

1 **SEC. ____ . ADVANCE PAYMENT AUTHORITIES FOR VIRTUAL COMPUTING**
2 **ENVIRONMENTS.**

3 Section 3324(d) of title 31, United States Code, is amended—

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

5 (2) in paragraph (2), by striking the period and inserting “; and”; and

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

7 “(3) amounts payable under a contract for services relating to accessing a virtual
8 computing environment for information technology, but only in the case of a contract
9 with a contract period that does not exceed one year.”.

[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 3324 of title 31, United States Code, to allow the Department of Defense and other U.S. Government contracting activities to procure services for “virtual computing environments” (commonly called "cloud hosting" and "cloud computing" services) in advance rather than paying for such services after they are provided. These services are integral to the success of the Department, which has become increasingly reliant on cloud computing but unable to take advantage of discounts for advance payment.

The risk of harm that the advance payment prohibition in section 3324(b) protects against is relatively low when it comes to recurring requirements for cloud computing. The primary purpose of section 3324 is to protect the Government against the risk of nonperformance--“to preclude the possibility of loss to the Government in the event a contractor - after receipt of payment should fail to perform his contract or refuse or fail to refund moneys advanced.” 25 Comp. Gen. 834, 835 (1946). Cloud computing vendors already must surmount substantial resource and technical requirements to compete for Government contracts for cloud computing. The competitive selection process to become a potential Government cloud service provider significantly reduces the risk that the advance payment prohibition seeks to prevent. Companies must undergo a rigorous evaluation process, which includes demonstrating their technical capabilities, financial stability, compliance with security requirements, and ability to meet performance standards. These steps ensure that only highly qualified and reliable companies are considered for contract awards. The substantial investments and commitments required to compete for these contracts further incentivize companies to perform as expected, making the risk of non-performance by the awarded contractor far less likely.

The Department procures cloud hosting and cloud computing services to support DoD by three primary models: Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS). Each model provides the user with services related to storing, sharing, and processing of data, whether it be in a private, public, community, or hybrid cloud environment. DoD and other U.S. Government contracting activities would be able to pass on substantial savings to U.S. Government customers if the U.S. Government could take advantage of discounts customarily available in the commercial sector.

Cloud hosting involves pooling computing resources from a network of virtual and physical servers, which allows for greater scalability and flexibility to quickly make changes while providing optimum cyber security defenses. In cloud hosting, a cloud provider is paid to host software applications and store data across a network of physical and virtual servers spanning diverse geographic locations.

Section 3324 does not allow for the payment in advance of the service rendered. This current prohibition impairs DoD's ability to contract for cloud computing and hosting services at significant cost savings when vendors offer substantial customary commercial discounts that require payment in advance of providing the service. Vendors bundle commercial software licenses and software support subscriptions with hosting services, which complicates the U.S. Government's ability to pay on delivery or in advance for licenses and subscriptions as presently occurs. Allowing cloud hosting and cloud computing services to be paid for in advance will promote further use of cloud hosting and cloud computing services across DoD that enable the processing and storing of data efficiency and allow in-depth analysis of such data in a more efficient fashion in direct support of the warfighter. This exception would also promote further competition between more and newer vendors in industry.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year 2027 President's Budget.

Changes to Existing Law: This proposal would amend section 3324 of title 31, United States Code, as follows:

§ 3324. Advances

(a) Except as provided in this section, a payment under a contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered.

(b) An advance of public money may be made only if it is authorized by—

(1) a specific appropriation or other law; or

(2) the President to be made to—

(A) a disbursing official if the President decides the advance is necessary to carry out—

(i) the duties of the official promptly and faithfully; and

(ii) an obligation of the Government; or

(B) an individual serving in the armed forces at a distant station if the President decides the advance is necessary to disburse regularly pay and allowances.

(c) Before the Secretary of the Treasury acts on a requisition for an advance, the Comptroller General shall act on the requisition under section 3522 of this title. The Comptroller General does not countersign a requisition for an advance.

(d) The head of an agency may pay in advance from appropriations available for the purpose—

(1) to the Secretary of the Army, charges for messages sent by the Secretary of the Army for the head of the agency, including charges for—

(A) payment of tolls of commercial carriers;

(B) leasing facilities for sending messages; and

(C) installing and maintaining facilities for sending messages; ~~and~~

(2) charges for a publication printed or recorded in any way for the auditory or visual use of the agency; and

(3) amounts payable under a contract for services relating to accessing a virtual computing environment for information technology, but only in the case of a contract with a contract period that does not exceed one year.

1 **SEC. ____ . AUTHORITY OF SPECIAL TRIAL COUNSEL TO ENTER INTO PRETRIAL**
2 **AGREEMENTS WITH RESPECT TO CERTAIN OFFENSES**
3 **OCCURRING BEFORE EFFECTIVE DATE OF MILITARY JUSTICE**
4 **REFORMS.**

5 Section 824a(c) of title 10, United States Code (article 24a(c) of the Uniform Code of
6 Military Justice), is amended—

7 (1) in paragraph (3)—

8 (A) in the matter preceding subparagraph (A), by striking “paragraph (5)”
9 and inserting “paragraphs (4) and (6)”; and

10 (B) in subparagraph (C), by inserting “or pretrial agreement” after “plea
11 agreement”;

12 (2) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6),
13 respectively; and

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

15 “(4) PRETRIAL AGREEMENTS.—If a special trial counsel exercises authority
16 pursuant to subsection (d) over an offense committed before January 1, 2019, the special
17 trial counsel may enter into a pretrial agreement with the accused in accordance with
18 regulations prescribed by the President. Upon acceptance of such an agreement by the
19 military judge of a general or special court-martial, the agreement shall bind the parties
20 and the convening authority.”.

[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 judge advocate detailed as a special trial counsel in accordance with section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice (UCMJ)), with authority to enter into a pretrial agreement with an accused for an offense that was allegedly committed before January 1, 2019, the effective date of the amendments made by the Military Justice Act of 2016 (division E of Public Law 114-328), and would thereby facilitate the efficient resolution of such cases by special trial counsel.

Statutory requirements for plea agreements under the UCMJ were codified in article 53a, UCMJ by section 5237 of the Military Justice Act of 2016. Before the enactment of article 53a, UCMJ, regulations prescribed by the President referred to such agreements between the convening authority and the accused as pretrial agreements. The authority to enter into pretrial agreements was based on the convening authority's ability to limit the sentence imposed in accordance with article 60, UCMJ.

Section 531 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Public Law 118-31) and section 562 of the Servicemember Quality of Life Improvement and NDAA for FY 2025 (Public Law 118-159) amended article 24a, UCMJ to provide special trial counsel the discretion to exercise authority over certain offenses allegedly committed before the effective dates specified in section 539C of the NDAA for FY 2022 (Public Law 117-81) and section 541 of the James M. Inhofe NDAA for FY 2023 (Public Law 117-263).

In cases in which a special trial counsel exercises authority, article 24a(c)(3), UCMJ provides special trial counsel exclusive authority to enter into a plea agreement. This proposal would provide special trial counsel authority to enter into a pretrial agreement with the accused for an offense allegedly committed before January 1, 2019, the effective date of the amendments made by the Military Justice Act of 2016.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget.

Changes to Existing Law: This proposal would amend section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice), as follows:

§ 824a. Art 24a. Special trial counsel

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

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

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

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

(ii) in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps; and

(2) in the case of a lead special trial counsel appointed pursuant to section 1044f(a)(2) of this title, is in a grade no lower than O-7.

(c) DUTIES AND AUTHORITIES.—

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

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

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

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

(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—Subject to ~~paragraph (5)~~ paragraphs (4) and (6), with respect to charges and specifications alleging any offense over which a special trial counsel exercises authority, a special trial counsel shall have exclusive authority to, in accordance with this chapter—

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

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

(C) enter into a plea agreement or pretrial agreement; and

(D) determine if an ordered rehearing is impracticable.

(4) PRETRIAL AGREEMENTS.—If a special trial counsel exercises authority pursuant to subsection (d) over an offense committed prior to January 1, 2019, the special trial counsel may enter into a pretrial agreement with the accused in accordance with regulations prescribed by the President. Upon acceptance of such agreement by the military judge of a general or special court-martial, the agreement shall bind the parties and the convening authority.

~~(4)(5)~~ BINDING DETERMINATION.—The determination of a special trial counsel to refer charges and specifications to a court-martial for trial shall be binding on any applicable convening authority for the referral of such charges and specifications.

~~(5)(6)~~ DEFERRAL TO COMMANDER OR CONVENING AUTHORITY.—If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense or, with respect to charges and specifications for such

offense preferred by a person other than a special trial counsel, elects not to refer such charges and specifications, a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such commander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.

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

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

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

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

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

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

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

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

(2) THE STANDALONE OFFENSE OF SEXUAL HARASSMENT.—A special trial counsel may, at the sole and exclusive discretion of the special trial counsel, exercise authority over the following offenses:

(A) The standalone offense of sexual harassment punishable under section 934 of this title (article 134) in each instance in which—

(i) the offense occurs after January 26, 2022, and on or before January 1, 2025; and

(ii) a formal complaint is made and substantiated in accordance with regulations prescribed by the Secretary concerned.

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

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

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

(3) EFFECT OF EXERCISE OF AUTHORITY.—

(A) TREATMENT AS COVERED OFFENSE.—If a special trial counsel exercises authority over an offense pursuant to paragraph (1) or (2), the offense over which the special trial counsel exercises authority shall be considered a covered offense for purposes of this chapter.

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

1 **SEC. ____ . AUTHORITY TO USE DEPARTMENT OF DEFENSE ISSUANCE IN PLACE**
2 **OF ARMY FIELD MANUAL FOR SPECIFIED PURPOSES.**

3 (a) APPLICABLE DEPARTMENT OF DEFENSE ISSUANCE DEFINED.—Paragraph (1) of section
4 1045(a) of the National Defense Authorization Act for Fiscal Year 2016 (42 U.S.C. 2000dd-2(a))
5 is amended to read as follows:

6 “(1) APPLICABLE DEPARTMENT OF DEFENSE ISSUANCE DEFINED.—In this
7 subsection, the term ‘applicable Department of Defense issuance’ means—

8 “(A) the Army Field Manual 2-22.3 entitled ‘Human Intelligence
9 Collector Operations’ in effect on November 25, 2015, or any successor Army
10 Field Manual; or

11 “(B) any Department of Defense directive, instruction, manual, or other
12 issuance intended to supersede that Army Field Manual with respect to the
13 specific interrogation techniques, procedures, approvals and limitations stated in
14 the Army Field Manual.”.

15 (b) INCORPORATION OF REFERENCES TO “APPLICABLE DEPARTMENT OF DEFENSE
16 ISSUANCE”.—

17 (1) Paragraphs (2) through (4) of such section are amended by striking “Army
18 Field Manual 2-22.3” each place it appears and inserting “applicable Department of
19 Defense issuance”.

20 (2) Paragraph (6)(A) of such section is amended—

21 (A) in clause (i), by striking “Army Field Manual 2-22.3” and all that
22 follows through “complies” and inserting “the applicable Department of Defense
23 issuance, and revise that issuance, as necessary to ensure that it complies”; and

1 (B) in clause (ii), by striking “Army Field Manual 2-22.3” and all that
2 follows through “adopted” and inserting “The applicable Department of Defense
3 issuance shall remain available to the public and any revisions that issuance
4 adopted”.

5 (c) INITIAL APPLICABLE DEPARTMENT OF DEFENSE ISSUANCE.—Paragraph (6) of such
6 section is further amended by striking subparagraph (B) and inserting the following new
7 subparagraph (B):

8 “(B) REQUIREMENT RELATING TO INITIAL SUCCESSOR DEPARTMENT OF
9 DEFENSE ISSUANCE.—If the Secretary of Defense issues a Department of Defense
10 directive, instruction, manual, or other issuance described in paragraph (1)(B), the
11 Secretary shall authorize revocation of the provisions of the Army Field Manual
12 that contains the specific interrogation techniques, procedures, approvals, and
13 limitations in effect at the time such Department of Defense issuance is issued.”.

14 (d) TECHNICAL AND CONFORMING AMENDMENTS.—Such section is further amended—

15 (1) in the subsection heading, by striking “ARMY FIELD MANUAL” and inserting
16 “APPLICABLE DEPARTMENT OF DEFENSE ISSUANCE”; and

17 (2) in paragraph (6)(A)(i), by striking “three years after the date of the enactment
18 of this Act” and inserting “November 25, 2018”.

Section-by-Section Analysis

In October 2019, the Secretary of Defense directed the Under Secretary of Defense for Intelligence and Security (USD(I&S)) to review Army Field Manual (FM) 2-22.3, as directed in section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (42 U.S.C. 2000dd-2)). The USD(I&S) convened a working group to review FM 2-22.3. The working group identified a need to consolidate all sections relevant to the conducting of interrogations into a single, authoritative issuance promulgated by a senior Department of Defense (DoD) official in lieu of a military department publication. Updating FM 2-22.3 with a DoD issuance, in lieu of an Army Field Manual, would be appropriate to ensure interrogation techniques, approaches, and

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

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

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year 2027 President’s Budget.

Changes to Existing Law: This proposal would amend section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (42 U.S.C. 2000dd-2) as follows:

SEC. 1045. LIMITATION ON INTERROGATION TECHNIQUES.

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

~~(1) ARMY FIELD MANUAL 2-22.3 APPLICABLE DEPARTMENT OF DEFENSE ISSUANCE DEFINED.—In this subsection, the term “Army Field Manual 2-22.3 applicable Department of Defense issuance” means—~~

~~(A) the Army Field Manual 2-22.3 entitled “Human Intelligence Collector Operations” in effect on the date of the enactment of this Act November 25, 2015, or any similar successor Army Field Manual; or~~

~~(B) any Department of Defense directive, instruction, manual, or other issuance intended to supersede that Army Field Manual with respect to the specific interrogation techniques, procedures, approvals, and limitations stated in the Army Field Manual.~~

~~(2) RESTRICTION.—~~

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

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

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

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

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

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

(6) UPDATE OF THE ARMY FIELD MANUAL—

(A) REQUIREMENT TO UPDATE.—

(i) IN GENERAL.—Not sooner than ~~three years after the date of the enactment of this Act~~ November 25, 2018, and once every three years thereafter, the Secretary of Defense, in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall complete a thorough review of ~~Army Field Manual 2-22.3~~ the applicable Department of Defense issuance, and revise ~~Army Field Manual 2-22.3~~ that issuance, as necessary to ensure that ~~Army Field Manual 2-22.3~~ it complies with the legal obligations of the United States and the practices for interrogation described therein do not involve the use or threat of force.

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

(B) REPORT ON BEST PRACTICES OF INTERROGATIONS.—

(i) REQUIREMENT FOR REPORT.—Not later than ~~120 days after the date of the enactment of this Act~~, the interagency body established pursuant to Executive Order 13491 (commonly known as the High Value Detainee Interrogation Group) shall submit to the Secretary of Defense, the Director of National Intelligence, the Attorney General, and other appropriate officials a report on best practices for interrogation that do not involve the use of force.

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

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

(B) REQUIREMENT RELATING TO INITIAL SUCCESSOR DEPARTMENT OF DEFENSE ISSUANCE.—If the Secretary of Defense issues a Department of Defense directive, instruction, manual, or other issuance described in paragraph (1)(B), the Secretary shall authorize revocation of the provisions of the Army Field Manual described in paragraph (1)(A) that contain the specific interrogation techniques, procedures, approvals, and limitations in effect at the time such Department of Defense issuance is issued.

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

1 **SEC. __. CLARIFICATION OF CERTAIN ELEMENTS OF DEPARTMENT OF**
2 **DEFENSE MENTOR-PROTÉGÉ PROGRAM.**

3 (a) CLARIFICATION OF LIMITATION ON PROTÉGÉ FIRMS PARTICIPATING IN CONCURRENT
4 MENTOR-PROTÉGÉ AGREEMENTS.—Subsection (c)(2) of section 4902 of title 10, United States
5 Code, is amended—

- 6 (1) by inserting “under subsection (e)” after “one agreement”; and
- 7 (2) by striking “during the 5-year period beginning on the date such concern
8 enters into the first such agreement” and inserting “after the completion of any previous
9 such agreement”.

10 (b) CLARIFICATION OF REQUIREMENT THAT MENTOR FIRMS MUST BE FOR-PROFIT
11 FIRMS.—Subsection (d)(1) of such section is amended—

- 12 (1) by striking “and” at the end of subparagraph (A);
- 13 (2) by redesignating subparagraph (B) as subparagraph (C); and
- 14 (3) by inserting after subparagraph (A) the following new subparagraph (B):
15 “(B) is an entity organized for profit, with a place of business located in
16 the United States and—
17 “(i) operates primarily within the United States, or
18 “(ii) makes a significant contribution to the United States economy
19 through payment of taxes or use of American products, materials, or labor;
20 and”.

21 (c) CLARIFICATION OF TERM OF PARTICIPATION AGREEMENT.—Subsection (e)(1)(B) of
22 such section is amended by inserting “for the agreement” after “A program participation term”.

23 (d) CLARIFICATION OF MATTERS RELATING TO REIMBURSEMENT OF MENTOR FIRMS.—

24 Subsection (e)(2) of such section is amended—

25 (1) by inserting “reimbursement through” after “may be”; and

26 (2) by inserting “intermediary,” after “cooperative agreement”.

[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 clarify the definitions and operation of the Department of Defense Mentor-Protégé Program, as authorized in section 4902 of title 10, United States Code.

Subsection (a) would amend Section 4902(c)(2) to clarify the eligibility of a firm to participate as a protégé firm in a Department of Defense (DoD) mentor-protégé agreement. Mentor-protégé programs for other agencies are authorized in section 45(d) of the Small Business Act (15 U.S.C. 657r(d)). The intent is for a protégé firm to be able participate in only one mentor-protégé agreement at a time under the (DoD) Mentor-Protégé Program, while not precluding concurrent participation in a mentor-protégé program with another agency.

Subsection (b) would amend Section 4902(d)(1) to clarify that for-profit firms are the only type of firms eligible to participate as mentor firms in the DoD Mentor-Protégé Program. This clarification codifies the historical practice of the program’s operation, throughout which the program has not had not-for-profits firms as mentor firms. The proposal also clarifies the required nexus of a mentor firm to the United States.

Subsection (c) would amend Section 4902(e)(1)(B) to clarify that mentor-protégé agreements have a program participation term not to exceed three years but can be extended up to two years with justification. Participation in the Mentor-Protégé Program, and thus reimbursement, is guided by the agreements. This modification aligns the statutory and regulatory language to make clear that the agreements are the means of calculating the duration of program participation. The regulatory language is found at [DFARS Appendix I-107](#).

Subsection (d) would amend Section 4902(e)(2) to clarify the manner of reimbursement of a mentor firm under DoD mentor-protégé agreements. Reimbursement under the Defense Mentor-Protégé Program is performed under the auspices of a contract, cooperative agreement, intermediary, or a partnership intermediary agreement. In the Defense program, the Mentor-Protégé Agreement or MPA itself is not necessarily in one of these formats.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal amends sections 4902 of title 10, United States Code, as follows:

§4902. Department of Defense Mentor-Protege Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to be known as the “Mentor-Protege Program”.

(b) PURPOSE.—***

* * * * *

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

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

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

(d) MENTOR FIRM ELIGIBILITY.—

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

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

(B) is an entity organized for profit, with a place of business located in the United States and—

(i) operates primarily within the United States, or

(ii) makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor; and

~~(B)~~ (C) demonstrates that it—

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

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

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

(I) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than \$25,000,000; or

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

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

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

(e) MENTOR-PROTEGE AGREEMENT.—(1) Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

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

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

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

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

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

(B) A program participation term for the agreement for any period of not more than three years, except that the term may be a period of up to five years if the

Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

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

(2) An agreement under this subsection may be reimbursed through a contract, cooperative agreement, intermediary, or a partnership intermediary agreement.

(f) ***

* * * * *

1 **SEC. ___. CLARIFICATION OF COURT OF CRIMINAL APPEALS REVIEW OF**
2 **SENTENCING.**

3 Section 866(e)(1) of title 10, United States Code (article 66(e)(1) of the Uniform Code of
4 Military Justice), is amended—

5 (1) by striking subparagraph (B) and inserting the following new subparagraph:

6 “(B) whether the portion of the sentence extending to confinement is
7 inappropriately severe, except that in the case of an offense for which the
8 President has established a sentencing parameter for such portion pursuant to
9 section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022
10 (10 U.S.C. 856 note), the Court may not consider such portion inappropriately
11 severe if such portion is at or below the upper range of such sentencing
12 parameter;” and

13 (2) in subparagraph (C), by striking “the sentence” and inserting “the portion of
14 the sentence extending to confinement”.

[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 866(e)(1) of title 10, United States Code (article 66(e)(1) of the Uniform Code of Military Justice (UCMJ)), to clarify that, when the accused is sentenced to confinement for a specification alleging a criteria offense or when the confinement portion of the sentence for a specification alleging a parameter offense exceeds the parameter range, a Court of Criminal Appeals (CCA) will engage in a sentence appropriateness analysis of only the portion of a court-martial sentence providing for confinement for such a specification or specifications. The CCA will review any other adjudged punishment—such as a punitive discharge, forfeitures of pay and allowances, and confinement for a specification alleging a parameter offense for which the adjudged confinement is within the parameter range—under the plainly unreasonable standard under article 66(e)(1)(D), UCMJ.

Article 66(e)(1), UCMJ was added as part of the significant reforms to the UCMJ enacted by the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81), which

established sentencing by military judges alone in all non-capital general and special court-martial cases and required the President to issue sentencing parameters and criteria applicable to sentences of confinement. This reform is necessary to resolve confusion arising from the current statutory language of article 66(e)(1)(B), UCMJ because the confinement and fine portions of a sentence are imposed based on each individual finding of guilty of a specification while all other portions of a sentence (such as punitive discharge, forfeitures, and reduction in grade) are imposed on a unitary basis considering all findings of guilty.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would make the following changes to section 866 of title 10, United States Code (article 66 of the Uniform Code of Military Justice):

§ 866. Art. 66. Courts of Criminal Appeals

(a) ***

* * * * *

(e) CONSIDERATION OF SENTENCE.—

(1) IN GENERAL.—In considering a sentence on appeal, other than as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

(A) whether the sentence violates the law;

(B) whether the portion of the sentence extending to confinement is inappropriately severe, except that in the case of an offense for which the President has established a sentencing parameter for such portion pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022 (10 U.S.C. 856 note), the Court may not consider such portion inappropriately severe if such portion is at or below the upper range of such sentencing parameter;—

~~(i) if the sentence is for an offense for which the President has not established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022; or~~

~~(ii) in the case of an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, if the sentence is above the upper range of such sentencing parameter;~~

(C) in the case of a sentence for an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, whether the portion of the sentence extending to confinement is a result of an incorrect application of the parameter;

(D) whether the sentence is plainly unreasonable; and

(E) in review of a sentence to death or to life in prison without eligibility for parole determined by the members in a capital case under section 853(c) of this title (article 53(c)), whether the sentence is otherwise appropriate, under rules prescribed by the President.

