SEC. ___. CONSOLIDATION OF DIRECT HIRE AUTHORITIES FOR CANDIDATES WITH SPECIFIED DEGREES AT SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.

Section 4091 of title 10, United States Code, is amended—

(1) in subsection (a)(1), by striking "bachelor's degree" and inserting "bachelor's or advanced degree";

(2) in subsection (c)—

(A) in the subsection heading, by striking "CALENDAR YEAR" and inserting "FISCAL YEAR";

(B) in the matter preceding paragraph (1), by striking "calendar year" and inserting "fiscal year";

(C) in paragraph (1), by striking "6 percent" and inserting "11 percent"; and

(D) in paragraphs (1), (2), and (3), by striking "the fiscal year last ending before the start of such calendar year " and inserting "the preceding fiscal year";

(3) by striking subsection (f); and

(4) by redesignating subsection (g) as subsection (f).

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

Section-by-Section Analysis

Section 212 of the National Defense Authorization Act for Fiscal Year (FY) 2022 (Public Law 117–81) repealed section 1108 of the NDAA for FY 2009 and added its direct hire authority for candidates with advanced degrees to section 4091 of title 10, United States Code, which contains other Science and Technology Reinvention Laboratory (STRL) direct hire authorities, to include one for candidates with bachelor's degrees. This proposal would amend section 4091 of title 10 to combine the direct hire authorities for candidates with advanced degrees and candidates with bachelor's degrees seeking positions in STRLs to permit allocations for such

positions to be managed in an aggregate manner. In addition to streamlining recordkeeping concerning usage of direct hire authority, this amendment would permit STRLs that need more advanced degree allocations to use unused bachelor's degree allocations, if needed, and vice versa.

The proposal also amends section 4091 to use fiscal years instead of calendar years for purposes of determining the number of available allocations. These amendments would further streamline recordkeeping as this is the only direct hire authority of the Department that is tracked by calendar year.

Without this change, the ability to shape the STRL workforce to meet mission requirements could be diminished, as STRLs are currently unable to use the full allocation of positions when separate caps exist for those with bachelors and advanced degrees. The effectiveness of the STRL workforce would be at risk as STRLs need to be competitive with the private sector for certain high-level scientific and technical positions.

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 4091 of title 10, United States Code, as follows:

Title 10, United States Code

§ 4091. Authorities for certain positions at science and technology reinvention laboratories

(a) AUTHORITY TO MAKE DIRECT APPOINTMENTS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS AT SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.—The director of any Science and Technology Reinvention Laboratory (hereinafter in this section referred to as an "STRL") may appoint qualified candidates possessing a bachelor's or advanced degree to positions described in paragraph (1) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(2) VETERAN CANDIDATES FOR SIMILAR POSITIONS AT RESEARCH AND ENGINEERING FACILITIES.—The director of any STRL may appoint qualified veteran candidates to positions described in paragraph (2) of subsection (b) as an employee at a laboratory, agency, or organization specified in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5.

(3) STUDENTS ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The director of any STRL may appoint qualified candidates enrolled in a program of undergraduate or graduate instruction leading to a bachelor's or an advanced degree in a scientific, technical, engineering or mathematical course of study at an institution of higher education (as that term is defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002)) to positions described in paragraph (3) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the

provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(4) NONCOMPETITIVE CONVERSION OF APPOINTMENTS.—With respect to any student appointed by the director of an STRL under paragraph (3) to a temporary or term appointment, upon graduation from the applicable institution of higher education (as defined in such paragraph), the director may noncompetitively convert such student to another temporary appointment or to a term or permanent appointment within the STRL without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title), provided the student meets all eligibility and Office of Personnel Management qualification requirements for the position.

(b) COVERED POSITIONS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS.—The positions described in this paragraph are scientific and engineering positions that may be temporary, term, or permanent in any laboratory designated by section 4121(b) of this title as a Department of Defense science and technology reinvention laboratory.

(2) QUALIFIED VETERAN CANDIDATES.—The positions described in this paragraph are scientific, technical, engineering, and mathematics positions, including technicians, in the following:

(A) Any laboratory referred to in paragraph (1).

(B) Any other Department of Defense research and engineering agency or organization designated by the Secretary for purposes of subsection (a)(2).

(3) CANDIDATES ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The positions described in this paragraph are scientific and engineering positions that may be temporary or term in any laboratory designated by section 4121(b) of this title as a Department of Defense science and technology reinvention laboratory.

(c) LIMITATION ON NUMBER OF APPOINTMENTS ALLOWABLE IN A ~~CALENDAR~~ FISCAL YEAR.—The authority under subsection (a) may not, in any ~~calendar~~ fiscal year and with respect to any laboratory, agency, or organization described in subsection (b), be exercised with respect to a number of candidates greater than the following:

(1) In the case of a laboratory described in subsection (b)(1), with respect to appointment authority under subsection (a)(1), the number equal to ~~6~~ 11 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the preceding fiscal year ~~last ending before the start of such calendar year~~.

(2) In the case of a laboratory, agency, or organization described in subsection (b)(2), with respect to appointment authority under subsection (a)(2), the number equal to 3 percent of the total number of scientific, technical, engineering, mathematics, and technician positions in such laboratory, agency, or organization that are filled as of the close of the preceding fiscal year ~~last ending before the start of such calendar year~~.

(3) In the case of a laboratory described in subsection (b)(3), with respect to appointment authority under subsection (a)(3), the number equal to 10 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the preceding fiscal year ~~last ending before the start of such calendar year~~.

(d) SENIOR SCIENTIFIC TECHNICAL MANAGERS.—

(1) ESTABLISHMENT.—There is hereby established in each STRL, each facility of the Major Range and Test Facility Base, and the Defense Test Resource Management Center a category of senior professional scientific and technical positions, the incumbents of which shall be designated as "senior scientific technical managers" and which shall be positions classified above GS–15 of the General Schedule, notwithstanding section 5108(a) of title 5. The primary functions of such positions shall be—

(A) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL, of such facility of the Major Range and Test Facility Base, or the Defense Test Resource Management Center; and

(B) to carry out technical supervisory responsibilities.

(2) APPOINTMENTS.—(A) The laboratory positions described in paragraph (1) may be filled, and shall be managed, by the director of the STRL involved, under criteria established pursuant to section 4121(a) of this title, relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director of the laboratory involved shall determine the number of such positions at such laboratory, not to exceed 2 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made.

(B) The test and evaluation positions described in paragraph (1) may be filled, and shall be managed, by the director of the Major Range and Test Facility Base, in the case of a position at a facility of the Major Range and Test Facility Base, and the director of the Defense Test Resource Management Center, in the case of a position at such center, under criteria established pursuant to section 4121(a) of this title, relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director involved shall determine the number of such positions at each facility of the Major Range and Test Facility Base and the Defense Test Resource Management Center, not to exceed two percent of the number of scientists and engineers, but at least one position, employed at the Major Range and Test Facility Base or the Defense Test Resource Management Center, as the case may be, as of the close of the last fiscal year before the fiscal year in which any appointments subject to those numerical limitations are made.

(e) EXCLUSION FROM PERSONNEL LIMITATIONS.—

(1) IN GENERAL.—The director of an STRL shall manage the workforce strength, structure, positions, and compensation of such STRL—

(A) without regard to any limitation on appointments, positions, or funding with respect to such STRL, subject to subparagraph (B); and

(B) in a manner consistent with the budget available with respect to such STRL.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to Senior Executive Service positions (as defined in section 3132(a) of title 5) or scientific and professional positions authorized under section 3104 of such title.

~~(f) DIRECT HIRE AUTHORITY AT PERSONNEL DEMONSTRATION LABORATORIES FOR ADVANCED DEGREE HOLDERS.—~~

~~(1) AUTHORITY.—The Secretary of Defense may appoint qualified candidates possessing an advanced degree to positions described in paragraph (2) without regard to the provisions of subchapter of chapter 33 of title 5, other than sections 3303 and 3328 of such title.~~

~~(2) APPLICABILITY.—This subsection applies with respect to candidates for scientific and engineering positions within any laboratory designated by section 4121(b) of this title as a Department of Defense science and technology reinvention laboratory.~~

~~(3) LIMITATION.—(A) Authority under this subsection may not, in any calendar year and with respect to any laboratory, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering positions within such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.~~

~~(B) For purposes of this paragraph, positions and candidates shall be counted on a full-time equivalent basis.''.~~

(~~g~~f) DEFINITIONS.—In this section:

(1) The term "Defense Test Resource Management Center" means the Department of Defense Test Resource Management Center established under section 4173 of this title.

(2) The term "employee" has the meaning given that term in section 2105 of title 5.

(3) The term "Major Range and Test Facility Base" means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(4) The term "veteran" has the meaning given that term in section 101 of title 38.

SEC.___. EXTENSION OF AUTHORITY TO GRANT COMPETITIVE STATUS TO EMPLOYEES OF INSPECTORS GENERAL FOR OVERSEAS CONTINGENCY OPERATIONS.

Section 419(d)(5)(B) of title 5, United States Code,[1] is amended by striking "2 years" and inserting "5 years".

[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 419(d)(5)(B) of title 5, United States Code (formerly section 8L(d)(5)(B) of the Inspector General Act of 1978) to extend the authority to grant competitive status to employees hired under section 419 by the Department of Defense, the Department of State, and U.S. Agency for International Development Offices of Inspector General to support the Lead Inspector General (Lead IG) mission.

The current authorization for competitive status applies only to employees hired on or before December 20, 2021, which is within 2 years from the date of enactment of the FY 2020 National Defense Authorization Act (NDAA) (Public Law 116–92). To sustain this recruitment and retention incentive for all section 419 employees supporting the Lead IG mission, including those hired after December 20, 2021, we believe the authorization should be extended to 5 years in the FY 2024 NDAA.

Budget Implications: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would amend section 419 of title 5, United States Code, as follows:

Title 5, United States Code

§ 419. Special provisions concerning overseas contingency operations
(a) ADDITIONAL RESPONSIBILITIES OF CHAIR OF COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY.—The Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) shall, in consultation with the members of the Council, have the additional responsibilities specified in subsection (b) with respect to the Inspectors General specified in subsection (c) upon the earlier of—

(1) the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days; or

[1] Section 419(d)(5)(B) of title 5, United States Code, was formerly section 8L(d)(5)(B) of the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App. 8L) . It was codified into title 5 by section 3(b) of Public Law 117–286.

(2) receipt of a notification under section 113(n) of title 10 with respect to an overseas contingency operation.

(b) SPECIFIC RESPONSIBILITIES.—The responsibilities specified in this subsection are the following:

(1) DESIGNATE LEAD INSPECTOR GENERAL.—In consultation with the Inspectors General specified in subsection (c), to designate a lead Inspector General in accordance with subsection (d) to discharge the authorities of the lead Inspector General for the overseas contingency operation concerned as set forth in subsection (d).

(2) RESOLVE CONFLICTS OF JURISDICTION.—To resolve conflicts of jurisdiction among the Inspectors General specified in subsection (c) on investigations, inspections, and audits with respect to such contingency operation in accordance with subsection (d)(2)(B).

(3) IDENTIFY OFFICE PERSONNEL.—To assist in identifying for the lead inspector general for such contingency operation, Inspectors General and inspector general office personnel available to assist the lead Inspector General and the other Inspectors General specified in subsection (c) on matters relating to such contingency operation.

