health care; consideration of active duty service to reduce the age for retired pay; the high-deployment allowance for lengthy or numerous deployments and frequent mobilizations; Post-9/11

educational assistance; and non-reduction in pay while serving in the uniformed services or National Guard).

The definition of the term “covered incident” used by this proposal is adopted from: (a) the definition of a “major incident” provided by the Office of Management Budget Memorandum 22-05, “Fiscal Year 2021-2022 Guidance on Federal Information Security and Privacy Management Requirements,” (i.e., any incident [involving a Federal information system] that is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States or to the public confidence, civil liberties, or public health and safety of the American people; or a breach [in a Federal information system] that involves personally identifiable information (PII) that, if exfiltrated, modified, deleted, or otherwise compromised, is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people); (b) the definition of a “significant cyber incident” included in Presidential Policy Directive 41, “United States Cyber Incident Coordination”; and (c) the Secretary of Homeland Security’s authority to declare a significant incident pursuant to Section 2233 of the Homeland Security Act of 2002, as amended by Section 70602 of the Infrastructure and Jobs Act (Public Law 117-58). Adopting these criteria would help ensure that this authority is used consistent with established law and national policy. Consistent with these definitions, the Secretary of Defense’s determination on the necessity to augment the active forces for a DoD response to a covered incident would follow: (1) the Secretary of Defense’s determination that DoD has experienced a “major incident”; (2) the President’s determination, including as exercised through an existing or specially tailored process established by the President, that the Nation has experienced a “significant cyber incident”; or (3) the Secretary of Homeland Security’s declaration of a “significant incident.”

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2024 President’s Budget request. Either DoD will use applicable existing military personnel funds: (a) for the purpose of employing mobilized RC personnel to respond to a significant cyber incident affecting DoD personnel, assets, installations, and operations, including the DoDIN; or (b) for the purpose of providing support, on a reimbursable basis, to a lead Federal agency’s response.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Activated RC personnel	\$0.44 1 - \$1.76 3	\$0.44 1 - \$1.76 3	\$0.44 1 - \$1.76 3	\$0.44 1 - \$1.76 3	\$0.4 41 - \$1.7 63	Military Personnel, Multiple	Multiple	Multiple	Multiple
Travel & Per Diem	\$0.17 6 - \$0.70 2	\$0.17 6 - \$0.70 2	\$0.17 6 - \$0.70 2	\$0.17 6 - \$0.70 2	\$0.1 76 - \$0.7 02	Operation and Maintenance, Multiple	Multiple	Multiple	Multiple

Total	\$0.61 7 - \$2.46 5	\$0.61 7 - \$2.46 5	\$0.61 7 - \$2.46 5	\$0.61 7 - \$2.46 5	\$0.6 17 - \$2.4 65				
-------	------------------------------	------------------------------	------------------------------	------------------------------	------------------------------	--	--	--	--

Note: The estimates above reflect personnel and travel and per diem costs for one 39-person RC Cyber Protection Team (CPT) mobilized for 30 days and one 39-person RC CPT mobilized for 120 days. Actual numbers of personnel and appropriation impacted will depend on the specific circumstances of the significant cyber incident.

Changes to Existing Law: This proposal would make the following changes to section 12304 of title 10, United States Code:

§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) AUTHORITY OPERATIONAL MISSIONS AND CERTAIN OTHER EMERGENCIES.—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any named operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize 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, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty for not more than 365 consecutive days.

(b) SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving—

- (1) a use or threatened use of a weapon of mass destruction; or
- (2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property.

(c) SIGNIFICANT CYBER INCIDENTS.—The Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve or Individual Ready Reserve to active duty for a continuous period of not more than 365 days when the Secretary of Defense determines it is necessary to augment the active forces for a Department of Defense response to a covered incident.

(~~e~~) LIMITATIONS.—(1) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 13 or section 12406 of this title or, except as provided in subsection (b) or subsection (c) to provide assistance

to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(3) No unit or member of a reserve component may be ordered to active duty under this section to provide assistance referred to in subsection (b) unless the President determines that the requirements for responding to an emergency referred to in that subsection have exceeded, or will exceed, the response capabilities of local, State, and Federal civilian agencies.

(~~d~~e) EXCLUSION FROM STRENGTH LIMITATIONS.—Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(~~e~~f) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Homeland Security shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(~~f~~g) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Homeland Security to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(~~g~~h) TERMINATION OF DUTY.—(1) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

(~~1~~A) order of the President, or

(~~2~~B) law.

(2) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (b), the service of all units or members so ordered to active duty may be terminated by—

(A) order of the Secretary of Defense, or

(B) law.

(~~h~~i) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(~~i~~j) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—(1) In determining which members of the Selected Reserve and Individual Ready Reserve will be ordered to duty without their consent under this section, appropriate consideration shall be given to—

- (A) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;
- (B) the frequency of assignments during service career;
- (C) family responsibilities; and
- (D) employment necessary to maintain the national health, safety, or interest.

