**SEC. __. ADDITIONAL PROTECTION OF CERTAIN FACILITIES AND ASSETS FROM UNMANNED AIRCRAFT THREATS.**

Section 130i of title 10, United States Code, is amended—

(1) in subsection (a), by inserting "or a temporarily covered facility or asset" after "a covered facility or asset";

(2) by striking subsection (i);

(3) by redesignating subsection (j) as subsection (i); and

(4) in subsection (i) (as so redesignated)—

(A) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (9), respectively;

(B) in subparagraph (C) of paragraph (4) (as so redesignated)—

(i) in clause (viii), by striking "; or" and inserting a semicolon;

(ii) in clause (ix), by striking the period and inserting a semicolon; and

(iii) by adding at the end the following new clauses:

"(x) command and control of armed forces by commanders of unified and specified combatant commands to perform military operations directed by the Secretary and approved by the President in support of a covered contingency operation;

"(xi) deployment and sustainment of armed forces;

"(xii) organizing, training, equipping, and other functions in preparation to deploy and conduct military operations in support of a covered contingency operation;

"(xiii) assistance in support of Department of Justice activities during an emergency situation involving a weapon of mass destruction pursuant to section 282 of this title;

"(xiv) transportation, storage, treatment, and disposal of nondefense toxic and hazardous materials by the Department pursuant to section 2692 of this title;

"(xv) production, storage, transportation, or decommissioning of chemical or biological materials by the Department;

"(xvi) assistance to Federal, State, or local officials in responding to threats involving nuclear, radiological, biological, or chemical weapons, or high-yield explosives, or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear, radiological, biological, or chemical weapons, or high-yield explosives, and related materials and technologies pursuant to section 1414(a) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2314(a));

"(xvii) detainee operations pursuant to lawful authority, which may include an authorization for the use of military force or a declaration of war; and

"(xviii) physical protection and personal security of senior leaders of the Department of Defense in accordance with section 714 of this title.";

(C) by inserting after paragraph (2) the following new paragraph:

"(3) The term 'covered contingency operation' means a contingency operation as defined in subparagraph (A) of section 101(a)(13) of this title."; and

(D) by inserting after paragraph (6) (as so redesignated) the following new paragraphs:

"(7) The terms 'specified combatant command' and 'unified combatant command' have the meaning given the terms in section 161 of this title.

"(8) The term 'temporarily covered facility or asset' means a facility or asset determined by the Secretary of Defense to be temporarily at high risk of loss due to a specific, highly significant vulnerability or due to specific indications that such a facility or asset is a target for hostile action.".

**[Please note: the "changes to existing law" section below sets out in red-line format how the legislative text above would amend existing law.]**

**Section-by-Section Analysis**

The proliferation and operation of unmanned aircraft are a rapidly increasing risk to the Department's installations, activities, and personnel. This proposal would make several amendments to section 130i of title 10, U.S. Code, to clarify and strengthen this authority to mitigate the threat that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered Department of Defense (DoD) facility or asset.

The proposal would amend subsection (a) by authorizing the Secretary of Defense to take such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a temporarily covered facility or asset. A DoD facility or asset that is not directly associated with a covered mission can temporarily be at high risk of loss due to a specific, highly significant vulnerability or specific indications that such a facility or asset is a target for hostile action. The authority to mitigate the threat to a temporarily covered facility or asset would enable the Secretary of Defense to adapt to emerging vulnerabilities and threats in a timely manner.

This proposal would repeal subsection (i). Although a presidential extension is authorized, as a practical matter, the 180 day extension would merely extend the protection of the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3) to May 2021. This likely would result in a gap in protection from May 2021 until such time as a National Defense Authorization Act for Fiscal Year 2022 re-authorizing section 130i is enacted

into law. The termination of this authority would critically undermine DoD's ability to mitigate the threat that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered DoD facility or asset. The fact that the Department's current authority to protect covered facilities or assets specified in clauses (iv) through (viii) of subparagraph (j)(3) terminate on December 31, 2020, is a deterrent against programming and budgeting for the capabilities and operations to protect such facilities and assets.