(2) RECORD ON APPEAL.—In an appeal under this subsection or section 856(d) of this title (article 56(d)), other than review under subsection (b)(2) of this section, the record on appeal shall consist of—

(A) any portion of the record in the case that is designated as pertinent by any party;

(B) the information submitted during the sentencing proceeding; and

(C) any information required by rule or order of the Court of Criminal Appeals.

* * * * *

1 **SEC. ____ . CONSOLIDATION AND MODIFICATION OF REPORTING**
2 **REQUIREMENTS FOR DEPARTMENT OF DEFENSE HUMANITARIAN**
3 **ASSISTANCE ACTIVITIES.**

4 (a) MODIFICATION OF SECURITY COOPERATION ANNUAL REPORT SUBMISSION DATE.—

5 Subsection (a) of section 386 of title 10, United States Code, is amended—

6 (1) by striking “Not later than March 31 of each year, the” and inserting “The”;

7 and

8 (2) by adding at the end the following new sentence: “The report shall be
9 submitted each year at the time the President submits to Congress the budget for the next
10 fiscal year under section 1105(a) of title 31.”.

11 (b) CONSOLIDATION INTO SECURITY COOPERATION ANNUAL REPORT.—Subsection (b) of
12 such section is amended—

13 (1) in paragraph (3), by adding at the end the following new subparagraph:

14 “(L) With respect to section 2557 of this title, the number of humanitarian
15 excess property projects that delivered property during the period of the report.”;

16 and

17 (2) in paragraph (4), by adding at the end the following new subparagraph:

18 “(J) With respect to each humanitarian excess property project under
19 section 2557 of this title that delivered property during the period of the report—

20 “(i) the approximate date of delivery;

21 “(ii) a description of the delivered property; and

22 “(iii) identification of the entity that received the property.”.

1 (c) REPEAL OF SEPARATE STATUS REPORT REQUIREMENT.—Section 2561 of title 10,
2 United States Code, is amended—
3 (1) in subsection (c)(1), by striking “subsection (g)” and inserting “subsection
4 (f)”;
5 (2) by striking subsection (d);
6 (3) by redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f),
7 respectively;
8 (4) in subsection (d), as so redesignated, by striking “subsection (g)” and inserting
9 “subsection (f)”;
10 (5) in subsection (f), as so redesignated, in the matter preceding paragraph (1), by
11 striking “subsections (c)(1), (d)(1), and (e)” and inserting “subsections (c)(1) and (d)”.

[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 improve the effectiveness of Department of Defense (DoD) reporting to Congress on humanitarian assistance activities by consolidating two overlapping statutory reporting requirements. Congress enacted reporting requirements for DoD humanitarian assistance (HA) in two sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023. This proposal would continue to provide Congress with meaningful visibility into DoD’s HA program, increase transparency, and provide timely and accurate data by retaining the reporting requirements in section 386 of title 10, United States Code, (Section 386) and eliminating the reporting requirements in section 2561 of title 10, United States Code (Section 2561).

Section 1053 of the NDAA for FY 2023 amended Section 2561 to require DoD to provide a report with the annual DoD budget submission that provides data for funds obligated to provide humanitarian assistance during the prior fiscal year, a comprehensive list of humanitarian assistance efforts being provided, a description of the humanitarian needs of the foreign partner, and how the assistance meets DoD and broader U.S. national security objectives. Prior to this amendment, the scope of the Section 2561 report was primarily focused on DoD transportation support of humanitarian assistance supplies and the transfer of excess DoD property for humanitarian assistance under section 2557 of title 10, United States Code.

Separately, section 1202 of the NDAA for FY 2023 amended Section 386 to require an annual report on 31 March of each year related to DoD security cooperation efforts which includes DoD humanitarian assistance provided under Section 2561. Regarding the humanitarian assistance related data elements, Section 386 requires the Department to provide a fiscal year report that includes:

- (1) the total planned execution cost of completing humanitarian assistance activities for the partner country that were approved in the fiscal year for the required report;
- (2) the total number of new humanitarian assistance projects funded by the Overseas Humanitarian Disaster and Civic Aid account that were approved during the period of the required report; and
- (3) the title of each HA project, a description of the assistance to be provided, and the anticipated cost to provide such assistance.

Pursuant to the current reporting requirements, Congress receives two separate reports on the HA program using different data elements.

The Section 2561 HA report provides fund obligation data while the Section 386 report provides the estimated cost data of all approved HA projects in a given fiscal year. An HA report which is driven by obligation data will result in an untimely report because financial obligation data is not readily available. The resulting Section 2561 report does not provide clear insight regarding DoD's current prioritization of resources for partners because most DoD HA projects typically execute over a period of years. Thus, a report driven by obligation data will produce a snapshot of ongoing HA projects from multiple fiscal years, but not a prioritized view of DoD's HA program.

The proposed amendments to the Section 386 report would provide a comprehensive description of DoD's approved HA efforts in a given fiscal year and align the submission of the report with the submission of the budget by the President. Since this report relies on readily accessible data and captures new efforts, the resulting report will provide meaningful insight regarding how the Department's prioritization of resources in any given fiscal year.

Overall, this proposal would increase congressional visibility into DoD's HA efforts while reducing the burden of developing a second report that includes less relevant data. Enacting this proposal would accelerate timely reporting by enabling the Department to provide accurate data that provides meaningful insight into the Department's humanitarian assistance as well as security cooperation objectives and prioritization.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget.

Changes to Existing Law: This proposal would amend sections 386 and 2561 of title 10, United States Code, as follows:

TITLE 10, UNITED STATES CODE

§386. Annual report

(a) ANNUAL REPORT REQUIRED.—~~Not later than March 31 of each year,~~ The Secretary of Defense shall submit to the appropriate congressional committees a report that sets forth, on a country-by-country basis, an overview of security cooperation activities carried out by the Department of Defense during the fiscal year in which such report is submitted, using the authorities specified in subsection (b). The report shall be submitted each year at the time the President submits to Congress the budget for the next fiscal year under section 1105(a) of title 31.

(b) ELEMENTS OF REPORT.—Each report required under subsection (a) shall include, with respect to each country and for the entirety of the period covered by such report, the following:

(1) A narrative summary that provides—

(A) a brief overview of the primary security cooperation objectives for the activities encompassed by the report; and

(B) a description of how such activities advance the theater security cooperation strategy of the relevant geographic combatant command.

(2) ****

(3) A table that includes aggregated totals for each of the following:

(A) Pursuant to section 311 of this title, the number of personnel from a partner country assigned to a Department of Defense organization.

(B) The number of new programs carried out during the period of the report that required notice under section 331 of this title.

(C) Pursuant to section 332(a) of this title, the number of Department of Defense personnel assigned as advisors to a ministry of defense.

(D) Pursuant to section 332(b) of this title, the number of activities conducted by the Department of Defense.

(E) The number of new programs carried out during the period of the report that required notice under section 333 of this title.

(F) With respect to section 335 of this title, the number of partner country officials who participated in training provided by the Government of Colombia that began during the period of the report.

(G) With respect to section 341 of this title, the number of Department of Defense bilateral state partnership program engagements with the partner country that began during the period of the report.

(H) With respect to section 342 of this title, the number of partner country officials who participated in regional center activity that began during the period of the report.

(I) Pursuant to the authorities under sections 343, 345, 348, 349, 350 and 352 of this title, the total number of partner country personnel who began training during the period of the report.

(J) Pursuant to section 347 of this title, the number of cadets from the partner country that were enrolled in the Service Academies during the period of the report.

(K) Pursuant to amounts made available to carry out section 2561 of this title, the number of new humanitarian assistance projects funded through the Overseas Humanitarian Disaster and Civic Aid account that were approved during the period of the required report.

(L) With respect to section 2557 of this title, the number of humanitarian excess property projects that delivered property during the period of the report.

(4) A table that includes the following:

(A) For each person from the partner country assigned to a Department of Defense organization pursuant to section 311 of this title—

(i) whether the person is a member of the armed forces or a civilian;

(ii) the rank of the person (if applicable); and

(iii) the component of the Department of Defense and location to which such person is assigned.

(B) With respect to each civilian employee of the Department of Defense or member of the armed forces that was assigned, pursuant to section 332(a) of this title, as an advisor to a ministry of defense during the period of the report, a description of the object of the Department of Defense for such support and the name of the ministry or regional organization to which the employee or member was assigned.

(C) With respect to each activity commenced under section 332(b) of this title during the period of the report-

(i) the name of the supported ministry or regional organization;

(ii) the component of the Department of Defense that conducted the activity;

(iii) the duration of the activity; and

(iv) a description of the objective of the activity.

(D) For each program that required notice to Congress under section 333 of this title during the period of the report-

(i) the units of the national security forces of the foreign country to which assistance was provided;

(ii) the type of operation capability assisted;

(iii) a description of the nature of the assistance being provided; and

(iv) the estimated cost included in the notice provided for such assistance.

(E) With respect to each Government of Colombia training activity which included Department of Defense funded participants under section 335 of this title that commenced during the period of the report-

(i) the units of the defense personnel of the friendly foreign country to which the Department of Defense funded assistance was provided;

(ii) the units of the Government of Colombia that conducted the training activity;

(iii) the duration of the training activity provided by the Government of Colombia; and

(iv) a description of the objective of the training activity provided by the Government of Colombia.

(F) With respect to each activity commenced under section 341 of this title during the period of the report—

(i) a description of the activity;

(ii) the duration of the activity;

(iii) the number of participating members of the National Guard;

and

(iv) the number of participating personnel of foreign country.

(G) With respect to each activity of a Regional Center for Security Studies commenced under section 342 of this title during the period of the report—

(i) a description of the activity;

(ii) the name of the Regional Center that sponsored the activity;

(iii) the location and duration of the training; and

(iv) the number of officials from the foreign country who participated the activity.

(H) With respect to each training event that commenced under section 343, 345, 348, 349, 350, or 352 of this title during the period of the report—

(i) a description of the training;

(ii) the location and duration of the training; and

(iii) the number of personnel of the foreign country trained.

(I) With respect to each new project approved under section 2561 of this title during the period of the report and funded through the Overseas Humanitarian Disaster and Civic Aid account—

(i) the title of the project;

(ii) a description of the assistance to be provided; and

(iii) the anticipated costs to provide such assistance.

(J) With respect to each humanitarian excess property project under section 2557 of this title that delivered property during the period of the report—

(i) the approximate date of delivery;

(ii) a description of the delivered property; and

(iii) identification of the entity that received the property.

§2561. Humanitarian assistance

(a) AUTHORIZED ASSISTANCE.—(1) To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for

humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

(2) The Secretary of Defense may use the authority provided by paragraph (1) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment, but only if other sources to provide such transportation are not readily available. The Secretary may require reimbursement for costs incurred by the Department of Defense to transport supplies under this paragraph.

(b) AVAILABILITY OF FUNDS.—To the extent provided in appropriation Acts, funds appropriated for humanitarian assistance for the purposes of this section shall remain available until expended.

(c) NOTICE BEFORE PROVISION OF ASSISTANCE.—

(1) If the Secretary of Defense uses the authority under subsection (a) to provide assistance for any program or activity in an amount in excess of \$5,000,000, the Secretary shall provide to the congressional committees specified in ~~subsection (g)~~ subsection (f) notice in writing of the use of such authority in accordance with paragraph (2). Notice under this subsection shall include an identification of each of the following:

(A) The amount, type, and purpose of assistance to be provided and the recipient of the assistance.

(B) The goals and objectives of the assistance.

(C) The number and role of any members of the Armed Forces involved in the provision of the assistance.

(D) Any other information the Secretary determines is relevant.

(2) Notice required under paragraph (1) shall be provided-

(A) before the provision of assistance under subsection (a) using funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance; or

(B) not later than 48 hours after the provision of such assistance, if the Secretary determines that extraordinary circumstances that affect the national security interests of the United States exist.

~~(d) STATUS REPORTS.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (g) an annual report on the provision of humanitarian assistance pursuant to this section for the prior fiscal year. The report shall be submitted each year at the time of the budget submission by the President for the next fiscal year.~~

~~(2) Each report required by paragraph (1) shall cover all provisions of law that authorize appropriations for humanitarian assistance to be available from the Department of Defense for the purposes of this section.~~

~~(3) Each report under this subsection shall set forth the following information regarding activities during the previous fiscal year:~~

~~(A) The total amount of funds obligated for humanitarian assistance under this section.~~

~~(B) A comprehensive list of humanitarian assistance efforts for which support was provided under this section, disaggregated by foreign partner country, amount obligated, and purpose specified in subsection (b).~~

~~(C) A description of the manner in which such efforts address—
(i) the humanitarian needs of the foreign partner country; and
(ii) Department of Defense objectives and broader United States national security objectives.~~

~~(D) A description of any transfer of nonlethal excess supplies of the Department of Defense made available for humanitarian relief purposes under section 2557 of this title, including, for each such transfer—
(i) the date of the transfer;
(ii) the entity to which the transfer is made; and
(iii) the quantity of items transferred.~~

(ed) REPORT REGARDING RELIEF FOR UNAUTHORIZED COUNTRIES.—In any case in which the Secretary of Defense provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law, the Secretary shall notify the congressional committees specified in ~~subsection (g)~~ subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the Secretary's intention to provide such transportation. The notification shall be submitted not less than 15 days before the commencement of such transportation.

(fe) DEFINITION.—In this section, the term "defense authorization Act" means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including authorizations of appropriations for the activities described in paragraph (7) of section 114(a) of this title.

~~(gf) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsections (c)(1), (d)(1), and (e) (c)(1) and (d) are the following:~~

- (1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.
- (2) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

1 **SEC. __. EXPANDED FUNDING SOURCES FOR PROVISION OF INSTALLATION-**
2 **SUPPORT SERVICES UNDER INTERGOVERNMENTAL SUPPORT**
3 **AGREEMENTS.**

4 Section 2679(c) of title 10, United States Code, is amended—

5 (1) by striking the first two sentences;

6 (2) by designating the third sentence as paragraph (3); and

7 (3) by inserting after “FUNDS.—” the following:

8 “(1) The Secretary concerned may use funds described in paragraph (2) to pay for
9 installation-support services under an agreement entered into under subsection (a) if, as
10 determined by the Secretary concerned, the payment for such services is consistent with the
11 purpose of the funds to be used.

12 “(2) The funds described in this paragraph are the following:

13 “(A) Operation and maintenance funds.

14 “(B) Working capital funds authorized under section 2208 of this title.

15 “(C) Nonappropriated funds.”.

Section-by-Section Analysis

This proposal would provide additional sources of funding for the provision of installation-support services under intergovernmental support agreements (IGSAs) to execute valid installation requirements. These requirements include:

(1) industrial base facility maintenance and repair activities (including activities funded from the Army Working Capital Fund (AWCF) and Transportation Working Capital Fund (TWCF); and

(2) quality of life morale, welfare, and recreation (MWR) nonappropriated fund programs (including mass transit, childcare, and hunting, fishing, and trapping programs).

Section 2679 of title 10, United States Code, limits IGSAs to funding from an annual appropriation designated for operation and maintenance (O&M), such as Operation and Maintenance, Army. However, many installation support services are funded with non-O&M funding sources, including the AWCF and TWCF. Installation MWR programs are often funded with nonappropriated funds. Installation requirements that are funded with non-O&M and

nonappropriated funding are ineligible to achieve efficiencies and cost savings available via IGSA's.

This proposal would allow military installation requirements funded by non-O&M and nonappropriated funding to be executed by local and State government entities via IGSA's, thereby realizing efficiencies in execution and cost savings. The Secretary concerned (or designee) would still need to determine that the payment of such installation support services matches the purpose of the selected type of fund, thereby ensuring that some connection exists between the identified funding sources and the type of service. This will ensure that some internal constraints are placed on the application of the new authority.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to section 2679 of title 10, United States Code:

§2679. Installation-support services: intergovernmental support agreements

(a) IN GENERAL.—(1) Notwithstanding any other provision of law governing the award of Federal Government contracts for goods and services, the Secretary concerned may enter into an intergovernmental support agreement, on a sole source basis, with a State, local, or tribal government to provide, receive, or share installation-support services if the Secretary determines that the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including by reducing costs.

(2) An intergovernmental support agreement under paragraph (1)—

(A) may be for a term not to exceed ten years; and

(B) may use, for installation-support services provided by a State, local, or tribal government, wage grades normally paid by that State, local, or tribal government.

(3) An intergovernmental support agreement under paragraph (1) may only be used when the Secretary concerned or the State, local, or tribal government, as the case may be, providing the installation-support services already provides such services for its own use.

(4) Any contract for the provision of installation-support services awarded by the Federal Government or a State, local, or tribal government pursuant to an intergovernmental support agreement provided in subsection (a) shall be awarded on a competitive basis.

(b) EFFECT ON FIRST RESPONDER ARRANGEMENTS.—The authority provided by this section and limitations on the use of that authority are not intended to revoke, preclude, or otherwise interfere with existing or proposed mutual-aid agreements relating to police or fire protection services or other similar first responder agreements or arrangements.

(c) AVAILABILITY OF FUNDS.—~~Funds available to the Secretary concerned for operation and maintenance may be used to pay for such installation support services. The costs of agreements under this section for any fiscal year may be paid using annual appropriations made available for that year.~~ (1) The Secretary concerned may use funds described in paragraph (2) to pay for installation-support services under an agreement entered into under subsection (a) if, as

determined by the Secretary concerned, the payment for such services is consistent with the purpose of the funds to be used.

(2) The funds described in this paragraph are the following:

(A) Operation and maintenance funds.

(B) Working capital funds authorized under section 2208 of this title.

(C) Nonappropriated funds.

(3) Funds received by the Secretary as reimbursement for providing installation-support services pursuant to such an agreement shall be credited to the appropriation or account charged with providing installation support.

(d) EFFECT ON OMB CIRCULAR A-76.—The Secretary concerned shall ensure that intergovernmental support agreements authorized by this section are not used to circumvent the requirements of Office of Management and Budget Circular A-76 regarding public-private competitions.

(e) PILOT PROGRAM FOR USE OF COST SAVINGS REALIZED.—(1) Each Secretary concerned shall conduct a pilot program under which the Secretary will make available to the commander of each military installation for which cost savings are realized as a result of an intergovernmental support agreement entered into under this section an amount equal to not less than 25 percent of the amount of such cost savings for that military installation for a fiscal year.

(2) Amounts made available to an installation commander under paragraph (1) shall be used solely to address sustainment restoration and modernization requirements that have been approved by the major subordinate command or equivalent component.

(3) With respect to each military installation for which amounts are made available to the installation commander under paragraph (1), the Secretary concerned shall certify, not less frequently than annually for each fiscal year of the pilot program, to the congressional defense committees the following:

(A) The name of the installation and the amount of the cost savings achieved at the installation.

(B) The source and type of intergovernmental support agreement that achieved the cost savings.

(C) The amount of the cost savings made available to the installation commander under paragraph (1).

(D) The sustainment restoration and modernization purposes for which the amount made available under paragraph (1) were used.

(4) The authority to conduct the pilot program shall expire September 30, 2030.

(f) DEFINITIONS.—In this section:

(1) The term “installation-support services” means those services, supplies, resources, and support typically provided by a local government for its own needs and without regard to whether such services, supplies, resources, and support are provided to its residents generally, except that the term does not include security guard or fire-fighting functions. The term does include disposal.

(2) The term “local government” includes a county, parish, municipality, city, town, township, local public authority, school district, special district, and any agency or instrumentality of a local government.

(3) The term “State” includes the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, the State of Yap of the Federated States of Micronesia, and the Republic of Palau, and any agency or instrumentality of a State.

(4) The term “intergovernmental support agreement” means a legal instrument reflecting a relationship between the Secretary concerned and a State, local, or tribal government that contains such terms and conditions as the Secretary concerned considers appropriate for the purposes of this section and necessary to protect the interests of the United States.

1 **SEC. ____ . EXTENSION OF TIME PERIOD FOR FINAL DECISIONS FOR CLAIMS**
2 **FOR \$100,000 OR LESS, AND ESTABLISHMENT OF TIME LIMITS FOR**
3 **APPEALS OF CLAIMS THAT ARE ADJUDGED DEEMED DENIALS.**

4 (a) TIME FOR ISSUANCE OF DECISION.—

5 (1) EXTENSION OF TIME FOR CLAIMS FOR \$100,000 OR LESS.—Paragraph (1) of
6 section 7103(f) of title 41, United States Code, is amended by adding at the end the
7 following new sentence: “The contracting officer may extend the period for the decision
8 for one additional 60-day period if the contracting officer notifies the contractor of the
9 extension within the original 60-day period.”.

10 (2) TIME LIMITS FOR APPEALS OF DEEMED DENIALS.—Paragraph (5) of such section
11 is amended by inserting after the first sentence the following new sentence: “The time
12 limits for appeal of the deemed denial starts at the end of the required time period for the
13 issuance of the decision under this section including any extensions issued by the
14 contracting officer.”.

15 (b) CONTRACTOR'S RIGHT OF APPEAL FROM DECISION BY CONTRACTING OFFICER.—

16 (1) TIME FOR APPEAL TO AGENCY BOARD.—Subsection (a) of section 7104 of such
17 title is amended by inserting after “section 7103 of this title” the following: “, or within
18 90 days from the date a decision was due but not received under that section”.

19 (2) TIME FOR FILING.—Subsection (b)(3) of such section is amended by inserting
20 after “of this title” the following: “or within 12 months from the date a decision was due
21 but not received under section 7103 of this title”.

**[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 41 U.S.C. 7103 to grant contracting officers an additional 60 days to review a claim for \$100,000 or less. This proposal would also amend 41 U.S.C. 7104 to clarify that deemed denials have the same appeal rights as regular claims, with the appeal period beginning at the end of the contracting officer's decision timeframe.

Currently, 41 U.S.C. § 7103 allows contracting officers to extend the review period for claims exceeding \$100,000 by notifying the contractor of the anticipated decision date. This flexibility accommodates document discovery challenges or complex contractual issues requiring additional research. However, claims under \$100,000 have a fixed 60-day review period, even if similar complexities exist. This proposal addresses this discrepancy by allowing contracting officers to request a 60-day extension for these smaller claims.