(2) The Secretary of Defense shall prescribe such policies and procedures as the Secretary considers necessary to carry out this subsection.

(j) DEFINITIONS.—In this section:

(1) The term “Individual Ready Reserve mobilization category” means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

(2) The term “covered incident” means—

(A) a cyber incident involving a Department of Defense information system, or a breach of a Department of Defense system that involves personally identifiable information, that the Secretary of Defense determines is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people;

(B) a cyber incident or collection of related cyber incidents that the President determines is likely to result in demonstrable harm to the national security interests, foreign relations, or economy of the United States or to the public confidence, civil liberties, or public health and safety of the people of the United States; or

(C) a significant incident declared pursuant to section 2233 of the Homeland Security Act of 2002 (6 U.S.C. 677b).

(3) The term “weapon of mass destruction” has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

1 **SEC. __. TECHNICAL AND CONFORMING AMENDMENTS TO THE UNIFORM**
2 **CODE OF MILITARY JUSTICE.**

3 (a) TECHNICAL AMENDMENT RELATING TO GUILTY PLEAS FOR MURDER.—Section 918 of
4 title 10, United States Code (article 118 of the Uniform Code of Military Justice), is amended—

5 (1) by striking “he” each place it appears and inserting “such person”; and

6 (2) in the matter following paragraph (4), by striking the period and inserting “,
7 unless such person is otherwise sentenced in accordance with a plea agreement entered
8 into between the parties under section 853a (article 53a).”.

9 (b) TECHNICAL AMENDMENTS RELATING TO THE MILITARY JUSTICE REFORMS IN THE
10 NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022.—

11 (1) ARTICLE 16.—Subsection (c)(2)(A) of section 816 of title 10, United States
12 Code (article 16 of the Uniform Code of Military Justice), is amended by striking “by the
13 convening authority”.

14 (2) ARTICLE 25.—Section 825 of title 10, United States Code (article 25 of the
15 Uniform Code of Military Justice), is amended—

16 (A) in subsection (d)—

17 (i) in paragraph (1), by striking “may, after the findings are
18 announced and before any matter is presented in the sentencing phase,
19 request, orally on the record or in writing, sentencing by the members”
20 and inserting “shall be sentenced by the military judge”; and

21 (ii) by amending paragraph (2) to read as follows:

1 “(2) In a capital case, if the accused is convicted of an offense for which the court-martial
2 may sentence the accused to death, the accused shall be sentenced in accordance with section
3 853(c) of this title (article 53(c)).”;

4 (B) in subsection (e)—

5 (i) in paragraph (1), by striking “him” and inserting “the member
6 being tried”; and

7 (ii) in paragraph (2)—

8 (I) in the first sentence, by striking “his opinion” and
9 inserting “the opinion of the convening authority”; and

10 (II) in the second sentence, by striking “he” and inserting

11 “the member”; and

12 (C) in subsection (f) in the second sentence—

13 (i) by striking “his authority” and inserting “the authority of the
14 convening authority”; and

15 (ii) by striking “his staff judge advocate or legal officer” and
16 inserting “the staff judge advocate or legal officer of the convening
17 authority”.

18 (c) AUTHORITY OF SPECIAL TRIAL COUNSEL WITH RESPECT TO CERTAIN OFFENSES
19 OCCURRING BEFORE EFFECTIVE DATE OF MILITARY JUSTICE REFORMS ENACTED IN THE
20 NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022.—

21 (1) AUTHORITY.—Section 824a of title 10, United States Code, as added by
22 section 531 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law

1 117-81) and as amended by subsection (b)(2) of this section, is further amended by
2 adding at the end the following new subsection:

3 “(d) SPECIAL TRIAL COUNSEL AUTHORITY OVER CERTAIN OTHER OFFENSES.—

4 “(1) OFFENSES OCCURRING BEFORE EFFECTIVE DATE.—A special trial counsel
5 may, at the sole and exclusive discretion of the special trial counsel, exercise authority
6 over the following offenses:

7 “(A) An offense under section 917a (article 117a), 918 (article 118),
8 section 919 (article 119), section 920 (article 120), section 920b (article 120b),
9 section 920c (article 120c), section 928b (article 128b) or the standalone offense
10 of child pornography punishable under section 934 (article 134) of this title that
11 occurred on or before December 27, 2023.

12 “(B) An offense under section 925 (article 125), section 930 (article 130),
13 or section 932 (article 132) of this title that occurred on or after January 1, 2019,
14 and before December 28, 2023.

15 “(C) An offense under section 920a (article 120a) of this title, an offense
16 under section 925 (article 125) of this title alleging an act of nonconsensual
17 sodomy, or the standalone offense of kidnapping punishable under section 934
18 (article 134) of this title that occurred before January 1, 2019.

19 “(D) A conspiracy to commit an offense specified in subparagraph (A),
20 (B), or (C) as punishable under section 881 of this title (article 81).