DoD appreciates that Congress has continued to approach this authority with deliberate caution, and DoD would prefer that the Secretary of Defense be granted the discretion to designate additional missions, in consultation with the Secretary of Transportation. However, in the absence of such authorization, this proposal would amend subsection (j)(3)(C) by updating the definition of a covered facility or asset to include a facility or asset that relates to seven additional DoD missions that are critical to national security.

Clause (x) would add "command and control of United States armed forces by commanders of unified and specified combatant commands, as defined in section 161(c) of this title, to perform military operations in support of a contingency operation, as defined in section 101(a)(13)(A) of this title, as directed by the Secretary and approved by the President." Combatant commanders who are based in the United States command military operations that are critical to the national security of the United States in the homeland and throughout the world on a daily basis. Unless already covered by section 130i, the command centers of these combatant commanders are at risk to hostile unmanned aircraft surveillance and attack. Clause (x) would include the command centers of: the Commanders of U.S. Central Command and U.S. Special Operations Command at MacDill Air Force Base, Florida; the Commander of U.S. Northern Command at Peterson Air Force Base, Colorado; the Commander of U.S. Indo-Pacific Command at Camp H.I. Smith, Hawaii; the Commander of U.S. Southern Command in Miami, Florida; the Commander of U.S. Strategic Command at Offutt Air Force Base, Nebraska; the Commander of U.S. Transportation Command at Scott Air Force Base, Illinois; and the Commander of U.S. Cyber Command at Fort Meade, Maryland.

Clause (xi) would add "deployment and sustainment of United States armed forces." Certain facilities and assets are critical to the ability of the United States to deploy and sustain the armed forces. These include, for example, ports and airfields at which personnel, equipment, and supplies are aggregated and shipped; airfields at which transport and air refueling aircraft are located; and ports at which vessels of the Military Sealift Command and the National Defense Reserve Fleet are based. All are essential components of the Department's ability to project power and sustain the armed forces once deployed, and all are potentially vulnerable to threats posed by unmanned aircraft.

Clause (xii) would add "organizing, training, equipping and other functions in preparation to deploy and conduct military operations in support of a contingency operation, as defined in section 101(a)(13)(A) of this title." The Secretaries of the Army, Navy, and Air Force (pursuant to sections 3013(b), 5013(b), and 8013(b) of title 10, U.S. Code) are responsible for, and have the authority necessary to conduct, all affairs of their Military Departments to prepare military units and personnel to deploy in order to conduct contingency operations in support of the national security interests of the United States. The conduct of these affairs would be a high-

value target for future adversaries for surveillance – a threat to operational security – or, potentially, to facilitate attacks on such units and personnel before they can deploy to the address a contingency.

Clause (xiii) would add DoD "assistance in support of Department of Justice (DOJ) activities during an emergency situation involving a weapon of mass destruction pursuant to section 282 of this title." This is the critical mission of assisting DOJ in the detection, neutralization, containment, dismantlement, and disposal of weapons of mass destruction in the United States. Currently, this critical mission is vulnerable to hostile surveillance and targeting by unmanned aircraft. Clause (xi) could mitigate this risk for both DoD and DOJ. When DOJ is authorized to take similar counter-unmanned aircraft actions, this authority would allow complementary and mutually supporting actions.

Clause (xiv) would add DoD "transportation, storage, treatment, and disposal of nondefense toxic and hazardous materials by the Department pursuant to section 2692 of this title." Clause (xii) would enable DoD to mitigate the threat posed by unmanned aircraft against a facility selected for the temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned. This would permit DoD to mitigate the threat posed by unmanned aircraft against a facility selected for the temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

Clause (xv) would add DoD "production, storage, transportation, or decommissioning of chemical and biological materials." Clause (xiii) would permit DoD to mitigate the threat posed by unmanned aircraft of the limited number of facilities responsible for the highly sensitive function of producing, storing, transporting, or decommissioning chemical and biological materials. This would include specialized DoD laboratories.

Clause (xvi) would add DoD "assistance to Federal, State, and local officials in responding to threats involving nuclear, radiological, biological, chemical weapons, or high-yield explosives (CBRNE) or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear, radiological, biological, chemical weapons, and high-yield explosives and related materials and technologies, pursuant to the Defense Against Weapons of Mass Destruction Act of 1996 (Public Law 104-201, div. A, title XIV, §1414(a), as amended; 50 U.S.C. §2314(a))." Currently, this critical mission is vulnerable to the threat of hostile surveillance and targeting by unmanned aircraft.