Recent case law has created ambiguity regarding appeal timelines for deemed denials. While untimely appeals for regular claims (outside the 90-day limit for agency board appeals and the 12-month limit for Court of Federal Claims appeals) are typically disallowed, the government has successfully used the legal concept of laches to deny untimely deemed denial claims based on unreasonable delays. However, a recent Supreme Court decision has challenged the reliance on laches, leading courts and boards to allow deemed denial claims filed years prior due to the absence of a final contracting officer decision to trigger the appeal clock. This creates uncertainty in contract finality, allowing contractors to appeal aged contracts solely based on the contracting officer's inaction. This proposal addresses this gap by starting the appeal clock at the end of the statutory deadline for the contracting officer's decision, providing greater certainty and finality for contract claims.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget.

Changes to Existing Law: This proposal would amend sections 7103 and 7104 of title 41, United States Code, as follows:

§7103. Decision by contracting officer

(a) Claims Generally.-

(1) Submission of contractor's claims to contracting officer.- Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) Contractor's claims in writing.-Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

(3) Contracting officer to decide federal government's claims.-Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.

(4) Time for submitting claims.-

(A) In general.-Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

(B) Exception.-Subparagraph (A) of this paragraph does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(5) Applicability.-The authority of this subsection and subsections (c)(1), (d), and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

(b) Certification of Claims.-***

(c) Fraudulent Claims.-***

(d) Issuance of Decision.-***

(e) Contents of Decision.-***

(f) TIME FOR ISSUANCE OF DECISION.—

(1) CLAIM OF \$100,000 OR LESS.-A contracting officer shall issue a decision on any submitted claim of \$100,000 or less within 60 days from the contracting officer's receipt of a written request from the contractor that a decision be rendered within that period. The contracting officer may extend the period for the decision for one additional 60-day period if the contracting officer notifies the contractor of the extension within the original 60-day period.

(2) CLAIM OF MORE THAN \$100,000.-A contracting officer shall, within 60 days of receipt of a submitted certified claim over \$100,000-

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) GENERAL REQUIREMENT OF REASONABLENESS.-The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations prescribed by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor.

(4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED TIME PERIOD.-A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.-Failure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim as otherwise provided in this chapter. The time limits for appeal of the deemed denial starts at the end of the required time period for the issuance of the decision under this section including any extensions issued by the contracting officer. However, the tribunal concerned may, at its option, stay the proceedings of the appeal or action to obtain a decision by the contracting officer.

(g) FINALITY OF DECISION UNLESS APPEALED.-***

(h) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.-***

§7104. Contractor's right of appeal from decision by contracting officer

(a) APPEAL TO AGENCY BOARD.— A contractor, within 90 days from the date of receipt of a contracting officer's decision under section 7103 of this title, or within 90 days from the date a decision was due but not received under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.

(b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

(1) IN GENERAL.—Except as provided in paragraph (2), and in lieu of appealing the decision of a contracting officer under section 7103 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) TENNESSEE VALLEY AUTHORITY.—In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a district court of the United States pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) TIME FOR FILING.—A contractor shall file any action under paragraph (1) or (2) within 12 months from the date of receipt of a contracting officer's decision under section 7103 of this title or within 12 months from the date a decision was due but not received under section 7103 of this title.

(4) DE NOVO.—An action under paragraph (1) or (2) shall proceed de novo in accordance with the rules of the appropriate court.

1 **SEC. ____ . PORTABILITY OF GUARDIANSHIP APPOINTMENTS FOR**
2 **SERVICEMEMBERS AND THEIR SPOUSES UPON MILITARY**
3 **TRANSFER TO ANOTHER STATE.**

4 The Servicemembers Civil Relief Act (50 U.S.C. 3901 et. seq.) is amended by inserting
5 after section 208 (50 U.S.C. 3938) the following new section:

6 **“SEC. 209. PORTABILITY OF GUARDIANSHIP APPOINTMENTS FOR**
7 **SERVICEMEMBERS AND THEIR SPOUSES.**

8 “(a) TRANSFER OF GUARDIANSHIP UPON RELOCATION DUE TO MILITARY ORDERS.—If a
9 State appoints a servicemember or the spouse of a servicemember as the guardian of a minor
10 child or an adult adjudicated to be in need of a guardian and the appointed servicemember or
11 spouse relocates, because of military orders of the servicemember, to a State other than that
12 which made the appointment, the guardianship shall be transferred to, and the order granting the
13 guardianship shall be accepted by, the State to which the servicemember or spouse relocates, and
14 the State that issued the guardianship appointment shall allow the transfer.

15 “(b) PROHIBITION OF COSTS TO THE GUARDIAN UPON TRANSFER OF GUARDIANSHIP.—
16 When a servicemember or the spouse of a servicemember seeks to transfer a guardianship under
17 subsection (a), neither the State that issued the guardianship appointment nor the State to which
18 the appointment is transferred may impose any cost, fee, or other monetary expense incident to
19 the transfer.

20 “(c) DEFINITION.—In this section, the term ‘military orders’ has the meaning given that
21 term in section 305(i)(1).”.

Section-by-Section Analysis

This proposal would amend the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 3901 et. seq.) to remove barriers that military families with disability-related needs often

experience when transferring a guardianship to a new State due to military orders. This proposal requires that the substantive findings and adjudication of the court ordering the appointment of a guardian be recognized and adopted by the new jurisdiction without requiring servicemembers and spouses to seek guardianship in the new jurisdiction or face the financial burden of seeking to transfer guardianship from one jurisdiction to another because of relocation to a new duty station pursuant to military orders. Servicemembers and spouses caring for a family member who is unable to care for themselves independently would greatly benefit from this legislative proposal, particularly those servicemembers and spouses who are guardians of adult children with disability-related needs.

Guardianship requirements are State specific, thus requiring servicemembers and/or their spouses to seek guardianship in each jurisdiction to which they relocate because of military service after the initial guardianship is granted. Although the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) provides a simplified and streamlined process for making guardianship transfers to another state, it does not restrict the ability of the gaining state to request a hearing when a transfer is requested and the States of Texas, Michigan, and Florida have not enacted the legislation. As such, military families with guardianship responsibilities face legal and bureaucratic hurdles when attempting to transfer guardianship between States. Importantly, servicemembers and their spouses may incur additional costs and fees to transfer guardianship to a new State depending on the circumstances and complexity of the situation. The cost of retaining an attorney and petitioning a court to establish guardianship can cost up to \$10,000.

An SCRA amendment allowing for the portability of State guardianship orders would ease the process of transferring guardianships between States, particularly to States that have not enacted the UAGPPJA, and decreases the financial burden on servicemembers and spouses when moving to a new State due to military orders.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget.

Changes to Existing Law: This proposal would add a new section to the Servicemembers Civil Relief Act (50 U.S.C. 3901 et. seq.) as set forth in the legislative text above.

1 **SEC. ___. IMPROVEMENTS RELATING TO RECRUITING, RETENTION, AND**
2 **MANAGEMENT OF SENIOR RESERVE OFFICERS’ TRAINING CORPS**
3 **CADETS AND MIDSHIPMEN.**

4 (a) UPDATE TO BONUS AUTHORITY FOR SENIOR RESERVE OFFICERS’ TRAINING CORPS

5 CADETS AND MIDSHIPMEN.—Section 336 of title 37, United States Code, is amended—

6 (1) in subsection (b), by striking “\$5,000” and inserting “\$15,000”; and

7 (2) in subsection (c)(1), by striking “field training or a practice cruise under
8 section 2104(b)(6)(A)(ii) of title 10” and inserting “training requirements prescribed
9 by the Secretary concerned”.

10 (b) MODIFICATION OF AUTHORITY TO CONTRACT NON-SCHOLARSHIP CADETS AND

11 MIDSHIPMEN.—Section 2103a(a) of title 10, United States Code is amended in the matter

12 preceding paragraph (1) by striking “who has completed successfully the first year of a four-year

13 Senior Reserve Officers' Training Corps course and”.

Section-by-Section Analysis

This proposal would increase the maximum bonus amount for Senior Reserve Officer Training Corps (SROTC) cadets and midshipmen under section 336 of title 37, United States Code, from \$5,000 to \$15,000. It would also modify the requirements for receipt of such bonuses to provide the Secretary concerned with more discretion to prescribe the necessary training requirements. Additionally, this proposal would allow the military departments to contract non-scholarship, SROTC cadets and midshipmen earlier in their SROTC careers to increase recruitment and retention of non-scholarship cadets/midshipmen.

Bonus Increase.

The services have found that providing bonuses is an effective use of resources to contract SROTC cadets and midshipmen. Bonuses effectively incentivize non-scholarship participation in SROTC to meet the recruiting requirements for junior officers. Increasing the value of the contracting bonus will provide the military departments with the necessary flexibility to adjust to market demand, maximize the use of limited resources, and meet the SROTC accessions mission.

The current \$5,000 bonus cap has not been adjusted since 2013. An increase of the cap to \$15,000 would account for inflation in the intervening years and provide the Department of

Defense with additional flexibility to provide a more lucrative bonus when dictated by economic conditions (the Army anticipates that most contracting bonuses will be around \$10,000 based on current recruiting trends). Additionally, providing the Service Secretaries with more discretion with respect to the training requirements will allow the services to offer contract bonuses to cadet and midshipmen at different points in their SROTC advancement.

Earlier Contracting for Non-scholarship, SROTC Cadets and Midshipmen.

This proposal would also allow the military departments to contract non-scholarship, SROTC cadets and midshipmen, particularly Simultaneous Member Program cadets/midshipmen, earlier in their SROTC careers. By contracting these cadets/midshipmen earlier in the process, the military departments would increase recruitment and retention of non-scholarship cadets/midshipmen through commissioning by providing access to any available university and/or State incentives as well as access to the SROTC stipend.

Under current law, section 2103a of title 10, United States Code, requires a member of an SROTC program, who is not on an SROTC scholarship, to successfully complete the first full year of a four-year SROTC course before contracting. If adopted, this proposed change would allow cadets/midshipmen to enter into a contract to commission as military officers earlier and receive the corresponding stipend as freshmen, rather than waiting until they are academic sophomores. Contracting cadets/midshipmen a year earlier in the process increases the likelihood that they will be retained through commissioning.¹ Additionally, it improves recruiting by offering students access to incentives and the SROTC stipend almost immediately upon attending college. Within the Army alone, analysis indicates that approximately 900 non-scholarship cadets contracted in their sophomore year. The vast majority of those cadets began participating in SROTC activities during their freshman year, which seems to indicate that they would have contracted earlier if they had an option to do so.

If adopted, these changes would materially enhance the effectiveness of the SROTC contracting bonus authority, thereby improving recruitment and retention of non-scholarship cadets and midshipmen, as well as enable the military departments to better compete with outside employers by incentivizing students to contract earlier in their decision cycle.

Resource Information: The tables below reflect the best estimate of resources requested within the Fiscal Year (FY) 2027 President’s Budget request that are impacted by this proposal.

| BONUS AUTHORITY RESOURCE IMPACT (\$MILLIONS) | | | | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|--------------------------|------------------------|----------------|---|
| Program | FY 2027 | FY 2028 | FY 2029 | FY 2030 | FY 2031 | Appropriation | Budget Activity | BLI/SAG | Program Element (for all RDT&E programs) |
| Army | 3.00 | 3.00 | 3.00 | 3.00 | 3.00 | Military Personnel, Army | 6 | 6W5 | N/A |

¹ A survey in the fall of 2024 indicated that 23.7 percent of surveyed non-scholarship cadets enrolled in ROTC for the financial benefits.

| | | | | | | | | | |
|---|------|------|------|------|------|--------------------------|---|-----|-----|
| Total | 3.00 | 3.00 | 3.00 | 3.00 | 3.00 | | | | |
| Contracting Bonuses Programmed in POM 27-31 | 3.00 | 3.00 | 3.00 | 3.00 | 3.00 | Military Personnel, Army | 6 | 6W5 | N/A |
| Overall Resource Impact | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | | | | |

The resource impact is based on 300 cadets annually receiving a \$10,000 contracting bonus. Services could increase or decrease the bonus amount given to each cadet based on rising costs of higher education, the amount needed to make a SROTC non-scholarship contract a competitive option for a specific cadets, and available funding during the year of execution for bonuses. Army SROTC will use existing money programmed for contracting bonuses, so the overall resource impact to the Army will be \$0.

| CONTRACTING AUTHORITY RESOURCE IMPACT (\$MILLIONS) | | | | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|--------------------------|------------------------|----------------|---|
| Program | FY 2027 | FY 2028 | FY 2029 | FY 2030 | FY 2031 | Appropriation | Budget Activity | BLI/SAG | Program Element (for all RDT&E programs) |
| Army | 2.70 | 2.70 | 2.70 | 2.70 | 2.70 | Military Personnel, Army | 6 | 6W5 | N/A |
| Total | 2.70 | 2.70 | 2.70 | 2.70 | 2.70 | | | | |

The resource impact is based on the stipend paid to contracted cadets. The Army expects to contract 750 non-scholarship freshman cadets annually. Contracted cadets receive a \$420 monthly stipend. On average, cadets receive the stipend for 8.56 months of the academic year. The \$420 monthly cadet stipend is a consistent rate that is not adjusted for inflation.

Changes to Existing Law: This proposal would amend section 336 of title 37, United States Code, and section 2103a of title 10, United States Code, as follows:

TITLE 37, UNITED STATES CODE

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

(a) **CONTRACTING BONUS AUTHORIZED.**—The Secretary concerned may pay a bonus under this section to a cadet or midshipman enrolled in the Senior Reserve Officers' Training Corps who executes a written agreement described in subsection (c).

(b) AMOUNT OF BONUS.—The amount of a bonus under subsection (a) may not exceed ~~\$5,000~~ \$15,000.

(c) AGREEMENT.—A written agreement referred to in subsection (a) is a written agreement by the cadet or midshipman-

- (1) to complete ~~field training or a practice cruise under section 2104(b)(6)(A)(ii) of title 10~~ training requirements prescribed by the Secretary concerned;
- (2) to complete advanced training under chapter 103 of title 10;
- (3) to accept a commission or appointment as an officer of the armed forces; and
- (4) to serve on active duty.

(d) PAYMENT METHOD.—***

TITLE 10, UNITED STATES CODE

§2103a. Students not eligible for advanced training: commitment to military service

(a) AUTHORITY.—A member of the program ~~who has completed successfully the first year of a four year Senior Reserve Officers' Training Corps course and~~ who is not eligible for advanced training under section 2104 of this title and is not a cadet or midshipman appointed under section 2107 of this title may—

- (1) contract with the Secretary of the military department concerned, or the Secretary's designated representative, to serve for the period required by the program; and
- (2) agree in writing to accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, and to serve in the armed forces for the period prescribed by the Secretary.

(b) ELIGIBILITY REQUIREMENTS.—A member of the program may enter into a contract and agreement under this section (and receive a subsistence allowance under section 209(c) of title 37) only if the person—

- (1) is a citizen of the United States;
- (2) enlists in an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary; and
- (3) executes a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

(c) PARENTAL CONSENT FOR MINORS.—A member of the program who is a minor may enter into a contract under subsection (a)(1) only with the consent of the member's parent or guardian.

1 **SEC. ____ . MILITARY RECRUITMENT ADVERTISING ON BROADCAST STATIONS**
2 **TO RECEIVE LOWEST UNIT CHARGE DURING DESIGNATED**
3 **PERIODS.**

4 Chapter 31 of title 10, United States Code, is amended by inserting after section 503 the
5 following new section:

6 **“§503a. Recruiting campaigns: lowest unit charge for broadcast advertising during certain**
7 **periods**

8 “(a) **LOWEST UNIT CHARGE FOR BROADCAST ADVERTISING.**—When the Secretary
9 concerned conducts an advertising campaign or program that includes broadcast advertising, the
10 charges made for the use during a designated period of any broadcasting station by the Secretary
11 in connection with the advertising campaign or program may not exceed the lowest unit charge
12 of the station for the same class and amount of time for the same period.

13 “(b) **DESIGNATED PERIODS.**—The designated periods for the purposes of subsection (a)
14 are the following:

15 “(1) February, March, April, and May in any year.

16 “(2) September, October, and November in any year.

17 “(3) A period designated by the President by Executive order as a period during
18 which the armed forces are engaged in military operations involving armed conflict with
19 a hostile foreign force.

20 “(c) **DEFINITIONS.**—In this section:

21 “(1) The term ‘Secretary concerned’ means the Secretary of Defense, the
22 Secretary of a military department, or the Secretary of Homeland Security with respect to
23 the Coast Guard when it is not operating as a service in the Navy.

1 “(2) The term ‘broadcasting station’ has the meaning given that term under
2 section 3 of the Communications Act of 1934 (47 U.S.C. 153).

3 “(3) The term ‘lowest unit charge’ has the meaning applicable to that term under
4 section 315(b)(1)(A) of the Communications Act of 1934 (47 U.S.C. 315(b)(1)(A)).”.

Section-by-Section Analysis

This proposal would support military recruiting by ensuring broadcasting stations charge the Department of Defense only the Lowest Unit Rate (LUR) in connection with advertising or promoting military service or recruitment. Currently, LUR only applies to official political campaigns of qualified candidates for federal office under section 315 of the Communications Act of 1934 (47 U.S.C. 315). However, ensuring fair and affordable access to broadcast advertising is crucial for military recruitment efforts, particularly during peak recruiting seasons and times of national emergency, and demonstrates responsible, judicious stewardship of taxpayer dollars. The greatest positive impact would be pricing on live sports on national broadcast networks, which are already cost-prohibitive to buy consistently but reach large audiences.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would add a new section to chapter 31 of title 10, United States Code, as set forth in the legislative text above.

1 **SEC. ____ . MODERNIZATION OF HUMAN SUBJECT RESEARCH REQUIREMENTS.**

2 Section 980 of title 10, United States Code, is repealed.

Section-by-Section Analysis

This proposal would repeal section 980 of title 10, United States Code, to bring the Department of Defense (DoD) into alignment with interagency standards. Section 980 predates the modern framework of federal regulations, including the "Common Rule" (32 CFR § 219), and Food and Drug Administration (FDA) regulations governing all federally funded research involving human subjects and are implemented for DoD in DoD Instruction 3216.02 and DoD Manual 6025.18 (in addition to any other Health Information and Accountability Act (HIPAA) and Privacy Act requirements). Unlike these constantly evolving regulations, Section 980 (enacted in 1972) has become a burdensome requirement that delays DoD research relative to other federal agencies.

Section 980 adds DoD-specific ethical standards that differ from the universally accepted standards outlined in the Common Rule and FDA regulations. This discrepancy forces DoD research personnel to reconcile Section 980's out of date frameworks with interagency practices, creating confusion and uncertainty. For example, the statute employs the term "experimental subject," which is obsolete and not found in current federal regulations governing human research protections, such as the Common Rule. This terminological discrepancy forces DoD institutions to seek waivers for the statute, creating an administrative hurdle simply to align the law's original intent with contemporary standards that use terms like "human research participant".

The statute's mandate for advance informed consent preempts the FDA's regulations for Exception from Informed Consent (EFIC). EFIC trials are vital for developing treatments for life-threatening emergencies, such as stroke or combat trauma, where patients are incapacitated and cannot consent. The dual-approval process—securing FDA allowance for EFIC and then navigating a separate, lengthy DoD staffing process to waive Section 980—creates redundant administrative burdens and causing critical delays to initiating potentially life-saving studies.

These barriers have two major negative consequences. First, they create a "chilling effect" on collaborative research, as other federal agencies are not bound by a similar restrictive law, making interagency partnerships with the DoD unnecessarily complex. Second, and most importantly, this regulatory friction limits the military community's access to the same cutting-edge medical advancements available to civilians, creating a disparity in care and denying service members and their families the benefits of such research.

Section 980's requirement for mandatory informed consent leads to misunderstandings regarding DoD's human research protection program. Upon repeal, DoD would then be in compliance with the sophisticated legal and ethical oversight system that governs all federal agency human subject research. This modern system extends well beyond clinical interventions to include protections for research involving personal data, identifiable information, and biological specimens, ensuring stringent privacy, security, and ethical standards are met across all domains.

The need to address Section 980's restrictive requirements adds significant delays to the research acquisition process. For instance, when the Air Force supports human subject research at a university, DoD personnel must generate additional documentation to address the differences between Section 980's standards, the Common Rule, and FDA regulations. This coordination can add weeks or months to project timelines, hindering the timely execution of critical research. This diverts valuable resources away from actual research activities and creates an unnecessary burden on DoD personnel.

Repealing Section 980 will streamline DoD research, reduce administrative burdens and costs, and foster collaboration with other federal agencies and research institutions. The current federal framework of laws and policies, including the Common Rule and FDA regulations, provide modern regulatory protections for human subjects in DoD research.

By repealing Section 980, Congress can eliminate an unnecessary statutory burden on critical DoD research, ensuring that the Department can effectively address national security challenges while upholding the highest ethical standards for human subject protection.

Resource Information: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would repeal section 980 of title 10, United States Code, as follows.

~~§980. Limitation on use of humans as experimental subjects~~

~~(a) Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—~~

~~(1) the informed consent of the subject is obtained in advance; or~~

~~(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.~~

~~(b)(1) The Secretary of Defense may waive the prohibition in this section with respect to a specific research project to advance the development of a medical product necessary to the armed forces if the research project may directly benefit the subject and is carried out in accordance with all other applicable laws.~~

~~(2) The Secretary may delegate the authority provided by paragraph (1) to the Under Secretary of Defense for Research and Engineering.~~

1 **SEC. ____ . MODIFICATIONS TO FEDERAL POLICY ON SHARING OF COVERED**
2 **INSIDER THREAT INFORMATION PERTAINING TO CONTRACTOR**
3 **EMPLOYEES IN THE TRUSTED WORKFORCE.**

4 Section 806(b) of the Intelligence Authorization Act for Fiscal Year 2022 (division X of
5 Public Law 117–103; 50 U.S.C. 3352f note) is amended—

6 (1) in the first sentence—

7 (A) by striking “, as a condition of obtaining and maintaining a security
8 clearance with the Federal Government,”; and

9 (B) by inserting “, as an additional required component of the clearance
10 process” before the period; and

11 (2) by inserting after the first sentence the following new sentence: “The recipient
12 contract company or vendor shall handle such information in compliance with all
13 applicable Federal, State, and local privacy laws to which the recipient company or
14 vendor is subject.”.