21 “(E) A solicitation to commit an offense specified in subparagraph (A),
22 (B), or (C) as punishable under section 882 of this title (article 82).

1 “(F) An attempt to commit an offense specified in subparagraph (A), (B),
2 (C), (D), or (E) as punishable under section 880 of this title (article 80).

3 “(2) EFFECT OF EXERCISE OF AUTHORITY.—

4 “(A) TREATMENT AS COVERED OFFENSE.—If a special trial counsel
5 exercises authority over an offense pursuant to paragraph (1), the offense over
6 which the special trial counsel exercises authority shall be considered a covered
7 offense for purposes of this chapter.

8 “(B) KNOWN OR RELATED OFFENSES.—If a special trial counsel exercises
9 authority over an offense pursuant to paragraph (1), the special trial counsel may
10 exercise the authority of the special trial counsel under subsection (c)(2)(B) with
11 respect to other offenses described in that subparagraph without regard to the date
12 on which the other offenses occur.”.

13 (2) CONFORMING AMENDMENT TO EFFECTIVE DATE.—Section 539C(a) of the
14 National Defense Authorization Act for Fiscal Year 2022 (10 U.S.C. 801 note; Public
15 Law 117-81) is amended by striking “and shall” and inserting “and, except as provided in
16 section 824a(d) of title 10, United States Code (article 24a of the Uniform Code of
17 Military Justice), shall”.

18 (d) CLARIFICATION OF APPLICABILITY OF DOMESTIC VIOLENCE AND STALKING TO DATING
19 PARTNERS.—

20 (1) ARTICLE 128B; DOMESTIC VIOLENCE.—Section 928b of title 10, United States
21 Code (article 128b of the Uniform Code of Military Justice), is amended—

22 (A) in the matter preceding paragraph (1), by striking “Any person” and
23 inserting “(a) IN GENERAL.—Any person”;

1 (B) in subsection (a), as designated by paragraph (1) of this section, by
2 inserting “a dating partner,” after “an intimate partner,” each place it appears; and

3 (C) by adding at the end the following new subsection:

4 “(b) DEFINITIONS.—In this section (article), the terms ‘dating partner’, ‘immediate
5 family’, and ‘intimate partner’ have the meaning given such terms in section 930 of this title
6 (article 130 of the Uniform Code of Military Justice).”.

7 (2) ARTICLE 130; STALKING.—Section 930 of such title (article 130 of the
8 Uniform Code of Military Justice) is amended—

9 (A) in subsection (a), by striking “or to his or her intimate partner” each
10 place it appears and inserting “to his or her intimate partner, or to his or her dating
11 partner”;

12 (B) in subsection (b)—

13 (i) by redesignating paragraphs (3) through (5) as paragraphs (4)
14 through (6), respectively; and

15 (ii) by inserting after paragraph (2) the following new paragraph:

16 “(3) The term ‘dating partner’, in the case of a specific person, means a person
17 who is or has been in a social relationship of a romantic or intimate nature with such
18 specific person based on a consideration of—

19 “(A) the length of the relationship;

20 “(B) the type of relationship; and

21 “(C) the frequency of interaction between the persons involved in the
22 relationship.”.

1 (e) EFFECTIVE DATE.—The amendments made by subsection (b) and subsection (c)(1)
2 shall take effect immediately after the coming into effect of the amendments made by part 1 of
3 subtitle D of title V of the National Defense Authorization Act for Fiscal Year 2022 (Public Law
4 117-81) as provided in section 539C of that Act (10 U.S.C. 801 note).

[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 technical and conforming amendments to the Uniform Code of Military Justice (UCMJ) and clarify the authorities of the special trial counselors with respect to certain offenses that may occur before the effective date of the amendments made by part 1 of subtitle D of title V of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Public Law 117-81).

Technical Amendment Relating to Guilty Pleas for Premeditated or Felony Murder.

This proposal would amend article 118 (10 U.S.C. 918) to provide the authority for a plea agreement for premeditated murder or felony murder to include a period of confinement of less than confinement for life. Prior to the enactment of the Military Justice Act of 2016 (MJA), convening authorities were authorized to grant clemency as part of the plea bargain process when an accused and the convening authority entered into a pretrial agreement. That authority allowed pretrial agreements to include a reduction in the mandatory period of confinement to something less than confinement for life. The MJA removed that clemency authority without making the corresponding change to article 118 to ensure that a plea agreement could still contain a period of confinement that is reduced from confinement for life.

Technical Amendments Relating to the Enactment of the NDAA for FY 2022.

Article 16. This proposal would amend article 16 (10 U.S.C. 816) to increase the range of the special trial counsel’s disposition decisions. Existing language currently precludes a special trial counsel from referring charges to a special court-martial convened in accordance with article 16(c)(2) of the UCMJ (10 U.S.C. 816(c)(2)). The proposed amendment would eliminate that barrier.