Clause (xvii) would add DoD "detainee operations pursuant to lawful authority, which may include an authorization for the use of military force or a declaration of war." Detainee operations involving enemy prisoners of war and detained terrorists are subject to surveillance by hostile unmanned aircraft. Clause (xv) would allow DoD to mitigate against this threat and, as a result, deter or defeat hostile actions to contact or liberate enemy prisoners of war and detained terrorists.

Clause (xviii) would add DoD "physical protection and personal security of senior leaders of the Department of Defense in accordance with section 714 of this title." Section 714 authorizes DoD to provide physical protection and personal security within the United States to the following persons who, by the nature of their positions, require continuous security and protection: (a) the Secretary of Defense; (b) the Deputy Secretary of Defense; and (c) the Chairman of the Joint Chiefs of Staff; (d) the Vice Chairman of the Joint Chiefs of Staff; (e) the Secretaries of the Military Departments; (f) members of the Joint Chiefs of Staff in addition to the Chairman and Vice Chairman; and (g) commanders of combatant commands.

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

| RESOURCE REQUIREMENTS ($MILLIONS) | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| | 78.5 | 0 | 0 | 0 | 0 | Air Force O&M and Procurement |
| | 20 | 0 | 0 | 0 | 0 | Army O&M and Procurement |
| | 163.8 | 151.2 | 154.1 | 152.8 | 156.1 | Navy O&M and Procurement |
| | 6.748 | 7.284 | 8.107 | 8.957 | 9.841 | USMC O&M and Procurement |
| Total | 269.05 | 158.484 | 162.207 | 161.757 | 165.941 | |

**Changes to Existing Law:** This proposal would amend section 130i of title 10, United States Code, as follows:

**§ 130i. Protection of certain facilities and assets from unmanned aircraft**

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers and civilian employees of the Department of Defense with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset <u>or a temporarily covered facility or asset</u>.

(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph are the following:

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

(2) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) REGULATIONS AND GUIDANCE.—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2)(A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings shall include—

(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

(B) a description of instances where actions described in subsection (b)(1) have been taken;

(C) how the Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, but may be accompanied by an additional classified briefing.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) vest in the Secretary of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

~~(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3) 1 shall terminate on December 31, 2020.~~

~~(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2020, the President certifies to Congress that such extension is in the national security interests of the United States.~~

(~~j~~i) DEFINITIONS.—In this section:

(1) The term "appropriate congressional committees" means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Commerce, Science, and Transportation of the Senate; and

(C) the Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) The term "budget", with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term "covered contingency operation" means a contingency operation as defined in subparagraph (A) of section 101(a)(13) of this title.

(~~3~~4) The term "covered facility or asset" means any facility or asset that—

(A) is identified by the Secretary of Defense, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

(B) is located in the United States (including the territories and possessions of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; ~~or~~

(ix) a Major Range and Test Facility Base (as defined in section 196(i) of this title)~~.~~;

(x) command and control of armed forces by commanders of unified and specified combatant commands to perform military operations directed by the Secretary and approved by the President in support of a covered contingency operation;

(xi) deployment and sustainment of armed forces;

(xii) organizing, training, equipping, and other functions in preparation to deploy and conduct military operations in support of a covered contingency operation;

(xiii) assistance in support of Department of Justice activities during an emergency situation involving a weapon of mass destruction pursuant to section 282 of this title;

(xiv) transportation, storage, treatment, and disposal of nondefense toxic and hazardous materials by the Department pursuant to section 2692 of this title;

(xv) production, storage, transportation, or decommissioning of chemical or biological materials by the Department;

(xvi) assistance to Federal, State, or local officials in responding to threats involving nuclear, radiological, biological, or chemical weapons, or high-yield explosives, or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear, radiological, biological, or chemical weapons, or high-yield explosives, and related materials and technologies pursuant to section 1414(a) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2314(a));

(xvii) detainee operations pursuant to lawful authority, which may include an authorization for the use of military force or a declaration of war; and

(xviii) physical protection and personal security of senior leaders of the Department of Defense in accordance with section 714 of this title.