(c) INSPECTORS GENERAL.—The Inspectors General specified in this subsection are the Inspectors General as follows:

(1) The Inspector General of the Department of Defense.

(2) The Inspector General of the Department of State.

(3) The Inspector General of the United States Agency for International Development.

(d) LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATION.—

(1) DESIGNATION.—A lead Inspector General for an overseas contingency operation shall be designated by the Chair of the Council of Inspectors General on Integrity and Efficiency under subsection (b)(1) not later than 30 days after the earlier of—

(A) the commencement or designation of the military operation concerned as an overseas contingency operation that exceeds 60 days; or

(B) receipt of a notification under section 113(n) of title 10 with respect to an overseas contingency operation.

The lead Inspector General for a contingency operation shall be designated from among the Inspectors General specified in subsection (c).

(2) RESPONSIBILITIES.—The lead Inspector General for an overseas contingency operation shall have the following responsibilities:

(A) APPOINT ASSOCIATE INSPECTOR GENERAL.—To appoint, from among the offices of the other Inspectors
General specified in subsection (c), an Inspector General to act as associate Inspector General for the contingency operation who shall act in a coordinating role to assist the lead Inspector General in the discharge of responsibilities under this subsection.

(B) STRATEGIC PLAN TO CONDUCT COMPREHENSIVE OVERSIGHT.—To develop and carry out, in coordination with the offices of the other Inspectors General specified in subsection (c), a joint strategic plan to conduct comprehensive oversight over all aspects of the contingency operation and to ensure through either joint or individual audits, inspections, and investigations, independent and effective oversight of all programs and operations of the Federal Government in support of the contingency operation.

(C) ACCURACY OF INFORMATION.—To review and ascertain the accuracy of information provided by Federal
agencies relating to obligations and expenditures, costs of programs and projects, accountability of funds, and the award and execution of major contracts, grants, and agreements in support of the contingency operation.
(D) JURISDICTIONAL MATTERS.—
(i) NO INSPECTOR GENERAL WITH PRINCIPAL JURISDICTION.— If none of the Inspectors General specified
in subsection (c) has principal jurisdiction over a matter with respect to the contingency operation, to
identify and coordinate with the Inspector General who has principal jurisdiction over the matter to ensure effective oversight.
(ii) MORE THAN ONE INSPECTOR GENERAL WITH JURISDICTION.—If more than one of the Inspectors General specified in subsection (c) has jurisdiction over a matter with respect to the contingency operation, to determine principal jurisdiction for discharging oversight responsibilities in accordance with this chapter with respect to such matter.
(iii) INVESTIGATIONS.—
(I) REQUEST BY INSPECTOR GENERAL WITH PRINCIPAL JURISDICTION.—Upon written request by the Inspector General with principal jurisdiction over a matter with respect to the contingency operation, and
with the approval of the lead Inspector General, an Inspector General specified in subsection (c) may provide
investigative support or conduct an independent investigation of an allegation of criminal activity by
any United States personnel, contractor, subcontractor, grantee, or vendor in the applicable theater of operations.
(II) NO INSPECTOR GENERAL WITH PRINCIPAL JURISDICTION.—In the case of a determination by the lead
Inspector General that no Inspector General has principal jurisdiction over a matter with respect to the
contingency operation, the lead Inspector General may—
(aa) conduct an independent investigation of an allegation described in subclause (I); or
(bb) request that an Inspector General specified in subsection (c) conduct such investigation.
(E) PERSONNEL.—To employ, or authorize the employment by the other Inspectors General specified in subsection (c), on a temporary basis using the authorities in section 3161 of this title (without regard to subsection (b)(2) of that section), such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation.
(F) REPORT ON ACTIVITY.—To submit to Congress on a bi-annual basis, and to make available on an internet
website available to the public, a report on the activities of the lead Inspector General and the other Inspectors General specified in subsection (c) with respect to the contingency operation, including—

(i) the status and results of investigations, inspections, and audits and of referrals to the Department
of Justice; and
(ii) overall plans for the review of the contingency operation by inspectors general, including plans for
investigations, inspections, and audits.
(G) REPORT ON CONTINGENCY OPERATION.—To submit to Congress on a quarterly basis, and to make available
on an Internet website available to the public, a report on the contingency operation.
(H) OTHER RESPONSIBILITIES.—To carry out such other responsibilities relating to the coordination and efficient and effective discharge by the Inspectors General specified in subsection (c) of duties relating to the contingency operation as the lead Inspector General shall specify.
(I) ENHANCING COOPERATION.—To enhance cooperation among Inspectors General and encourage comprehensive oversight of the contingency operation, any Inspector General responsible for conducting oversight of any program or operation performed in support of the contingency operation may, to the maximum extent practicable and consistent with the duties, responsibilities, policies, and
procedures of that Inspector General—
(i) coordinate such oversight activities with the lead Inspector General; and
(ii) provide information requested by the lead Inspector General relating to the responsibilities of
the lead Inspector General described in subparagraphs (B), (C), and (G).
(3) EMPLOYMENT OF ANNUITANTS.—
(A) IN GENERAL.—The lead Inspector General for an overseas contingency operation may employ, or authorize the employment by the other Inspectors General specified in subsection (c) of, annuitants covered by section 9902(g) of this title, for purposes of assisting the lead Inspector General in discharging responsibilities under this subsection with respect to the contingency operation.
(B) DEEMED DEPARTMENT OF DEFENSE.—The employment of annuitants under this paragraph shall be subject
to the provisions of section 9902(g) of this title as if the lead Inspector General concerned was the Department of Defense.
(C) FOREIGN SERVICE ANNUITANTS.—
(i) CONTINUANCE OF ANNUITY.—An annuitant receiving an annuity under the Foreign Service Retirement
and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign
Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection—
(I) shall continue to receive the annuity; and
(II) shall not be considered a participant for purposes of chapter 8 of title I of the Foreign
Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of
chapter 83 or chapter 84 of this title.

(ii) ELECTION REGARDING REEMPLOYMENT.—An annuitant described in clause (i) may elect in writing
for the reemployment of the annuitant under this subsection to be subject to section 824 of the Foreign
Service Act of 1980 (22 U.S.C. 4064). A reemployed annuitant shall make an election under this clause
not later than 90 days after the date of the reemployment of the annuitant.

(4) DISCHARGE OF RESPONSIBILITIES IN ACCORDANCE WITH CHAPTER.—The lead Inspector General for an overseas contingency operation shall discharge the responsibilities for the contingency operation under this subsection in a manner consistent with the authorities and requirements of this chapter generally and the authorities and requirements applicable to the Inspectors General specified in subsection (c) under this chapter.

(5) CCOMPETITIVE STATUS FOR APPOINTMENT.—

(A) IN GENERAL.—A person employed by a lead Inspector General for an overseas contingency operation under this section shall acquire competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications upon the completion of 2 years of continuous service as an employee under this section.

(B) LIMITATION.—No person who is first employed as described in subparagraph (A) more than ~~2~~ 5 years after December 19, 2019, may acquire competitive status under subparagraph (A)

(e) SUNSET FOR PARTICULAR CONTINGENCY OPERATIONS.—The requirements and authorities of this section with respect to an overseas contingency operation shall cease at the end of the first fiscal year after the commencement or designation of the contingency operation in which the total amount appropriated for the contingency operation is less than $100,000,000.

(f) CONSTRUCTION OF AUTHORITY.—Nothing in this section shall be construed to limit the ability of the Inspectors General specified in subsection (c) to enter into agreements to conduct joint audits, inspections, or investigations in the exercise of their oversight responsibilities in accordance with this chapter with respect to overseas contingency operations.

SEC. ___. EXTENSION OF CROSS-SERVICING AGREEMENTS FOR LOAN OF PERSONNEL PROTECTION AND SURVIVABILITY EQUIPMENT IN COALITION OPERATIONS.

Section 1207(f) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2342 note) is amended by striking "December 31, 2024." and inserting "December 31, 2029.".

[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 the duration of section 1207 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2342 note) an additional five years.

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 1207 of the of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2324 note) as follows:

SEC. 1207. CROSS SERVICING AGREEMENTS FOR LOAN OF PERSONNEL PROTECTION AND PERSONNEL SURVIVABILITY EQUIPMENT IN COALITION OPERATIONS.

(a) IN GENERAL.--The Secretary of Defense may, with the concurrence of the Secretary of State, enter into an arrangement, under an agreement concluded pursuant to section 2342 of title 10, United States Code, under which the United States agrees to loan personnel protection and personnel survivability equipment for the use of such equipment by military forces of a nation participating in the following:

(1) A coalition operation with the United States as part of a contingency operation.

(2) A coalition operation with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.

(3) Training of such forces in connection with the deployment of such forces to be deployed to an operation described in paragraph (1) or (2).

(b) LIMITATIONS.--

(1) LOAN ONLY OF EQUIPMENT FOR WHICH US FORCES HAVE NO UNFULFILLED REQUIREMENTS.--Equipment may be loaned to the military forces of a nation under the authority of this section only upon a determination by the Secretary of Defense that the United States forces in the coalition operation concerned have no unfulfilled requirements for such equipment.

(2) SCOPE OF USE OF LOANED EQUIPMENT.-- Equipment loaned to the military forces of a nation under the authority of this section may be used by those forces only for personnel protection or to aid in the personnel survivability of those forces and only in-

(A) a coalition operation with the United States described in paragraph (1) or (2) of subsection (a); or

(B) training described in paragraph (3) of subsection (a).

(3) DURATION OF USE OF LOANED EQUIPMIENT.-- Equipment loaned to the military forces of a nation under the authority of this section may be used by the military forces of that nation not longer than the duration of that country's participation in the coalition operation concerned.

(4) NOTICE AND WAIT ON LOAN OF EQUIPMENT FOR TRAINING,-- Equipment may not be loaned under subsection (a) in connection with training described in paragraph (3) of that subsection until 15 days after the date on which the Secretary of Defense submits to the appropriate committees of Congress written notice on the loan of such equipment for such

(c) WAIVER OF REIMBURSEMENT IN CASE OF LOSS OF EQUIPMENT IN COMBAT--

(1) IN GENERAL.--In the case of equipment loaned under the authority of this section that is damaged or destroyed as a result of combat operations during coalition operations while held by forces to which loaned under this section, the Secretary of Defense may, with respect to such equipment, waive any other requirement under applicable law for-

(A) reimbursement;

(B) replacement-in-kind; or

(C) exchange of supplies or services of an equal value.

(2) BASIS FOR WAIVER.--Any waiver under this subsection may be made only if the Secretary determines that the waiver is in the national security interest of the United States.

(3) WAIVER ON A CASE-BY-CASE BASIS.--Any waiver under this subsection may be made only on a case-by-case basis.

(d) REPORTS TO CONGRESS.--If the authority provided under this section is exercised during a fiscal year, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report on the exercise of such authority by not later than October 30 of the year in which such fiscal year ends. Each report on the exercise of such authority shall specify the recipient country of the equipment loaned, the type of equipment loaned, and the duration of the loan of such equipment.

(e) DEFINITIONS -In this section:

(1) The term “appropriate committees of Congress” means-

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

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

(2) The term “personnel protection and personnel survivability equipment” means items enumerated in categories I, II, III, VII, X, XI and XIII of the United States Munitions List under section 38(a)(l) of the Arms Export Control Act (22 U.S.C. 2778(a)(l) that the Secretary of Defense designates as available for loan under this section.