Article 25. This proposal would amend article 25 (10 U.S.C. 825) to remove language no longer operable following the enactment of the reforms contained in the NDAA for FY 2022.

Clarification of Authority of Special Trial Counselors Over Certain Offenses. This proposal would further amend article 24a (10 U.S.C. 824a) and amend section 539C of the NDAA for FY 2022 to provide special trial counselors with discretionary authority over covered offenses that occur before the date on which the reforms enacted by the NDAA for FY 2022 (December 28, 2023) apply to those offenses, as well as any “known” or “related” offenses that occur before that date. Providing special trial counselors with such discretionary authority will facilitate the prosecution of cases in which the accused is charged with committing some

offenses before December 28, 2023, and some offenses on or after that date. Additionally, because several covered offenses have no statute of limitations, cases will continue to arise decades in the future involving covered offenses committed before December 28, 2023. At some point, traditional convening authorities will no longer be familiar with the handling of such cases; institutional knowledge will rest exclusively with special trial counsels. Providing special trial counsels with the ability to exercise authority over those cases will facilitate their effective disposition.

Clarification of applicability of domestic violence and stalking to dating partners.

This proposal adds dating partners to the victims covered by the UCMJ's domestic violence article (article 128b UCMJ (10 U.S.C. § 928b)). It also adds a stalking victim's dating partner to the class of individuals threats against whom are addressed by the UCMJ's stalking article (article 130, UCMJ, 10 U.S.C. § 930)). It also provides a definition of dating partner modeled on that in 18 U.S.C. § 2266.

Section 2261 of title 18, United States Code, the Federal civilian counterpart to the UCMJ's domestic violence article, separately lists intimate partners and dating partners among those who fall within its protection. Despite that the proposed definition of dating partners may appear similar to the definition of intimate partners, as defined in title 10 U.S.C. section 930(b)(5)(B), the approach of listing each separately ensures the provision's applicability without the necessity for courts to make intrusive inquiries into a couple's level of intimacy and ensures the provision applies to those persons who could reasonably be considered to be dating the accused but who might not be considered intimate with the accused based on the considerations outlined in the definition of intimate partner.

The UCMJ's punitive articles would benefit from following the title 18 model. The Independent Review Commission on Sexual Assault in the Military expressly recommended adding dating partners to those protected by the UCMJ's domestic violence punitive article (Independent Revision Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military*, recommendation 1.7 f (July 2, 2021)). The UCMJ's stalking punitive article would be similarly improved by including threats against an individual's dating partner as a prohibited means by which that individual may be stalked.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2024 President's Budget.

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

Title 10, United States Code

§ 816. Art 16. Courts-martial classified

(a) IN GENERAL.—The three kinds of courts-martial in each of the armed forces are the following:

- (1) General courts-martial, as described in subsection (b).

- (2) Special courts-martial, as described in subsection (c).
- (3) Summary courts-martial, as described in subsection (d).

(b) GENERAL COURTS-MARTIAL.—General courts-martial are of the following three types:

(1) A general court-martial consisting of a military judge and eight members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) In a capital case, a general court-martial consisting of a military judge and the number of members determined under section 825a of this title (article 25a), subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(3) A general court-martial consisting of a military judge alone, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(c) SPECIAL COURTS-MARTIAL.—Special courts-martial are of the following two types:

(1) A special court-martial consisting of a military judge and four members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) A special court-martial consisting of a military judge alone—

(A) if the case is so referred by the convening authority, subject to section 819 of this title (article 19) and such limitations as the President may prescribe by regulation; or

(B) if the case is referred under paragraph (1) and, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(d) SUMMARY COURT-MARTIAL.—A summary court-martial consists of one commissioned officer.

* * * * *

§ 824a. Art 24a. Special trial counsel¹

(a) DETAIL OF SPECIAL TRIAL COUNSEL.—Each Secretary concerned shall promulgate regulations for the detail of commissioned officers to serve as special trial counsel.

(b) QUALIFICATIONS.—A special trial counsel shall be a commissioned officer who—
(1)(A) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

(B) is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by—

(i) the Judge Advocate General of the armed force of which the officer is a member; or

¹ Section 824a of title 10, United States Code, takes effect on December 27, 2023.

- (ii) in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps; and
- (2) in the case of a lead special trial counsel appointed pursuant to section 1044f(a)(2) of this title, is in a grade no lower than O-7.

(c) DUTIES AND AUTHORITIES.—

(1) IN GENERAL.—Special trial counsel shall carry out the duties described in this chapter and any other duties prescribed by the Secretary concerned, by regulation.

(2) DETERMINATION OF COVERED OFFENSE; RELATED CHARGES.—

(A) AUTHORITY.—A special trial counsel shall have exclusive authority to determine if a reported offense is a covered offense and shall exercise authority over any such offense in accordance with this chapter. Any determination to prefer or refer charges shall not act to disqualify the special trial counsel as an accuser.