(~~4~~5) The term "defense budget materials", with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(~~5~~6) The terms "electronic communication", "intercept", "oral communication", and "wire communication" have the meanings given those terms in section 2510 of title 18.

(7) The terms "specified combatant command" and "unified combatant command" have the meaning given the terms in section 161 of this title.

(8) The term "temporarily covered facility or asset" means a facility or asset determined by the Secretary of Defense to be temporarily at high risk of loss due to a specific, highly significant vulnerability or due to specific indications that such a facility or asset is a target for hostile action.

(~~6~~9) The terms "unmanned aircraft" and "unmanned aircraft system" have the meanings given those terms in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).

**SEC. ___. AUTHORITIES OF SECRETARY OF DEFENSE AND SERVICE SECRETARIES TO VARY PERSONNEL END STRENGTHS.**

(a) AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES. —Section 115(f)(2) of title 10, United States Code, is amended by striking "increase" and inserting "vary".

(b) AUTHORITY FOR SERVICE SECRETARY VARIANCES. —Section 115(g) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "and" at the end; and

(B) in subparagraph (B)—

(i) by striking "increase" and inserting "vary"; and

(ii) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(C) vary the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for the Active Guard and Reserve category of the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Active Guard and Reserve category of the Selected Reserve of the reserve component of any armed force under the jurisdiction of that Secretary, by a number equal to not more than 1 percent of such authorized end strength."; and

(2) in paragraph (2)—

(A) in the second sentence, by striking "increase" each place it occurs and inserting "variance"; and

(B) by adding at the end the following new sentence: "Any variance under paragraph (1)(C) of the end strength for the Active Guard and Reserve category of the Selected Reserve of an armed force for a fiscal year shall be counted as part of the variance for that Selected Reserve for that fiscal year authorized under subsection (f)(2).".

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

**Section-by-Section Analysis**

Pursuant to the Declaration of National Emergency, the Secretary of Defense (SecDef) delegated certain authorities to the Secretaries of the Military Departments, including the authority to waive end strength requirements outside the parameters of 10 U.S.C. 115. Upon the lifting of the Declaration of National Emergency, the SecDef and the Secretaries of the Military Departments must satisfy the provisions of 10 U.S.C. 115, regarding end strengths. By law, personnel within the Active Guard and Reserve category serve on active duty in full-time support of the Reserve Components. Currently, the SecDef can only increase actual Active Guard and Reserve end strength by 2 percent above congressionally authorized end strength. This proposal amends 10 U.S.C. 115 to enable the SecDef the flexibility to vary actual Active Guard and Reserve end strength either 2 percent above or 2 percent below authorized Active Guard and Reserve end strength, which is consistent with the Secretary of Defense authority to vary other elements of the Selected Reserve, by a prescribed percentage.

This proposal further amends 10 U.S.C. 115 in order to authorize the Secretaries of the Military Departments to vary their respective Active Guard and Reserve end strengths by not more than 1 percent. Current law only authorizes the Secretary of Defense to increase Active Guard and Reserve end strength up to not more than 2 percent, while the Secretaries of the Military Departments do not have any authority to vary that end strength. Giving the Secretaries of the Military Departments the authority to vary their respective Active Guard and Reserve end strengths by not more than 1 percent would reduce the administrative burden of pursuing such a variance.

**Budget Implications:** This proposal is non-budgetary. 10 U.S.C. 115 subsection (f)(2) authorizes the Secretary of Defense to increase the end strength pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength. This proposal gives the Secretary of Defense and the Secretaries of the Military Departments more flexibility to vary end strength within current title 10 limits.

**Changes to Existing Law:** This proposal would make the following changes to section 115 of title 10, United States Code:

**§115. Personnel strengths: requirement for annual authorization**

(a) ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel unless on active duty pursuant to subsection (b), and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel unless on active duty or full-time National Guard duty pursuant to subsection (b).

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

(b) CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW. —(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

(B) full-time National Guard duty under section 502(f)(1)(B) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f)(1)(B) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).