(f) EXPIRATION OF AUTHORITY.--The authority in subsection (a) shall expire on ~~December 31, 2024.~~ December 31, 2029.

SEC. ___. MODIFICATION OF AUTHORITY TO REPLACE DAMAGED OR DESTROYED FACILITIES TO INCLUDE FACILITIES IN FAILING CONDITION.

(a) IN GENERAL.—Section 2854 of title 10, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a) Subject to subsection (b), the Secretary concerned may—

"(1) replace a facility under the Secretary's jurisdiction, including a family housing facility, that has been damaged or destroyed; or

"(2) subject to subsection (d)(1), replace a facility under the Secretary's jurisdiction, including a family housing facility, that is in failing condition, if—

"(A) replacement is more cost-effective than repair;

"(B) the replacement facility supports an existing mission; and

"(C) the replacement facility does not exceed the total scope of the replaced facility.";

(2) in subsection (b), by striking "repair, restoration, or";

(3) in subsection (c)—

(A) in paragraph (1), by striking "subsection (a)" and inserting "subsection (a)(1)"; and

(B) in paragraph (2)—

(i) by striking "this subsection" and inserting "paragraph (1)" ; and

(ii) by striking "described in paragraph (1)" and inserting "described in paragraph (1)(B)";

(4) by redesignating paragraph (3) as subsection (e);

(5) by inserting after subsection (c) the following new subsection (d):

"(d)(1) In using the authority described in subsection (a)(2) to carry out a military construction project to replace a facility, including a family housing facility, that is in failing condition, the Secretary concerned may use appropriations available for operation and maintenance.

"(2) A replacement project under paragraph (1) may be carried out only after the end of the 7-day period beginning on the date on which the Secretary submits in an electronic medium pursuant to section 480 of this title a notification to the appropriate committees of Congress of the decision, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under subsection (a)(2)."; and

(6) in subsection (e), as redesignated by paragraph (4) of this subsection, by striking "in any fiscal year" and all that follows and inserting "per armed force in any fiscal year—

"(1) for replacement projects under the authority of subsection (a)(1) is $300,000,000; and

"(2) for replacement projects under the authority of subsection (a)(2) is $100,000,000.".

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of section 2854 of such title is amended to read as follows:

"§ 2854. Replacement of damaged, destroyed, or failing facilities".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter III of chapter 169 of such title is amended by striking the item relating to section 2854 and inserting the following new item:

"2854. Replacement of damaged, destroyed, or failing facilities.".

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

Section-by-Section Analysis

This proposal would increase the maximum aggregate amount that the Secretary concerned could obligate to replace a facility that has been damaged or destroyed from appropriations available for operation and maintenance in any fiscal year under this authority from $100,000,000 to $300,000,000. The increased capacity for use of O&M funding to replace critical facilities damaged or destroyed would greatly enhance the agility, speed, and flexibility of the Department to recover from natural disasters and improve its resilience. As climate-related impacts to DoD facilities are accelerating and broadening, DoD Components are experiencing damage to facilities from a single climate event that are of a larger magnitude than in the past. This significantly increases the replacement cost to restore operations, and initial recovery would be delayed pending the enactment of a supplemental funding bill. Additionally, DoD components are increasingly being impacted by multiple natural disaster events in a single year that drive up requirements and justify the need for additional authority to quickly re-allocate funding that can be positioned to address critically damaged facilities. This provision increases the ability of a Service Secretary to accomplish more scope to restore military readiness after a natural disaster without waiting for a supplemental to pass.

Recognizing limitations between military construction authorized by law under section 2802 of title 10, United States Code (title 10), repair of facilities authorized in section 2811 of title 10, and replacement of damaged and destroyed facilities authorized in the current version of section 2854 of title 10, this proposal also provides the Department a new tool to meet dynamic mission demands by *recapitalizing existing facilities for existing missions* through replacement of economically unrepairable or functionally failing facilities. The authority allows for replacement of a facility using funds available for operation and maintenance when replacement is more cost-effective than repairing old, decrepit, outmoded inventory.

The niche of facilities that would be eligible under this new replacement authority is bounded by the following constraints:

1) Replacing the facility is more cost effective than repairing the facility
2) The replacement facility supports an existing mission
3) The replacement facility does not exceed the total scope of the replaced facility
4) There is an annual cap of $100M per armed force to use this authority
5) These projects must be approved by the Secretary concerned

6) The appropriate congressional committees must be notified of the approval of these projects
7) Carrying out the project is subject to a 7-day wait after notifying committees (a wait period is not a requirement for a notified repair project)

In addition to overall savings to the operation and maintenance account through the replacement of failing facilities, other benefits include optimized physical plant, mission consolidation, improved operational effectiveness, timely fulfillment of dynamic mission requirements, enhanced facility operations, and reduced temporary facilities or leased space. The cost savings enables these already-stretched funds to be used on other unfunded priorities.

Section 2802 of title 10 provides the Department the authority to carry out military construction (MilCon) projects as authorized by law. However, there are many more MilCon requirements than currently budgeted, the timelines of the MilCon legislative cycle are not responsive to rapidly evolving and dynamic mission requirements, and priorities of the MilCon program properly have a primary focus on new missions and combatant command (command authority) requirements. Most of the prioritized MilCon requirements, above and below the budget line, *can only be met with new construction*, meaning repairing existing facilities to meet these mission requirements is not a beneficial option.

Under section 2811 of title 10, the Department has the authority to carry out extensive facility repairs using funds available for operation and maintenance. With many below-the-line new-construction-only mission requirements in the MilCon queue, any other requirements that have a repair alternative will be executed as repair projects, even though repair is economically and operationally sub-optimal in many of these cases. When repair is an option to meet to the mission requirement but other new-construction-only projects dominate the MilCon queue, repair becomes the only reachable solution for these requirements. Such projects never reach funded status as a MilCon project.

The Department cannot use section 2811 repair authority to replace facilities. However, there are times when complete facility replacement is more economically beneficial than repairing. Whole-facility *repair* of failing facilities to meet dynamic current mission demands is sometimes costlier and less operationally effective than replacing the facilities. This proposal requests authority only for those instances—when replacement is more beneficial than repair, and when the mission requirement can be met with less than or the same total square footage.

Section 2854 of title 10 currently provides the authority to replace facilities which have been damaged or destroyed using either funds available for MilCon or available for operation and maintenance. This proposal recommends amending section 2854 of title 10 to allow replacement of failing facilities using funds available for operation and maintenance in cases *when it is more economically beneficial* to replace facilities than to repair them. The proposed authority specifically applies to buildings that *would have otherwise been repaired* to meet mission requirements, but where replacement is *more economically beneficial* than repairing. It does not allow for widespread replacement. Replacement facilities will always be more operationally effective than repaired facilities, and in cases under this authority will result in the same or reduced square footage (new facilities can be better optimized than renovating old and

outdated facilities). This authority enables a tool for meeting mission demands while eliminating antiquated inventory, furthering facility modernization, reducing life cycle costs, and reducing inventory square footage.

This proposal takes a limited approach to replacing facilities and does not circumvent congressional oversight. Realistically, as outlined above, these requirements will never be specified MilCon projects and will never have MilCon oversight. Without this authority, these requirements will be executed as more expensive and frequent repair projects under section 2811 of title 10. With this limited facility replacement authority under section 10 2854 of title 10, the Department can realize meeting mission demands with economically and operationally optimal facilities. Projects under this authority will be notified to congressional committees with a 7-day wait period, whereas no wait period is required under section 2811 repair authority.

This proposal uses existing restoration and modernization dollars to effectively and efficiently recapitalize dated, failing, and obsolete inventory. It enables the Department to meet mission requirements within existing inventory and budgets, provides true recapitalization for a portion of the inventory, and enables more effective use of taxpayer dollars.

Funds used under this authority are the *same* dollars that otherwise would have been used to carry out more expensive and less effective repairs of the *same* facilities being replaced. In other words, some projects planned and budgeted to be executed as repair projects using funds available for operation and maintenance can instead be executed as replacement projects using those same budgeted dollars at reduced cost. The Department has a significant facility repair requirement backlog, so any savings realized from use of this authority will enable the Department to execute some of those much-needed requirements below the funding line.

Estimated projected savings in some cases:
- up-front cost reduction--12%-45%
- long-term (25 years) operation and maintenance reduction--20%-35%
- square footage reduction--20%-33%

The cost savings will enable existing budgeted dollars to go further toward tackling sustainment, restoration, and modernization backlog.

Vignettes to Replace Existing Inventory vs Renovate													
		Up-Front Cost				25-Year Ops, Mx, & Repair				Square Footage			
Location	Project	Repair ($M)	Replace ($M)	**Delta (savings) ($M)**	% Delta (savings)	Repair ($M)	Replace ($M)	**Delta (savings) ($M)**	% Delta (savings)	Repair	Replace	Delta (reduce)	% Delta
Wright-Patterson	Consolidate Wing Functions into Renovated VOQs	$48.40	$26.30	**$22.10**	45.66%	$7.80	$5.20	**$2.60**	33.33%	84,100	56,200	27,900	33%
Hill	Renovate 1960s dorms for Depot Software Maintenance	$17.80	$14.30	**$3.50**	19.66%	$6.25	$5.00	**$1.25**	20.00%	53,200	42,560	10,640	20%
Fairchild	Renovate/Sustain Civil Engineering Ops Complex	$56.50	$48.00	**$8.50**	15.04%	$14.06	$10.56	**$3.50**	24.89%	173,000	130,000	43,000	25%
Eglin	Consolidate Mission Support - Demo WWII Buildings	$73.60	$64.30	**$9.30**	12.64%	$65.80	$43.10	**$22.70**	34.50%	143,770	115,016	28,754	20%

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. This proposal is

budget neutral. Projects proposed under authority of this proposal will be prioritized among other O&M-funded facility requirements, and funds for these projects will come from those funds that otherwise would have been used to renovate the buildings being replaced. Restoration and Modernization funds for repairing/renovating facilities are already in the budget per the snapshot in the table below. Facility requirements designated for the accounts below exceed the funds available (backlog), so any savings realized from projects under the authority of this proposal will be used for validated facility requirements currently below the funding line.

Program	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/ SAG
Air Force R&M	$1,701.6	$1,304.9	$1,204.1	$1,228.5	Operation and Maintenance, Air Force	01	11R
Air Force Reserve R&M	$61.9	$46.8	$46.1	$47.0	Operation and Maintenance, Air Force Reserve	01	11R
Air National Guard R&M	$163.3	$120.5	$118.5	$120.8	Operation and Maintenance, Air National Guard	01	11R
Total Air Force R&M	$1,987.8	$1,492.4	$1,396.3	$1,396.3	--	--	--
USMC R&M	$170.8	$169.0	$172.4	$172.4	Operation and Maintenance, USMC		
Navy R&M	$860.0	$859.4	$876.5	$876.5	Operation and Maintenance, Navy	01	11R
USMC Reserve R&M	$24.2	$24.8	$25.3	$25.3	Operation and Maintenance, USMC Reserve	01	11R
Navy Reserve R&M	$25.8	$25.2	$24.7	$24.7	Operation and Maintenance, Navy Reserve	01	11R
Total Navy R&M	$1,080.8	$1,078.4	$1,098.9	$1,098.9	--	--	--
Total Army	$0	$0	$0	$0	Army does not intend to use this authority	Total Army	$0

Changes to Existing Law: This proposal would amend section 2854 of title 10, United States Code, as follows:

§2854. ~~Restoration or replacement of damaged or destroyed~~ Replacement of damaged, destroyed, or failing facilities

(a) Subject to subsection (b), the Secretary concerned may—

~~repair, restore, or~~ (1) replace a facility under ~~his~~ the Secretary's jurisdiction, including a family housing facility, that has been damaged or destroyed~~.~~; or

(2) subject to subsection (d)(1), replace a facility under the Secretary's jurisdiction, including a family housing facility, that is in failing condition, if—q

(A) replacement is more cost-effective than repair;

(B) the replacement facility supports an existing mission; and

(C) the replacement facility does not exceed the scope of the replaced facility.