(B) KNOWN AND RELATED OFFENSES.—If a special trial counsel determines that a reported offense is a covered offense, the special trial counsel may also exercise authority over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense.

(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—Subject to paragraph (5), with respect to charges and specifications alleging any offense over which a special trial counsel exercises authority, a special trial counsel shall have exclusive authority to, in accordance with this chapter—

(A) on behalf of the Government, withdraw or dismiss the charges and specifications or make a motion to withdraw or dismiss the charges and specifications;

(B) refer the charges and specifications for trial by a special or general court-martial;

(C) enter into a plea agreement; and

(D) determine if an ordered rehearing is impracticable.

(4) BINDING DETERMINATION.—The determination of a special trial counsel to refer charges and specifications to a court-martial for trial shall be binding on any applicable convening authority for the referral of such charges and specifications.

(5) DEFERRAL TO COMMANDER OR CONVENING AUTHORITY.—If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense or, with respect to charges and specifications for such offense preferred by a person other than a special trial counsel, elects not to refer such charges and specifications, a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such commander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.

(d) SPECIAL TRIAL COUNSEL AUTHORITY OVER CERTAIN OTHER OFFENSES.—

(1) OFFENSES OCCURRING BEFORE EFFECTIVE DATE.—A special trial counsel may, at the sole and exclusive discretion of the special trial counsel, exercise authority over the following offenses:

(A) An offense under section 917a (article 117a), 918 (article 118), section 919 (article 119), section 920 (article 120), section 920b (article 120b), section 920c (article 120c), section 928b (article 128b) or the standalone offense of child pornography punishable under section 934 (article 134) of this title that occurred on or before December 27, 2023.

(B) An offense under section 925 (article 125), section 930 (article 130), or section 932 (article 132) of this title that occurred on or after January 1, 2019, and before December 28, 2023.

(C) An offense under section 920a (article 120a) of this title, an offense under section 925 (article 125) of this title alleging an act of nonconsensual sodomy, or the standalone offense of kidnapping punishable under section 934 (article 134) of this title that occurred before January 1, 2019.

(D) A conspiracy to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 881 of this title (article 81).

(E) A solicitation to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 882 of this title (article 82).

(F) An attempt to commit an offense specified in subparagraph (A), (B), (C), (D), or (E) as punishable under section 880 of this title (article 80).

(2) EFFECT OF EXERCISE OF AUTHORITY.—

(A) TREATMENT AS COVERED OFFENSE.—If a special trial counsel exercises authority over an offense pursuant to paragraph (1), the offense over which the special trial counsel exercises authority shall be considered a covered offense for purposes of this chapter.

(B) KNOWN OR RELATED OFFENSES.—If a special trial counsel exercises authority over an offense pursuant to paragraph (1), the special trial counsel may exercise the authority of the special trial counsel under subsection (c)(2)(B) with respect to other offenses described in that subparagraph without regard to the date on which the other offenses occur.

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members shall be sentenced by the military judge ~~may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.~~

(2) In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the accused shall be sentenced ~~by the members for all offenses for which the court-martial may sentence the accused to death~~ in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to ~~him~~ the member being tried in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in ~~his~~ the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when ~~he~~ the member is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(4) When convening a court-martial, the convening authority shall detail as members thereof members of the armed forces under such regulations as the President may prescribe for the randomized selection of qualified personnel, to the maximum extent practicable.²

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate ~~his~~ the authority of the convening authority under this subsection to ~~his~~ the staff judge advocate or legal officer of the convening authority or to any other principal assistant.

* * * * *

² Section 543 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263) provides that effective on December 23, 2024, paragraph (4) as shown will be added to section 825(e) of title 10, United States Code.

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when ~~he~~ such person—

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or
- (4) is engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), ~~he~~ such person shall suffer death or imprisonment for life as a court-martial may direct, unless such person is otherwise sentenced in accordance with a plea agreement entered into between the parties under section 853a (article 53a).

* * * * *

§ 928b. Art. 128b. Domestic violence

(a) IN GENERAL.—Any person who—

- (1) commits a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person;
 - (2) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person—
 - (A) commits an offense under this chapter against any person; or
 - (B) commits an offense under this chapter against any property, including an animal;
 - (3) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order;
 - (4) with intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order;
- or
- (5) assaults a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangling or suffocating;
- shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section (article), the terms “dating partner”, “immediate family”, and “intimate partner” have the meaning given such terms in section 930 of this title (article 130 of the Uniform Code of Military Justice).

* * * * *

§ 930. Art. 130. Stalking

(a) IN GENERAL.—Any person subject to this chapter-

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner;
is guilty of stalking and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term “conduct” means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term “course of conduct” means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term “dating partner”, in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(~~3~~4) The term “repeated”, with respect to conduct, means two or more occasions of such conduct.

(~~4~~5) The term “immediate family”, in the case of a specific person, means—

(A) that person's spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or marriage.

