

1 **SEC. ____ . COVER ENHANCEMENT AUTHORITIES.**

2 (a) IN GENERAL.—Part II of title 10, United States Code, is amended by inserting after
3 chapter 88 the following new chapter:

4 **“CHAPTER 89—COVER ENHANCEMENT AUTHORITIES**

- “Sec.
- “1801. Definitions.
- “1802. Cover enhancement authority.
- “1803. Compensation.
- “1804. Retirement benefits.
- “1805. Health insurance benefits.
- “1806. Life insurance benefits.
- “1807. Exemption from certain requirements.
- “1808. Taxation and social security.
- “1809. Regulations.
- “1810. Finality of decisions.

5 **“§ 1801. Definitions**

6 “In this chapter:

7 “(1) The term ‘designated employee or member’ means an employee of the
8 Department of Defense or a member of the armed forces designated by the Secretary of
9 Defense under subsection (b).

10 “(2) The term ‘Federal retirement system’ includes the Federal Employees’
11 Retirement System (including the Thrift Savings Plan).

12 “(3) The term ‘military retirement system’ includes military retired pay programs
13 under chapters 61, 63, 65, and 67 of this title and the Survivor Benefit Plan established by
14 chapter 73 of this title.

15 **“§ 1802. Cover enhancement authority**

16 “(a) AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Defense
17 may exercise the authorities under this chapter to protect from unauthorized disclosure—

18 “(1) intelligence operations or other authorized sensitive activities of the
19 Department of Defense;

1 “(2) the identities of undercover officers;

2 “(3) intelligence sources and methods; or

3 “(4) cover mechanisms.

4 “(b) DESIGNATION OF EMPLOYEES AND MEMBERS.—(1) Subject to paragraph (2), the
5 Secretary of Defense may designate any employee of the Department of Defense or member of
6 the armed forces who is under cover to be an employee or a member to whom this chapter
7 applies.

8 “(2) The Secretary of Defense may not designate more than 15 persons under paragraph
9 (1) in a fiscal year unless the Secretary provides notice of the intent to designate more than 15
10 persons in such fiscal year to the congressional defense committees, the Select Committee on
11 Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of
12 Representatives.

13 “(3) A designation may be made under this subsection with respect to any or all
14 authorities exercised under this chapter.

15 “(c) INTERAGENCY COORDINATION AND SUPPORT.—Establishment of any such cover
16 enhancement authority for intelligence operations or other authorized sensitive activities of the
17 Department of Defense shall be pre-coordinated with the Director of the Central Intelligence
18 Agency using procedures mutually agreed upon by the Secretary of Defense and the Director.

19 **“§ 1803. Compensation**

20 “The Secretary of Defense may pay a designated employee or member salary,
21 allowances, and other benefits in an amount and in a manner consistent with the cover of that
22 employee or member, without regard to any limitation that is otherwise applicable to a Federal
23 employee or member of the armed forces. A designated employee or member may accept,

1 utilize, and, to the extent authorized by regulations prescribed under this chapter retain any
2 salary, allowances, and other benefits provided under this chapter.

3 **“§ 1804. Retirement benefits**

4 “(a) ESTABLISHMENT OF RETIREMENT SYSTEM.—The Secretary of Defense may establish,
5 administer, contract for, or implement through another Federal agency a cover retirement system
6 for designated employees and members (and the spouse, former spouses, and survivors of such
7 designated employees and members). A designated employee may not receive credit for service
8 under the retirement system established under this paragraph and another Federal retirement
9 system for the same time period.

10 “(b) CONVERSION TO OTHER FEDERAL RETIREMENT SYSTEM.—A designated employee or
11 member participating in the retirement system established under subsection (a) may convert to
12 coverage under the Federal retirement system or military retirement system that would otherwise
13 apply to such employee or member at any appropriate time determined by the Secretary of
14 Defense (including at the time of separation of service by reason of retirement), if the Secretary
15 of Defense determines that the participation of the employee or member in the retirement system
16 established under this subsection is no longer necessary to protect from unauthorized
17 disclosure—

18 “(A) intelligence operations or other authorized sensitive activities necessary for
19 the national defense that require special security measures;

20 “(B) the identities of undercover officers;

21 “(C) intelligence sources and methods; or

22 “(D) cover mechanisms.

23 “(c) CONVERSION TREATMENT.—Upon a conversion under subsection (b)—

1 “(1) all periods of service under the retirement system established under this
2 section shall be deemed periods of creditable service under the applicable Federal
3 retirement system or military retirement system;

4 “(2) the Secretary of Defense shall transmit an amount for deposit in any
5 applicable fund of that Federal retirement system or military retirement system that—

6 “(A) is necessary to cover all employee or member and agency
7 contributions including—

8 “(i) interest as determined by the head of the agency administering
9 the Federal retirement system or military retirement system into which the
10 employee or member is converting;

11 “(ii) in the case of an employee or member converting into the
12 Federal Employee’s Retirement System interest as determined under
13 section 8334(e) of title 5; or

14 “(iii) in the case of an employee or member converting to a
15 military retirement system, interest as determined under chapter 74 of this
16 title; and

17 “(B) ensures that such conversion does not result in any unfunded liability
18 to that fund; and

19 “(3) in the case of a designated employee or member who participated in an
20 employee or member investment retirement system established under subsection (a) and
21 is converted to coverage under the Federal retirement system or military retirement
22 system, the Secretary of Defense may transmit any or all amounts of that designated

1 employee or member in that employee or military investment retirement system (or
2 similar part of that retirement system) to the Thrift Savings Fund.