[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 modify the requirements regarding the Federal policy on sharing covered insider threat information pertaining to contractor employees in the trusted workforce. Currently, section 806 of the Intelligence Authorization Act for Fiscal Year 2022 (division X of Public Law 117–103; 50 U.S.C. 3352f note) requires that a contractor employee provide prior written consent for the Federal Government to share covered insider threat information with the senior official responsible for the insider threat program of the contractor that employs the contractor employee, *as a condition of obtaining and maintaining their security clearance*. This proposal would resolve a point of ambiguity around adjudicative criteria by clarifying that the sharing of this information is not an adjudicative criterion for being granted and holding a clearance, so the inclusion of this caveat in the existing language – “as a condition of obtaining and maintaining their security clearance” – is inaccurate or is an improper expansion of the 13 adjudicative guidelines.

Further, the existing language of section 806 is difficult to implement, its implementation would require the creation of a mechanism to track contractor personnel of the consent form and a

series of next steps if the contractor personnel fail to comply. These next steps will be primarily implemented by the Federal Government and include management of opportunities for extensions to complete the consent form, issuing Statements of Reasons when clearances will need to revoke for failure to comply, completion of the security review proceedings process to revoke the clearance or to reinstate the clearance when they have completed the consent form. In the interest of both operational efficacy and compliance with established legal standards, eliminating the requirement of consent as a condition for obtaining or maintaining a security clearance directly addresses implementation feasibility concerns, reduces the expected implementation cost, and resolves critical ambiguities regarding the proper application of adjudicative criteria. The overall goal of the proposal is to ensure a more efficient and legally sustainable personnel vetting process.

The proposal also seeks to protect the privacy and civil liberties of contract employees by adding language requiring the contract companies to adhere to applicable Federal, State, and local privacy on re-disclosure once in the hands of the “Senior Official” of the contractor that employs the contractor employee.

Resource Information: This proposal is anticipated to have minimal impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would make the following changes to section 806 of the Intelligence Authorization Act for Fiscal Year 2022 (division X of Public Law 117–103; 50 U.S.C. 3352f note):

SEC. 806. FEDERAL POLICY ON SHARING OF COVERED INSIDER THREAT INFORMATION PERTAINING TO CONTRACTOR EMPLOYEES IN THE TRUSTED WORKFORCE.

(a) POLICY REQUIRED.—Not later than 2 years after the date of the enactment of this Act [Mar. 15, 2022], the Director of National Intelligence, in coordination with the Secretary of Defense, the Director of the Office of Management and Budget, and the Attorney General, shall issue a policy for the Federal Government on sharing covered insider threat information pertaining to contractor employees.

(b) CONSENT REQUIREMENT.—The Director shall ensure that the policy issued under subsection (a) requires, ~~as a condition of obtaining and maintaining a security clearance with the Federal Government,~~ that a contractor employee provide prior written consent for the Federal Government to share covered insider threat information with the senior official responsible for the insider threat program of the contractor that employs the contractor employee, as an additional required component of the clearance process. The recipient contract company or vendor shall handle such information in compliance with all applicable Federal, State, and local privacy laws to which the recipient company or vendor is subject. The Director may include in such policy restrictions on the further disclosure of such information.

(c) CONSULTATION.—On a quarterly basis during the period in which the Director is developing the policy under subsection (a), the Director shall consult with Congress and industry partners with respect to such development.

(d) REVIEW.—***

1 **SEC. ____ . PERMANENT AUTHORITY FOR TRANSFER OF FUNDS TO JOINT**
2 **DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS**
3 **MEDICAL FACILITY DEMONSTRATION FUND FOR CAPTAIN**
4 **JAMES A. LOVELL HEALTH CARE CENTER, ILLINOIS, AND**
5 **CODIFICATION OF AUTHORITY FOR THE FUND.**

6 (a) CODIFICATION OF JOINT MEDICAL FACILITY DEMONSTRATION FUND.—Chapter 55 of
7 title 10, United States Code, is amended by adding at the end the following new section:

8 **“§ 1110c. Joint Medical Facility Demonstration Fund**

9 “(a) ESTABLISHMENT.—There is established on the books of the Treasury under the
10 Department of Veterans Affairs a fund to be known as the ‘Joint Department of Defense-
11 Department of Veterans Affairs Medical Facility Demonstration Fund’ (in this section referred to
12 as the ‘Fund’). The Fund shall be used to facilitate the joint funding of designated combined
13 Federal medical facilities by the Department of Defense and the Department of Veterans Affairs.

14 “(b) TRANSFERS TO FUND.—

15 “(1) IN GENERAL.—Amounts may be transferred to the Fund by the Secretary of
16 Defense from amounts authorized and appropriated for the Department of Defense and by
17 the Secretary of Veterans Affairs from amounts authorized and appropriated for the
18 Department of Veterans Affairs, as determined by a methodology jointly established by
19 the Secretary of Defense and the Secretary of Veterans Affairs that reflects the mission-
20 specific activities, workload, and costs of provision of health care at the facilities of the
21 Department of Defense and the Department of Veterans Affairs, respectively.

1 “(2) TRANSFERS OF AMOUNTS FROM MEDICAL CARE COLLECTIONS.—Amounts may
2 be transferred to the Fund from medical care collections under the following authorities
3 for health care provided at combined Federal medical facilities:

4 “(A) Section 1095 of this title.

5 “(B) Section 1729 of title 38.

6 “(C) Public Law 87–693, popularly known as the ‘Federal Medical Care
7 Recovery Act’ (42 U.S.C. 2651 et seq.).

8 “(c) AVAILABILITY OF AMOUNTS IN FUND.—

9 “(1) IN GENERAL.—Amounts transferred to the Fund under subsection (b) shall be
10 available to fund the operations of combined Federal medical facilities of the Department
11 of Defense and the Department of Veterans Affairs, including capital equipment, real
12 property maintenance, and minor construction projects that are not required to be
13 specifically authorized by law under section 2805 of this title or section 8104 of title 38.

14 “(2) CAPTAIN JAMES A. LOVELL FEDERAL HEALTH CARE CENTER.—Funds
15 transferred to the Fund by the Secretary of Defense under subsection (b) may be used for
16 facility operations of the Captain James A. Lovell Federal Health Care Center, consisting
17 of the North Chicago Veterans Affairs Medical Center, the Navy Ambulatory Care
18 Center, and supporting facilities designated as a combined Federal medical facility under
19 an operational agreement covered by section 706 of the Duncan Hunter National Defense
20 Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4500).

21 “(3) LIMITATION.—The availability of funds transferred to the Fund under
22 subsection (b)(2) shall be subject to the provisions of section 1729A of title 38.

23 “(4) PERIOD OF AVAILABILITY.—

1 “(A) IN GENERAL.—Except as provided in subparagraph (B), funds
2 transferred to the Fund under subsection (b) shall remain available under
3 paragraphs (1) and (2) until the end of the first fiscal year beginning after the date
4 of the transfer.

5 “(B) EXCEPTION.—Of the amount transferred to the Fund under subsection
6 (b) in a fiscal year, an amount not to exceed two percent of such amount shall
7 remain available under paragraphs (1) and (2) until the end of the second fiscal
8 year beginning after the date of the transfer.

9 “(d) EXECUTIVE AGREEMENT.—

10 “(1) FUND ADMINISTRATION.—The Fund shall be administered in accordance with
11 an executive agreement between the Secretary of Defense and the Secretary of Veterans
12 Affairs. The executive agreement shall be consistent with section 706 of the Duncan
13 Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417;
14 122 Stat. 4500) and shall provide for an independent review of the methodology
15 established under subsection (b)(1).

16 “(2) FINANCIAL RECONCILIATION.—The executive agreement between the
17 Secretary of Defense and the Secretary of Veterans Affairs shall provide for the
18 development and implementation of an integrated financial reconciliation process that
19 meets the fiscal reconciliation requirements of the Department of Defense and the
20 Department of Veterans Affairs. The process shall permit the Department of Defense and
21 the Department of Veterans Affairs to identify their fiscal contributions to the Fund,
22 taking into consideration accounting, workload, and financial management differences.”.

1 (b) CONFORMING REPEAL.—Section 1704 of the National Defense Authorization Act for
2 Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2571), as most recently amended by section
3 1421(a) of the National Defense Authorization Act for Fiscal Year 2026 (Public Law 119-60;
4 139 Stat. 1136), is repealed.

[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 chapter 55 of title 10, United States Code, to make permanent the funding authorities for the Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund (the “Fund”), originally established by section 1704 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2571).

- **Eliminates Uncertainty and Delays:** Codification would eliminate the annual uncertainty and potential delays associated with seeking renewal through the NDAA. It directly addresses the previous funding lapse when the language was omitted from the NDAA two years ago and ensures consistent and timely funding for the Captain James A. Lovell Federal Health Care Center (FHCC).
- **Protects Critical Healthcare Services:** The FHCC provides essential healthcare services to veterans and military personnel. Codification would safeguard these services by ensuring uninterrupted funding, preventing disruptions that could negatively impact patient care.
- **Demonstrates Long-Term Commitment:** Codifying the authority would signify a lasting commitment to the joint DoD/VA healthcare model, fostering stability and encouraging further collaboration and innovation in integrated care. Permanent authority would allow for more effective long-term planning and resource allocation, promoting efficient and responsible use of taxpayer dollars.
- **Streamlines Administrative Processes:** Annual legislative efforts consume valuable time and resources. Codification would streamline the process, freeing up personnel to focus on other high priority matters.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2027 President’s Budget that are impacted by this proposal.

| RESOURCE IMPACT (\$MILLIONS) | | | | | | | | | |
|------------------------------|---------|----------|----------|----------|----------|-----------------------------------|-----------------|---------|--|
| Program | FY 2027 | FY 2028 | FY 2029 | FY 2030 | FY 2031 | Appropriation | Budget Activity | BLI/SAG | Program Element (for all RDT&E programs) |
| Defense Health Program (DHP) | \$171.6 | \$178.46 | \$185.60 | \$193.03 | \$200.76 | 0130-DHP, Operation & Maintenance | 01 | | |
| Total | \$171.6 | \$178.46 | \$185.60 | \$193.03 | \$200.76 | | 01 | | |

Changes to Existing Law: This proposal would add a new section to chapter 55 of title 10, United States Code, as set forth in the legislative text above, and would make the following conforming repeal:

National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84)

SEC. 1704. JOINT FUNDING AUTHORITY.

~~(a) JOINT MEDICAL FACILITY DEMONSTRATION FUND.—~~

~~(1) ESTABLISHMENT.— There is established on the books of the Treasury under the Department of Veterans Affairs a fund to be known as the “Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund” (in this section referred to as the “Fund”).~~

~~(2) ELEMENTS.— The Fund shall consist of the following:~~

~~(A) Amounts transferred to the Fund by the Secretary of Defense, in consultation with the Secretary of the Navy, from amounts authorized and appropriated for the Department of Defense specifically for that purpose.~~

~~(B) Amounts transferred to the Fund by the Secretary of Veterans Affairs from amounts authorized and appropriated for the Department of Veterans Affairs, specifically for that purpose.~~

~~(C) Amounts transferred to the Fund from medical care collections under paragraph (4)~~

~~(3) DETERMINATION OF AMOUNTS TRANSFERRED.— The amount transferred to the Fund by each of the Secretary of Defense and the Secretary of Veterans Affairs under subparagraphs (A) and (B), as applicable, of paragraph (2) each fiscal year shall be such amount, as determined by a methodology jointly established by the Secretary of Defense and the Secretary of Veterans Affairs for purposes of this subsection, that reflects the mission specific activities, workload, and costs of provision of health care at the James A. Lovell Federal Health Care Center of the Department of Defense and the Department of Veterans Affairs, respectively.~~

~~(4) TRANSFERS FROM MEDICAL CARE COLLECTIONS.—~~

~~(A) IN GENERAL.— Amounts collected under the authorities specified in subparagraph (B) for health care provided at the James A. Lovell Federal Health Care Center may be transferred to the Fund under paragraph (2)(C).~~

~~(B) AUTHORITIES.~~—The authorities specified in this subparagraph are the following:

~~(i) Section 1095 of title 10, United States Code.~~

~~(ii) Section 1729 of title 38, United States Code.~~

~~(iii) Public Law 87-693, popularly known as the “Federal Medical Care Recovery Act” (42 U.S.C. 2651 et seq.).~~

~~(5) ADMINISTRATION.~~—The Fund shall be administered in accordance with such provisions of the executive agreement under section 1701 as the Secretary of Defense and the Secretary of Veterans Affairs shall jointly include in the executive agreement. Such provisions shall provide for an independent review of the methodology established under paragraph (3).

~~(b) AVAILABILITY.~~—

~~(1) IN GENERAL.~~—Funds transferred to the Fund under subsection (a)(2) shall be available to fund the operations of the James A. Lovell Federal Health Care Center, including capital equipment, real property maintenance, and minor construction projects that are not required to be specifically authorized by law under section 2805 of title 10, United States Code, or section 8104 of title 38, United States Code.

~~(2) LIMITATION.~~—The availability of funds transferred to the Fund under subsection (a)(2)(C) shall be subject to the provisions of section 1729A of title 38, United States Code.

~~(3) PERIOD OF AVAILABILITY.~~—

~~(A) IN GENERAL.~~—Except as provided in subparagraph (B), funds transferred to the Fund under subsection (a) shall be available under paragraph (1) for one fiscal year after transfer.

~~(B) EXCEPTION.~~—Of an amount transferred to the Fund under subsection (a, an amount not to exceed two percent of such amount shall be available under paragraph (1) for two fiscal years after transfer.

~~(c) FINANCIAL RECONCILIATION.~~—The executive agreement under section 1701 shall provide for the development and implementation of an integrated financial reconciliation process that meets the fiscal reconciliation requirements of the Department of Defense, the Department of the Navy, and the Department of Veterans Affairs. The process shall permit each of the Department of Defense, the Department of Navy, and the Department of Veterans Affairs to identify their fiscal contributions to the Fund, taking into consideration accounting, workload, and financial management differences.

~~(d) ANNUAL REPORT.~~—The Secretary of Defense, in consultation with the Secretary of the Navy, and the Secretary of Veterans Affairs shall jointly provide for an annual independent review of the Fund for at least three years after the date of the enactment of this Act. Such review shall include detailed statements of the uses of amounts of the Fund and an evaluation of the adequacy of the proportional share contributed to the Fund by each of the Secretary of Defense and the Secretary of Veterans Affairs.

~~(e) TERMINATION.~~—The authorities in this section shall terminate on September 30, 2027.

1 **SEC. ____ . PROMPT PAYMENT FOR DEFENSE CONTRACTS AND**
2 **SUBCONTRACTORS.**

3 (a) PROMPT PAYMENT CHAPTER.—Part V of subtitle A of title 10, United States Code, is
4 amended by inserting after chapter 277 the following new chapter:

5 **“CHAPTER 278—PROMPT PAYMENT**

“Sec.

“3821. Definitions.

“3822. Interest penalties.

“3823. Regulations.

“3824. Limitations on discount payments.

“3825. Payment provisions relating to contracts other than construction contracts.

“3826. Relationship to other laws.

6 **“3821. Definitions**

7 “In this chapter:

8 “(1) AGENCY.—The term ‘agency’ means the Department of Defense.

9 “(2) BUSINESS CONCERN.—The term ‘business concern’ means—

10 “(A) a person carrying on a trade or business; and

11 “(B) a nonprofit entity operating as a contractor.

12 “(3) PRIME CONTRACT.—The term ‘prime contract’ has the meaning given that
13 term in section 8701(4) of title 41.

14 “(4) PRIME CONTRACTOR.—The term ‘prime contractor’ has the meaning given
15 that term in section 8701(5) of title 41.

16 “(5) SUBCONTRACTOR.—The term ‘subcontractor’ has the meaning given that
17 term in section 8701(8) of title 41.

18 “(6) PROPER INVOICE.—The term ‘proper invoice’ means—

1 “(A) for a prime contractor, an invoice containing or accompanied by
2 substantiating documentation that the Secretary of Defense may require by
3 regulation or contract; or

4 “(B) for a subcontractor, an invoice containing or accompanied by
5 substantiating documentation specified in the subcontract.

6 “(7) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the
7 meaning provided under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

8 “(8) DATE OF RECEIPT OF AN INVOICE UNDER A PRIME CONTRACT.—For the
9 purposes of determining a payment due date under a prime contract and the date upon
10 which any late payment interest penalty shall begin to accrue, the Secretary of Defense is
11 deemed to receive an invoice—

12 “(A) on the later of—

13 “(i) the date on which the place or person designated by the agency
14 to first receive such invoice actually receives a proper invoice; or

15 “(ii) on the 7th day after the date on which, in accordance with the
16 terms and conditions of the contract, the property is actually delivered or
17 performance of the services is actually completed, as the case may be,
18 unless—

19 “(I) the agency has actually accepted such property or
20 services before such 7th day; or

21 “(II) the contract (except in the case of a contract for the
22 procurement of a brand-name commercial product for authorized
23 resale) specifies a longer acceptance period, as determined by the

1 contracting officer to be required to afford the agency a practicable
2 opportunity to inspect and test the property furnished or evaluate
3 the services performed; or

4 “(B) on the date of the invoice, if the agency has failed to annotate the
5 invoice with the date of receipt at the time of actual receipt by the place or person
6 designated by the agency to first receive such invoice.

7 “(9) DATE OF RECEIPT OF AN INVOICE UNDER A SUBCONTRACT.—For the purposes
8 of determining a payment due date under a subcontract and the date upon which any late
9 payment interest penalty shall begin to accrue, the prime contractor or higher-tier
10 subcontractor is deemed to receive an invoice—

11 “(A) on the later of—

12 “(i) the date on which the place or person designated by the prime
13 contractor or higher-tier subcontractor to first receive such invoice
14 actually receives a proper invoice; or

15 “(ii) on the 7th day after the date on which, in accordance with the
16 terms and conditions of the subcontract, the property is actually delivered
17 or performance of the services is actually completed, as the case may be,
18 unless—

19 “(I) the prime contractor or higher-tier subcontractor has
20 actually accepted such property or services before such 7th day; or

21 “(II) the subcontract (except in the case of a subcontract for
22 the procurement of a brand-name commercial product for
23 authorized resale) specifies a longer acceptance period, as

1 determined by the prime contractor or higher-tier subcontractor to
2 be required to afford a practicable opportunity to inspect and test
3 the property furnished or evaluate the services performed; or

4 “(B) on the date of the invoice, if the prime contractor or higher-tier
5 subcontractor has failed to annotate the invoice with the date of receipt at the time
6 of actual receipt by the place or person designated to first receive such invoice.

7 “(10) DATE OF PAYMENT TO A PRIME CONTRACTOR.—A payment from the
8 Government to a prime contractor is deemed to be made on the date an electronic fund
9 transfer is made or a check for payment is dated.

10 “(11) DATE OF PAYMENT TO A SUBCONTRACTOR.—A payment from a prime
11 contractor or higher-tier subcontractor to a subcontractor is deemed to be on the date an
12 electronic fund transfer is made or on the third calendar day after the date a check for
13 payment is mailed or otherwise delivered to the subcontractor.

14 “(12) CONTRACT OR SUBCONTRACT TO RENT PROPERTY.—A contract or
15 subcontract to rent property is deemed to be a contract or subcontract to acquire the
16 property.

17 **§ 3822. Interest penalties**

18 “(a) INTEREST PENALTY REQUIREMENT.—(1) Under regulations prescribed under section
19 3823 of this title, if the Secretary of Defense or a prime contractor or subcontractor acquires
20 property or services from a business concern and does not pay the concern for each complete
21 delivered item of property or services by the required payment date, the Secretary, prime
22 contractor, or subcontractor shall pay an interest penalty to the concern on the amount of the
23 payment due, except that a prime contractor or subcontractor that is a small business concern

1 shall not be required to pay an interest penalty. The interest shall be computed at the rate of
2 interest established by the Secretary of the Treasury and published in the Federal Register for
3 interest payments under subsections (a)(1) and (b) of section 7109 of title 41 that is in effect at
4 the time the agency, prime contractor, or subcontractor accrues the obligation to pay a late
5 payment interest penalty.

6 “(2) A prime contractor or subcontractor shall include in the clause required by
7 subsection (a) or (b) of section 3825 of this title, as applicable, a statement advising its
8 subcontractors whether it is or is not a small business concern for purposes of the prime contract
9 or higher-tier subcontract in support of which the subcontract is awarded.

10 “(b) PERIOD COVERED.—The interest penalty shall be paid for the period beginning on
11 the day after the required payment date and ending on the date on which payment is made.

12 “(c) ENTITLEMENT TO INTEREST PENALTY ON PAYMENTS SUBJECT TO THIS CHAPTER.—(1)
13 A business concern shall be entitled to an interest penalty of \$1.00 or more that is owed such
14 business concern under this section, and such penalty shall be paid without regard to whether the
15 business concern has requested payment of such penalty.

16 “(2) Each payment subject to this chapter for which a late payment interest penalty is
17 required to be paid shall be accompanied by a notice stating the amount of the interest penalty
18 included in such payment and the rate by which, and period for which, such penalty was
19 computed.

20 “(3) If a business concern—

21 “(A) is owed an interest penalty by the agency, a prime contractor, or a higher-tier
22 subcontractor;

1 “(B) is not paid the interest penalty in a payment made to the business concern by
2 the agency, prime contractor, or higher-tier subcontractor on or after the date on which
3 the interest penalty becomes due;

4 “(C) is not paid the interest penalty by the agency, prime contractor, or higher-tier
5 subcontractor within 10 days after the date on which such payment is made; and

6 “(D) makes a written demand, not later than 40 days after the date on which such
7 payment is made, that the agency, prime contractor, or higher-tier subcontractor pay such
8 a penalty,

9 such business concern shall be entitled to an amount equal to the sum of the late payment interest
10 penalty to which the contractor is entitled and an additional penalty equal to a percentage of such
11 late payment interest penalty specified by regulation by the Secretary of Defense, subject to such
12 maximum as may be specified in such regulations.

13 “(d) OBLIGATION TO PAY INTEREST PENALTIES.—The temporary unavailability of funds
14 to make a timely payment due for property or services does not relieve the Secretary of Defense
15 from the obligation to pay interest penalties to a prime contractor under this section.

16 “(e) UNALLOWABLE COSTS.—Interest penalties under this chapter paid by a prime
17 contractor or higher-tier subcontractor are unallowable costs for purposes of the prime contract
18 and each higher-tier subcontract.

19 “(f) UNPAID INTEREST PENALTY ADDED TO PRINCIPAL AMOUNT.—An amount of an
20 interest penalty unpaid after any 30-day period shall be added to the principal amount of the
21 debt, and a penalty accrues thereafter on the added amount.