(b) When a decision is made to carry out construction under subsection (a) and the cost of the ~~repair, restoration, or~~ replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(c)(1) In using the authority described in subsection (a)(1) to carry out a military construction project to replace a facility, including a family housing facility, that has been damaged or destroyed, the Secretary concerned may use appropriations available for operation and maintenance if-

(A) the damage or destruction to the facility was the result of a natural disaster or a terrorism incident; and

(B) the Secretary submits a notification to the appropriate committees of Congress of the decision to carry out the replacement project, and includes in the notification-

(i) the current estimate of the cost of the replacement project;

(ii) the source of funds for the replacement project;

(iii) in the case of damage to a facility rather than destruction, a certification that the replacement project is more cost-effective than repair or restoration; and

(iv) a certification that deferral of the replacement project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) A replacement project under paragraph (1) ~~this subsection~~ may be carried out only after the end of the 7-day period beginning on the date on which a copy of the notification described in paragraph (1)(B) is provided in an electronic medium pursuant to section 480 of this title.

(d)(1) In using the authority described in subsection (a)(2) to carry out a military construction project to replace a facility, including a family housing facility, that is in failing condition the Secretary concerned may use appropriations available for operation and maintenance.

(2) A replacement project under paragraph (1) may be carried out only after the end of the 7-day period beginning on the date on which the Secretary submits in an electronic medium pursuant to section 480 of this title a notification to the appropriate committees of Congress of the decision, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under subsection (a)(2).

(~~3~~e) The maximum aggregate amount that the Secretary concerned may obligate from appropriations available for operation and maintenance per armed force in any fiscal year--

(1) for replacement projects under the authority of ~~this~~ subsection (a)(1) is $300,000,000 ~~$100,000,000~~; and

(2) for replacement projects under the authority of subsection (a)(2) is $100,000,000.

SEC. ___. PILOT PROGRAM FOR ADDITIONAL SUBSEQUENT PHASE II AWARDS FOR SMALL BUSINESS CONCERNS.

Section 9(ff) of the Small Business Act (15 U.S.C. 638(ff)) is amended by adding at the end the following new paragraph:

"(3) DEPARTMENT OF DEFENSE PILOT AUTHORITY FOR AWARDING AN ADDITIONAL SEQUENTIAL PHASE II AWARD.—

"(A) During fiscal years 2024 through 2027, the Secretary of Defense may award one additional Phase II SBIR award or one additional Phase II STTR award to a small business concern that received a Phase II award under paragraph (1) for continued work on that project.

"(B) The Secretary of Defense may use not more than 3 percent of the funds allocated to the SBIR and STTR programs in carrying out this paragraph and shall submit an application to the Administrator for approval prior to any award under subparagraph (A). The application shall include an explanation for why the requirement could not be funded as a Phase III award and a description of how the Department of Defense will minimize, to the maximum extent possible, the number of awards under this paragraph.".

Section-by-Section Analysis

This proposal would clarify and expand the current authority for subsequent Phase II awards that Federal agencies may award to small business concerns (SBCs). The current authority in the Small Business Act (15 U.S.C. 638(j)(1)) limits an SBC to one additional "sequential" award. This language limits agencies in the number of total Phase II awards allowed as not-to-exceed two Phase II awards in total to the same SBC for the same topic. This has proven to limit the utility of section (9)(ff) of the Small Business Act (15 U.S.C. 638(ff)), as the original sponsoring agency of the Phase I award is usually the awardee of the original (first) Phase II award and has declined requests from other agencies to make a subsequent Phase II award in order to further develop the technology for the agency's own transition efforts.

Expanding this authority to allow for an additional, subsequent Phase II award regardless of the number of Phase II awards made by the original Phase I agency, but not to exceed three awards in total, to the same SBC for the same topic, would afford the Federal Agencies greater flexibility in awarding a subsequent Phase II award within the Federal agencies in order to further mature SBIR and STTR technology to a transition readiness level that would enable insertion into a program of record and/or fielded system. Ultimately, augmenting the number of phase II awards to a total of three will help bridge the "valley of death" for small business concerns and will significantly benefit transition rates.

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 9(ff) of the Small Business Act (15 U.S.C. 638(ff)) as follows:

(ff) Additional SBIR and STTR awards
(1) Express authority for awarding a sequential Phase II award
A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.
(2) Preventing duplicative awards
The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.
(3) Department of defense pilot authority for awarding an additional sequential Phase II award
(A) During fiscal years 2024 through 2027, the Secretary of Defense may award one additional Phase II SBIR award or one additional Phase II STTR award to a small business concern that received a Phase II award under paragraph (1) for continued work on that project.
(B) The Secretary of Defense may use not more than 3 percent of the funds allocated to the SBIR and STTR programs in carrying out this paragraph and shall submit an application to the Administrator for approval prior to any award under subparagraph (A). The application shall include an explanation for why the requirement could not be funded as a Phase III award and a description of how the Department of Defense will minimize, to the maximum extent possible, the number of awards under this paragraph.

SEC. ___. PILOT PROGRAM TO AUTHORIZE CERTAIN SBIR AND STTR AWARDS FOR TECHNOLOGIES THAT ALIGN WITH DEPARTMENT OF DEFENSE MODERNIZATION PRIORITIES.

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may make a Phase II award under the Small Business Innovation Research program or the Small Business Technology Transfer program that exceeds the limitation described in paragraph (1) of section 9(aa) of the Small Business Act (15 U.S.C. 638(aa)) without seeking a waiver from the Administrator of the Small Business Administration under paragraph (4) of such section, if the award meets the requirements of subsection (b).

(b) AWARD REQUIREMENTS.—An award meets the requirements of this subsection if—

(1) the award does not exceed $5,000,000; and

(2) the Secretary of Defense determines that the award is being made for a technology that aligns with modernization priorities of the Department of Defense and has a high potential for transition to a program of record or fielded system.

(c) LIMITATION.—For awards under the pilot program authorized under subsection (a), the Secretary of Defense and the Secretary of each military department may allocate not more than 10 percent of the funds allocated in a fiscal year to the SBIR program and the STTR program for the Department of Defense or a military department, as the case may be.

(d) RULE OF CONSTRUCTION.—Nothing in this section affects the applicability of section 9(aa)(4) of the Small Business Act (15 U.S.C. 638(aa)(4)) with respect to an award that exceeds $5,000,000.

(e) REPORTING.—The Secretary of Defense shall include information on the awards made under this section in complying with annual reporting requirements relating to the SBIR and

STTR programs, including the requirements of paragraph (2) of section 9(aa) of the Small Business Act (15 U.S.C. 638(aa)).

(f) DEFINITIONS.—The definitions in section 9(e) of the Small Business Act (15 U.S.C. 638(e)) shall apply to the terms used in this section.

(g) SUNSET.—The authority under this section shall terminate on September 30, 2026.

Section-by-Section Analysis

This proposal would authorize a pilot program under which the Secretary of Defense and the Secretaries of the military departments may make Phase II awards under the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) program in amounts that exceed the maximum award amount described in section 9(aa)(1) of the Small Business Act (15 U.S.C. 638(aa)(1)), without seeking a waiver from the Small Business Administration (SBA). The authority to make awards under the pilot program would be limited to awards that are not more than $5,000,000 and that are for technologies that align with DoD modernization priorities and have a high potential for transition to programs of record or fielded systems. This pilot program would be limited to 10 percent of each of the SBIR program and STTR program budgets of the Department of Defense, including the military departments and the defense agencies.

Subsection (aa) of section 9 of the Small Business Act (15 U.S.C. 638(aa)) establishes a cap on amounts for SBIR and STTR awards, prohibiting such awards from exceeding award guidelines by more than 50 percent unless a waiver is issued by the SBA. The award cap is adjusted annually for inflation by the Administrator of the SBA in accordance with subsections (j)(2)(D) and (p)(2)(B)(ix) of such section. The current award cap, released by the SBA in November 2020, is $1,730,751 for a Phase II award (including modifications). This award cap is restrictive to the Department of Defense (DoD) as it limits the ability of the Department to make awards on a timely basis due to the need to obtain the SBA's approval of a waiver prior to making an award that exceeds the award cap.

The creation of the pilot program would improve the Department's time-to-award for continuing technological research and development, as well as reduce the risk of the "valley of death" between phases of awards. The increased $5,000,000 award threshold would allow DoD SBIR/STTR's innovative technologies to mature to higher transition readiness levels, through programs such as the Office of the Secretary of Defense Transitions SBIR/STTR Technology program, and transition faster to members of the Armed Forces. If approved, the Department will be required to include a list of all awards made as part of this pilot program, as well as information on these awards as instructed in paragraphs (2) of section 9(aa) of the Small Business Act (15 U.S.C. 638(aa)) in DoD's annual report to the SBA Administrator.

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 makes no changes to existing law.

SEC. ___. RETENTION AND CREDITING OF FUNDS RECEIVED AS REIMBURSEMENT FOR USE OF PROPERTY ISSUED TO THE NATIONAL GUARD DURING A STATE-DIRECTED MISSION.

Section 710 of title 32, United States Code, is amended by adding at the end the following new subsection:

"(g) Any funds received by the Department of Defense from a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands as reimbursement for costs incurred by the Department of Defense resulting from the use of military property described in this section during a mission directed or requested by a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands shall be credited, at the discretion of the Secretary of Defense, to—

"(1) the appropriation, fund, or account used in incurring the obligation; or

"(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.".

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

Section-by-Section Analysis

This proposal would provide a significant, positive impact on Federal training and readiness levels. Retaining reimbursement of costs incurred while Federal equipment and property are utilized for State-directed[1] missions would ensure available funding for maintenance, repair, and replacement costs when needed. Equipment and property will remain ready for the National Guard (NG) Federal mission.

State Adjutants General have the authority to use Federal equipment and property during State-directed missions, and the U.S. Property and Fiscal Officers (USPFOs) have the responsibility to obtain reimbursement for loss, damage, and destruction associated with the use of such equipment and property.

[1] Missions directed or requested by a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the U.S. Virgin Islands.

When Governors or State Adjutants General utilize NG equipment and property in State-directed missions responding to disasters such as floods, fires, hurricanes, and/or other State missions, the Federal Government is required to obtain reimbursement from State and territorial governments for loss, damage, and destruction associated with the use of such equipment and property. Reimbursements are received by the USPFO and deposited to the General Fund of the U.S. Treasury in accordance with the Miscellaneous Receipts Statute (31 U.S.C. § 3302). Because the funds are not deposited into Department of Defense accounts, National Guard units are not able promptly to maintain, repair, or replace lost, damaged, or destroyed equipment used for State-directed missions.