3 “(d) TRANSMITTED AMOUNTS.—(1) Amounts described under subsection (c)(2) shall be
4 paid from any fund the Secretary of Defense deems appropriate.

5 “(2) The Secretary of Defense may use amounts contributed by the designated employee
6 or member to a retirement system established under subsection (a) to offset amounts paid under
7 paragraph (1).

8 “(e) RECORDS.—The Secretary of Defense shall transmit all necessary records relating to
9 a designated employee or member who converts to a Federal retirement system or military
10 retirement system under subsection (b) (including records relating to periods of service which are
11 deemed to be periods of creditable service under subsection (c)(1)) to the head of the agency
12 administering that Federal retirement system or military retirement system.

13 **“§ 1805. Health insurance benefits**

14 “(a) IN GENERAL.—The Secretary of Defense may establish, administer, contract for, or
15 implement through another Federal agency, a cover health insurance program for designated
16 employees and members and eligible family members. A designated employee or member may
17 not participate in the health insurance program established under this section and the program
18 under chapter 89 of title 5 or chapter 55 of this title at the same time.

19 “(b) CONVERSION TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.—A designated
20 employee participating in the health insurance program established under subsection (a) may
21 convert to coverage under the program under chapter 89 of title 5, and a designated member
22 participating in the program established under subsection (a) may convert to coverage under the
23 program under chapter 55 of this title or chapter 17 of title 38, at any appropriate time

1 determined by the Secretary of Defense (including at the time of separation of service by reason
2 of retirement), if the Secretary of Defense determines that the participation of the employee or
3 member in the health insurance program established under this subsection is no longer necessary
4 to protect from unauthorized disclosure—

5 “(1) intelligence operations or other authorized sensitive activities necessary for
6 the national defense which requires special security measures;

7 “(2) the identities of undercover officers;

8 “(3) intelligence sources and methods; or

9 “(4) cover mechanisms.

10 “(c) CONVERSION TREATMENT.—Upon a conversion of a designated employee under
11 subsection (b)—

12 “(1) the employee (and family, if applicable) shall be entitled to immediate
13 enrollment and coverage under chapter 89 of title 5;

14 “(2) any requirement of prior enrollment in a health benefits plan under chapter
15 89 of title 5 for continuation of coverage purposes shall not apply;

16 “(3) the employee shall be deemed to have had coverage under chapter 89 of title
17 5 from the first opportunity to enroll for purposes of continuing coverage; and

18 “(4) the Secretary of Defense shall transmit an amount for deposit in the
19 Employees’ Health Benefits Fund that is necessary to cover any costs of such conversion.

20 “(d) TRANSMITTED AMOUNTS.—Any amount described under subsection (c)(4) shall be
21 paid from any fund the Secretary of Defense deems appropriate.

22 “(e) ELIGIBLE FAMILY MEMBER DEFINED.—In this section, the term ‘eligible family
23 member’ means—

1 “(1) with respect to an employee, a member of a family as defined in section 8901
2 of title 5; and

3 “(2) with respect to a member of the armed forces, a dependent as defined in
4 section 1072 of this title.

5 **“§ 1806. Life insurance benefits**

6 “(a) IN GENERAL.—The Secretary of Defense may establish, administer, contract for, or
7 implement through another Federal agency, a cover life insurance program for designated
8 employees and members (and the family of such designated employees or members). A
9 designated employee or member may not participate in the life insurance program established
10 under this section and the program under chapter 87 of title 5 for the same time period.

11 “(b) CONVERSION TO FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM.—A
12 designated employee participating in the life insurance program established under subsection (a)
13 may convert to coverage under the program under chapter 87 of title 5, and a designated member
14 participating in the life insurance program established under subsection (a) may convert to
15 coverage under the program under chapter 19 of title 38 , at any appropriate time determined by
16 the Secretary of Defense (including at the time of separation of service by reason of retirement),
17 if the Secretary of Defense determines that the participation of the employee or member in the
18 life insurance program established under this section is no longer necessary to protect from
19 unauthorized disclosure—

20 “(1) intelligence operations or other authorized sensitive activities necessary for
21 the national defense which requires special security measures;

22 “(2) the identities of undercover officers;

23 “(3) intelligence sources and methods; or

1 “(4) cover mechanisms.

2 “(c) CONVERSION TREATMENT.—Upon a conversion of a designated employee under
3 subsection (b)—

4 “(1) the employee (and family, if applicable) shall be entitled to immediate
5 coverage under chapter 87 of title 5;

6 “(2) any requirement of prior enrollment in a life insurance program under chapter
7 87 of title 5 for continuation of coverage purposes shall not apply;

8 “(3) the employee shall be deemed to have had coverage under chapter 87 of title
9 5 for the full period of service during which the employee would have been entitled to be
10 insured for purposes of continuing coverage; and

11 “(4) the Secretary of Defense shall transmit an amount for deposit in the
12 Employees’ Life Insurance Fund that is necessary to cover any costs of such conversion.