(~~5~~6) The term “intimate partner”, in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the

relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

* * * * *

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022
(PUBLIC LAW 117-81)

SEC. 539C. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and, except as provided in section 824a(d) of title 10, United States Code (article 24a of the Uniform Code of Military Justice), shall apply with respect to offenses that occur after that date.

(b) REGULATIONS.—

(1) REQUIREMENT.—The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.

(2) IMPACT OF DELAY OF ISSUANCE.—If the President does not prescribe the regulations necessary to carry out this part before the date that is two years after the date of the enactment of this Act, the amendments made by this part shall take effect on the date on which such regulations are prescribed and shall apply with respect to offenses that occur on or after that date.

1 **SEC. ____. TRAINING FOR EASTERN EUROPEAN NATIONAL SECURITY FORCES**
2 **IN THE COURSE OF MULTILATERAL EXERCISES.**

3 Section 1251 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C.
4 333 note; Public Law 114-82) is amended—

5 (1) in subsection (c)(1), by adding at the end the following new subparagraph:

6 “(C) The Republic of Kosovo.”; and

7 (2) in subsection (h)—

8 (A) by striking “December 31, 2024” each place it appears and inserting

9 “December 31, 2026”; and

10 (B) in the second sentence, by striking the second period at the end.

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

Section-by-Section Analysis

This proposal would expand the authority of section 1251 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 333 note; Public Law 114-92) (section 1251) to authorize the Secretary of Defense to provide training and payment of incremental expenses specifically to the Republic of Kosovo. Kosovo is not currently authorized to receive such assistance under section 1251 because it is neither a post-1999 North Atlantic Treaty Organization (NATO) Ally nor a Partnership for Peace country. The Department of Defense (DoD) seeks to prioritize the development of Kosovo’s military and security forces to enhance and increase interoperability, increase Kosovo’s ability to participate in coalition efforts led by the United States or NATO, increase Kosovo’s ability to respond to external threats, increase Kosovo’s ability to respond to hybrid warfare, and increase Kosovo’s capacity to respond to calls for collective action. This proposal would also extend the authority to December 31, 2026; it is currently set to expire on December 31, 2024.

U.S. European Command (USEUCOM) is unable to provide section 1251 incremental expenses for Kosovo Security Forces to participate in USEUCOM Joint Exercise Program Events. Although USEUCOM has been able to use 10 U.S.C. 321 to some extent to support Kosovo’s participation in exercises, it limits the type and scope of training that USEUCOM normally conducts during major exercises. USEUCOM’s intent is to enable the full scope of training with Kosovo authorized under section 1251. The U.S. Government is committed to enabling the 10-year transition of the Kosovo Armed Forces. The end-state of this transition is an interoperable Kosovo Armed Forces that is capable of executing its territorial defense mission

and that has the capacity to support U.S.-led coalition operations. Although Kosovo’s eventual inclusion in NATO’s Partnership for Peace Framework and accession to NATO are ultimate U.S. Government objectives, geopolitical issues, such as the normalization of Serbia-Kosovo relations and United Nations recognition, prevent either objective in the near-term. Expanding section 1251 to include Kosovo would significantly enhance USEUCOM’s ability to train the Kosovo Armed Forces and enable its successful transition to a professional Armed Force.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
JEP	\$10	\$9	\$9	\$9	\$9	Operation and Maintenance, Army	01	2020	N/A
Total	\$10	\$9	\$9	\$9	\$9				

Changes to Existing Law: This proposal would amend section 1251 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 333 note; Public Law 114-92) as follows:

(a) AUTHORITY.—The Secretary of Defense may provide the training specified in subsection (b), and pay the incremental expenses incurred by a country as the direct result of participation in such training, for the national security forces provided for under subsection (c).

* * * * *

(c) ELIGIBLE COUNTRIES.—

(1) IN GENERAL.—Training may be provided under subsection (a) to the national security forces of the countries determined by the Secretary of Defense, with the concurrence of the Secretary of State, to be appropriate recipients of such training from among the countries as follows:

(A) Countries that are a signatory to the Partnership for Peace Framework Documents, but not a member of the North Atlantic Treaty Organization.

(B) Countries that became a member of the North Atlantic Treaty Organization after January 1, 1999.

(C) The Republic of Kosovo.

(2) ELIGIBLE COUNTRIES.—Before providing training under subsection (a), the Secretary of Defense shall, in coordination with the Secretary of State, submit to the Committees on Armed Services of the Senate and the House of Representatives a list of the countries determined pursuant to paragraph (1) to be eligible for the provision of training under subsection (a).

* * * * *

(h) TERMINATION OF AUTHORITY.—The authority under this section shall terminate on ~~December 31, 2024~~ December 31, 2026. Any activity under this section initiated before that date may be completed, but only using funds available for the period beginning on October 1, 2015, and ending on ~~December 31, 2024~~. December 31, 2026.