This issue was addressed in the report on State-directed missions provided to the House Committee on Armed Services as requested on page 97 of House Report 116-120 accompanying H.R. 2500, the National Defense Authorization Act for Fiscal Year 2020.

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. The legislative proposal (LP) provides for depositing payments for costs incurred by the Department of Defense associated with the loss or destruction of, or damage to, equipment and property issued to a State or territory during State-directed missions that currently are deposited in the U.S. Treasury. From FY 2017 to FY 2021, approximately $179M in reimbursements was collected by USPFOs from State and territorial governments for loss, damage, and destruction associated with the use of Federal equipment and property.

	RESOURCE IMPACT ($MILLIONS)													
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**FY 2028**	**FY 2029**	**FY 2030**	**FY 2031**	**FY 2032**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Reimbursement	39.6	40.5	41.4	42.3	43.2	44.1	45.0	45.9	46.8	47.7	Operation and Maintenance, Army National Guard	1	111G / 116G	
Reimbursement	4.4	4.5	4.6	4.7	4.8	4.9	5.0	5.1	5.2	5.3	Operation and Maintenance, Air National Guard	1	011Z	
Total	44.0	45.0	46.0	47.0	48.0	49.0	50.0	51.0	52.0	53.0				

** The calculation of resource impact: The annual impact is the average of actual reimbursements from FY17 to FY21 and applies the standard inflation rate of 2% per year.*

Changes to Existing Law: This proposal would amend section 710 of title 32, United States Code, as follows:

§ 710. Accountability for property issued to the National Guard

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) The Secretary of the Army shall prescribe regulations for accounting for property issued by the United States to the Army National Guard and for the fixing of responsibility for that property. The Secretary of the Air Force shall prescribe regulations for accounting for property issued by the United States to the Air National Guard and for the fixing of responsibility for that property. So far as practicable, regulations prescribed under this section shall be uniform among the components of each service.

(c) Under regulations prescribed by the Secretary concerned under subsection (b), liability for the value of property issued by the United States to the National Guard that is lost, damaged, or destroyed may be charged (1) to a member of the Army National Guard or the Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be so charged, or (2) to a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction. Liability charged to a member of the Army National Guard or the Air National Guard shall be paid out of pay due to the member for duties performed as a member of the National Guard, unless the Secretary concerned shall for good cause remit or cancel that liability. Liability charged to a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands shall be paid from its funds or from any other non-Federal funds.

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, to reimburse the United States for the loss or destruction of, or damage to, the property.

(e) If a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.

(f)(1) Instead of the procedure prescribed by subsections (b), (c), and (d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer designated by the Secretary. The State, the Commonwealth of Puerto Rico,

the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, is relieved of accountability for that property.

(2) In designating an officer to conduct inspections and make findings for purposes of paragraph (1), the Secretary concerned shall designate-

(A) in the case of the Army National Guard, a commissioned officer of the Regular Army or a commissioned officer of the Army National Guard who is also a commissioned officer of the Army National Guard of the United States; and

(B) in the case of the Air National Guard, a commissioned officer of the Regular Air Force or a commissioned officer of the Air National Guard who is also a commissioned officer of the Air National Guard of the United States.

(g) Any funds received by the Department of Defense from a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands as reimbursement for costs incurred by the Department of Defense resulting from the use of military property described in this section during a mission directed or requested by a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands shall be credited, at the discretion of the Secretary of Defense, to—

(1) the appropriation, fund, or account used in incurring the obligation; or

(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

SEC. ___. DEPARTMENT OF DEFENSE SMALL BUSINESS INNOVATION RESEARCH AND SMALL BUSINESS TECHNOLOGY TRANSFER BUDGET CALCULATION PILOT PROGRAM.

(a) SBIR BUDGET CALCULATION PILOT PROGRAM—

(1) PILOT PROGRAM.— Section (9)(f) of the Small Business Act (15 U.S.C. 638(f)) is amended—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph (4):

"(4) SBIR BUDGET CALCULATION PILOT PROGRAM IN DEPARTMENT OF DEFENSE.—

"(A) The Secretary of Defense shall conduct a budget calculation pilot program that requires total expenditures for the SBIR program in the Department of Defense to be calculated as described in subparagraph (B), specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

"(B) Beginning in fiscal year 2024, the Department of Defense shall calculate required budget expenditures for its SBIR program as not less than 3.25 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

"C) The pilot program under this paragraph shall terminate on September 30, 2027.".

(2) CONFORMING AMENDMENT.—Section 9(f) of such Act is further amended in paragraph (1) by striking "Except as provided in paragraph (2)(B" and inserting "Except as provided in paragraphs (2)(B) and (4)".

(b) STTR BUDGET CALCULATION PILOT PROGRAM.—

(1) PILOT PROGRAM.—Section (9)(n) of the Small Business Act (15 U.S.C. 638(n)) is amended by adding at the end the following new paragraph:

"(4) STTR BUDGET CALCULATION PILOT PROGRAM IN DEPARTMENT OF DEFENSE.—

"(A) The Secretary of Defense shall conduct a budget expenditure pilot program that requires total expenditures for STTR to be calculated as described in subparagraph (B).

"(B) Beginning in fiscal year 2024, the Department of Defense shall calculate required budget expenditures for its STTR program as not less than 0.46 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

"(C) The pilot program under this paragraph shall terminate on September 30, 2027.".

(2) CONFORMING AMENDMENT—Section 9(n) of such Act is further amended in paragraph (1)(B) by striking "The percentage" and inserting "Except as provided in paragraph (4), the percentage".

[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 authorizes a pilot program to reduce the time and effort required to calculate the annual budgetary assessments for the SBIR and STTR programs. Currently, an accurate budget assessment cannot be performed until the final appropriation is received and the determination of extramural portions of each program, project, and activity within the final appropriation are estimated. This process delays release of funding for program efforts by months (section (9)(i) currently provides agencies 4 months to provide a report of their budget calculation after enactment of the Appropriation) and requires extensive resources to complete and document. These delays are detrimental to the SBIR and STTR programs' execution and the development and transition of program technology, and has been cited by technical personnel as a reason for reluctance to participate in the programs. Congress has also made clear through subsections (9)(hh) and (9)(ii) that it expects the Department to improve timelines for release of funds, funding decisions, and award times. This pilot will enable calculation of extramural percentages during the previous fiscal year. This percentage can be applied to the budget request to estimate SBIR and STTR budgets and can quickly be applied to final appropriations to provide funds to the programs. This will enable faster funding decisions and award times for both new and on-going work.

This proposal amends sections (9)(f) and (9)(n) by adding new paragraphs requiring the pilot program. No deletions to existing statutory provisions are required. Under new sections 9(f)(4) and 9(n)(4), DoD will be excluded from the standard budget expenditure requirements beginning in FY24 for the SBIR and STTR programs. Each new paragraph (4) provides the period the pilot will be active and the alternative method the DoD will use in determining the SBIR and STTR program expenditure requirements.

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

Cost Methodology: This proposal does not seek to change the SBIR/STTR set-aside amount. The resource impact of this proposal is a savings to the Department for the man hours the current computation methodology requires. There are over 1,500 RDTE budget lines across 16 components/organizations that must be assessed, taking approximately four months of effort to complete, or 25% of an FTE. Taken individually, those savings are insignificant. However, some components may have multiple persons working the computations. In the aggregate, if enacted, this proposal would allow a low estimate of $400K Department-wide to be reallocated to other priority requirements. (25% of an FTE x ~$100K/FTE x 16 components = $400K)

Changes to Existing Law: This proposal would amend sections (9)(f) and (9)(n) of the Small Business Act (15 U.S.C. 638) as follows:

Sec. 9. Research and Development

*****

(f) Federal agency expenditures for SBIR program

(1) Required expenditure amounts

Except as provided in paragraphs (2)(B) and (4), each Federal agency which has an extramural budget for research or research and development in excess of $100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns-

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996;

(C) not less than 2.5 percent of such budget in each of fiscal years 1997 through 2011;

(D) not less than 2.6 percent of such budget in fiscal year 2012;

(E) not less than 2.7 percent of such budget in fiscal year 2013;

(F) not less than 2.8 percent of such budget in fiscal year 2014;

(G) not less than 2.9 percent of such budget in fiscal year 2015;

(H) not less than 3.0 percent of such budget in fiscal year 2016; and

(I) not less than 3.2 percent of such budget in fiscal year 2017 and each fiscal year thereafter.

(2) Limitations

A Federal agency shall not-

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) SBIR budget calculation pilot program in Department of Defense.—

(A) The Secretary of Defense shall establish and conduct a budget calculation pilot program that requires total expenditures for the SBIR program in the Department of Defense to be calculated as described in subparagraph (B), specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(B) Beginning in fiscal year 2024, the Department of Defense shall calculate required budget expenditures for its SBIR program as not less than 3.25 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

(C) The pilot program under this paragraph shall terminate on September 30, 2027.

(4 5) Rule of construction

Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1).

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(n) Required expenditures for STTR by Federal agencies

(1) Required expenditure amounts

(A) In general

With respect to each fiscal year through fiscal year 2022, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

(B) Expenditure amounts

Except as provided in paragraph (4), the ~~The~~ percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be-

(i) 0.15 percent for each fiscal year through fiscal year 2003;

(ii) 0.3 percent for each of fiscal years 2004 through 2011;

(iii) 0.35 percent for each of fiscal years 2012 and 2013;

(iv) 0.40 percent for each of fiscal years 2014 and 2015; and

(v) 0.45 percent for fiscal year 2016 and each fiscal year thereafter.

(2) Limitations

A Federal agency shall not-

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) STTR budget calculation pilot program in Department of Defense.—

(A) The Secretary of Defense shall conduct a budget expenditure pilot program that requires total expenditures for STTR to be calculated as described in subparagraph (B).

(B) Beginning in fiscal year 2024, the Department of Defense shall calculate required budget expenditures for its STTR program as not less than 0.46 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

(C) The pilot program under this paragraph shall terminate on September 30, 2027.

SEC. ___. AUTHORITY TO PROVIDE INCREASED VOLUNTARY SEPARATION INCENTIVE PAY FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.

Section 9902(f)(5)(A)(ii) of title 5, United States Code, is amended by striking "$25,000" and inserting "an amount determined by the Secretary, not to exceed $40,000".

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

Section-by-Section Analysis

This proposal would amend section 9902(f)(5)(A)(ii) of title 5, United States Code, to increase from $25,000 to $40,000, the maximum amount of voluntary separation incentive pay (VSIP) that the Department of Defense (DoD) is authorized to provide to an individual. The temporary authority for the Department to provide this increased maximum amount for VSIP expired on September 30, 2021. When considering the effects of inflation, the increased maximum amount for VSIP that would be authorized by this proposal is less than the $25,000 amount that was originally authorized for VSIP in 1993.