13 “(d) TRANSMITTED AMOUNTS.—Any amount described under subsection (c)(4) shall be
14 paid from any fund the Secretary of Defense deems appropriate.

15 **“§ 1807. Exemption from certain requirements**

16 “The Secretary of Defense may exempt a designated employee or member from
17 mandatory compliance with any Federal regulation, rule, standardized administrative policy,
18 process, or procedure that the Secretary of Defense determines—

19 “(1) would be inconsistent with the cover of that employee or member; and

20 “(2) could expose that employee to detection as a Federal employee or that
21 member as a member of the armed forces.

22 **“§ 1808. Taxation and social security**

1 “(a) IN GENERAL.—Notwithstanding any other provision of law, a designated employee
2 or member—

3 “(1) shall file a Federal or State tax return as if that employee or member is not a
4 Federal employee or member of the armed forces and may claim and receive the benefit
5 of any exclusion, deduction, tax credit, or other tax treatment that would otherwise apply
6 if that designated employee was not a Federal employee or that designated member was
7 not a member of the armed forces, if the Secretary of Defense determines that taking any
8 action under this subsection is necessary to protect from unauthorized disclosure—

9 “(A) intelligence operations or other authorized sensitive activities
10 necessary for the national defense which requires special security measures;

11 “(B) the identities of undercover officers;

12 “(C) intelligence sources and methods; or

13 “(D) cover mechanisms; and

14 “(2) shall receive social security benefits based on the social security
15 contributions made.

16 “(b) PAYMENT OF ADDITIONAL FINANCIAL LIABILITIES.—If a designated employee or
17 member incurs an additional financial liability as a result of filing a Federal or State tax return as
18 if the employee is not a Federal employee or member of the armed forces, the Secretary of
19 Defense may reimburse the designated employee or designated member for such additional
20 financial liability.

21 “(c) INTERNAL REVENUE SERVICE REVIEW.—The Secretary of Defense shall establish
22 procedures to carry out this section. The procedures shall be subject to periodic review by the
23 Internal Revenue Service.

1 **“§ 1809. Regulations**

2 “The Secretary of Defense shall prescribe regulations to carry out this chapter. The
3 regulations shall ensure that the combination of salary, allowances, and benefits that an
4 employee or member designated under this chapter may retain does not significantly exceed,
5 except to the extent determined by the Secretary of Defense to be necessary to exercise the
6 authority in this chapter, the combination of salary, allowances, and benefits otherwise received
7 by employees or members not designated under this chapter.

8 **“§ 1810. Finality of decisions**

9 “Any determinations authorized by this chapter to be made by the Secretary of Defense
10 or a designee of the Secretary shall be final and conclusive and shall not be subject to review by
11 any court.”.

12 (b) TABLE OF CHAPTERS AMENDMENT.—The table of chapters at the beginning of part II
13 of subtitle A of title 10, United States Code, is amended by adding at the end the following new
14 item:

“89. Cover Enhancement Authorities1801.”.

Section-by-Section Analysis

This proposal would add a new chapter to title 10, United States Code, that enhances the cover of certain Department of Defense (DoD) employees and members of the Armed Forces. This new chapter provides the Secretary of Defense with personnel authorities, including pay, allowances, retirement, insurance, and other benefits, similar to those authorities provided to the Director of the Central Intelligence Agency (CIA) in section 23 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3523). Under the proposal, the Secretary would be able to exercise such authorities to protect from unauthorized disclosure (a) intelligence operations or authorized activities necessary for the national defense that require special security measures; (b) the identities of undercover officers; (c) intelligence sources and methods; or (d) cover mechanisms. The Secretary may designate, and exercise such authorities with respect to, any individual who is under cover and an employee of the Department or a member of the armed forces. The proposal would provide the Secretary with authority to exempt such designated individuals from mandatory compliance with any Federal regulation, rule, standardized administrative policy, process, or procedure that the Secretary of Defense determines would be inconsistent with the cover of that employee or member and could expose that employee to

detection as a Federal employee or that member as a member of the Armed Forces. See classified document for additional background and justification.

Resource Information: The best estimate of resources requested within the Fiscal Year (FY) 2024 President's Budget that are impacted by this proposal will be provided in a separate classified document.

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

1 **SEC. __. MODIFICATION TO ISSUANCE REQUIREMENTS RELATING TO**
2 **LIMITATION ON INTERROGATION TECHNIQUES.**

3 Section 1045(a) of the National Defense Authorization Act for Fiscal Year 2016 (42
4 U.S.C. 2000dd-2(a)) is amended—

5 (1) in the heading, by inserting “OR SUCCESSOR DEPARTMENT OF DEFENSE
6 ISSUANCE” after “ARMY FIELD MANUAL”;

7 (2) by striking “(1) ARMY FIELD MANUAL 2-22.3 DEFINED.—In this subsection, the
8 term” and inserting the following:

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) ARMY FIELD MANUAL 2-22.3 DEFINED.—The term”;

11 (3) in paragraph (1), as amended by paragraph (1) of this section—

12 (A) in subparagraph (A), by striking “in effect on the date of the
13 enactment of this Act or any similar successor Army Field Manual” and inserting
14 “in effect on the date of the enactment of the National Defense Authorization Act
15 for Fiscal year 2024”; and

16 (B) by adding at the end the following new subparagraph:

17 “(B) SUCCESSOR DEPARTMENT OF DEFENSE ISSUANCE.—The term
18 ‘successor Department of Defense issuance’ means a Department of Defense
19 instruction or manual that adopts and implements the specific interrogation
20 techniques, procedures, approvals, and limitations established by Army Field
21 Manual 2-22.3 that were in effect on the date of the enactment of the National
22 Defense Authorization Act for Fiscal Year 2024 or updated in accordance with
23 this subsection.”;

1 (4) in paragraph (2)(A), by inserting “or successor Department of Defense
2 issuance” before the period;

3 (5) in paragraph (3), by inserting “or successor Department of Defense issuance”
4 after “Army Field Manual 2-22.3” each place it appears;

5 (6) in paragraph (4), by inserting “or successor Department of Defense issuance”
6 after “Army Field Manual 2-22.3” each place it appears; and

7 (7) in paragraph (6)—

8 (A) in subparagraph (A), by inserting “or successor Department of
9 Defense issuance” after “Army Field Manual 2-22.3” each place it appears; and

10 (B) by adding at the end the following new subparagraph:

11 “(C) REQUIREMENT FOR INITIAL SUCCESSOR DEPARTMENT OF DEFENSE
12 ISSUANCE.—If the Secretary of Defense issues a successor Department of Defense
13 issuance, the Secretary shall revoke the provisions of Army Field Manual 2-22.3
14 containing the specific interrogation techniques, procedures, approvals, and
15 limitations in effect at the time such successor Department of Defense issuance is
16 issued.”.

**[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

In October 2019, the Secretary of Defense tasked the Under Secretary of Defense for Intelligence and Security (USD(I&S)) to review Army Field Manual (FM) 2-22.3, as directed in section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (42 U.S.C. 2000dd-2)). USD(I&S) convened a working group to review FM 2-22.3. The working group identified a need to update interrogation language to better define interrogation approach categories and consolidate all sections relevant to the conduct of interrogation into a single, authoritative manual issued by a senior Department of Defense (DoD) official in lieu of a Military Department publication. Updating FM 2-22.3 with a DoD issuance, in lieu of an Army Field Manual, would be appropriate to ensure the conduct of interrogations is managed across all services and

organizations of the DoD and would obviate the need for the Army to coordinate across the entire Defense Intelligence Enterprise to update Army guidance on human intelligence (HUMINT) doctrine. FM 2-22.3 is entitled “Human Intelligence Collector Operations” and addresses topics much broader than interrogation techniques, approaches, and treatments of detainees. A DoD manual would also supplement other Department-level guidance pertaining to detainee handling, interrogations, debriefings, and tactical questioning.

After a review of a proposed DoD manual to replace portions of FM 2-22.3 addressing interrogation techniques, approaches, and treatment of detainees, the Department concluded that section 1045 currently restricts DoD to either revising the existing Army Field Manual or replacing it with a successor Army Field Manual, since section 1045 specifically limits the use of interrogation techniques, approaches, and treatments to those contained in FM 2-22.3 or any “successor Army Field Manual”. The statutory language specifying the type of publication that may be used to regulate interrogation techniques, approaches, and treatments limits the ability for revised guidance that may be issued by the Secretary of Defense, who has the responsibility for oversight of the entire Department of Defense. This proposal would allow a DoD-level issuance to replace FM 2-22.3.

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 section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (42 U.S.C. 2000dd-2):

SEC. 1045. LIMITATION ON INTERROGATION TECHNIQUES.

(a) LIMITATION ON INTERROGATION TECHNIQUES TO THOSE IN THE ARMY FIELD MANUAL OR SUCCESSOR DEPARTMENT OF DEFENSE ISSUANCE.—

(1) DEFINITIONS.—In this subsection:

(~~1A~~) ARMY FIELD MANUAL 2-22.3 DEFINED.—In this subsection, the term “Army Field Manual 2-22.3” means the Army Field Manual 2-22.3 entitled “Human Intelligence Collector Operations” in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2024 ~~this Act or any similar successor Army Field Manual.~~

(B) SUCCESSOR DEPARTMENT OF DEFENSE ISSUANCE.—The term “successor Department of Defense issuance” means a Department of Defense instruction or manual that adopts and implements the specific interrogation techniques, procedures, approvals, and limitations established by Army Field Manual 2-22.3 that were in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2024 or updated in accordance with this subsection.

(2) RESTRICTION.—

(A) IN GENERAL.—An individual described in subparagraph (B) shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in the Army Field Manual 2-22.3 or successor Department of Defense issuance.

(B) INDIVIDUAL DESCRIBED.—An individual described in this subparagraph is an individual who is—

- (i) in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or
- (ii) detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.

(3) IMPLEMENTATION.—Interrogation techniques, approaches, and treatments described in Army Field Manual 2-22.3 or successor Department of Defense issuance shall be implemented strictly in accord with the principles, processes, conditions, and limitations prescribed by Army Field Manual 2-22.3 or successor Department of Defense issuance.

(4) AGENCIES OTHER THAN THE DEPARTMENT OF DEFENSE.—If a process required by Army Field Manual 2-22.3 or successor Department of Defense issuance, such as a requirement of approval by a specified Department of Defense official, is inapposite to a department or an agency other than the Department of Defense, the head of such department or agency shall ensure that a process that is substantially equivalent to the process prescribed by Army Field Manual 2-22.3 or successor Department of Defense issuance for the Department of Defense is utilized by all officers, employees, or other agents of such department or agency.