(4) As part of the budget justification materials submitted by the Secretary of Defense to Congress in support of the end strength authorizations required under subparagraphs (A) and (B)

of subsection (a)(1) for fiscal year 2009 and each fiscal year thereafter, the Secretary shall provide the following:

(A) The number of members, specified by reserve component, authorized under subparagraphs (A) and (B) of paragraph (1) who were serving on active duty or full-time National Guard duty for operational support beyond each of the limits specified under subparagraphs (A) and (B) of paragraph (2) at the end of the fiscal year preceding the fiscal year for which the budget justification materials are submitted.

(B) The number of members, specified by reserve component, on active duty for operational support who, at the end of the fiscal year for which the budget justification materials are submitted, are projected to be serving on active duty or full-time National Guard duty for operational support beyond such limits.

(C) The number of members, specified by reserve component, on active duty or full-time National Guard duty for operational support who are included in, and counted against, the end strength authorizations requested under subparagraphs (A) and (B) of subsection (a)(1).

(D) A summary of the missions being performed by members identified under subparagraphs (A) and (B).

(c) LIMITATION ON APPROPRIATIONS FOR MILITARY PERSONNEL.—No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law;

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law; or

(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.

(d) MILITARY TECHNICIAN (DUAL STATUS) END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

(e) END-OF-QUARTER STRENGTH LEVELS.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year.

Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by subsections (a) and (d) are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance with subsection (a) (as such levels may be adjusted pursuant to subsection (f)) and subsection (d).

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted pursuant to subsection (f)) and subsection (d).

(3) Whenever the Secretary establishes an end-of-quarter strength level under subparagraph (A) of paragraph (2), or modifies a strength level under the authority provided in subparagraph (B) of paragraph (2), the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that strength level or of that modification, as the case may be.

(f) AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE STRENGTHS.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 3 percent of that end strength;

(2) ~~increase~~ vary the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength;

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 3 percent of that end strength; and

(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.

(g) AUTHORITY FOR SERVICE SECRETARY VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS.—(1) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may—

(A) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that

Secretary, by a number equal to not more than 2 percent of such authorized end strength; ~~and~~

(B) ~~increase~~ vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Selected Reserve of the reserve component of any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength~~.~~; and

(C) vary the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for the Active Guard and Reserve category of the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Active Guard and Reserve category of the Selected Reserve of the reserve component of any armed force under the jurisdiction of that Secretary, by a number equal to not more than 1 percent of such authorized end strength.

(2) Any increase under paragraph (1)(A) of the end strength for an armed force for a fiscal year shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (f)(1). Any ~~increase~~ variance under paragraph (1)(B) of the end strength for the Selected Reserve of a reserve component of an armed force for a fiscal year shall be counted as part of the ~~increase~~ variance for that Selected Reserve for that fiscal year authorized under subsection (f)(3). Any variance under paragraph (1)(C) of the end strength for the Active Guard and Reserve category of the Selected Reserve of an armed force for a fiscal year shall be counted as part of the variance for that Selected Reserve for that fiscal year authorized under subsection (f)(2).

(h) ADJUSTMENT WHEN COAST GUARD IS OPERATING AS A SERVICE IN THE NAVY.—The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

(i) CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.—In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

(5) Members of the National Guard called into Federal service under section 12406 of this title.

(6) Members of the militia called into Federal service under chapter 13 of this title.

(7) Members of the National Guard on full-time National Guard duty under section 502(f)(1)(A) of title 32.

(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1321(a) of the Department of Defense Cooperative Threat Reduction Act (50 U.S.C. 3711(a)).

(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) 1 for the administration of the Selective Service System.

(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.

(13) Members of the National Guard on full-time National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32.