The Department has traditionally offered incentives, such as VSIP, to encourage voluntary separations as a way to minimize the impact of workforce restructuring and avoid involuntary reductions in force (RIFs). RIFs are costly and disruptive to DoD's missions and create negative morale in the workforce. VSIP authority is also an important workforce shaping and restructuring tool that assists the Department in recalibrating the workforce to ensure the Department has the right skills for emerging missions and mission growth. Indeed, VSIP authority can be exercised independent of RIF planning and in the past has been effective in enabling DoD components to shape their workforce. Any future reduction to or reorganization of the DoD workforce will require management tools to efficiently shape the workforce without adversely affecting DoD's missions or its commitment to the Nation's warfighters. Incentive authorities such as VSIP provide a less expensive, more accommodating, and more manageable way to efficiently reduce as well as restructure the DoD workforce.

In general, VSIP has been used sparingly since DoD completed the actions related to Fiscal Year (FY) 2005 base realignment and closure (BRAC). Over the past four years, the Department averaged approximately 1,500 VSIP payments per year. In the future, DoD anticipates similar VSIP usage to support organizational restructuring, position restructuring, and other measures to reskill the workforce.

The Department strongly supports renewal and permanent increase of the authority based on the following:

When intangible costs are considered, effective use of VSIP to accomplish workforce shaping is more efficient than conducting a RIF. According to a report published by the RAND Corporation in late 2016, entitled "Workforce Downsizing and Restructuring in the Department of Defense – The Voluntary Separation Incentive Payment Program Versus Involuntary Separation," increasing the VSIP cap from $25,000 to $41,000 (the real value of a $25,000 VSIP established in 1993 converted into 2015 dollars based on increases in the consumer price index) would likely generate about 45 percent more voluntary separations. VSIP, when coupled with Voluntary Early Retirement Authority, produces budgetary net savings to DoD both after the first year and cumulatively after five years when total personnel costs are considered. VSIP would also produce net savings to the U.S. Treasury over five years. Furthermore, the net savings to DoD and the Treasury are larger over a five-year horizon when the VSIP cap is larger than $25,000. Although this budgetary costs savings is less than the use of involuntary separations, it does not fully capture the intangible costs identified in the report, such as "disruption and turbulence because the bumping and retreating rules result in multiple employees changing positions to generate a single separation" which "can generate uncertainty, delays in workflow, and skills/competency gaps for organizations." The report states that "evidence from past studies indicates that such downsizing can hurt morale and may create imbalances in the experience mix of the workforce…which may have prolonged effects on the capability of the workforce over time." It also cites the costs of "equal employment opportunity (EEO) complaints, Merit Systems Protection Board (MSPB) appeals, and labor union grievances, as well as workload costs of RIF, particularly when multiple RIFs are conducted to reach end-state…" as additional costs of involuntary separations. Such costs are avoided or are mitigated when voluntary separations occur.

In practice, increased VSIP has proven to be an effective means of administering workforce shaping. DoD recently reported to Congress on its assessment of the impact of the temporary increase in authority to $40,000, noting that between FY 2018 and FY 2021, VSIP, coupled with the effective use of other workforce reshaping tools, resulted in significant savings in separation costs. VSIP helped to negate 98 percent of projected separations, averting an estimated cost of $309,400,000 in severance costs (excludes unemployment insurance costs). There were 5,860 VSIP payments (downsizing and restructuring) totaling approximately $227,800,000. A statutory increase to $40,000 will enable the Department to continue to limit the use of involuntary separations to shape the workforce and foster a cost-effective and efficient means of administering future workforce reductions or reorganizations to ensure a more effective Federal workforce.

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. Mandatory resources required are minimal and also reflected in the table. Adoption of the proposal would make permanent the temporary increase in the maximum VSIP amount for the DoD from $25,000 to $40,000 that expired on September 30, 2021. VSIP is authorized at levels not to exceed DoD's appropriated budget authority in any given fiscal year. DoD's intent is to offer VSIP at a steady rate to continue to reshape our workforce, as needed, and avoid costly reductions-in-force. The increased incentive may influence the number of civilians offered the opportunity to participate in VSIP and/or the timeframe in which participants must accept VSIP in order to maximize the use of funds in the given fiscal year. The authority will not change the

severance pay formulas used to calculate the actual VSIP amount. We anticipate a continued steady use of VSIP.

NOTIONAL ONLY RESOURCE DISCRETIONARY IMPACT ($MILLIONS) ***NOTIONAL ONLY***															
Program	**Projected VSIPs**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**FY 2028**	**FY 2029**	**FY 2030**	**FY 2031**	**FY 2032**	**FY 2033**	**Total**	**Appropriation**	**Budget Activity**	**BLI/SAG**
Army	842	$12.47	$12.47	$12.47	$12.47	$12.47	$12.47	$12.47	$12.47	$12.47	$12.47	$124.70	O&M, Army	Multiple	Multiple
Navy	31	$0.46	$0.46	$0.46	$0.46	$0.46	$0.46	$0.46	$0.46	$0.46	$0.46	$4.60	O&M, Navy	Multiple	Multiple
Navy	196	$2.93	$2.93	$2.93	$2.93	$2.93	$2.93	$2.93	$2.93	$2.93	$2.93	$29.30	Navy WCF	Multiple	Multiple
Navy	10	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$1.50	RDT&E, Navy	Multiple	Multiple
Air Force	56	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$8.40	O&M, Air Force	Multiple	Multiple
USMC	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, MC	Multiple	Multiple
DLA	51	$0.77	$0.77	$0.77	$0.77	$0.77	$0.77	$0.77	$0.77	$0.77	$0.77	$7.70	O&M, DLA	Multiple	Multiple
DCMA	128	1.91	1.91	1.91	1.91	1.91	1.91	1.91	1.91	1.91	1.91	19.1	O&M, DCMA	Multiple	Multiple
DISA	51	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	7.7	O&M, DISA	Multiple	Multiple
DCAA	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DCAA	Multiple	Multiple
OSD	40	$0.60	$0.60	$0.60	$0.60	$0.60	$0.60	$0.60	$0.60	$0.60	$0.60	$6.00	O&M, OSD	Multiple	Multiple
DFAS	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DFAS	Multiple	Multiple
WHS	16	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$2.40	O&M, WHS	Multiple	Multiple
Joint Staff	6	$0.09	$0.09	$0.09	$0.09	$0.09	$0.09	$0.09	$0.09	$0.09	$0.09	$0.90	O&M, Joint Staff	Multiple	Multiple
National Guard	16	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$0.24	$2.40	O&M, National Guard	Multiple	Multiple
DoDEA	53	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$8.00	O&M, DoDEA	Multiple	Multiple
DECA	45	$0.68	$0.68	$0.68	$0.68	$0.68	$0.68	$0.68	$0.68	$0.68	$0.68	$6.80	O&M, DECA	Multiple	Multiple
DHA	23	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35	$3.50	O&M, DHA	Multiple	Multiple
MDA	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, MDA	Multiple	Multiple
DHRA	13	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$2.00	O&M, DHRA	Multiple	Multiple
DoDIG	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DoDIG	Multiple	Multiple
PFPA	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, PFPA	Multiple	Multiple
DTRA	10	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$0.15	$1.50	O&M, DTRA	Multiple	Multiple
DSS	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DSS	Multiple	Multiple
USUHS	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, USUHS	Multiple	Multiple
DAU	3	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.50	O&M, DAU	Multiple	Multiple
DSCA	1	$0.02	$0.02	$0.02	$0.02	$0.02	$0.02	$0.02	$0.02	$0.02	$0.02	$0.20	O&M, DSCA	Multiple	Multiple
DMA	14	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$2.00	O&M, DMA	Multiple	Multiple
NDU	2	$0.03	$0.03	$0.03	$0.03	$0.03	$0.03	$0.03	$0.03	$0.03	$0.03	$0.30	O&M, NDU	Multiple	Multiple
NRO	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, NRO	Multiple	Multiple
POW/MIA Ofc	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, POW/MIA Ofc	Multiple	Multiple
Def Legal Svcs	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, Def Legal Svcs	Multiple	Multiple
DTIC	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DTIC	Multiple	Multiple
DMeA	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DMeA	Multiple	Multiple
DARPA	3	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.05	$0.50	O&M, DARPA	Multiple	Multiple
DTSA	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, DTSA	Multiple	Multiple
Crt Appls Armd Frcs	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, Crt Appls Armd Frcs	Multiple	Multiple
OEA	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, OEA	Multiple	Multiple
Test Resource Mgmt Ctr	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	O&M, Test Resource Mgmt Ctr	Multiple	Multiple
Total	1600	$24.00	$24.00	$24.00	$24.00	$24.00	$24.00	$24.00	$24.00	$24.00	$24.00	$240.00			

10-YEAR COST PROJECTION ($MILLIONS)											
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**	**FY 2028**	**FY 2029**	**FY 2030**	**FY 2031**	**FY 2032**	**FY 2033**	**10-Year Total**
Discretionary*	$0.000	$0.000	$0.000	$0.000	$0.000	$0.000	$0.000	$0.000	$0.000	$0.000	$0.000
Mandatory	$1.164	$2.293	$3.365	$4.417	$5.363	$6.149	$6.759	$7.264	$7.701	$8.061	$52.536
Total	$1.164	$2.293	$3.365	$4.417	$5.363	$6.149	$6.759	$7.264	$7.701	$8.061	$52.536

*Discretionary costs do not increase. As an offset each fiscal year, the Department of Defense (DOD) uses funding from within the civilian pay accounts for authorized Voluntary Separation Incentive Pays (VSIPs). The VSIP resource use of civilian pay offsets, by each DOD Component is detailed in the additional tables.

Cost Methodology: DoD anticipates continued use of VSIP in the foreseeable future as the need for reshaping the workforce continues. VSIP is used to encourage voluntary separations that mitigate adverse effects on the civilian workforce and are less costly to the Department than involuntary reductions via RIF. The resource requirements listed reflect the total cost of VSIPs over the ten-year timeframe, taking into account the number of employees who have historically participated in VSIP. It assumes a straight-line of $15,000 more per incentive, since historically 99 percent of the incentives approved were at the maximum amount of $25,000. This extra expenditure will be absorbed by reducing the costs associated with RIFs, including severance pay, unemployment compensation, continuation of benefits, transition assistance, permanent change of station costs, and various administrative costs.

Changes to Existing Law: This proposal would amend section 9902(f)(5)(A)(ii) of title 5, United States Code, as follows:

§ 9902. Department of Defense personnel authorities

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(f) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) shall not be included in that number.

(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

(3) For purposes of this section, the term "employee" means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

(5)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c), if the employee were entitled to payment under such section; or

(ii) ~~25,000~~ an amount determined by the Secretary, not to exceed $40,000.

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–226; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the

United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

SEC. ___. WORKFORCE ISSUES FOR MILITARY REALIGNMENT IN THE PACIFIC.