(5) INTERROGATION BY FEDERAL LAW ENFORCEMENT.—The limitations in this subsection shall not apply to officers, employees, or agents of the Federal Bureau of Investigation, the Department of Homeland Security, or other Federal law enforcement entities.

(6) UPDATE OF THE ARMY FIELD MANUAL OR SUCCESSOR DEPARTMENT OF DEFENSE ISSUANCE.—

(A) REQUIREMENT TO UPDATE.—

(i) IN GENERAL.—Not sooner than three years after the date of the enactment of this Act, and once every three years thereafter, the Secretary of Defense, in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall complete a thorough review of Army Field Manual 2-22.3 or successor Department of Defense issuance and revise Army Field Manual 2-22.3 or successor Department of Defense issuance, as necessary to ensure that Army Field Manual 2-22.3 or successor Department of Defense issuance complies with the legal obligations of the United States and the practices for interrogation described therein do not involve the use or threat of force.

(ii) AVAILABILITY TO THE PUBLIC.—Army Field Manual 2-22.3 or successor Department of Defense issuance shall remain available to the public and any revisions to Army Field Manual 2-22.3 or successor Department of Defense issuance adopted by the Secretary of Defense shall be made available to the public 30 days prior to the date the revisions take effect.

(B) REPORT ON BEST PRACTICES OF INTERROGATIONS.—

(i) REQUIREMENT FOR REPORT.—Not later than 120 days after the date of the enactment of this Act, the interagency body established

pursuant to Executive Order 13491 (commonly known as the High-Value Detainee Interrogation Group) shall submit to the Secretary of Defense, the Director of National Intelligence, the Attorney General, and other appropriate officials a report on best practices for interrogation that do not involve the use of force.

(ii) RECOMMENDATIONS.—The report required by clause (i) may include recommendations for revisions to Army Field Manual 2-22.3 based on the body of research commissioned by the High-Value Detainee Interrogation Group.

(iii) AVAILABILITY TO THE PUBLIC.—Not later than 30 days after the report required by clause (i) is submitted such report shall be made available to the public.

(C) REQUIREMENT FOR INITIAL SUCCESSOR DEPARTMENT OF DEFENSE ISSUANCE.—If the Secretary of Defense issues a successor Department of Defense issuance, the Secretary shall revoke the provisions of Army Field Manual 2-22.3 containing the specific interrogation techniques, procedures, approvals, and limitations in effect at the time such successor Department of Defense issuance is issued.

(b) INTERNATIONAL COMMITTEE OF THE RED CROSS ACCESS TO DETAINEES.—

(1) REQUIREMENT.—The head of any department or agency of the United States Government shall provide the International Committee of the Red Cross with notification of, and prompt access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, contractor, subcontractor, or other agent of the United States Government or detained within a facility owned, operated, or effectively controlled by a department, agency, contractor, or subcontractor of the United States Government, consistent with Department of Defense regulations and policies.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed—

(A) to create or otherwise imply the authority to detain; or

(B) to limit or otherwise affect any other individual rights or state obligations which may arise under United States law or international agreements to which the United States is a party, including the Geneva Conventions, or to state all of the situations under which notification to and access for the International Committee of the Red Cross is required or allowed.

1 **SEC. ___. REVISION TO DECISION TIMEFRAME FOR EXPEDITED TRANSFERS**
2 **AT THE MILITARY SERVICE ACADEMIES.**

3 The following sections of title 10, United States Code, are amended by striking “72
4 hours” each place it appears and inserting “five calendar days”:

- 5 (1) Section 7461(e).
- 6 (2) Section 8480(e).
- 7 (3) Section 9461(e).

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

Section-by-Section Analysis

This proposal would amend sections 7461, 8480, and 9461 of title 10, United States Code (U.S.C.), to expand the expedited transfer decision timeframe of the Military Service Academies (MSAs). The expedited transfer decision timeframe of the Regular Force was expanded from 72 hours to five calendar days by section 531 of the National Defense Authorization Act (NDAA) for (FY) Fiscal Year 2021 (Public Law 116–283). This proposal would make the same change to the expedited transfer decision timeframe of the MSAs.

Section 555 of the FY 2020 NDAA (Public Law 119–92) amended sections 7461, 8480, and 9461 of title 10, U.S.C., to require the MSAs to develop policies to provide for the expedited processing of transfer requests submitted by victims of sexual assault enrolled at one of the MSAs. As amended, such sections required that decisions on expedited transfer requests submitted by cadets and midshipmen be made within 72 hours. This legislative proposal would expand that timeframe from 72 hours to five calendar days, which in turn would have three key benefits: (1) improving support for cadets and midshipmen, (2) ensuring an MSA Superintendent or subsequent reviewing authority has the necessary information prior to making a decision on whether to approve or disapprove a transfer request, and (3) making the decision timeframe for the MSAs track the same as the decision timeframe for the Regular Force to ensure consistency.