1 **SEC. ___. UPDATING AUTHORITY TO AUTHORIZE PROMOTION TRANSFERS**
2 **BETWEEN COMPONENTS OF THE SAME SERVICE OR A**
3 **DIFFERENT SERVICE.**

4 (a) **WARRANT OFFICERS TRANSFERRED BETWEEN COMPONENTS WITHIN THE SAME OR A**
5 **DIFFERENT UNIFORMED SERVICE.**—Section 578 of title 10, United States Code, is amended by
6 adding at the end the following new subsection:

7 “(g) Notwithstanding subsection (d), and subject to regulations prescribed by the
8 Secretary of Defense, in the case of a warrant officer who (1) is selected for promotion by a
9 selection board convened under this chapter, and (2) prior to the placement of the warrant
10 officer’s name on the applicable promotion list, is approved for transfer to a new component
11 within the same or a different uniformed service, the Secretary concerned may place the warrant
12 officer’s name on a corresponding promotion list of the new component without regard to the
13 warrant officer’s competitive category. A warrant officer’s promotion under this subsection shall
14 be made pursuant to section 12242 of this title.”.

15 (b) **OFFICERS TRANSFERRED TO RESERVE ACTIVE-STATUS LIST.**—

16 (1) **IN GENERAL.**—Section 624 of such title is amended by adding at the end the
17 following new subsections:

18 “(e) Notwithstanding subsection (a)(2), in the case of an officer who (1) is selected for
19 promotion by a selection board convened under this chapter, and (2) prior to the placement of the
20 officer’s name on the applicable promotion list, is approved for transfer to the reserve active-
21 status list of the same or a different uniformed service, the Secretary concerned may place the
22 officer’s name on a corresponding promotion list on the reserve active-status list without regard

1 to the officer’s competitive category. An officer’s promotion under this subsection shall be made
2 pursuant to section 14308 of this title.

3 “(f) Notwithstanding subsection (a)(3), in the case of an officer who (1) is placed on an
4 all-fully-qualified-officers list, and (2) is subsequently approved for transfer to the reserve
5 active-status list, the Secretary concerned may place the officer’s name on an appropriate all-
6 fully-qualified-officers list on the reserve active status list. An officer’s promotion under this
7 subsection shall be made pursuant to section 14308 of this title.”.

8 (2) DATE OF RANK.—Section 14308(c) of such title is amended—

9 (A) by redesignating paragraph (3) as paragraph (4); and

10 (B) by inserting after paragraph (2) the following new paragraph:

11 “(3) The Secretary concerned may adjust the date of rank of an officer whose name is
12 placed on a reserve active-status promotion list pursuant to subsection (e) or (f) of section 624 of
13 this title.”.

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

Section-by-Section Analysis

This proposal would provide increased flexibility to allow the Secretary concerned, in lieu of promoting on the established sequence or approval date, to transfer the promotion selection of a regular officer or warrant officer to the Reserve Component. Such transfers could be made within the same or a different uniformed service.

Under current authority, section 14317 of title 10, United States Code, as implemented by Department of Defense Instruction 1300.04, allows the Secretary concerned to transfer a promotable officer between components within the same military service and integrate the officer into the corresponding promotion list based upon the officer’s date of rank in his or her current grade. The Secretary concerned has the same authority for warrant officers.

However, when a promotable officer/warrant officer’s effective promotion date occurs shortly before transfer, the Secretary concerned has no authority to defer and transfer a promotion to the new component, which can contribute to financial burdens, lost employment opportunities, and quality of life issues for the family.

Annually, approximately 100 promotable commissioned/warrant officers, primarily in the grades of CW2, CW3, 1LT, and CPT, conducting an inter-component transfer are adversely impacted when the effective date of their promotion, by promotion list sequence, occurs within approximately 30-45 days of their separation date from their current component. Generally, the impacts are as follows:

- Regular Army officers who are promoted after they have received their separation order, but prior to their separation date, must be retained beyond their approved separation date until a new appointment scroll for the higher grade is approved. If the officer had an approved start date for a civilian job, the extension on active duty may result in a delayed start date, or a lost employment opportunity. Additionally, the officer/warrant officer may have already shipped household goods and the family may have relocated to the new job location, all of which may cause unforeseen financial burdens and family separation.
- If a Regular Army officer is released from active duty (REFRAD) with an effective date of promotion occurring while the officer is on transition leave, the officer may report to the Reserve unit without a proper, approved Reserve appointment in the higher grade. In such cases the accession is considered erroneous as the appointment is in violation of statutory requirements. When identified, the Army must submit a ratification scroll; however, that process can take 3-6 months. The erroneous accession then puts the officer at risk of incurring debt and losing service time and promotion opportunities for the time served between REFRAD and the approved Reserve appointment.
- If an officer is separating from the Regular Army and transferring to the Reserve, but the new appointment at the higher grade is not yet approved by the approved separation date, the officer may be required to incur a break in service in order to continue with separation on the approved separation date, resulting in numerous adverse effects. The most significant impacts of a break in service in this scenario include the officer's promotion timeline being delayed, and the officer and his or her family temporarily lose educational, health, and/or dental benefits, all of which result in increased financial burdens.