Section 6 of the Joint Resolution titled "A Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America', and for other purposes", approved March 24, 1976 (Public Law 94–241; 90 Stat. 263; 48 U.S.C. 1806), is amended in subsection (b)(1)—

(1) in subparagraph (B), in the matter preceding clause (i)—

(A) by inserting "during the transition period, as described in subsection (a)(2)," after "admission"; and

(B) by striking ", before December 31, 2024,"; and

(2) by adding at the end the following new subparagraphs:

"(C) PORTABILITY.—A Federal contractor or subcontractor providing services or labor qualified under subparagraph (B) on a Federal contract or subcontract that has obtained approval of the contractor's or subcontractor's application for temporary labor certification, and on the basis of such approved certification has properly filed with U.S. Citizen and Immigration Services a petition to classify a worker or workers under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) and implementing regulations, may recruit and, upon filing of such petition, immediately employ persons on Guam or in the Commonwealth of the Northern Mariana Islands (hereafter in this paragraph referred to as "CNMI") who were validly employed in H-2B status with another employer on Guam or the CNMI at the time of filing of the petition, in accordance with subparagraph (B) on the

Federal contract or subcontract. The recruitment and subsequent employment by such a Federal contractor or subcontractor shall be subject to all existing laws and regulations, including subparagraph (B), this subparagraph, and subparagraphs (D) through (G) of this paragraph, except that such persons shall be allowed to begin employment with the Federal contractor or subcontractor prior to approval of the Federal contractor's or subcontractor's petition, and that such persons are not required to depart from Guam or the CNMI before commencing such employment. The beneficiaries of the new petition shall be authorized to continue to work with the Federal contractor or subcontractor until the earliest of—

"(i) the final date of employment stated in the Federal contractor's or subcontractor's new petition;

"(ii) the date the Federal contractor's or subcontractor's new petition is denied or revoked; or

"(iii) the date the Federal contractor's or subcontractor's new approved temporary labor certification is revoked.

Nothing in this subparagraph shall be interpreted to prohibit, or otherwise restrict the ability of, an alien who obtains admission as an H-2B nonimmigrant under subparagraph (B) from applying for, and if determined by the Department of Homeland Security to be eligible under existing law, being admitted to any other part of the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(38)).

"(D) EMPLOYERS OF H-2B WORKERS.—An employer who employs an alien worker described in subparagraph (A) and a prospective employer who applies for temporary labor certification for an alien worker described in subparagraph (A) shall—

"(i) provide annual training to all employees of the employer and employees of any subcontractors on human trafficking and applicable U.S. law through the Secretary of Labor, the Guam Department of Labor, or a third party training provider approved by the Secretary of Labor;

"(ii) remain neutral with regard to all employees' choice to form or join a union;

"(iii) make available safe and sanitary housing, which shall, at a minimum, meet Occupational Safety and Health Administration Standards for Temporary Labor Camps or Department of Labor Farmworker housing standards, and such housing—

"(I) shall be made available to all workers, including United States workers, at no cost to the worker;

"(II) shall, at employer expense, be inspected by the Secretary of Labor, the Guam Department of Labor, or a third party inspector approved by the Secretary of Labor prior to occupation and at least once every six months during occupancy;

"(iv) provide training, at employer expense, through the Secretary of Labor, the Guam Department of Labor, or a third party training provider approved by the Secretary of Labor, to all employees of the

employer and employees of any subcontractors on labor and employment rights during the first full week after commencement of employment or within one week of contract execution, and at least once every six months during employment;

"(v) provide to all employees—

"(I) at least one one-half hour unpaid meal break per workday;

"(II) at least two paid 10-minute rest breaks per eight-hour workday; and

"(III) at least one additional paid 10- minute rest break for each hour beyond eight in a workday;

"(vi) provide to all employees—

"(I) not less than seven paid sick days per year;

"(II) not less than four additional paid sick leave hours (per dose) to receive a COVID-19 vaccine if it is not made available on the jobsite or at the site of employee-provided housing without charge to leave; and

"(III) Not less than 20 additional paid sick leave hours (per dose) to recover from an adverse reaction to a COVID-19 vaccine;

"(vii) make available unpaid family and medical leave for up to 12 weeks for any employee who needs leave at any point during the employee's employment for qualifying reasons under the Family and Medical Leave Act under the condition that such unpaid leave shall be

available, entirely at the election of the employee, in full or in part as paid leave to the extent that—

"(I) the employee has available paid annual or sick leave; or

"(II) other employees voluntarily donate accrued annual or sick leave to the employee;

"(viii) create a formalized safety and health management system that complies with either ISO 45001 or ANSI Z10 and obtain certification of such system by a recognized third party certification entity. The Secretary of Labor shall issue a willful citation under the Occupational Safety and Health Act to any employer not in full compliance with the requirements of the employer's formalized system, but shall have the authority to issue variances or otherwise offer flexibility with regard to compliance;

"(ix) provide overtime pay for all workers at a rate of one-and-one-half times the employee's regular rate of pay for any hours beyond—

"(I) eight hours per day, and

"(II) 40 hours per week;

"(x) provide pay at an hourly rate to all employees at a rate not lower than the highest of—

"(I) the minimum wage applicable to Federal contractor employees;

"(II) an applicable Davis-Bacon Act prevailing wage rate in the locality,

"(III) the applicable statutory minimum wage of Guam or the CNMI; or

"(IV) an applicable Service Contract Act prevailing wage rate in the locality;

"(xi) provide physical pay stubs to all employees at the end of each pay period documenting all hours worked, rate of pay, itemized deductions from pay, and any other information deemed necessary by the Secretary of Labor; and

"(xii) if the employer had within the preceding five-year period any labor or employment violations of any law within the jurisdiction of the Secretary of Labor, National Labor Relations Board, or Equal Employment Opportunity Commission, enter into a compliance agreement, within 90 days after commencement of employment of an alien worker under subparagraph (A), with the Secretary of Labor to agree to resolve such violations to the satisfaction of the agency that issued the citation and to implement additional measures designed by the Secretary of Labor to prevent such violations in the future, with the employer being obligated to pay a fine to the Secretary of Labor of $1,000 per worker per each week past 90 days that such agreement is not entered into unless an extension is granted by the Secretary of Labor.

"(E) JOINT AND SEVERAL LIABILITY.—An employer of an alien worker described in subparagraph (A,) or a contractor whose project uses H2-B labor on or in connection with the project, whether as a prime contractor or subcontractor, shall be jointly and severally liable for any labor violation or other violation of law related to workers, including any recruitment violation or fraud, committed by a subcontractor or recruiter in connection with such employment or project. Joint and several liability under this subparagraph shall extend to any fraudulent or discriminatory practices by contractors, subcontractors, or recruiters, including the requirements and prohibitions of clauses (i) through (iv) of this subparagraph. The Secretary of Labor shall have the authority to investigate such conduct and issue citations requiring appropriate remedies and relief. Contractors, subcontractors, and recruiters—

"(i) shall not, in solicitation or recruitment, target or have a preference in favor of male workers or workers without spouses or children;

"(ii) shall not solicit or collect money from workers in exchange for offering them employment contracts or charge workers or jobseekers any recruitment fees, certification fees, or other related costs;

"(iii) shall not confiscate, destroy, or retain workers' identity documents or contracts; and

"(iv) shall provide workers with a work contract that contains all significant conditions of employment, as defined by the Secretary of

Labor, in a language they understand prior to the worker departing their country of origin for the United States.

"(F) INITIAL RECRUITMENT OF H-2B WORKERS.—A prospective employer who applies for an initial temporary labor certification for an alien worker described in subparagraph (A) shall, at least 60 days before the desired start date—

"(i) engage in efforts to recruit United States workers in accordance with all applicable Guam and CNMI statutes and regulations as well as all applicable Federal statutes and regulations, and shall, at a minimum—

"(I) submit a job order posting for each position or category of position to the State Workforce Agency and American Job Center on Guam (The Guam Department of Labor);

"(II) in addition to the postings described in subclause (I), provide written notification to the American Federation of Labor and Congress of Industrial Organizations office in Washington D.C., provided that this provision may be waived by the Secretary of Labor;

"(III) provide a copy of the job order posting to any former United States employee who left a similar position within the three proceeding years, including any employee laid off or furloughed, at their last known address; and

"(IV) post a copy of the job order in at least two conspicuous locations at the employer's place of business or job site, or on an internal or external website maintained by the employer and customarily used for notices to employees about the terms and conditions of employment;

"(ii) keep the job posted in Guam and the CNMI until 21 days before the desired start date;

"(iii) continue to accept referrals of United States workers until at least 21 days before the desired start date;

"(iv) interview any apparently qualified and available United States worker; and

"(v) maintain documentation of lawful, job-related reasons for any failure to offer the position to a qualified United States applicant on terms no less favorable than those advertised in the posting for at least three years.

"(G) RECRUITMENT FOR H-2B WORKER EXTENSIONS.—An employer who applies for renewal of a temporary labor certification for an alien worker described in subparagraph (A) shall—

"(i) no earlier than 120 days prior to expiration of the current temporary labor certification and no later than 50 days prior to such expiration, engage in efforts to recruit United States workers in accordance with all applicable requirements in subparagraph (F)(i) and maintain postings in Guam and CNMI for at least 21 days;

"(ii) continue to accept referrals of United States workers for at least 21 days after initial posting;

"(iii) interview any apparently qualified and available United States worker who applies; and

"(iv) maintain documentation of job-related reasons for any failure to offer the position to a United States applicant on terms no less favorable than those advertised in the posting for at least three years.".

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

Section-by-Section Analysis

Section 1045 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) (NDAA FY19) made various amendments to Section 6 of the Joint Resolution titled "A Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America', and for other purposes" (48 U.S.C. 1806) in order to address certain workforce issues in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) which had the potential to disrupt the implementation of the United States military realignment in the Pacific. Section 6(a) (48 U.S.C. 1806(a)) established a transition period effective November 27, 2009, in the CNMI during which the Secretary of Homeland Security would establish, administer, and enforce a transition program to regulate immigration to the CNMI. As part of the Northern Mariana Islands U.S. Workforce Act of 2018, Pub. L. 115-218, Congress extended the transition program's expiration date from December 31, 2019, to December 31, 2029. During this transition period, employers on Guam and CNMI are exempt from the national H-2B visa cap and other H caps until December 31, 2029.

Section 1045 of the NDAA FY19 also made amendments to the "H-2B Workers" provision that had been enacted in the National Defense Authorization Act for Fiscal Year 2018 which provided a limited exemption on Guam and the CNMI from the statutory requirement that H-2B nonimmigrant foreign workers may only be admitted to fill temporary employment positions for a period of up to 3 years. Under section 1045 of the NDAA FY19, this only applied to foreign nonimmigrant workers who were needed to perform service or labor on Guam or in the CNMI that was directly connected to, or associated with, the military realignment occurring on Guam and in the CNMI, and certain health care workers; this was expanded by the NDAA for FY 2021 (sec. 9502 of Pub. L. 116-283) to include employment adversely affected by the military realignment. Unlike the transition program and its associated exemption from the national H-2B visa cap which expire on December 31, 2029, this exemption from the temporary work requirement expires on December 31, 2024 (as amended by section 5901 of the James M.

Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263) (FY23 NDAA).

This proposal would provide conformity between the expiration dates of the transition program and the exemption from the temporary work requirement.

In addition, the proposed amendment would add new subparagraphs (C) through (G) to section 6(b)(1) of the Joint Resolution (48 U.S.C. 1806(a))

Subparagraph (C) would provide flexibility to DOD contractors, enabling them to hire H-2B workers already on Guam or CNMI, pending approval by U.S. Citizen and Immigration Services (USCIS).

Subparagraph (D) would impose new statutory requirements on employers of H-2B workers in Guam and the CNMI to improve working conditions, wages, and housing conditions and to reduce the likelihood of human trafficking and labor violations. Subparagraph (D) would also impose minimum wage requirements, similar to those already applied on federal relocation contracts, on all employers of H-2B aliens in Guam and the CNMI and would create new requirements for provision of paid sick leave and unpaid family medical leave to all workers.