22 “(g) SOURCE OF FUNDS FOR INTEREST PENALTIES.—This section does not authorize the
23 appropriation of additional amounts to pay an interest penalty. The Secretary of Defense shall

1 pay a penalty under this section out of amounts made available to carry out the program for
2 which the penalty is incurred. A prime contractor or higher-tier subcontractor shall pay a penalty
3 under this section from its own funds, and shall not claim any paid or owed interest penalties
4 under this chapter as incurred cost under a reimbursable or flexibly priced contract.

5 “(h) TREATMENT OF GRANT RECIPIENTS.—A recipient of a grant from the Secretary of
6 Defense shall provide in a subcontract for the acquisition of property or services from a business
7 concern that, consistent with the requirements of this chapter, the recipient will pay an interest
8 penalty on amounts overdue under the subcontract under the conditions specified in this chapter.
9 The recipient may not pay the penalty from amounts received from an agency. Amounts
10 expended for the penalty may not be counted toward a matching requirement applicable to the
11 grant. An obligation to pay the penalty is not an obligation of the United States Government.

12 **§ 3823. Regulations**

13 “(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to carry out this
14 chapter. The regulations shall—

15 “(1) provide that the required payment date for a prime contract is—

16 “(A) the date payment is due under the contract for the item of property or
17 services provided; or

18 “(B) except as provided in paragraph (8), 30 days after a proper invoice
19 for the amount due is received if a specific payment date is not established by
20 contract;

21 “(2) for the acquisition of meat or a meat food product (as defined in section
22 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3))), including any edible
23 fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and

1 any perishable egg product, or of fresh or frozen fish (as defined in section 204(3) of the
2 Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3))), provide a required
3 payment date of not later than 7 days after the meat, meat food product, or fish is
4 delivered; and

5 “(3) for the acquisition of a perishable agricultural commodity (as defined in
6 section 1(b)(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.
7 499a(b)(4))), provide a required payment date consistent with that Act;

8 “(4) for the acquisition of dairy products (as defined in section 111(e) of the Dairy
9 Production Stabilization Act of 1983 (7 U.S.C. 4502(e))), the acquisition of edible fats or
10 oils, and the acquisition of food products prepared from edible fats or oils, provide a
11 required payment date of not later than 10 days after the date on which a proper invoice
12 for the amount due has been received by the agency acquiring such dairy products, fats,
13 oils, or food products;

14 “(5) require periodic payments, in the case of a property or services contract that
15 does not prohibit periodic payments for partial deliveries or other contract performance
16 during the contract period, upon—

17 “(A) submission of an invoice for property delivered or services
18 performed during the contract period, if an invoice is required by the contract; and

19 “(B) either—

20 “(i) acceptance of the property or services by an employee of the
21 agency authorized to accept the property or services; or

1 “(ii) the making of a determination by such an employee, that the
2 performance covered by the payment conforms to the terms and conditions
3 of the contract;

4 “(6) require that—

5 “(A) each invoice be reviewed as soon as practicable after receipt for the
6 purpose of determining that such an invoice is a proper invoice;

7 “(B) any invoice determined not to be a proper invoice suitable for
8 payment shall be returned as soon as practicable, but not later than 7 days after
9 receipt, specifying the reasons that the invoice is not a proper invoice; and

10 “(C) the number of days available to an agency to make a timely payment
11 of an invoice without incurring an interest penalty shall be reduced by the number
12 of days by which an agency exceeds the requirements of subparagraph (B) of this
13 paragraph;

14 “(7) permit the agency to make payment prior to the required payment date, as
15 determined by the agency to be appropriate to provide robust cash flow to prime
16 contractors, and to allow prime contractors, in turn, to accelerate payments to
17 subcontractors in order to improve cash flow throughout the supply chain; and

18 “(8) for a prime contractor that subcontracts with a small business concern, to the
19 fullest extent permitted by law, authorize an accelerated payment date with a goal of 15
20 days after a proper invoice for the amount due is received if—

21 “(A) a specific payment date is not established by contract; and

22 “(B) such prime contractor agrees to make accelerated payments to such
23 subcontractor in comparison to the subcontract payment due dates as specified in

1 section 3825(a)(1) of this title, to the maximum extent practicable, without any
2 further consideration from or fees charged to such subcontractor.

3 “(b) CERTIFICATION REQUIREMENT.—A prime contractor request for payment, either
4 prior to acceptance of goods or services by the agency, or after goods or services are delivered
5 under a contract may not be approved unless the application for such payment includes, in
6 addition to any other certification that may be required in the context of the specific type of
7 payment request, a certification by the prime contractor that, to the best of the contractor’s
8 knowledge and belief (except as reported in writing in the certification), all payments to
9 subcontractors and suppliers under the contract have been paid, or will be paid, when due under
10 the subcontract in accordance with the requirements of section 3825 of this title.

11 “(c) SINGLE REQUIRED PAYMENT DATE AUTHORIZED FOR SUBSISTENCE ITEMS.—A
12 contract for the procurement of subsistence items that is entered into under the prime vendor
13 program of the Defense Logistics Agency may specify for the purposes of section 3822 of this
14 title a single required payment date that is to be applicable to an invoice for subsistence items
15 furnished under the contract when more than one payment due date would otherwise be
16 applicable to the invoice under the regulations prescribed under paragraphs (2), (3), and (4) of
17 subsection (a) or under any other provision of law. The required payment date specified in the
18 contract shall be consistent with prevailing industry practices for the subsistence items, but may
19 not be more than 10 days after the date of receipt of the invoice or the certified date of receipt of
20 the items. The Secretary of Defense shall provide in the regulations under subsection (a) that
21 when a required payment date is so specified for an invoice, no other payment due date applies to
22 the invoice.

23 **§ 3824. Limitations on discount payments**

1 “(a) IN GENERAL.—The Secretary of Defense or a prime contractor or higher-tier
2 subcontractor offered a discount by a business concern from an amount due under a contract or
3 subcontract for property or services in exchange for payment within a specified time may pay the
4 discounted amount only if payment is made within the specified time. For the purpose of the
5 preceding sentence, the specified time shall be determined from the date of the invoice. The
6 Secretary of Defense, the prime contractor, or the higher-tier subcontractor shall pay an interest
7 penalty on an amount remaining unpaid in violation of this section. The penalty accrues as
8 provided under sections 3822 and 3823 of this title, except that the required payment date for the
9 unpaid amount is the last day specified in the contract that the discounted amount may be paid.

10 “(b) SMALL BUSINESS CONCERNS NOT EXEMPT.—Notwithstanding section 3822(a) of this
11 title, small business concerns are not exempt from the requirements of this section.

12 **§ 3825. Payment provisions relating to contracts other than construction contracts**

13 “(a) REQUIREMENT FOR PRIME CONTRACTS TO INCLUDE CERTAIN CLAUSE IN
14 SUBCONTRACTS.—Each non-construction contract awarded by the agency shall include a clause
15 that requires the prime contractor to include in each subcontract for property or services entered
16 into by the prime contractor and a subcontractor (including a material supplier) for the purpose
17 of performing such contract, and such clause shall include the following terms:

18 “(1) PAYMENT DUE DATE.—A requirement that obligates the prime contractor to
19 pay the subcontractor for satisfactory performance under its subcontract as of the due
20 date applicable to that subcontract under paragraph (1)(B), (2), (3), or (4) of section
21 3823(a) of this title, or an earlier date as agreed to between the prime contractor and the
22 subcontractor.

1 “(2) BUSINESS SIZE STATUS.—A statement indicating whether the prime contractor
2 is or is not a small business concern for the purpose of the prime contract.

3 “(3) INTEREST PENALTY.—A requirement that obligates the prime contractor, if
4 not a small business concern for the purpose of the prime contract, to pay to the
5 subcontractor an interest penalty on amounts due in the case of each payment not made in
6 accordance with the payment clause included in the subcontract pursuant to paragraph
7 (1)—

8 “(A) for the period beginning on the day after the required payment date
9 and ending on the date on which payment of the amount due is made; and

10 “(B) computed at the rate specified by section 3822(a) of this title.

11 “(4) PERIODIC PAYMENT.—A requirement for periodic payments, in the case of a
12 property or services subcontract that does not prohibit periodic payments for partial
13 deliveries or other contract performance during the contract period, upon—

14 “(A) submission of an invoice for property delivered or services
15 performed during the contract period, if an invoice is required by the subcontract;
16 and

17 “(B) either—

18 “(i) acceptance of the property or services by an employee of the
19 prime contractor authorized to accept the property or services; or

20 “(ii) the making of a determination by such an employee that the
21 performance covered by the payment conforms to the terms and conditions
22 of the contract.

23 “(5) TIMELY INVOICE REVIEW.—A requirement that—

1 “(A) each subcontract invoice be reviewed as soon as practicable after
2 receipt for the purpose of determining that such an invoice is a proper invoice;

3 “(B) any invoice determined not to be a proper invoice suitable for
4 payment shall be returned to the subcontractor as soon as practicable, but not later
5 than 7 days after receipt, specifying the reasons that the invoice is not a proper
6 invoice; and

7 “(C) the number of days available to the prime contractor to make a timely
8 payment of an invoice without incurring an interest penalty shall be reduced by
9 the number of days by which the prime contractor exceeds the requirements of
10 subparagraph (B) of this paragraph.

11 “(6) NOTICE OF PERFORMANCE UNDER GOVERNMENT CONTRACT.—Except when
12 subcontract performance is in support of a classified prime contract, a notification that the
13 subcontract is in support of a Government contract, and identification of the prime
14 contract number and the Government contracting officer’s name, telephone number, and
15 email address.

16 “(b) REQUIREMENT FOR PRIME CONTRACTORS TO REQUIRE SUBCONTRACTORS TO INCLUDE
17 CLAUSE IN LOWER-TIER SUBCONTRACTS.—The non-construction contract awarded by the agency
18 shall further require the prime contractor to include in each of its subcontracts (for the purpose of
19 performance of such non-construction contract) a requirement for the subcontractor to include a
20 clause conforming to the standards of subsection (a) (including each of paragraphs (1) through
21 (6) of such subsection) in each of its subcontracts and to require each of its subcontractors to
22 include such clause in their subcontracts with each lower-tier subcontractor or supplier.

1 “(c) RELATIONSHIP TO RIGHT TO NEGOTIATE.—The clauses required by subsections (a)
2 and (b) shall not be construed to impair the right of a prime contractor or a subcontractor at any
3 tier to negotiate, and to include in any of their subcontracts, provisions that—

4 “(1) permit the prime contractor or a higher-tier subcontractor to retain (with
5 cause) a specified percentage of each payment otherwise due to a subcontractor for
6 satisfactory performance under the subcontract, without incurring any obligation to pay a
7 late payment interest penalty, in accordance with terms and conditions agreed to by the
8 parties to the subcontract;

9 “(2) permit the contractor or higher-tier subcontractor to make a determination
10 that part or all of the subcontractor’s request for payment may be withheld (with cause) in
11 accordance with the subcontract agreement; and

12 “(3) permit such withholding without incurring any obligation to pay a late
13 payment penalty if—

14 “(A) a notice conforming to the standards of subsection (d) has been
15 previously furnished to the subcontractor; and

16 “(B) a copy of any notice issued by a prime contractor pursuant to
17 subparagraph (A) has been furnished to the Government.

18 “(d) NOTICE OF AMOUNTS WITHHELD.—For purposes of subsection (c)(3)(A), a written
19 notice of any withholding of payment to a subcontractor shall be issued by a prime contractor or
20 higher-tier subcontractor to the subcontractor specifying—

21 “(1) the amount to be withheld;

22 “(2) the specific causes for the withholding under the terms of the subcontract;

23 and

1 “(3) the remedial actions to be taken by the subcontractor in order to receive
2 payment of the amounts withheld.

3 “(e) RELATIONSHIP TO OTHER REMEDIES.—Except as provided in section 3826(c)(2) of
4 this title, this section shall not limit or impair any contractual, administrative, or judicial
5 remedies otherwise available to a contractor or a subcontractor in the event of a dispute
6 involving late payment or nonpayment by a prime contractor or higher-tier subcontractor or
7 deficient subcontract performance or nonperformance by a subcontractor.

8 “(f) INTEREST PENALTY NOT AN OBLIGATION OF THE UNITED STATES.—A contractor’s
9 obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a
10 subcontract under subsection (a) or (b) may not be construed to be an obligation of the United
11 States for such interest penalty. A contract modification may not be made for the purpose of
12 providing reimbursement of such interest penalty. A cost reimbursement claim may not include
13 any amount for reimbursement of such interest penalty.

14 (g) CONSTRUCTION CONTRACTS COVERED UNDER TITLE 31.—For payment provisions
15 relating to construction contracts, see section 3905 of title 31.

16 **§ 3826. Relationship to other laws**

17 “(a) CLAIMS.—A prime contractor’s claim for an interest penalty not paid under this
18 chapter may be filed under section 7103 of title 41.

19 “(b) ACCRUAL OF INTEREST PENALTIES.—(1) An interest penalty under this chapter does
20 not continue to accrue—

21 “(A) after a claim for a penalty is filed under chapter 71 of title 41; or

22 “(B) for more than one year.

1 “(2) Paragraph (1) does not prevent an interest penalty from accruing under subsections
2 (a)(1) and (b) of section 7109 of title 41 after a penalty stops accruing under this chapter. A
3 penalty accruing under such subsections may accrue on an unpaid contract payment and on the
4 unpaid penalty under this chapter.

5 “(c) DISPUTES.—

6 “(1) BETWEEN SECRETARY OF DEFENSE AND PRIME CONTRACTOR.—Except as
7 provided in section 3824 of this title, this chapter does not require an interest penalty on a
8 payment that is not made because of a dispute between the Secretary of Defense and a
9 business concern over the amount of payment or compliance with the contract. A claim
10 related to the dispute, and interest payable for the period during which the dispute is
11 being resolved, is subject to chapter 71 of title 41.

12 “(2) BETWEEN CONTRACTOR AND SUBCONTRACTOR.—A dispute between a
13 contractor and subcontractor relating to the amount of, or entitlement of a subcontractor
14 to, a payment or a late payment interest penalty under a clause included in the subcontract
15 pursuant to subsection (a) or (b) of section 3825 of this title does not constitute a dispute
16 to which the United States is a party. The United States may not be interpleaded in any
17 judicial or administrative proceeding involving such a dispute. A subcontractor may
18 elect to submit a notice of the dispute to the administrative contracting officer responsible
19 for evaluating the acceptability of the business systems of the prime contractor or higher-
20 tier subcontractor in question.”.

21 “(b) CONFORMING AMENDMENTS.—

22 “(1) Section 3801(b)(2) of title 10, United States Code, is amended by inserting
23 “performing a construction contract” after “For a prime contractor”.

1 (2) Chapter 39 of title 31, United States Code, is amended—

2 (A) in section 3901(a), by inserting before the period at the end the
3 following: “, but the term does not include the Department of Defense, except as
4 provided in section 3905 of this title”; and

5 (B) in section 3905, by adding at the end the following new subsection:

6 “(I) APPLICABILITY OF SECTION TO DEPARTMENT OF DEFENSE—Notwithstanding
7 section 3901(a) of this title, the term ‘agency’ in this section includes the Department of
8 Defense.”.

9 (c) APPLICABILITY.—Chapter 278 of title 10, United States Code, as added by subsection
10 (a), shall apply to prime contracts and subcontracts entered into after the date occurring 180 days
11 after the date of the enactment of this Act.

12 (d) REGULATIONS.—In prescribing regulations required under chapter 278 of title 10,
13 United States Code, as added by subsection (a), the Secretary of Defense may provide for the use
14 of regulations that are the same or similar to regulations implementing chapter 39 of title 31,
15 United States Code.

**[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 add a new chapter 278 of title 10, United States Code, entitled Prompt Payment. The new chapter, applicable to the Department of Defense (DoD) only, substantially mirrors the Governmentwide Prompt Payment Act (PPA) for DoD prime contractors; it also makes Prompt Payment applicable to DoD subcontractors, including small businesses, in order to ensure that the Department is able to appropriately provide for improved cash flow to its supply base and thereby bolster the financial health of the defense industrial base (DIB) as a whole. A robust supply chain is essential to ensure that the DoD can procure goods and services that United States warfighters need to effectively defend our nation.

The PPA, applicable Governmentwide at the prime contract level and set forth in chapter 39 of title 31, United States Code, does three things: sets a 30-day payment term, establishes a

baseline for payment timeliness, and requires interest on late payments. While the 2023 DoD Contract Finance Study (a comprehensive assessment of the effect that DoD's contract financing and profit policies have on the defense industry, issued in response to Government Accountability Office (GAO) recommendations) and DoD payment metrics indicate that DoD is meeting or beating the PPA 30-day timeframe (average ~14-day payments), there is no statute or regulation (other than for construction) addressing prime or higher-tier subcontract payment terms with their subcontractors and suppliers. Although a few primes may voluntarily offer their suppliers payment terms that are even better than those identified under PPA, this is not the norm. Research conducted under the DoD Contract Finance Study showed that prime/higher tier payment terms are predominantly significantly longer than the 30 days provided by the PPA, e.g., 60 days, 75 days, even 120 days. Additionally, while the payment timeframe for prime contractors under PPA is based on the date of receipt/acceptance of the goods or services, prime payment terms with suppliers are quite often based on when the prime is paid, rather than when the supplier actually provided the goods or services. Small businesses without the reserves of their large business counterparts may then be forced to resort to extreme measures (e.g., selling accounts receivable) to make payroll/pay the costs of performance.

Office of Management and Budget memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012, recognized the criticality of robust cash flow to small businesses at all levels of the DIB. Having already provided for the Federal Government's acceleration of payments to small business prime contractors under memorandum M-11-32, subsequent OMB memo M-12-16 attempted to flow down accelerated payments to subcontractors at all tiers on a voluntary basis by accelerating payments to those prime contractors which agreed to accelerate payments to their small business subcontractors. The Contract Finance Study tested the efficacy of this construct through University studies, surveys, and solicitation of public comments. The Study results clearly demonstrated that the attempts to achieve voluntary prime contractor acceleration of subcontract payments through the FAR 52.232-40 implementation of OMB memo M-12-16 has not been effective.

This proposal extends the benefits of PPA to DoD subcontractors of all sizes, with the goal of improving the Department's supply chain financial health. Improving cash flow opportunities at the subcontractor level helps to attract new entrants into the DIB while retaining existing participants and bolstering the supply chain. According to the GAO, more than 60 percent of the Department's work is accomplished at the subcontract level.

The new chapter to be added to title 10 comprises six sections, as follows:

§3821. Definitions. This section contains definitions to establish covered contracts. It establishes that the provisions are applicable to the Department of Defense and that it covers all subcontracts. It defines the baseline payment due date, which starts the clock for purposes of payment of interest, as the later of receipt of a proper invoice or acceptance of supplies delivered or services performed. It describes a proper invoice and a deemed receipt date.

§3822. Interest penalties. This section establishes that interest penalties accrue for both the Department of Defense and for contractors, except small businesses, that make late contract or subcontract payments. The inclusion of financial repercussions is necessary to signal the

importance of this initiative and to motivate compliance. Pursuant to the privity of contract between a company and its subcontractors, the higher-tier company is solely responsible for any interest payment. It emphasizes that interest must remain an unallowable cost (see FAR 31.205-20, Interest and other financial costs). This is consistent with the current construction clause requirements (see FAR 52.232-27(k)).

§3823. *Regulations.* This section directs the Secretary of Defense to issue regulations implementing the requirement for PPA applicable to prime contractors and subcontractors. The coverage of PPA applicable to DoD prime contractors was previously found in 31 U.S. Code Chapter 39; the flowdown of PPA for subcontractors is new. It establishes a requirement for any type of prime payment request to include a certification with respect to timely payment of subcontractors and suppliers, similar to other existing payment certification requests (e.g., progress payments, performance-based payments, and construction payments). A certification has associated remedies, which can drive improved behavior.

§3824. *Limitations on discount payments.* This section provides that, where the Department or a business makes a discounted payment to a prime contractor or subcontractor without providing the payment within the timeframe required to earn the discount, interest penalties accrue. This provision is applicable to all businesses, including small businesses; it is the one exception to the small business exemption from interest penalties.

§3825. *Payment provisions relating to contracts other than construction contracts.* This section describes the payment clause requirements to include in covered contracts. Construction contracts are excepted from coverage, as construction clauses have an established framework, under section 3905 of title 31, United States Code, covering timing of subcontract payment and requiring interest on late payments to subcontractors. It should be noted that while the statutory and regulatory requirements applicable to payment of subcontracts under construction contracts retain the “pay when paid” approach (subcontractor payment is contingent upon payment of the prime contractor by Government), this is in the context of fixed price contracts with payments based on percentage or stage of completion. In this scenario, the prime contractor receives payments throughout performance, and is required to make subcontract payments owed out of each payment received by the prime, within seven days of receipt of each payment from the Government. In most Defense contracts, payment to the prime contractor is made at the end of contract performance, upon delivery. Delaying subcontract payments until after that point would create a hardship for subcontractors, which generally have made delivery throughout the course of the prime’s contract performance.

§3826. *Relationship to other laws.* This section specifies that any disputes related to a prime or higher-tier contractor’s late payment to a supplier and/or interest penalty is a matter between the parties and does not constitute a dispute with the Government. It provides that a subcontractor may elect to submit a notice of dispute to the Government for consideration in business system evaluations.

This proposal is a first-time resubmission and believed will have a successful outcome. It was withdrawn from the FY26 cycle due to changes in the Administration.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would add a new chapter 278 to title 10, United States Code, as set forth in the legislative text above. In addition, this proposal would amend section 3801 of title 10 and sections 3901 and 3905 of title 31, United States Code, as shown below.

Title 10, United States Code

§3801. Authority of agency

(a) PAYMENT AUTHORITY.—The head of any agency may—

(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) PAYMENT DATES FOR CONTRACTORS THAT ARE SMALL BUSINESS CONCERNS.—

(1) PRIME CONTRACTORS.—For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due.

(2) SUBCONTRACTORS.—For a prime contractor performing a construction contract that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if the prime contractor agrees to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

Title 31, United States Code

§3901. Definitions and application

(a) In this chapter—

(1) “agency” has the same meaning given that term in section 551(1) of title 5 and includes an entity being operated, and the head of the agency identifies the entity as being operated, only as an instrumentality of the agency to carry out a program of the agency, but the term does not include the Department of Defense, except as provided in section 3905 of this title.

(2) “business concern” means—

(A) a person carrying on a trade or business; and

(B) a nonprofit entity operating as a contractor.

(3) “proper invoice” is an invoice containing or accompanied by substantiating documentation the Director of the Office of Management and Budget may require by regulation and the head of the appropriate agency may require by regulation or contract.