As part of the process of making an expedited transfer decision in connection with a request submitted by a cadet or midshipmen, the MSA Superintendent involved provides counseling to the cadet or midshipmen on career and academic trajectories, as applicable, resulting from the transfer. This counseling may include providing information concerning: (1) outcomes if the cadet or midshipmen cannot complete a specialized course of study at the current MSA, (2) transfer of credits, (3) impact on graduation, (4) opportunities to transfer to other MSAs or civilian universities, (5) tuition implications, and (6) other relevant considerations. However, if a cadet or midshipmen initiates a request for a transfer on a Friday, holiday recess, or during the weekend, the MSA Superintendent may not be able to contact appropriate officials

at other academic institutions to obtain the information necessary for the cadet or midshipmen to make a fully informed decision on the transfer request. Without this information, MSA Superintendents cannot fully discuss potential transfer locations and career implications, as appropriate, with cadets and midshipmen and the cadets and midshipmen must then make decisions without sufficient, helpful, and accurate career and academic counseling.

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 sections 7461, 8480, 9461 of title 10, United States Code, as follows:

CHAPTER 753-UNITED STATES MILITARY ACADEMY

§ 7461. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.—Under guidance prescribed by the Secretary of Defense, the Secretary of the Army shall direct the Superintendent of the Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

(b) ***

(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A CADET WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—(1) The Secretary of the Army shall provide for timely consideration of and action on a request submitted by a cadet appointed to the United States Military Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

(2) The Secretary of the Army shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

(A) provide that the Superintendent of the United States Military Academy shall ensure that any cadet who has been appointed to the United States Military Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a cadet is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

(B) direct the Superintendent of the United States Military Academy, in coordination with the Superintendent of the military service academy to which the cadet requests to transfer—

(i) to take action on a request for transfer under this subsection not later than ~~72 hours~~ five calendar days after receiving the formal request from the cadet;

(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the cadet to the military service academy concerned as expeditiously as possible; and

(C) direct the Superintendent of the United States Military Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers' Training Corps program at the institution of higher education to which the cadet requests to transfer—

(i) to take action on a request for transfer under this subsection not later than ~~72 hours~~ five calendar days after receiving the formal request from the cadet;

(ii) subject to the cadet's acceptance for admission to the institution of higher education to which the cadet wishes to transfer, to approve such request for transfer unless there are exceptional circumstances that require denial of the application; and

(iii) to take all necessary and appropriate action to effectuate the cadet's enrollment in the institution of higher education to which the cadet wishes to transfer and to process the cadet for participation in the relevant Senior Reserve Officers' Training Corps program as expeditiously as possible.

(3) If the Superintendent of the United States Military Academy denies a request for transfer under this subsection, the cadet may request review of the denial by the Secretary of the Army, who shall take action on such request not later than ~~72 hours~~ five calendar days after receipt of the formal request for review.

(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

(5) A cadet who transfers under this subsection may retain the cadet's appointment to the United States Military Academy or may be appointed to the military service academy to which the cadet transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.

CHAPTER 853-UNITED STATES NAVAL ACADEMY

§ 8480. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.—Under guidance prescribed by the Secretary of Defense, the Secretary of the Navy shall direct the Superintendent of the Naval Academy to prescribe a policy on sexual harassment and sexual violence applicable to the midshipmen and other personnel of the Naval Academy.

(b) ***

(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A MIDSHIPMAN WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE—(1) The Secretary of the Navy shall provide for timely consideration of and action on a request submitted by a midshipman appointed to the United States Naval Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers' Training Corps program affiliated with another institution of higher education.

(2) The Secretary of the Navy shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

(A) provide that the Superintendent of the United States Naval Academy shall ensure that any midshipman who has been appointed to the United States Naval Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a midshipman is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

(B) direct the Superintendent of the United States Naval Academy, in coordination with the Superintendent of the military service academy to which the midshipman requests to transfer—

(i) to take action on a request for transfer under this subsection not later than ~~72 hours~~ five calendar days after receiving the formal request from the midshipman;

(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the midshipman to the military service academy concerned as expeditiously as possible; and

(C) direct the Superintendent of the United States Naval Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers' Training Corps program at the institution of higher education to which the midshipman requests to transfer—

(i) to take action on a request for transfer under this subsection not later than ~~72 hours~~ five calendar days after receiving the formal request from the midshipman;

(ii) subject to the midshipman's acceptance for admission to the institution of higher education to which the midshipman wishes to transfer, to approve such request for transfer unless there are exceptional circumstances that require denial of the application; and

(iii) to take all necessary and appropriate action to effectuate the midshipman's enrollment in the institution of higher education to which the midshipman wishes to transfer and to process the midshipman for participation in the relevant Senior Reserve Officers' Training Corps program as expeditiously as possible.

(3) If the Superintendent of the United States Naval Academy denies a request for transfer under this subsection, the midshipman may request review of the denial by the Secretary

of the Navy, who shall take action on such request not later than ~~72 hours~~ five calendar days after receipt of the formal request for review.

(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

(5) A midshipman who transfers under this subsection may retain the midshipman's appointment to the United States Naval Academy or may be appointed to the military service academy to which the midshipman transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.

CHAPTER 953-UNITED STATES AIR FORCE ACADEMY

§ 9461. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.-Under guidance prescribed by the Secretary of Defense, the Secretary of the Air Force shall direct the Superintendent of the Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

(b) ***

(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A CADET WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—(1) The Secretary of the Air Force shall provide for timely consideration of and action on a request submitted by a cadet appointed to the United States Air Force Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers' Training Corps program affiliated with another institution of higher education.