If adopted, this proposal would eliminate delays in separation from active duty and other unintended consequences when an officer's promotion effective date occurs shortly prior to his or her approved separation date. It would also eliminate the requirement for the Secretary concerned to process another appointment scroll to the Secretary of Defense for the officer's promotion to the next higher grade. The Secretary concerned would retain the authority to defer the promotion in the current component and transfer it to the new component in accordance with existing promotion requirements.

Pursuant to sections 14308 and 741(for officers) or 12242 and 742 (for warrant officers) of title 10, the officer's or warrant officer's date of rank and effective date will be adjusted to

align with the date of the original promotion sequence number, thereby, having no adverse impact to the officer’s time in grade or pay and allowances.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

PERSONNEL					
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Army	100	100	100	100	100
Navy	0	0	0	0	0
Air Force	65	65	65	65	65
Marines	120	120	120	120	120
Total	285	285	285	285	285

Changes to Existing Law: This proposal would make the following changes to sections 578, 624, and 14308 of title 10, United States Code:

§ 578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order set forth in section 576(c) of this title.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(g) Notwithstanding subsection (d), and subject to regulations prescribed by the Secretary of Defense, in the case of a warrant officer who (1) is selected for promotion by a selection board convened under this chapter, and (2) prior to the placement of the warrant officer's name on the applicable promotion list, is approved for transfer to a new component within the same or a different uniformed service, the Secretary concerned may place the warrant officer's name on a corresponding promotion list of the new component without regard to the warrant officer's competitive category. A warrant officer's promotion under this subsection shall be made pursuant to section 12242 of this title.

* * * * *

§ 624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved 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 the seniority of such officers on the active-duty 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.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. 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. 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 concerned.

(3)(A) Except as provided in subsection (d), officers on the active-duty list in the 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.

(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.

(C) The Secretary of a military department may make a recommendation 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 active-duty 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 611(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.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, Marine Corps, or Space Force or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer;

(D) a criminal proceeding in a Federal or State court is pending against the officer;

(E) substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned; or

(F) the Secretary of the military department concerned determines that credible information of an adverse nature, including a substantiated adverse finding or conclusion described in section 615(a)(3)(A) of this title, with respect to the officer will result in the convening of a special selection review board under section 628a of this title to review the officer and recommend whether the recommendation for promotion of the officer should be sustained.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, if the officer is acquitted of the charges brought against him, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as

applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then unless action to delay an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to such grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) In the case of an officer whose promotion is delayed pursuant to paragraph (1)(F) and whose recommendation for promotion is sustained, authorities for the promotion of the officer are specified in section 628a(f) of this title.

(4)(A) Except as provided in subparagraph (B), the appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(B) In the case of an officer whose promotion is delayed pursuant to paragraph (1)(F), requirements applicable to notice and opportunity for response to such delay are specified in section 628a(c)(3) of this title.

(5) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any

court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(e) Notwithstanding subsection (a)(2), in the case of an officer who (1) is selected for promotion by a selection board convened under this chapter, and (2) prior to the placement of the officer's name on the applicable promotion list, is approved for transfer to the reserve active-status list of the same or a different uniformed service, the Secretary concerned may place the officer's name on a corresponding promotion list on the reserve active-status list without regard to the officer's competitive category. An officer's promotion under this subsection shall be made pursuant to section 14308 of this title.

(f) Notwithstanding subsection (a)(3), in the case of an officer who (1) is placed on an all-fully-qualified-officers list, and (2) is subsequently approved for transfer to the reserve active-status list, the Secretary concerned may place the officer's name on an appropriate all-fully-qualified-officers list on the reserve active status list. An officer's promotion under this subsection shall be made pursuant to section 14308 of this title.

* * * * *

§ 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) The Secretary concerned may adjust the date of rank of an officer whose name is placed on a reserve active-status promotion list pursuant to subsection (e) or (f) of section 624 of this title.

(4) 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.—(1) 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.

(2) If there is a delay in extending Federal recognition in the next higher grade in the Army National Guard or the Air National Guard to a reserve commissioned officer of the Army or the Air Force that exceeds 100 days from the date the National Guard Bureau deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau, and the delay was not attributable to the action or inaction of such officer—

(A) in the event of State promotion with an effective date before January 1, 2024, the effective date of the promotion concerned under paragraph (1) may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion; and

(B) in the event of State promotion with an effective date on or after January 1, 2024, the effective date of the promotion concerned under paragraph (1) shall be adjusted by the Secretary concerned to the later of—

(i) the date the National Guard Bureau deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau; and

(ii) the date on which the officer occupies a billet in the next higher grade.

(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.