(4) for the purposes of determining a payment due date and the date upon which any late payment interest penalty shall begin to accrue, the head of the agency is deemed to receive an invoice—

(A) on the later of—

(i) the date on which the place or person designated by the agency to first receive such invoice actually receives a proper invoice; or

(ii) on the 7th day after the date on which, in accordance with the terms and conditions of the contract, the property is actually delivered or performance of the services is actually completed, as the case may be, unless—

(I) the agency has actually accepted such property or services before such 7th day; or

(II) the contract (except in the case of a contract for the procurement of a brand-name commercial product for authorized resale) specifies a longer acceptance period, as determined by the contracting officer to be required to afford the agency a practicable opportunity to inspect and test the property furnished or evaluate the services performed; or

(B) on the date of the invoice, if the agency has failed to annotate the invoice with the date of receipt at the time of actual receipt by the place or person designated by the agency to first receive such invoice.

(5) a payment is deemed to be made on the date a check for payment is dated or an electronic fund transfer is made.

(6) a contract to rent property is deemed to be a contract to acquire the property.

(b) This chapter applies to the Tennessee Valley Authority. However, regulations prescribed under this chapter do not apply to the Authority, and the Authority alone is responsible for carrying out this chapter as it applies to contracts of the Authority.

(c) This chapter applies to the United States Postal Service. However, the Postmaster General shall be responsible for issuing the implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service.

(d)(1) Notwithstanding subsection (a)(1) of this section, this chapter, except section 3907 of this title, applies to the District of Columbia Courts.

(2) A claim for an interest penalty not paid under this chapter may be filed in the same manner as claims are filed with respect to contracts to provide property or services for the District of Columbia Courts.

(3)(A) Except as provided in subparagraph (B), an interest penalty under this chapter does not continue to accrue for more than one year or after a claim for an interest penalty is filed in the manner described in paragraph (2), whichever is earlier.

(B) If a claim for an interest penalty is filed in the manner described in paragraph (2) and interest is not available for such claims under the laws and regulations governing claims under contracts to provide property or services for the District of Columbia Courts, interest will accrue under this chapter as provided in paragraph (A) and from the date the claim is filed until the date the claim is paid.

(4) Paragraph (3) of this subsection does not prevent an interest penalty from accruing on a claim if such interest is available for such claim under the laws and regulations governing claims under contracts to provide property or services for the District of Columbia Courts. Such interest may accrue on an unpaid contract payment and on the unpaid penalty under this chapter.

(5) Except as provided in section 3904 of this title, this chapter does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract. A claim related to the dispute, and any interest payable for the period during which the dispute is being resolved, is subject to the laws and regulations governing claims under contracts to provide property or services for the District of Columbia Courts.

§3905. Payment provisions relating to construction contracts

(a) In the event that a contractor, after making a certified payment request to an agency pursuant to section 3903(b) of this title, discovers that a portion or all of such payment request constitutes a payment for performance by such contractor that fails to conform to the specifications, terms, and conditions of its contract (hereafter in this subsection referred to as the “unearned amount”), then the contractor shall—

(1) notify the agency of such performance deficiency; and

(2) be obligated to pay the Government an amount equal to interest on the unearned amount (computed in the manner provided in section 3903(c) of this title), from the date of the contractor's receipt of such unearned amount until—

(A) the date the contractor notifies the agency that the performance deficiency has been corrected; or

(B) the date the contractor reduces the amount of any subsequent certified application for payment to such agency by an amount equal to the unearned amount.

(b) Each construction contract awarded by an agency shall include a clause that requires the prime contractor to include in each subcontract for property or services entered into by the prime contractor and a subcontractor (including a material supplier) for the purpose of performing such construction contract—

(1) a payment clause which obligates the prime contractor to pay the subcontractor for satisfactory performance under its subcontract within 7 days out of such amounts as are paid to the prime contractor by the agency under such contract; and

(2) an interest penalty clause which obligates the prime contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (1) of this subsection—

(A) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) computed at the rate specified by section 3902(a) of this title.

(c) The construction contract awarded by the agency shall further require the prime contractor to include in each of its subcontracts (for the purpose of performance of such construction contract) a provision requiring the subcontractor to include a payment clause and an

interest penalty clause conforming to the standards of subsection (b) of this section in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by subsections (b) and (c) of this section shall not be construed to impair the right of a prime contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which—

(1) permit the prime contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract, without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) permit such withholding without incurring any obligation to pay a late payment penalty if—

(A) a notice conforming to the standards of subsection (g) of this section has been previously furnished to the subcontractor; and

(B) a copy of any notice issued by a prime contractor pursuant to subparagraph (A) of this paragraph has been furnished to the Government.

(e) If a prime contractor, after making application to an agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the prime contractor shall—

(1) furnish to the subcontractor a notice conforming to the standards of subsection (g) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) furnish to the Government, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (1) of this subsection;

(3) reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (1) of this subsection;

(4) pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(A) make such payment within—

(i) 7 days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (5)(A)); or

(ii) 7 days after the contractor recovers such funds from the Government; or

(B) incur an obligation to pay a late payment interest penalty computed at the rate specified by section 3902(a) of this title;

- (5) notify the Government, upon—
 - (A) reduction of the amount of any subsequent certified application for payment; or
 - (B) payment to the subcontractor of any withheld amounts of a progress payment, specifying—
 - (i) the amounts of the progress payments withheld under paragraph (1) of this subsection; and
 - (ii) the dates that such withholding began and ended; and
- (6) be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in section 3903(c) of this title), from the 8th day after receipt of the withheld amounts from the Government until—
 - (A) the day the identified subcontractor performance deficiency is corrected; or
 - (B) the date that any subsequent payment is reduced under paragraph (5)(A).

(f)(1) If a prime contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 3133(b) of title 40, asserting a deficiency in such first-tier subcontractor's performance under the contract for which the prime contractor may be ultimately liable, and the prime contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the prime contractor may, without incurring an obligation to pay an interest penalty under subsection (e)(6) of this section—

- (A) furnish to the first-tier subcontractor a notice conforming to the standards of subsection (g) of this section as soon as practicable upon making such determination; and
- (B) withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the prime contractor shall pay the amount withheld under paragraph (1)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified by section 3902(a) of this title.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Government of any such notice issued by a prime contractor), specifying—

- (1) the amount to be withheld;
- (2) the specific causes for the withholding under the terms of the subcontract; and
- (3) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) A prime contractor may not request payment from the agency of any amount withheld or retained in accordance with subsection (d) of this section until such time as the prime contractor has determined and certified to the agency that the subcontractor is entitled to the payment of such amount.

(i) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (b) or (c) of this section does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in subsection (i) of this section, this section shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) A contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under subsection (b) or (c) of this section may not be construed to be an obligation of the United States for such interest penalty. A contract modification may not be made for the purpose of providing reimbursement of such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) APPLICABILITY OF SECTION TO DEPARTMENT OF DEFENSE.—Notwithstanding section 3901(a) of this title, the term “agency” in this section includes the Department of Defense.

1 **SEC. ____ . RELIEF FOR FORMER SERVICE MEMBERS REQUESTING REVIEW OF**
2 **DISCHARGE OR DISMISSAL ON THE BASIS OF POST-TRAUMATIC**
3 **STRESS DISORDER OR TRAUMATIC BRAIN INJURY RELATED TO**
4 **COMBAT OR MILITARY SEXUAL TRAUMA.**

5 Section 1552(h) of title 10, United States Code, is amended by adding at the end the
6 following new paragraphs:

7 “(3) As a result of its review under paragraph (2), a board established under subsection
8 (a)(1) may—

9 “(A) grant a claimant’s request to upgrade the characterization of a discharge
10 or dismissal;

11 “(B) grant a claimant’s request to correct the following for a discharge or
12 dismissal: the narrative reason for separation, the separation code, and the re-
13 enlistment code; and

14 “(C) deny any part of the claimant’s application for relief after liberal
15 consideration of the evidence of record.

16 “(4) If a claimant described in paragraph (1) requests retirement or separation for
17 physical disability as defined by chapter 61 of this title, the board established under subsection
18 (a)(1) shall review such request under the evidentiary standards established by the Department of
19 Defense for current service members in the Disability Evaluation System. If the claimant submits
20 multiple bases or requests for relief, the board shall review any eligible requests for relief that do
21 not involve retirement or separation for physical disability as defined by chapter 61 this title,
22 under the liberal consideration standard established in paragraph (2).”.

Section-by-Section Analysis

This proposal would clarify the eligibility criteria and types of relief available when a Board for Correction of Military/Naval Records (BCM/NR) applies liberal consideration to an application involving combat- or Military Sexual Trauma (MST)-related post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI). Specifically, it clarifies that a BCM/NR may upgrade the characterization, narrative reason, separation code, and/or re-enlistment code for a discharge or dismissal, but that liberal consideration should not be applied to requests for medical separation or retirement.

This clarification is necessary due to *Doyon v. United States*, 58 F.4th 1235 (Fed. Cir. 2023), which left open the question of whether liberal consideration applies to claims for retroactive medical separation or retirement, with associated benefits (i.e., medical severance pay, lifelong military retirement pay, lifelong Tricare coverage including for dependents, etc.). If a court were to direct this approach, it would undercut the DoD Disability Evaluation System (DES) by establishing a separate, lower evidentiary standard¹ for former Service members alleging combat- or MST-related PTSD or TBI than that which DoD applies to current Service members² who are evaluated through the DES.

In effect, this would allow any Service member who was denied a medical retirement for combat- or MST-related PTSD or TBI in the DES (based upon objective evidence under normal evidentiary standards) to immediately re-apply to the BCM/NR after separation, and potentially receive a different result based on the same evidence, simply because the BCM/NR evaluated them under the lower “liberal consideration” standard. If implemented, this legislative change will still allow former Service members to apply for relief; however, their cases will be decided using the same evidentiary standard applied to current Service members.

While creating a disparate and unfair system in which current and former Service members are held to different standards for benefits, allowing liberal consideration to be applied in claims for medical retirement could also discourage current Service members from reporting symptoms of PTSD, TBI, or MST. Impacted Service members might “wait out” seeking treatment, with the assurance that if continuing behavioral symptoms impacted their careers negatively, they could simply obtain a retroactive military retirement later on without the need for objective evidence.

Finally, application of liberal consideration policy as potentially envisioned by the *Doyon* court would create a significant burden for the Department and in particular, for the BCM/NRs. Because the Department waives the statute of limitations for cases involving PTSD, TBI, or

¹ Under Secretary of Defense Memorandum, “Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests By Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment,” August 25, 2017, establishes at Attachment 1, paragraph 7 that “[t]he veteran’s testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigates the discharge.”

² DoDI 1332.18, “Disability Evaluation System,” November 10, 2022, establishes at paragraph 6.6.b that “Except for presumption of fitness cases, the Secretary of the Military Department concerned will determine fitness or unfitness for military service based on the preponderance of the objective evidence in the record.”

MST,³ the impact of failing to pass this legislative change proposal would be significant. Based on Department of Veterans Affairs' statistics, more than 1.75 million veterans have a post-service PTSD diagnosis/post-service allegation of PTSD. Former Service members who apply for medical retirement under the liberal consideration paradigm, rather than the same evidentiary standard applied to current Service members, might be entitled to decades of disproportionate back pay, including for the cost of medical care and health insurance premiums dating to their separation from service. Many Vietnam War-era veterans, for example, could be entitled to almost 60 years of retroactive pay and benefits.

BACKGROUND:

The Department of Defense (DoD) initially implemented the liberal consideration standard through DoD memoranda;⁴ it was also codified for the BCM/NRs at 10 U.S.C. 1552(h) and for the Discharge Review Boards (DRBs) at 10 U.S.C. 1553(d)(3).

Recently, in *Doyon*, the plaintiff, a Vietnam-era veteran, challenged the BCNR's decision declining to apply liberal consideration to his request to change the reason for his separation from unsuitability (due to personality disorder) to unfitness (due to PTSD). Though a lower court agreed with the BCNR's determination, on January 25, 2023, a panel of the U.S. Court of Appeals for the Federal Circuit (CAFC) vacated the decision. Critically, the CAFC opinion declined to decide whether liberal consideration should have been applied to the applicant's contention that his PTSD rendered him medically unfit for duty.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget request.

Changes to Existing Law: This proposal would add two new paragraphs to 10 U.S.C. 1552(h), as set forth below.

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an

³ Under Secretary of Defense Memorandum, 24 February 2016, titled "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)." ("Carson Memo").

⁴ Secretary of Defense Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," September 3, 2014; Carson Memo; Kurta Memo.

enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3)(A) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(B) If a board makes a preliminary determination that a claim under this section lacks sufficient information or documents to support the claim, the board shall notify the claimant, in writing, indicating the specific information or documents necessary to make the claim complete and reviewable by the board.

(C) If a claimant is unable to provide military personnel or medical records applicable to a claim under this section, the board shall make reasonable efforts to obtain the records. A claimant shall provide the board with documentary evidence of the efforts of the claimant to obtain such records. The board shall inform the claimant of the results of the board's efforts, and shall provide the claimant copies of any records so obtained upon request of the claimant.

(D) Any request for reconsideration of a determination of a board under this section, no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the board in making such determination.

(4)(A) Subject to subparagraph (B), a correction under this section is final and conclusive on all officers of the United States except when procured by fraud.

(B) If a board established under this section does not grant a request for an upgrade to the characterization of a discharge or dismissal, that declination may be considered under section 1553a of this title.

(5) Each final decision of the board under this subsection shall be made available to the public in electronic form on a centralized Internet website. The information provided shall include a summary of each decision, to be indexed by subject matter, except that the Secretary shall protect the privacy of claimants by redacting all personally identifiable information.

(b) No correction may be made under subsection (a)(1) unless the claimant (or the claimant's heir or legal representative) or the Secretary concerned files a request for the correction within three years after discovering the error or injustice. The Secretary concerned may file a request for correction of a military record only if the request is made on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice. A board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) If the correction of military records under this section involves setting aside a conviction by court-martial, the payment of a claim under this subsection in connection with the correction of the records shall include interest at a rate to be determined by the Secretary concerned, unless the Secretary determines that the payment of interest is inappropriate under the circumstances. If the payment of the claim is to include interest, the interest shall be calculated on an annual basis, and compounded, using the amount of the lost pay, allowances, compensation, emoluments, or other pecuniary benefits involved, and the amount of any fine or forfeiture paid, beginning from the date of the conviction through the date on which the payment is made.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice, action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g)(1) Any medical advisory opinion issued to a board established under subsection (a)(1) with respect to a member or former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request for correction of records concerned relates to a mental health disorder.

(2) If a board established under subsection (a)(1) is reviewing a claim described in subsection (h), the board shall seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with post-traumatic stress disorder or traumatic brain injury or other trauma as specified in the current

edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(3) If a board established under subsection (a)(1) is reviewing a claim in which sexual trauma, intimate partner violence, or spousal abuse is claimed, the board shall seek advice and counsel in the review from an expert in trauma specific to sexual assault, intimate partner violence, or spousal abuse, as applicable.

(h)(1) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, and whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(2) In the case of a claimant described in paragraph (1), a board established under subsection (a)(1) shall—

(A) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and

(B) review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

(3) As a result of its review under paragraph (2), a board established under subsection (a)(1) may—

(A) grant a claimant's request to upgrade the characterization of a discharge or dismissal;

(B) grant a claimant's request to correct following for a discharge or dismissal: the narrative reason for separation, separation code, and the re-enlistment code; and

(C) deny any part of the claimant's application for relief after liberal consideration of the evidence of record.

(4) If a claimant described in paragraph (1) requests retirement or separation for physical disability under chapter 61 of this title, the board established under subsection (a)(1) shall review such request under the evidentiary standards established by the Department of Defense for current service members in the Disability Evaluation System. If the claimant submits multiple bases or requests for relief, the board shall review any eligible requests for relief that do not involve retirement or separation for physical disability under chapter 61 of this title under the liberal consideration standard established in paragraph (2).

(i) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of claims considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or release of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or contingency operation, catalogued by each war or contingency operation.

(3) The number of military records corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or release of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

(j) For a recommendation to award or upgrade a military decoration or award submitted pursuant to section 1130 of this title, a board determination in favor of the claimant shall allow such a recommendation to proceed, and an award or upgrade to be made by the applicable award authority, without regard to the statutory time limitation contained in section 7274, section 8298, or section 9274 of this title, as the case may be.

(k) In this section, the term “military record” means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 747, 855, 857, 871, and 947 of this title).

1 **SEC. ____ . REMOVAL OF DUPLICATIVE MISSILE DEFENSE AGENCY TESTING**
2 **REQUIREMENT.**

3 Section 5534 of title 10, United States Code, is repealed.

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

Section-by-Section Analysis

This proposal would repeal section 5534 of title 10, United States Code. That section has become duplicative and unnecessary in light of Army and Missile Defense Agency (MDA) regular flight testing, real-world operational employment of the “system of systems” that comprise the Missile Defense System, and the interoperable architecture required to support Golden Dome for America (GDA).

Interoperability and integration of the covered air and missile defense capabilities of the United States is a core component of MDA’s mission to develop and deploy a layered Missile Defense System to defend the United States, its deployed forces, allies, and friends from missile attacks in all phases of flight. As such, the requirements levied by this provision are obviated by tests the U.S. Army and MDA already carry out during the Research, Defense, Test, and Evaluation (RDT&E) process. Flight testing regularly occurs in the course of normal capability upgrades and development with the covered capabilities listed. The mandate of annual interoperability testing between covered air and missile defense capabilities is not always required based on requirements and capability development. GDA requirements will determine which interoperability flight testing MDA will need to support. Additional mandated testing and reporting generates little value relative to the required cost to execute the process.

Further, the systems MDA develops are deployed around the world, operated by the Services, and must be maintained at a high level of readiness at all times in support of missions MDA performs in concert with the Combatant Commands and other warfighting organizations. All of the systems MDA develops are high-demand, low-density assets. Any additional requirements to conduct testing strain already depleted resources and create additional risk to readiness levels.

Finally, the Missile Defense System is being tested in real-world operational environments in support of our allies and partners. These operational employments of MDA systems have fostered integration and interoperability through definitively realistic conditions. Combined with the flight tests conducted during the RDT&E process, they have created an environment in which the mandates of the statute in question are unnecessary.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would repeal section 5534 of title 10, United States Code, as follows.

~~§5534. Integration and interoperability of air and missile defense capabilities~~

~~(a) INTEROPERABILITY OF MISSILE DEFENSE SYSTEMS.—The Vice Chairman of the Joint Chiefs of Staff and the chairman of the Missile Defense Executive Board (pursuant to section 1681(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), acting through the Missile Defense Executive Board, shall ensure the interoperability and integration of the covered air and missile defense capabilities of the United States, including by carrying out operational testing.~~

~~(b) ANNUAL DEMONSTRATION.—(1) Except as provided by paragraph (2), the Director of the Missile Defense Agency and the Secretary of the Army shall jointly ensure that not less than one intercept or flight test is carried out each year that demonstrates interoperability and integration among the covered air and missile defense capabilities of the United States.~~

~~(2) The Director and the Secretary may waive the requirement in paragraph (1) with respect to an intercept or flight test carried out during the year covered by the waiver if the chairman of the Missile Defense Executive Board—~~

~~(A) determines that such waiver is necessary for such year; and~~

~~(B) submits to the congressional defense committees notification of such waiver, including an explanation for how such waiver will not negatively affect demonstrating the interoperability and integration among the covered air and missile defense capabilities of the United States.~~

~~(c) DEFINITION OF COVERED AIR AND MISSILE DEFENSE CAPABILITIES.—In this section, the term "covered air and missile defense capabilities" means Patriot air and missile defense batteries and associated interceptors and systems, Aegis ships and associated ballistic missile interceptors (including Aegis Ashore capability), AN/TPY-2 radars, or terminal high altitude area defense batteries and interceptors.~~

1 **SEC. ____ . REPEAL OF CERTAIN LIMITATIONS ON AUTHORITY OF SECRETARY**
2 **OF DEFENSE RELATING TO CONDITIONAL RETIREMENT OF**
3 **CERTAIN SENIOR REGULAR COMMISSIONED OFFICERS.**

4 (a) OFFICERS RETIRING WHILE UNDER INVESTIGATION OR PENDING DISPOSITION OF
5 ADVERSE ACTION.—Subsection (b) of section 1370 of title 10, United States Code, is amended—

- 6 (1) by striking paragraph (4); and
7 (2) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6),
8 respectively.

9 (b) OFFICERS RETIRING IN A CONDITIONAL GRADE.—Subsection (d) of such section is
10 amended—

- 11 (1) in the subsection heading, by striking “OR ADVERSE ACTION” and inserting “,
12 ADVERSE ACTION, OR OTHER ADMINISTRATIVE ACTION”;
13 (2) in paragraph (2)—
14 (A) in the matter preceding subparagraph (A), by inserting “or other
15 administrative action” after “adverse personnel action”; and
16 (B) in subparagraph (A), by striking “permanent”;
17 (3) by striking paragraph (3); and
18 (4) by redesignating paragraph (4) as paragraph (3).

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

Section-by-Section Analysis

This proposal would make three adjustments to retirement authorities in section 1370 of title 10, United States Code, dealing with Regular officer retirements. These three portions of section 1370 limit the authority of the Secretary of Defense to conditionally retire general and flag officers in the grades of O-9 and O-10.

Section 1370(d)(2)(A) limits the reduction or waiver of a service-in-grade requirement in those cases where the officer is pending an investigation or adjudication of adverse information.

Section 1370(b)(4) limits the retirement of an O-9 or O-10 to a conditional grade that is the last permanent grade held by such officer, normally O-8.

Section 1370(d) only allows conditional retirements for those officers who have pending allegations against them.

Taken together the Secretary of Defense cannot conditionally retire a O-9 or O-10 officer in the officer's current grade even in those cases where there has been no misconduct found against the officer and the evidence shows none would be expected. In a time of focusing on war fighting, lethality, and accountability, the Secretary of Defense deserves to pick his leadership team to maximize strategic readiness and operational effectiveness.

This proposal would allow the Secretary of Defense the latitude to shape his leadership team while recognizing those who have served for so long in the appropriate grade as recommended by the Secretary of the military department concerned and the Chairman of the Joint Chiefs of Staff. Very few O-9 or O-10 officers who conditionally retire are found to have substantiated misconduct. These officers should be assumed innocent until proven guilty. A conditional retirement at a lower grade, while waiting an investigation adjudication, can have adverse impacts to employment opportunities and undermines the service and sacrifice of our career senior officers. This proposal allows retirement of O-9 or O-10 officers in the appropriate grade as determined by the Secretary of Defense.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget.

Changes to Existing Law: This proposal would amend section 1370 of title 10, United States Code as follows:

§1370. Regular commissioned officers

(a) RETIREMENT IN HIGHEST GRADE IN WHICH SERVED SATISFACTORILY.—

(1) IN GENERAL.—Unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who retires under any provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily.