Subparagraph (E) would address recruitment fraud by creating joint and several liability to hold prime contractors responsible for labor violations of their subcontractors and recruiters.

Subparagraph (F) would establish new statutory standards for initial recruitment of H-2B labor in Guam and the CNMI, similar to standards already applied for H-2B labor for military relocation projects.

Subparagraph (G) would impose recruitment standards for all Guam and H-2B extensions similar to those currently used for military relocation projects.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President's Budget.
However, workforce issues may be a cost factor for MILCON project estimates in Guam and the CNMI. The volume of Guam Marine Corps relocation-related construction is expected to gradually increase, creating a steep increase in the demand for construction workers through Fiscal Year (FY) 2028 with high demand continuing through at least 2029. This proposal may result in some cost creep; however, if this legislative proposal is not adopted contractors will face increased uncertainty regarding the availability of labor and there is likely to be a significant cost increase to the Department.

Changes to Existing Law: This proposal would make the following changes to section 6(b) of the Joint Resolution titled "A Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', and for other purposes" (Public Law 94–241; 90 Stat. 263; 48 U.S.C. 1806):

SEC. 6. IMMIGRATION AND TRANSITION.

(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS.—

(1) IN GENERAL.—

* * * * *

(B) H-2B WORKERS.—In the case of an alien described in subparagraph (A) who seeks admission during the transition period, as described in subsection (a)(2), under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)), the alien, if otherwise qualified, may~~, before December 31, 2024,~~ be admitted under such section, notwithstanding the requirement of such section that the service or labor be temporary, for a period of up to 3 years—

(i) to perform service or labor on Guam or in the Commonwealth pursuant to any agreement entered into by a prime contractor or subcontractor calling for services or labor required for performance of a contract or subcontract for construction, repairs, renovations, or facility services that is directly connected to, supporting, associated with, or adversely affected by the military realignment occurring on Guam and in the Commonwealth, with priority given to federally funded military projects; or

(ii) to perform service or labor as a health care worker (such as a nurse, physician assistant, or allied health professional) at a facility that jointly serves members of the Armed Forces, dependents, and civilians on Guam or in the Commonwealth, subject to the education, training, licensing, and other requirements of section 212(a)(5)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(C)), as applicable, except that this clause shall not be construed to include graduates of medical schools coming to Guam or the Commonwealth to perform service or labor as members of the medical profession.

(C) Portability.—A Federal contractor or subcontractor providing services or labor qualified under subparagraph (B) on a Federal contract or subcontract that has obtained approval of the contractor's or subcontractor's application for temporary labor certification, and on the basis of such approved certification has properly filed with U.S. Citizen and Immigration Services a petition to classify a worker or workers under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) and implementing regulations, may recruit and, upon filing of such petition, immediately employ persons on Guam or in the Commonwealth of the Northern Mariana Islands (hereafter in this paragraph referred to as "CNMI") who were validly employed in H-2B status with another employer on Guam or the CNMI at the time of filing of the petition, in accordance with subparagraph (B) on the Federal contract or subcontract. The recruitment and subsequent employment by such a Federal contractor or subcontractor shall be subject to all existing laws and regulations, including subparagraph (B), this subparagraph, and subparagraphs (D) through (G) of this paragraph, except that such persons shall be allowed to begin employment with the Federal contractor or subcontractor prior to approval of the Federal contractor's or subcontractor's petition, and that such persons are not required to depart from Guam or the CNMI before commencing such employment. The

beneficiaries of the new petition shall be authorized to continue to work with the Federal contractor or subcontractor until the earliest of—

(i) the final date of employment stated in the Federal contractor's or subcontractor's new petition;

(ii) the date the Federal contractor's or subcontractor's new petition is denied or revoked; or

(iii) the date the Federal contractor's or subcontractor's new approved temporary labor certification is revoked.

Nothing in this subparagraph shall be interpreted to prohibit, or otherwise restrict the ability of, an alien who obtains admission as an H-2B nonimmigrant under subparagraph (B) from applying for, and if determined by the Department of Homeland Security to be eligible under existing law, being admitted to any other part of the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(38)).

(D) Employers of H-2B Workers.—An employer who employs an alien worker described in subparagraph (A) and a prospective employer who applies for temporary labor certification for an alien worker described in subparagraph (A) shall—

(i) provide annual training to all employees of the employer and employees of any subcontractors on human trafficking and applicable U.S. law through the Secretary of Labor, the Guam Department of Labor, or a third party training provider approved by the Secretary of Labor;

(ii) remain neutral with regard to all employees' choice to form or join a union;

(iii) make available safe and sanitary housing, which shall, at a minimum, meet Occupational Safety and Health Administration Standards for Temporary Labor Camps or Department of Labor Farmworker housing standards, and such housing—

(I) shall be made available to all workers, including United States workers, at no cost to the worker;

(II) shall, at employer expense, be inspected by the Secretary of Labor, the Guam Department of Labor, or a third party inspector approved by the Secretary of Labor prior to occupation and at least once every six months during occupancy;

(iv) provide training, at employer expense, through the Secretary of Labor, the Guam Department of Labor, or a third party training provider approved by the Secretary of Labor, to all employees of the employer and employees of any subcontractors on labor and employment rights during the first full week after commencement of employment or within one week of contract execution, and at least once every six months during employment;

(v) provide to all employees—

(I) at least one one-half hour unpaid meal break per workday;

(II) at least two paid 10-minute rest breaks per eight-hour workday; and

(III) at least one additional paid 10- minute rest break for each hour beyond eight in a workday;

(vi) provide to all employees—

(I) not less than seven paid sick days per year;

(II) not less than four additional paid sick leave hours (per dose) to receive a COVID-19 vaccine if it is not made available on the jobsite or at the site of employee-provided housing without charge to leave; and

(III) Not less than 20 additional paid sick leave hours (per dose) to recover from an adverse reaction to a COVID-19 vaccine;

(vii) make available unpaid family and medical leave for up to 12 weeks for any employee who needs leave at any point during the employee's employment for qualifying reasons under the Family and Medical Leave Act under the condition that such unpaid leave shall be available, entirely at the election of the employee, in full or in part as paid leave to the extent that—

(I) the employee has available paid annual or sick leave; or

(II) other employees voluntarily donate accrued annual or sick leave to the employee;

(viii) create a formalized safety and health management system that complies with either ISO 45001 or ANSI Z10 and obtain certification of such system by a recognized third party certification entity. The Secretary of Labor shall issue a willful citation under the Occupational Safety and Health Act to any employer not in full compliance with the requirements of the employer's formalized system, but shall have the authority to issue variances or otherwise offer flexibility with regard to compliance;

(ix) provide overtime pay for all workers at a rate of one-and-one-half times the employee's regular rate of pay for any hours beyond—

(I) eight hours per day, and

(II) 40 hours per week;

(x) provide pay at an hourly rate to all employees at a rate not lower than the highest of—

(I) the minimum wage applicable to Federal contractor employees;

_____

(II) an applicable Davis-Bacon Act prevailing wage rate in the locality,

(III) the applicable statutory minimum wage of Guam or the CNMI; or

(IV) an applicable Service Contract Act prevailing wage rate in the locality;

(xi) provide physical pay stubs to all employees at the end of each pay period documenting all hours worked, rate of pay, itemized deductions from pay, and any other information deemed necessary by the Secretary of Labor; and

(xii) if the employer had within the preceding five-year period any labor or employment violations of any law within the jurisdiction of the

Secretary of Labor, National Labor Relations Board, or Equal Employment Opportunity Commission, enter into a compliance agreement, within 90 days after commencement of employment of an alien worker under subparagraph (A), with the Secretary of Labor to agree to resolve such violations to the satisfaction of the agency that issued the citation and to implement additional measures designed by the Secretary of Labor to prevent such violations in the future, with the employer being obligated to pay a fine to the Secretary of Labor of $1,000 per worker per each week past 90 days that such agreement is not entered into unless an extension is granted by the Secretary of Labor.

(E) Joint and Several Liability.—An employer of an alien worker described in subparagraph (A,) or a contractor whose project uses H2-B labor on or in connection with the project, whether as a prime contractor or subcontractor, shall be jointly and severally liable for any labor violation or other violation of law related to workers, including any recruitment violation or fraud, committed by a subcontractor or recruiter in connection with such employment or project. Joint and several liability under this subparagraph shall extend to any fraudulent or discriminatory practices by contractors, subcontractors, or recruiters, including the requirements and prohibitions of clauses (i) through (iv) of this subparagraph. The Secretary of Labor shall have the authority to investigate such conduct and issue citations requiring appropriate remedies and relief. Contractors, subcontractors, and recruiters—

(i) shall not, in solicitation or recruitment, target or have a preference in favor of male workers or workers without spouses or children;

(ii) shall not solicit or collect money from workers in exchange for offering them employment contracts or charge workers or jobseekers any recruitment fees, certification fees, or other related costs;

(iii) shall not confiscate, destroy, or retain workers' identity documents or contracts; and

(iv) shall provide workers with a work contract that contains all significant conditions of employment, as defined by the Secretary of Labor, in a language they understand prior to the worker departing their country of origin for the United States.

(F) Initial Recruitment of H-2B Workers.—A prospective employer who applies for an initial temporary labor certification for an alien worker described in subparagraph (A) shall, at least 60 days before the desired start date—

(i) engage in efforts to recruit United States workers in accordance with all applicable Guam and CNMI statutes and regulations as well as all applicable Federal statutes and regulations, and shall, at a minimum—

(I) submit a job order posting for each position or category of position to the State Workforce Agency and American Job Center on Guam (The Guam Department of Labor);

(II) in addition to the postings described in subclause (I), provide written notification to the American Federation of Labor and Congress of Industrial Organizations office in Washington D.C., provided that this provision may be waived by the Secretary of Labor;

(III) provide a copy of the job order posting to any former United States employee who left a similar position within the three proceeding years, including any employee laid off or furloughed, at their last known address; and

(IV) post a copy of the job order in at least two conspicuous locations at the employer's place of business or job site, or on an internal or external website maintained by the employer and customarily used for notices to employees about the terms and conditions of employment;

(ii) keep the job posted in Guam and the CNMI until 21 days before the desired start date;

(iii) continue to accept referrals of United States workers until at least 21 days before the desired start date;

(iv) interview any apparently qualified and available United States worker; and

(v) maintain documentation of lawful, job-related reasons for any failure to offer the position to a qualified United States applicant on terms no less favorable than those advertised in the posting for at least three years.

(G) Recruitment For H-2B Worker Extensions.—An employer who applies for renewal of a temporary labor certification for an alien worker described in subparagraph (A) shall—

(i) no earlier than 120 days prior to expiration of the current temporary labor certification and no later than 50 days prior to such expiration, engage in efforts to recruit United States workers in accordance with all applicable requirements in subparagraph (F)(i) and maintain postings in Guam and CNMI for at least 21 days;

(ii) continue to accept referrals of United States workers for at least 21 days after initial posting;

(iii) interview any apparently qualified and available United States worker who applies; and

(iv) maintain documentation of job-related reasons for any failure to offer the position to a United States applicant on terms no less favorable than those advertised in the posting for at least three years.