(2) The Secretary of the Air Force shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

(A) provide that the Superintendent of the United States Air Force Academy shall ensure that any cadet who has been appointed to the United States Air Force Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a cadet is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

(B) direct the Superintendent of the United States Air Force Academy, in coordination with the Superintendent of the military service academy to which the cadet requests to transfer—

(i) to take action on a request for transfer under this subsection not later than ~~72 hours~~ five calendar days after receiving the formal request from the cadet;

(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the cadet to the military service academy concerned as expeditiously as possible; and

(C) direct the Superintendent of the United States Air Force Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers' Training Corps program at the institution of higher education to which the cadet requests to transfer—

(i) to take action on a request for transfer under this subsection not later than ~~72 hours~~ five calendar days after receiving the formal request from the cadet;

(ii) subject to the cadet's acceptance for admission to the institution of higher education to which the cadet wishes to transfer, to approve such request for transfer unless there are exceptional circumstances that require denial of the application; and

(iii) to take all necessary and appropriate action to effectuate the cadet's enrollment in the institution of higher education to which the cadet wishes to transfer and to process the cadet for participation in the relevant Senior Reserve Officers' Training Corps program as expeditiously as possible.

(3) If the Superintendent of the United States Air Force Academy denies a request for transfer under this subsection, the cadet may request review of the denial by the Secretary of the Air Force, who shall take action on such request not later than ~~72 hours~~ five calendar days after receipt of the formal request for review.

(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

(5) A cadet who transfers under this subsection may retain the cadet's appointment to the United States Air Force Academy or may be appointed to the military service academy to which the cadet transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.

1 **SEC. ___. MODIFICATION TO SHORE LEAVE ACCRUAL FOR CREWS OF**
2 **VESSELS TO SUPPORT CREW ROTATIONS AND IMPROVE**
3 **RETENTION OF CIVILIAN MARINERS.**

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

6 **“§ 1599k. Shore leave accrual for civilian mariners of the Department of Defense**

7 “With respect to an officer, crewmember, or other employee of the Department of
8 Defense serving aboard an oceangoing vessel on an extended voyage, the first sentence in the
9 matter preceding paragraph (1) of subsection (c) of section 6305 of title 5 shall be applied by
10 substituting ‘7 calendar days’ for ‘30 calendar days’.”.

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

Section-by-Section Analysis

This proposal would permit an increase in the shore leave accrual rate of Department of Defense (DoD) civilian mariners (CIVMAR) that applies under section 6305 of title 5, United States Code, from two days earned per 30 days onboard a sea-going vessel to two days earned per 7 days onboard such a vessel. This proposed rate is more consistent with the prevailing leave practice in the commercial maritime industry.

The Military Sealift Command (MSC) of the Department of Navy (DoN) is unable to recruit and retain sufficient crew for combat logistics and other special mission ships (e.g., hospital ships) supporting DoD global operations. The current compensation package for the CIVMAR workforce is not competitive with that offered by commercial employers of U.S. mariners, specifically in the case of leave/time-off between at-sea assignments. Competition exacerbated by escalating demand for maritime workers, including increased opportunities ashore and the declining inventory of these workers, has resulted in approximately 600 vacancies aboard MSC ships, already minimally manned, leading to operational impacts and increased risk to ships and personnel. DoD must maintain a suitably-sized, sustainable CIVMAR workforce, manned and trained for missions in competition, crisis, and conflict to enable worldwide employment of Navy and joint forces.

DoN/MSC supports the joint warfighter across the full spectrum of military operations. MSC delivers continual afloat logistics, strategic sealift, and specialized mission support worldwide. There is no practical or available substitute for the CIVMAR manning structure, from which DoD realizes significant cost benefits and high operational performance, reliability and flexibility. In increasingly tight competition with the commercial world for a decreasing pool of mariners, MSC is unable to reliably crew 57 Government-operated mission-specific

vessels, including the combat logistics force (CLF), hospital ships, towing/salvage, submarine tenders, expeditionary transports and afloat basing ships. For example, CIVMAR-crewed CLF ships are essential for distributed maritime operations, a critical Navy component of U.S. National Military Strategy. The Navy's carrier strike groups (CSGs) are entirely dependent on CLF being on station, when needed and for the duration prescribed, to replenish fuel, ammunition, food, parts, and other provisions. MSC is currently unable to recruit and retain enough CIVMARs to operate CLF ships to the prescribed required operational capability/projected operating environment, with resultant degradation in CSG underway logistics support. CIVMAR manning challenges raise significant concerns that DoD may not be able to generate and sustain sufficient maritime forces necessary for missions assigned to combatant commanders.

DoD employs CIVMARs as excepted service employees subject to 5 U.S.C. 5348(a). The statutory mandate of 5 U.S.C. 5348 requires the Government to fix the pay of its civilian mariners "as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry." While pay and other typical benefits of Federal employment are competitive, the amount of paid time-off between seagoing assignments for DoD CIVMARs is well below that of the lowest commercial competitor. DoD leave practices are restricted by 5 U.S.C. 6305, resulting in the great disparity with the maritime industry by limiting CIVMAR leave to 2 days shore leave for each 30 days assigned to an MSC vessel. This disparity contributes to increased attrition and negatively impacts recruiting requirements. The proposed amendment allows DoD to provide shore leave at a rate more competitive with the commercial maritime industry and consistent with the letter and intent of 5 U.S.C. 5348(a) by compensating CIVMARs more consistently with the prevailing rates and practices in the maritime industry.