(2) DETERMINATION OF SATISFACTORY SERVICE.—The determination of satisfactory service of an officer in a grade under paragraph (1) shall be made as follows:

(A) By the Secretary of the military department concerned, if the officer is serving in a grade at or below the grade of major general or rear admiral.

(B) By the Secretary of Defense, if the officer is serving or has served in a grade above the grade of major general or rear admiral.

(3) EFFECT OF MISCONDUCT IN LOWER GRADE IN DETERMINATION.—If the Secretary of a military department or the Secretary of Defense, as applicable, determines that an officer committed misconduct in a lower grade than the retirement grade otherwise provided for the officer by this section-

(A) such Secretary may deem the officer to have not served satisfactorily in any grade equal to or higher than such lower grade for purposes of determining the retirement grade of the officer under this section; and

(B) the grade next lower to such lower grade shall be the retired grade of the officer under this section.

(4) NATURE OF RETIREMENT OF CERTAIN RESERVE OFFICERS AND OFFICERS IN TEMPORARY GRADES.—A reserve officer, or an officer appointed to a position under section 601 of this title, who is notified that the officer will be released from active duty without the officer's consent and thereafter requests retirement under section 7311, 8323, or 9311 of this title and is retired pursuant to that request is considered for purposes of this section to have been retired involuntarily.

(5) NATURE OF RETIREMENT OF CERTAIN REMOVED OFFICERS.—An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT OF OFFICERS RETIRING VOLUNTARILY.—

(1) SERVICE-IN-GRADE REQUIREMENT.—In order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the Army, Air Force, Marine Corps, or Space Force or lieutenant in the Navy, a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force must have served on active duty in that grade for a period of not less than three years, except that-

(A) subject to subsection (c), the Secretary of Defense may reduce such period to a period of not less than two years for any officer; and

(B) in the case of an officer to be retired in a grade at or below the grade of major general or rear admiral, the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period of not less than two years.

(2) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense in subparagraph (A) of paragraph (1) may not be delegated. The authority of the Secretary of a military department in subparagraph (B) of paragraph (1), as delegated to such Secretary pursuant to such subparagraph, may not be further delegated.

(3) WAIVER OF REQUIREMENT.—Subject to subsection (c), the President may waive the application of the service-in-grade requirement in paragraph (1) to officers covered by that paragraph in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under this paragraph may not be delegated.

~~(4) LIMITATION ON REDUCTION OR WAIVER OF REQUIREMENT FOR OFFICERS UNDER INVESTIGATION OR PENDING MISCONDUCT.—In the case of an officer to be retired in a grade above the grade of colonel in the Army, Air Force, Marine Corps, or Space Force or captain in the Navy, the service in grade requirement in paragraph (1) may not be reduced pursuant to that paragraph, or waived pursuant to paragraph (3), while the officer~~

~~is under investigation for alleged misconduct or while there is pending the disposition of an adverse personnel action against the officer.~~

~~(5)~~ (4) GRADE AND FISCAL YEAR LIMITATIONS ON REDUCTION OR WAIVER OF REQUIREMENTS.—The aggregate number of members of an armed force in a grade for whom reductions are made under paragraph (1), and waivers are made under paragraph (3), in a fiscal year may not exceed-

(A) in the case of officers to be retired in a grade at or below the grade of major in the Army, Air Force, Marine Corps, or Space Force or lieutenant commander in the Navy, the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade;

(B) in the case of officers to be retired in the grade of lieutenant colonel or colonel in the Army, Air Force, Marine Corps, or Space Force or commander or captain in the Navy, the number equal to four percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade; or

(C) in the case of officers to be retired in the grade of brigadier general or major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral (lower half) or rear admiral in the Navy, the number equal to 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade.

~~(6)~~ (5) NOTICE TO CONGRESS ON REDUCTION OR WAIVER OF REQUIREMENTS FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of the authority in paragraph (1) to reduce the service-in-grade requirement in that paragraph, or the authority in paragraph (3) to waive that requirement, the Secretary of Defense or the President, as applicable, shall, not later than 60 days prior to the date on which the officer will be retired in that grade, notify the Committees on Armed Services of the Senate and the House of Representatives of the exercise of the applicable authority with respect to that officer.

~~(7)~~ (6) RETIREMENT IN NEXT LOWEST GRADE FOR OFFICERS NOT MEETING REQUIREMENT.—An officer described in paragraph (1) whose length of service in the highest grade held by the officer while on active duty does not meet the period of the service-in-grade requirement applicable to the officer under this subsection shall, subject to subsection (c), be retired in the next lower grade in which the officer served on active duty satisfactorily, as determined by the Secretary of the military department concerned or the Secretary of Defense, as applicable.

(c) OFFICERS IN O–9 AND O–10 GRADES.—

(1) IN GENERAL.—An officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is serving or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general in the Army, Air Force, Marine Corps, or Space Force or vice admiral or admiral in the Navy

under section 601 of this title may be retired in such grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and the Committees on Armed Services of the Senate and the House of Representatives that the officer served on active duty satisfactorily in such grade.

(2) PROHIBITION ON DELEGATION.—The authority of the Secretary of Defense to make a certification with respect to an officer under paragraph (1) may not be delegated.

(3) REQUIREMENTS IN CONNECTION WITH CERTIFICATION.—A certification with respect to an officer under paragraph (1) shall—

(A) be submitted by the Secretary of Defense such that it is received by the President and the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days prior to the date on which the officer will be retired in the grade concerned;

(B) include an up-to-date copy of the military biography of the officer; and

(C) include the statement of the Secretary as to whether or not potentially adverse, adverse, or reportable information regarding the officer was considered by the Secretary in making the certification.

(4) CONSTRUCTION WITH OTHER NOTICE.—In the case of an officer under paragraph (1) to whom a reduction in the service-in-grade requirement under subsection (b)(1) or waiver under subsection (b)(3) applies, the requirement for notification under subsection (b)(6) is satisfied if the notification is included in the certification submitted by the Secretary of Defense under paragraph (1).

(d) CONDITIONAL RETIREMENT GRADE AND RETIREMENT FOR OFFICERS PENDING INVESTIGATION, OR ADVERSE ACTION, OR OTHER ADMINISTRATIVE ACTION.—

(1) IN GENERAL.—When an officer serving in a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral in the Navy is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement, the Secretary of the military department concerned may—

(A) conditionally determine the highest permanent grade of satisfactory service on active duty of the officer pending completion of the investigation or resolution of the personnel action, as applicable; and

(B) retire the officer in that conditional grade, subject to subsection (e).

(2) OFFICERS IN O–9 AND O–10 GRADES.—When an officer described by subsection (c)(1) is under investigation for alleged misconduct or pending the disposition of an adverse personnel action or other administrative action at the time of retirement, the Secretary of Defense may—

(A) conditionally determine the highest ~~permanent~~ grade of satisfactory service on active duty of the officer, pending completion of the investigation or personnel action, as applicable; and

(B) retire the officer in that conditional grade, subject to subsection (e).

~~(3) REDUCTION OR WAIVER OF SERVICE-IN-GRADE REQUIREMENT PROHIBITED FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In conditionally determining the~~

~~retirement grade of an officer under paragraph (1)(A) or (2)(A) of this subsection to be a grade above the grade of colonel in the Army, Air Force, Marine Corps, or Space Force or captain in the Navy, the service in grade requirement in subsection (b)(1) may not be reduced pursuant to subsection (b)(1) or waived pursuant to subsection (b)(3).~~

~~(4)(3) PROHIBITION ON DELEGATION.~~—The authority of the Secretary of a military department under paragraph (1) may not be delegated. The authority of the Secretary of Defense under paragraph (2) may not be delegated.

(e) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR ADVERSE ACTION.—

(1) NO CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired will not be changed, the conditional retirement grade of the officer shall, subject to paragraph (3), be the final retired grade of the officer.

(2) CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired should be changed, the changed retirement grade shall be the final retired grade of the officer under this section, except that if the final retirement grade provided for an officer pursuant to this paragraph is the grade of lieutenant general or general in the Army, Air Force, Marine Corps, or Space Force or vice admiral or admiral in the Navy, the requirements in subsection (c) shall apply in connection with the retirement of the officer in such final retirement grade.

(3) RECALCULATION OF RETIRED PAY.—

(A) IN GENERAL.—If the final retired grade of an officer is as a result of a change under paragraph (2), the retired pay of the officer under chapter 71 of this title shall be recalculated accordingly, with any modification of the retired pay of the officer to go into effect as of the date of the retirement of the officer.

(B) PAYMENT OF HIGHER AMOUNT FOR PERIOD OF CONDITIONAL RETIREMENT GRADE.—If the recalculation of the retired pay of an officer results in an increase in retired pay, the officer shall be paid the amount by which such increased retired pay exceeded the amount of retired pay paid the officer for retirement in the officer's conditional grade during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade. For an officer whose retired grade is determined pursuant to subsection (c), the effective date of the change of the officer's retired grade for purposes of this subparagraph shall be the date that is 60 days after the date on which the Secretary of Defense submits to the Committees on Armed Services of the Senate and the House of Representatives the certification required by subsection (c) in connection with the retired grade of the officer.

(C) RECOUPMENT OF OVERAGE DURING PERIOD OF CONDITIONAL RETIREMENT GRADE.—If the recalculation of the retired pay of an officer results in a decrease in retired pay, there shall be recouped from the officer the amount by which the amount of retired pay paid the officer for retirement in the officer's conditional grade exceeded such decreased retired pay during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade.

(f) FINALITY OF RETIRED GRADE DETERMINATIONS.—

(1) IN GENERAL.—Except for a conditional determination authorized by subsection (d), a determination of the retired grade of an officer pursuant to this section is administratively final on the day the officer is retired, and may not be reopened, except as provided in paragraph (2).

(2) REOPENING.—A final determination of the retired grade of an officer may be reopened as follows:

(A) If the retirement or retired grade of the officer was procured by fraud.

(B) If substantial evidence comes to light after the retirement that could have led to determination of a different retired grade under this section if known by competent authority at the time of retirement.

(C) If a mistake of law or calculation was made in the determination of the retired grade.

(D) If the applicable Secretary determines, pursuant to regulations prescribed by the Secretary of Defense, that good cause exists to reopen the determination of retired grade.

(3) APPLICABLE SECRETARY.—For purposes of this subsection, the applicable Secretary for purposes of a determination or action specified in this subsection is—

(A) the Secretary of the military department concerned, in the case of an officer retired in a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral in the Navy; or

(B) the Secretary of Defense, in the case of an officer retired in a grade of lieutenant general or general in the Army, Air Force, Marine Corps, or Space Force or vice admiral or admiral in the Navy.

(4) NOTICE AND LIMITATION.—If a final determination of the retired grade of an officer is reopened in accordance with paragraph (2), the applicable Secretary—

(A) shall notify the officer of the reopening; and

(B) may not make an adverse determination on the retired grade of the officer until the officer has had a reasonable opportunity to respond regarding the basis for the reopening of the officer's retired grade.

(5) ADDITIONAL NOTICE ON REOPENING FOR OFFICERS RETIRED IN O-9 AND O-10 GRADES.—If the determination of the retired grade of an officer whose retired grade was provided for pursuant to subsection (c) is reopened, the Secretary of Defense shall also notify the President and the Committees on Armed Services of the Senate and the House of Representatives.

(6) MANNER OF MAKING OF CHANGE.—If the retired grade of an officer is proposed to be changed through the reopening of the final determination of an officer's retired grade under this subsection, the change in grade shall be made—

(A) in the case of an officer whose retired grade is to be changed to a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral in the Navy in accordance with subsections (a) and (b)—

(i) by the Secretary of Defense (who may delegate such authority only as authorized by clause (ii)); or

(ii) if authorized by the Secretary of Defense, by the Secretary of the military department concerned (who may not further delegate such authority);

(B) in the case of an officer whose retired grade is to be changed to the grade of lieutenant general or general in the Army, Air Force, Marine Corps, or Space Force or vice admiral or admiral in the Navy, by the President, by and with the advice and consent of the Senate.

(7) RECALCULATION OF RETIRED PAY.—If the final retired grade of an officer is changed through the reopening of the officer's retired grade under this subsection, the retired pay of the officer under chapter 71 of this title shall be recalculated. Any modification of the retired pay of the officer as a result of the change shall go into effect on the effective date of the change of the officer's retired grade, and the officer shall not be entitled or subject to any changed amount of retired pay for any period before such effective date. An officer whose retired grade is changed as provided in paragraph (6)(B) shall not be entitled or subject to a change in retired pay for any period before the date on which the Senate provides advice and consent for the retirement of the officer in such grade.

(g) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term "highest permanent grade" means a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force, or rear admiral in the Navy.

1 **SEC. ____ . REPEAL OF REQUIREMENT FOR MINIMUM CAPITAL INVESTMENT**
2 **FOR FACILITIES SUSTAINMENT, RESTORATION, AND**
3 **MODERNIZATION FOR MILITARY DEPARTMENTS.**

4 Section 2680 of title 10, United States Code, is repealed.

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

Section-by-Section Analysis

This proposal would repeal section 2680 of title 10, United States Code, to eliminate the statutory requirement for military departments to allocate a minimum percentage of their facilities' plant replacement value (PRV) to facilities sustainment, restoration, and modernization (FSRM) budgets. This change would remove the structured framework that currently mandates specific investment levels tied to PRV, beginning in fiscal year 2027.

By repealing section 2680 of title 10, United States Code, the military departments would no longer be required to fence funding specifically for use on facilities sustainment or certify compliance with minimum investment thresholds to Congress. The repeal would also eliminate the requirement for detailed reporting on facilities scheduled for demolition, including cost and schedule estimates. This would provide military departments with greater flexibility in determining FSRM investment levels based on operational priorities and needs, rather than adhering to fixed statutory percentages.

Resource Information: This proposal has no direct impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would repeal section 2680 of title 10, United States Code, as amended by section 2841 of the National Defense Authorization Act for Fiscal Year 2026 (Public Law 119-60), as follows:

~~§2680. Minimum capital investment for facilities sustainment, restoration, and modernization for military departments~~

~~(a) MINIMUM INVESTMENT. Beginning in fiscal year 2027, and each fiscal year thereafter, each Secretary of a military department shall—~~

~~(1) calculate (in accordance with subsection (b)) the cumulative plant replacement value of the total inventory of covered facilities on each military installation under the jurisdiction of the Secretary concerned; and~~

~~(2) invest in the budget for facilities sustainment, restoration, and modernization of that military department, a total amount equal to not less than the percentage specified in subsection (c) of the cumulative plant replacement value described in paragraph (1).~~

~~(b) EXCLUSION. In making any calculation pursuant to paragraph (1) of subsection (a), each Secretary of a military department shall exclude any covered facility under the jurisdiction of such Secretary that is scheduled for demolition during the two-year period beginning after the date of such calculation.~~

~~(c) PERCENTAGE SPECIFIED. The percentage of the specified in this subsection is—~~
~~(1) for fiscal year 2027, 1.75 percent;~~
~~(2) for fiscal year 2028, 2.5 percent;~~
~~(3) for fiscal year 2029, 3.25 percent; and~~
~~(4) for fiscal year 2030 and each subsequent fiscal year, 4 percent.~~

~~(d) CERTIFICATION. — As part of the annual budget submission of the President under section 1105(a) of title 31, each Secretary of each military department shall include—~~
~~(1) a certification to the congressional defense committees that the military department is in compliance with this section; and~~
~~(2) a list of covered facilities under the jurisdiction of that Secretary, disaggregated by military installation and location, that are scheduled for demolition during the two-year period beginning after the date of the submission of such budget, which shall include cost and schedule estimates.~~

~~(e) DEFINITIONS. — In this section:~~

~~(1) The term “covered facility” means a facility (as defined in section 2801 of this title), except that such term does not include—~~

~~(A) a facility identified as closed, disposed of, or scheduled for divestment from the inventory of the Department of Defense;~~

~~(B) a facility in which the Department does not have a total ownership interest, including—~~

~~(i) a facility leased by the Department; and~~

~~(ii) a facility in which the Department has a lesser property interest under a governing legal instrument; or~~

~~(C) a facility for which the Department uses—~~

~~(i) nonappropriated funds; or~~

~~(ii) amounts appropriated or otherwise made available for military family housing.~~

~~(2) The term “plant replacement value” means, with respect to a covered facility, the cost to replace the covered facility using amounts appropriated for facilities sustainment, restoration, and modernization from the following accounts:~~

~~(A) Operation and maintenance.~~

~~(B) Military construction.~~

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

~~(D) Working capital funds.~~

1 **SEC. ____. REPEAL OF REQUIREMENT FOR SECRETARY OF DEFENSE TO ACT**
2 **THROUGH A SPECIFIED OFFICIAL FOR NATO INNOVATION**
3 **PROGRAM.**

4 (a) REPEAL OF LIMITATION ON SECRETARY OF DEFENSE DELEGATION AUTHORITY.—
5 Section 222 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-
6 31; 137 Stat. 189) is amended by striking “, acting through the Under Secretary of Defense for
7 Research and Engineering,” in subsections (a) and (b).

8 (b) REPEAL OF EXECUTED REQUIREMENT.—Such section is further amended by striking
9 subsection (c).

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

Section-by-Section Analysis

This proposal would repeal the requirement for the Secretary of Defense to act through the Under Secretary of Defense for Research and Engineering (USD(R&E)) in carrying out section 222 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-31; 137 Stat. 189), which authorizes the Secretary of Defense to provide funding support to NATO for the joint fund established for the Defence Innovation Accelerator for the North Atlantic (NATO DIANA) initiative. This proposal would provide the Secretary of Defense flexibility to designate an appropriate official or organization to carry out Department of Defense responsibilities in support of that initiative.

To support program execution, the Secretary of Defense transferred responsibility for support of the NATO DIANA initiative from USD (R&E) to the DIU Director in July 2025. That initiative has evolved from an organization focused on deep technology to an organization focused on identifying high transition readiness level commercially derived dual-use technology and rapidly accelerating the adoption of viable technology by NATO militaries. Recognizing this shift in focus, the USD (R&E) determined that NATO DIANA is more closely aligned to DIU’s mission.

Additionally, this proposal would repeal subsection (c) of section 222, which required the Secretary of Defense to submit to certain congressional committees, not later than July 1, 2024, a strategy for participation by the United States in the NATO DIANA initiative, since that strategy has been submitted. The Department will continue to provide annual reports as required by subsection (d), enabling relevant updates on strategy and execution.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would amend section 222 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-31) as follows:

SEC. 222. SUPPORT TO THE DEFENCE INNOVATION ACCELERATOR FOR THE NORTH ATLANTIC.

(a) ~~AUTHORITY.~~—Subject to the availability of appropriations, the Secretary of Defense, ~~acting through the Under Secretary of Defense for Research and Engineering,~~ is authorized to make available not more than \$15,000,000 for each of fiscal years 2024 through 2029 to the North Atlantic Treaty Organization for the joint fund established for the Defence Innovation Accelerator for the North Atlantic (DIANA) initiative (referred to in this section as the “Initiative”) to sustain the participation of the United States in such initiative.

(b) ~~NOTIFICATION.~~—

(1) ~~IN GENERAL.~~—Not later than 15 days after each instance in which the Secretary of Defense provides funds to the Initiative pursuant to subsection (a), the Secretary, ~~acting through the Under Secretary of Defense for Research and Engineering,~~ shall submit to the appropriate congressional committees written notice that such funds were provided.

(2) ~~CONTENTS.~~—Each notification submitted under paragraph (1) shall include the following:

(A) The total amount of funding provided under subsection (a) together with a detailed breakdown showing the specific amounts and purposes for which such funds are intended to be used, if any.

(B) The time period for which such funds are provided.

~~(c) STRATEGY.~~—

(1) ~~IN GENERAL.~~— Not later than July 1, 2024, the Secretary of Defense, ~~acting through the Under Secretary of Defense for Research and Engineering,~~ shall submit to the appropriate congressional committees a strategy for participation by the United States in the Initiative.

(2) ~~CONTENTS.~~— The strategy under paragraph (1) shall include the following:

(A) A description of how the Initiative fits into the science, technology, and innovation activities of the North Atlantic Treaty Organization and how the Initiative is synchronized with and expected to interact with other science, technology, and innovation activities of the Department of Defense.

(B) The anticipated funding profile for the Initiative across the period covered by the most recent future years defense program submitted to Congress under section 221 of title 10, United States Code (as of the date of the strategy).

(C) Identification of key technology focus areas to be addressed each year under the Initiative across such period.

(D) A description of any anticipated areas of expansion in the Initiative, including any anticipated expansion of the Initiative to or within key nodes or

~~locations that have strategic value for national security and where there is also a significant presence of technology oriented startup businesses.~~

~~(E) A description of how the Initiative is expected to contribute to fostering the spread of innovation throughout the United States.~~

(d) ANNUAL REPORT.—Not later than September 1, 2024, and not later than February 1 of each year thereafter through 2030, the Secretary of Defense shall submit to the congressional defense committees an annual report on—

(1) the activities of the Initiative that were supported by the Department of Defense under subsection (a) in the year preceding the date of the report; and

(2) any key milestones or other objectives that were achieved under the initiative in such year.

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

(1) the congressional defense committees;

(2) the Committee on Foreign Affairs of the House of Representatives; and

(3) the Committee on Foreign Relations of the Senate.

1 **SEC. ____ . REPEAL OF THE FEDERAL AGENCY DATA MINING REPORTING ACT**
2 **OF 2007.**

3 The Federal Agency Data Mining Reporting Act of 2007 (42 U.S.C. 2000ee-3) is
4 repealed.

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

Section-by-Section Analysis

This proposal would repeal the Federal Agency Data Mining Reporting Act of 2007 (42 U.S.C. 2000ee-3) (Section 804) which requires annual reports on government activities that use or develop data mining, and which the Department believes is outdated and no longer useful. Department of Defense (DoD) reporting in accordance with Section 804 has significantly diminished since this provision was adopted more than eighteen years ago years because “data mining” as defined no longer reflects current technologies and methodologies used by the DoD to query, search, or analyze electronic databases.

Of DoD’s forty-six Components, only the National Security Agency and the Defense Threat Reduction Agency continue to conduct and report activities responsive to Section 804 requirements. The report generated from their inputs requires thousands of man-hours to produce but contains nearly identical information year after year. Engagement from the congressional committees that receive the report has decreased precipitously in recent years suggesting the report is no longer useful. Congressional defense and intelligence committees receive more current and comprehensive information from DoD Components in response to other statutory requirements, such as reports required through FISA and through general oversight activities. The information provided to Congress through those other mechanisms fully incorporates the information requested in Section 804, making this provision unnecessary and ultimately ineffective to supporting congressional oversight.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year 2027 President’s Budget.