Reaching this competitive level is essential to recruit and retain this highly skilled workforce. While serving the nation as a CIVMAR for DoD can be a primary motivator, the hardship and family separation of all mariners puts a premium on quality time-off and a more predictable work schedule. DoN CIVMARs are subject to ship operational schedules that frequently require longer than expected periods at sea. CIVMARs are exempt from Personnel Tempo restrictions (i.e., the number of days that an individual is away from homeport) and consistently exceed planned rotations for time off and training. An average CIVMAR-crewed ship operates about 241 days a year away from homeport, with the remaining balance of the time tending to ship maintenance and repair requirements. CIVMARs are routinely assigned to a DoN/MSV vessel for 10 months of a calendar year. There are no shore tours. CIVMARs operate MSV ships alongside the warfighter in the performance of DoN's mission under stressful working conditions, at a high operational tempo, and actively train for operations in contested maritime environments.

MSV's average CIVMAR attrition rate has nearly doubled to 15% over the past three years and is expected to rapidly increase as the competition for the diminishing pool of mariners grows. MSV's CIVMARs are highly recruited due to their unique training, advanced certifications, extensive experience and security clearance. It takes years to replace this experience and MSV has been forced to establish multiple career advancement programs to develop skilled CIVMARs from new entry-level employees. A legislative change that increases CIVMAR shore leave and allows more time between ship assignments will significantly increase recruiting and retention as Federal mariner employment will be competitive with commercial industry.

The table below illustrates paid leave earned per month assigned aboard a DoN/MSC ship and the three Labor Unions representing CIVMARs and commercial maritime operators. Note that for DoD, paid leave includes annual leave, sick leave, and shore leave. Much of the private sector simply refers to all types of leave as “vacation” time without further delineation as to the specific purpose of the leave (i.e., sick leave or annual leave).

Company/Union	On Ship	Paid Leave
DoD (Current)	1 month	4-5 Days
DoD (Proposed Change)	1 month	11-12 Days
Seafarers International Union	1 month	15 days
Master Mates and Pilots	1 month	20-22 days
Marine Engineer’s Beneficial Association	1 month	20-22 days

Since January 2020, MSC recruited and trained 1,995 CIVMARS and lost 1,983 during the same timeframe. About 34% of those who left did so during their first two years of service. Exit interviews and surveys identify insufficient leave as one of the top reasons for separation.

Adding to existing retention and recruiting problems, DoN/MSC must grow the CIVMAR workforce 12.6% by FY25 to meet future Navy fleet requirements. Scheduled deliveries of new tankers, tugs, expeditionary sea-bases, and high-speed vessels will add 720 CIVMAR positions.

The pool of American merchant mariners is declining, as evidenced by the number of mariners credentialed by the U.S. Coast Guard (209,684 in 2017 vs. 198,118 in 2021). Per the Bureau of Labor Statistics (BLS), the Water Transportation industry is very small, reaching a ten-year peak of 67.75K workers in 2014. From November 2019 to October 2021, the industry declined nearly 19% creating a large gap of experienced mariners. Industry demand is expected to grow 12% overall by 2030 with the greatest growth in positions offering better work-life balance. The energy sector is helping to fuel this increase, with escalated growth projected from renewal energy and more specifically, the offshore wind segment. Maritime Captains, Mates and Pilots, Ship Engineers, and Unlicensed Deck and Engine workers are not returning to the more demanding Deep Sea, Coastal, and Great Lakes Water Transportation segment of the industry, creating a fierce competition for talent.

Commercial maritime employers are offering substantial signing and retention bonuses with improved leave benefits packages and various other incentives. DoN/MSC has done the same in the form of CIVMAR recruiting and retention incentives within existing authorities, but is statutorily limited in offering improved leave, commensurate with commercial practice. This gap has prevented DoN/MSC from achieving required recruitment and retention results, with out-year attrition expected to increase at a rapid rate unless addressed. Despite the allure of service to nation associated with Civil Service Mariner employment, these trends are not expected to improve given the competition for talent in the maritime industry. This proposal will allow DoD to regain competitive advantage to hire and retain experienced mariners required for the global DoD mission.

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)
Additional CIVMARs	\$28.1 M	\$57.1 M	\$64.9 M	\$70.9 M	\$72.4 M	Working Capital Fund, Navy	A1B	1B1B	N/A
Total	\$28.1 M	\$57.1 M	\$64.9 M	\$70.9 M	\$72.4 M	Working Capital Fund, Navy	A1B	1B1B	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 (for all RDT&E programs)
Additional CIVMARs	311	621	691	740	740	Working Capital Fund, Navy	A1B	1B1B	N/A
Total	311	621	691	740	740	Working Capital Fund, Navy	A1B	1B1B	N/A

Cost Methodology: This figure derived by a commensurate increase in CIVMAR Billets Authorized (BA).

Changes to Existing Law: This proposal would add a new section 1599k to chapter 81 of title 10, United States Code, the full text of which is shown in the legislative language above.