Changes to Existing Law: This proposal would repeal the Federal Agency Data Mining Reporting Act of 2007 (42 U.S.C. 2000ee-3) as follows:

~~SEC. 804. FEDERAL AGENCY DATA MINING REPORTING ACT OF 2007.~~

~~(a) SHORT TITLE.— This section may be cited as the “Federal Agency Data Mining Reporting Act of 2007”.~~

~~(b) DEFINITIONS.— In this section:~~

~~(1) DATA MINING.— The term “data mining” means a program involving pattern-based queries, searches, or other analyses of 1 or more electronic databases, where—~~

~~(A) a department or agency of the Federal Government, or a non-Federal entity acting on behalf of the Federal Government, is conducting the queries;~~

~~searches, or other analyses to discover or locate a predictive pattern or anomaly indicative of terrorist or criminal activity on the part of any individual or individuals;~~

~~(B) the queries, searches, or other analyses are not subject based and do not use personal identifiers of a specific individual, or inputs associated with a specific individual or group of individuals, to retrieve information from the database or databases; and~~

~~(C) the purpose of the queries, searches, or other analyses is not solely—~~

~~(i) the detection of fraud, waste, or abuse in a Government agency or program; or~~

~~(ii) the security of a Government computer system.~~

~~(2) DATABASE.— The term “database” does not include telephone directories, news reporting, information publicly available to any member of the public without payment of a fee, or databases of judicial and administrative opinions or other legal research sources.~~

~~(c) REPORTS ON DATA MINING ACTIVITIES BY FEDERAL AGENCIES.—~~

~~(1) REQUIREMENT FOR REPORT.— The head of each department or agency of the Federal Government that is engaged in any activity to use or develop data mining shall submit a report to Congress on all such activities of the department or agency under the jurisdiction of that official. The report shall be produced in coordination with the privacy officer of that department or agency, if applicable, and shall be made available to the public, except for an annex described in subparagraph (C) [paragraph 3].~~

~~(2) CONTENT OF REPORT.— Each report submitted under subparagraph (A) [paragraph (1)] shall include, for each activity to use or develop data mining, the following information:~~

~~(A) A thorough description of the data mining activity, its goals, and, where appropriate, the target dates for the deployment of the data mining activity.~~

~~(B) A thorough description of the data mining technology that is being used or will be used, including the basis for determining whether a particular pattern or anomaly is indicative of terrorist or criminal activity.~~

~~(C) A thorough description of the data sources that are being or will be used.~~

~~(D) An assessment of the efficacy or likely efficacy of the data mining activity in providing accurate information consistent with and valuable to the stated goals and plans for the use or development of the data mining activity.~~

~~(E) An assessment of the impact or likely impact of the implementation of the data mining activity on the privacy and civil liberties of individuals, including a thorough description of the actions that are being taken or will be taken with regard to the property, privacy, or other rights or privileges of any individual or individuals as a result of the implementation of the data mining activity.~~

~~(F) A list and analysis of the laws and regulations that govern the information being or to be collected, reviewed, gathered, analyzed, or used in conjunction with the data mining activity, to the extent applicable in the context of the data mining activity.~~

~~(G) A thorough discussion of the policies, procedures, and guidelines that are in place or that are to be developed and applied in the use of such data mining activity in order to—~~

~~(i) protect the privacy and due process rights of individuals, such as redress procedures; and~~

~~(ii) ensure that only accurate and complete information is collected, reviewed, gathered, analyzed, or used, and guard against any harmful consequences of potential inaccuracies.~~

~~(3) ANNEX.—~~

~~(A) IN GENERAL.—A report under subparagraph (A) [paragraph (1)] shall include in an annex any necessary—~~

~~(i) classified information;~~

~~(ii) law enforcement sensitive information;~~

~~(iii) proprietary business information; or~~

~~(iv) trade secrets (as that term is defined in section 1839 of title 18, United States Code).~~

~~(B) AVAILABILITY—Any annex described in clause (i) [subparagraph (A)]—~~

~~(i) shall be available, as appropriate, and consistent with the National Security Act of 1947 (50 U.S.C. 401 et seq.), to the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, the Permanent Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Financial Services of the House of Representatives; and~~

~~(ii) shall not be made available to the public.~~

~~(4) TIME FOR REPORT.—Each report required under subparagraph (A) [paragraph (1)] shall be—~~

~~(A) submitted not later than 180 days after the date of enactment of this Act [enacted Aug. 3, 2007]; and~~

~~(B) updated not less frequently than annually thereafter, to include any activity to use or develop data mining engaged in after the date of the prior report submitted under subparagraph (A).~~

1 **SEC. ___. REVIEW OF COURTS-MARTIAL RECORDS.**

2 (a) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN, OR NOT FILED.—Section
3 865(d) of title 10, United States Code (article 65(d) of the Uniform Code of Military Justice), is
4 amended—

5 (1) by striking paragraph (2);

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

7 (3) in paragraph (2), as so redesignated—

8 (A) in subparagraph (A)(ii), by striking “subparagraph (A), (B), or (C)”

9 and inserting “subparagraph (A) or (B)”; and

10 (B) in subparagraph (B), by striking “conclusions” and all that follows and

11 inserting “a conclusion on each of the following matters:

12 “(i) Whether the court had jurisdiction over the accused and the
13 offense.

14 “(ii) Whether the charge and specification stated an offense.

15 “(iii) Whether the sentence was within the limits prescribed as a
16 matter of law.”.

17 (b) TECHNICAL CORRECTION.—Section 869(c)(2) of title 10, United States Code (article
18 69(c)(2) of the Uniform Code of Military Justice), is amended by striking “section 865(b) of this
19 title (article 65(b))” and inserting “section 865(d) of this title (article 65(d))”.

[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 align and conform the language in section 865 of title 10, United States Code (article 65 of the Uniform Code of Military Justice (UCMJ)), with the amendments to article 66, UCMJ made by section 544 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Public Law 117–263). This proposal would also amend

section 865 of title 10 (article 69, UCMJ) to correct a scrivener’s cross-reference error regarding review of cases by the Judge Advocate General under article 65, UCMJ.

Article 65(d)(2), UCMJ requires review by an attorney within the Office of the Judge Advocate General, or another attorney designed under regulations prescribed by the Secretary concerned, of each general and special court-martial that is not eligible for direct appeal under article 66(b), UCMJ. Section 544 of the James M. Inhofe NDAA for FY 2023 (Public Law 117–263) modified the jurisdiction of the Courts of Criminal Appeals under article 66(b), UCMJ to include any appeal of a general or special court-martial where the judgment entered into the record includes a finding of guilty. Following this amendment, only general and special courts-martial that do not include a finding of guilty are ineligible for direct appeal under article 66(b), UCMJ and require review in accordance with article 65(d)(2), UCMJ. The requirements of article 65(d)(2) are thus vestigial and have no applicability following the amendment to article 66, UCMJ made by section 544 of the James M. Inhofe NDAA for FY 2023 (Public Law 117–263).

Article 69(c)(2), UCMJ seeks to limit the scope of review by the Judge Advocate General where a case has been previously reviewed under article “65(b)”, UCMJ. However, article 65(b), UCMJ does not provide for review, but rather pertains to requirements for transmission of records of trial. The subsection of article 65, UCMJ pertaining to review is subsection (d).

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would amend sections 865 and 869 of title 10, United States Code (article 65 and 69 of the Uniform Code of Military Justice), as follows:

§865. Art. 65. Transmittal and review of records

(a) TRANSMITTAL OF RECORDS.—

(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(b) CASES FOR DIRECT APPEAL.—

(1) AUTOMATIC REVIEW.—If the judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward—

(A) the record of trial to the Court of Criminal Appeals for review under section 866(b)(3) of this title (article 66(b)(3)); and

(B) a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, upon request of the accused, to represent the accused before the Criminal Court of Appeals.

(2) CASES ELIGIBLE FOR DIRECT APPEAL REVIEW.—

(A) IN GENERAL.—If the case is eligible for direct review under section 866(b)(1) of this title (article 66(b)(1)), the Judge Advocate General shall, upon written request of the accused—

(i) forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and to represent the accused before the Court of Criminal Appeals; and

(ii) forward a copy of the record of trial to civilian counsel provided by the accused.

(B) INAPPLICABILITY.—Subparagraph (A) shall not apply if the accused waives the right to appeal under section 861 of this title (article 61).

(c) NOTICE OF RIGHT TO APPEAL.—

(1) IN GENERAL.—The Judge Advocate General shall provide notice to the accused of the right to file an appeal under section 866(b)(1) of this title (article 66(b)(1)) by means of depositing in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the official service record of the accused.

(2) INAPPLICABILITY UPON WAIVER OF APPEAL.—Paragraph (1) shall not apply if the accused waives the right to appeal under section 861 of this title (article 61).

(d) REVIEW BY JUDGE ADVOCATE GENERAL.—

(1) BY WHOM.—A review conducted under this subsection may be conducted by an attorney within the Office of the Judge Advocate General or another attorney designated under regulations prescribed by the Secretary concerned.

~~(2) REVIEW OF CASES NOT ELIGIBLE FOR DIRECT APPEAL.—~~

~~(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court martial that is not eligible for direct appeal under paragraph (1) or (3) of section 866(b) of this title (article 66(b)).~~

~~(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision providing each of the following:~~

~~(i) A conclusion as to whether the court had jurisdiction over the accused and the offense.~~

~~(ii) A conclusion as to whether the charge and specification stated an offense.~~

~~(iii) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.~~

~~(iv) A response to each allegation of error made in writing by the accused.~~

~~(3) (2) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN, OR NOT FILED.—~~

~~(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial if—~~

(i) the accused waives the right to appeal or withdraws appeal under section 861 of this title (article 61); or

(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph ~~(A), (B), or (C)~~ (A) or (B) of section 866(b)(1) of this title (article 66(b)(1)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing a conclusions on each of the following matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B):

(i) Whether the court had jurisdiction over the accused and the offense.

(ii) Whether the charge and specification stated an offense.

(iii) Whether the sentence was within the limits prescribed as a matter of law.

(e) REMEDY.—

(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

(2) REHEARING.—In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(3) REMEDY WITHOUT REHEARING.—

(A) DISMISSAL WHEN NO REHEARING ORDERED.—If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(B) DISMISSAL WHEN REHEARING IMPRACTICABLE.—

(i) IN GENERAL.—Subject to clause (ii), if the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(ii) CASES REFERRED BY SPECIAL TRIAL COUNSEL.—If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.

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§ 869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused or receipt of the record pursuant to section 864(c)(3) of this title (article 64(c)(3)) and subject to subsections (b), (c), and (d), the Judge Advocate General may—

(1) with respect to a summary court-martial, modify or set aside, in whole or in part, the findings and sentence; or

(2) with respect to a general or special court-martial, order such court-martial to be reviewed under section 866 of this title (article 66).

(b) TIMING.—***

(c) SCOPE.—

(1)***

(2) In a case reviewed under section 865(~~b~~)(d) of this title (article 65(~~b~~)(d)), review under this section is limited to the issue of whether the waiver or withdrawal of an appeal was invalid under the law. If the Judge Advocate General determines that the waiver or withdrawal of an appeal was invalid, the Judge Advocate General shall send the case to the Court of Criminal Appeals.

(d) COURT OF CRIMINAL APPEALS.—***

(e) ACTION ONLY ON MATTERS OF LAW.—***

1 **SEC. ____ . SPECIAL PRIORITY TRAVEL AUTHORIZATION FOR DEPARTMENT OF**
2 **DEFENSE PERSONNEL STATIONED ON UNITED STATES NAVAL**
3 **STATION GUANTANAMO BAY, CUBA.**

4 Section 2641b of title 10, United States Code, is amended—

5 (1) by redesignating subsection (g) as subsection (h); and

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

7 “(g) SPECIAL PRIORITY FOR TRAVEL TO AND FROM UNITED STATES NAVAL STATION

8 GUANTANAMO BAY, CUBA.—(1) An eligible space-available traveler stationed at United States

9 Naval Station Guantanamo Bay, Cuba, may purchase transportation, at commercially-

10 competitive rates as determined by the agency contracting for the transportation, for travel to and

11 from Naval Station Guantanamo Bay, Cuba, without regard to subsection (b).

12 “(2) Such traveler shall have a priority consistent with other official travelers, as

13 determined by the Secretary.

14 “(3) Amounts collected under paragraph (1) shall be credited to the appropriate

15 appropriation of the agency contracting for the transportation. Amounts so collected shall be

16 credited to and merged with the funds in that appropriation and shall be available for the same

17 period and purposes as the appropriation with which merged.”.

[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 2641b of title 10, United States Code, by adding an exception for the Department of Defense (DoD) population on United States Naval Station Guantanamo Bay, Cuba (NSGB) to allow eligible space-available (Space-A) travelers stationed on NSGB to travel on DoD aircraft. The contracting agency would be allowed to retain those payments as an exception to the Miscellaneous Receipts Act (31 U.S.C. 3302).

NSGB has a DoD population of approximately 6,000 personnel. The primary scheduled air transportation between NSGB and the U.S. is the Air Mobility Command (AMC) Patriot Express. The NSGB DoD population is not authorized to seek access to commercial airlines off the installation due to current U.S. relations with Cuba, the installation's location, and force protection concerns. While the AMC Patriot Express flight meets current mission space-required (Space-R) travel requirements (i.e. official travel), the limited availability of air transportation creates difficulty for Space-A passengers to leave the island for non-mission related reasons. Since the AMC Patriot Express mission currently results in a net yearly loss of revenue of \$1 million, adding flights solely to accommodate Space-A passengers is difficult due to the requirement in subsection (b)(1) that the Space-A program be run in a budget-neutral manner and in subsection (b)(2) that no additional funding may be used specifically to provide Space-A travel.

DoD personnel may travel on Space-R once per 24-month tour, or twice over a five-year tour on Funded Environmental Morale Leave. Renewal Agreement Funded Travel is an additional benefit that can be invoked to provide a third funded trip over a five-year span. Space-R travel is also authorized for medical referrals. Given the limited flights, Space-A travel is challenging, especially during holiday and summer (peak PCS) periods, which negatively impacts retention and recruitment and the morale of the workforce.

Allowing the purchase of seats by DoD personnel on NSGB to guarantee availability would greatly enhance the morale of the workforce and aid in recruitment and retention by enabling the DoD population on NSGB to plan vacations and travel for other important family responsibilities and events, such as travel to care for a sick parent, or to attend weddings, graduations or funerals. In particular, a guaranteed return flight to NSGB would reduce the additional costs for lodging and extensions of leave requests that would be incurred if the travelers were not immediately manifested on the first available Space-A flight.

In addition, the Miscellaneous Receipts exception would allow the contracting agency (for the Patriot Express channels, USTRANSCOM) to retain those funds as revenue and adjust capacity as needed based on those additional funded passengers. Given the unique nature of NSGB as an installation without commercial flight availability, along with the sizable DoD population, a limited exception to the Space-A rules solely for NSGB would greatly enhance the Navy's mission and assist in the recruitment and retention of the work force and the morale and welfare of the NSGB.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget. No additional appropriations will be required; however, funds from passengers may off-set some current losses incurred in operating aircraft into and out of NSGB. The project income is not expected to exceed \$500,000 per fiscal year.

Changes to Existing Law: This proposal would amend section 2641b of title 10, United States Code, as follows:

§2641b. Space-available travel on Department of Defense aircraft: program authorized and eligible recipients

(a) **AUTHORITY TO ESTABLISH PROGRAM.**—(1) The Secretary of Defense may establish a program (in this section referred to as the "travel program") to provide transportation on Department of Defense aircraft on a space-available basis to the categories of individuals eligible under subsection (c).

(2) If the Secretary makes a determination to establish the travel program, the Secretary shall prescribe regulations for the operation of the travel program not later than one year after the date on which the determination was made. The regulations shall take effect on that date or such earlier date as the Secretary shall specify in the regulations.

(3) Not later than 30 days after making the determination to establish the travel program, the Secretary shall submit to the congressional defense committees an initial implementation report describing—

(A) the basis for determination;

(B) any additional categories of individuals to be eligible for the travel program under subsection (c)(6);

(C) how the Secretary will ensure that the travel program is established and operated in compliance with the conditions specified in subsection (b); and

(D) the metrics by which the Secretary will monitor the travel program to determine the efficient and effective execution of the travel program.

(b) **CONDITIONS ON ESTABLISHMENT AND OPERATION.**—(1) The Secretary of Defense shall operate the travel program in a budget-neutral manner.

(2) No additional funds may be used, or flight hours performed, for the purpose of providing transportation under the travel program.

(g) SPECIAL PRIORITY FOR TRAVEL TO AND FROM UNITED STATES NAVAL STATION GUANTANAMO BAY, CUBA.—(1) An eligible space-available traveler stationed at United States Naval Station Guantanamo Bay, Cuba, may purchase transportation, at commercially-competitive rates as determined by the agency contracting for the transportation, for travel to and from Naval Station Guantanamo Bay, Cuba, without regard to subsection (b).

(2) Such traveler shall have a priority consistent with other official travelers, as determined by the Secretary.

(3) Amounts collected under paragraph (1) shall be credited to the appropriate appropriation of the agency contracting for the transportation. Amounts so collected shall be credited to and with the funds in that appropriation and shall be available for the same period and purposes as the appropriation with which merged.

~~(g)~~ (h) CONSTRUCTION.—The authority to provide transportation under the travel program is in addition to any other authority under law to provide transportation on Department of Defense aircraft on a space-available basis.

1 **SEC. ____ . TECHNICAL AMENDMENT TO COMPLETION OF APPELLATE REVIEW**
2 **UNDER ARTICLE 57 OF THE UNIFORM CODE OF MILITARY**
3 **JUSTICE.**

4 Section 857(c) of title 10, United States Code (article 57(c) of the Uniform Code of
5 Military Justice), is amended—

6 (1) by redesignating paragraph (2) as paragraph (3);

7 (2) in paragraph (1)(B), by striking “Appeals and—” and all that follows and
8 inserting “Appeals and the review and time requirements described in paragraph (2) are
9 satisfied.”; and

10 (3) by inserting after paragraph (1) the following new paragraph (2):

11 “(2) REVIEW AND TIME REQUIREMENTS.—The review and time requirements
12 referred to in paragraph (1)(B) are satisfied if any of the following applies:

13 “(A) The time for the accused to file a petition for review by the Court of
14 Appeals for the Armed Forces has expired and the accused has not filed a petition
15 for such review in a timely manner and the case is not otherwise under review by
16 that Court.

17 “(B) Such a petition for review is withdrawn by the accused.

18 “(C) Such a petition for review having been filed—

19 “(i) either—

20 “(I) the petition is denied or otherwise rejected by the Court
21 of Appeals for the Armed Forces; or

1 “(II) the review requested by the petition is completed in
2 accordance with the judgment of the Court of Appeals for the
3 Armed Forces; and
4 “(ii) with respect to subsequent review by the Supreme Court—
5 “(I) a petition for a writ of certiorari as provided in section
6 1259 of title 28 is not filed within the time limits prescribed by the
7 Supreme Court;
8 “(II) such a petition is rejected by the Supreme Court;
9 “(III) such a petition is withdrawn by the petitioner; or
10 “(IV) review is otherwise completed in accordance with the
11 judgment of the Supreme Court.”.

[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 align and conform the language in section 857(c) of title 10, United States Code (article 57(c) of the Uniform Code of Military Justice (UCMJ)) regarding the completion of appellate review with recent changes to article 67a, UCMJ and section 1259 of title 28, United States Code made by section 533 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Public Law 118-31). Amendment of article 57(c)(1), UCMJ is necessary to eliminate a conflict with those amendments enacted by the NDAA for FY 2024.

Section 533 of the NDAA for FY 2024 modified article 67a, UCMJ, and 28 U.S.C. 1259 to provide that a decision of the Court of Appeals for the Armed Forces (CAAF) to “refuse to grant” a petition for review or other relief may be reviewed by the Supreme Court under 28 U.S.C. 1259(3)-(4). Prior to that amendment, the Supreme Court’s jurisdiction over military criminal cases was limited to instances where CAAF granted a petition for review, a Judge Advocate General certified the case to CAAF, an intermediate military appellate court affirmed a death sentence, or CAAF otherwise granted relief under article 67(a)(1)-(3), UCMJ. Conforming amendments to the structure of article 57(c)(1), UCMJ are necessary to ensure its language relating to the completion of a case’s appellate review mirrors the expansion of Supreme Court jurisdiction for petitions arising from military criminal appeals.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would make the following changes to section 857 of title 10, United States Code (article 57 of the Uniform Code of Military Justice):

§ 857. Art. 57. Effective date of sentences

(a) EXECUTION OF SENTENCES.— A court-martial sentence shall be executed and take effect as follows:

(1) FORFEITURE AND REDUCTION.— A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) CONFINEMENT.— Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) DEFERRAL OF SENTENCES.—***

(c) APPELLATE REVIEW.—

(1) COMPLETION OF APPELLATE REVIEW.— Appellate review is complete under this section when—

(A) a review under section 865 of this title (article 65) is completed; or

(B) a review under section 866 of this title (article 66) is completed by a Court of Criminal Appeals and the review and time requirements described in paragraph (2) are satisfied.—

~~(i) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;~~

~~(ii) such a petition is rejected by the Court of Appeals for the Armed Forces; or~~

~~(iii) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces, and—~~

~~(I) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;~~

~~(II) such a petition is rejected by the Supreme Court; or~~

~~(III) review is otherwise completed in accordance with the judgment of the Supreme Court.~~

(2) REVIEW AND TIME REQUIREMENTS.—The review and time requirements referred to in paragraph (1)(B) are satisfied if any of the following applies:

(A) The time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a petition for such review in a timely manner and the case is not otherwise under review by that Court.

(B) Such a petition for review is withdrawn by the accused.

(C) Such a petition for review having been filed—

(i) either—

(I) the petition is denied or otherwise rejected by the Court of Appeals for the Armed Forces; or

(II) the review requested by the petition is completed in accordance with the judgment of the Court of Appeals for the Armed Forces; and

(ii) with respect to subsequent review by the Supreme Court—

(I) a petition for a writ of certiorari as provided in section 1259 of title 28 is not filed within the time limits prescribed by the Supreme Court;

(II) such a petition is rejected by the Supreme Court;

(III) such a petition is withdrawn by the petitioner; or

(IV) review is otherwise completed in accordance with the judgment of the Supreme Court.

~~(2)~~(3) COMPLETION AS FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.