**SEC. ___. AUTHORIZED STRENGTHS FOR MARINE CORPS RESERVES ON ACTIVE DUTY.**

(a) OFFICERS.—Section 12011(a)(1) of title 10, United States Code, is amended by striking those parts of the table pertaining to the Marine Corps Reserve and inserting the following:

"Marine Corps Reserve:

| | Major | Lieutenant Colonel | Colonel |
|---|---|---|---|
| 2,400…… | 143 | 105 | 34 |
| 2,500…… | 149 | 109 | 35 |
| 2,600…… | 155 | 113 | 36 |
| 2,700…… | 161 | 118 | 37 |
| 2,800…… | 167 | 122 | 39 |
| 2,900…… | 173 | 126 | 41 |
| 3,000…… | 179 | 130 | 42". |

(b) SENIOR ENLISTED MEMBERS.—Section 12012(a) of title 10, United States Code, is amended by striking those parts of the table pertaining to the Marine Corps Reserve and inserting the following:

"Marine Corps Reserve:

| | E-8 | E-9 |
|---|---|---|
| 2,400…… | 106 | 24 |
| 2,500…… | 112 | 25 |
| 2,600…… | 116 | 26 |
| 2,700…… | 121 | 27 |
| 2,800…… | 125 | 28 |
| 2,900…… | 130 | 29 |
| 3,000…… | 134 | 30". |

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

**Section-by-Section Analysis**

For FY20, the Marine Corps is seeking an increase in the end strength of the Marine Corps Active Reserve Program by 125 Marines, from 2,261 to 2,386. Current end strength does not allow the Active Reserve Program to meet its readiness requirements. Specifically, there is no staffing to account for Active Reserve members who are executing change of station orders, attending formal training, or restricted due to medical status; the service's term for personnel in

this category is: Training, Transients, Patients and Prisoners (T2P2). An increase to end strength of 5.6% will allow the Active Reserve Program to be fully mission capable. This increase would only affect the end strength for "Reserves on active duty," the overall end strength of the Marine Corps Selected Reserve will remain at 38,500.

To accomplish this intent, the Marine Corps seeks an adjustment to the controlled grade caps for field grade officers and senior enlisted Marines by a commensurate amount of the aggregate increase to end strength. The proposal also expands current title 10 grade strength tables in the event of future end strength increases to ensure proper grade strength mix.

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

| RESOURCE REQUIREMENTS ($MILLIONS) | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Marine Corps Base Pay (Active Reserve, Pay Group "Q") | 0 | $9.9 | $10.5 | $11.2 | $11.4 | Reserve Personnel, Marine Corps |
| Total | 0 | $9.9 | $10.5 | $11.2 | $11.4 | |

**Changes to Existing Law:** This proposal would make the following changes to sections 12011 and 12012 of title 10, United States Code:

## §12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) LIMITATIONS.—(1) Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

| Total number of members of a reserve component serving on full-time reserve duty: | Number of officers of that reserve component who may be serving in the grade of: | | |
|---|---|---|---|
| | Major | Lieutenant Colonel | Colonel |
| * * * * * | | | |
| Marine Corps Reserve: | | | |
| 1,000 | 93 | 63 | 20 |
| 1,200 | 103 | 67 | 21 |
| 1,300 | 107 | 70 | 22 |
| 1,400 | 111 | 73 | 23 |
| 1,500 | 114 | 76 | 24 |
| 1,600 | 117 | 79 | 25 |

| | | | |
|---|---|---|---|
| 1,700 | 120 | 82 | 26 |
| 1,800 | 123 | 85 | 27 |
| 1,900 | 126 | 88 | 28 |
| 2,000 | 129 | 91 | 29 |
| 2,100 | 132 | 94 | 30 |
| 2,200 | 134 | 97 | 31 |
| 2,300 | 136 | 100 | 32 |
| 2,400 | ~~138~~ 143 | ~~103~~ 105 | ~~33~~ 34 |
| 2,500 | ~~140~~ 149 | ~~106~~ 109 | ~~34~~ 35 |
| 2,600 | ~~142~~ 155 | ~~109~~ 113 | ~~35~~ 36 |
| 2,700 | 161 | 118 | 37 |
| 2,800 | 167 | 122 | 39 |
| 2,900 | 173 | 126 | 41 |
| 3,000 | 179 | 130 | 42 |

* * * * *

## §12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) LIMITATIONS.—Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members in each of pay grades of E–8 and E–9 who may be serving on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

| Total number of members of a reserve component serving on full-time reserve duty: | Number of officers of that reserve component who may be serving in the grade of: | |
|---|---|---|
| | E-8 | E-9 |
| * * * * * | | |
| Marine Corps Reserves: | | |
| 1,100 | 50 | 11 |
| 1,200 | 55 | 12 |
| 1,300 | 60 | 13 |
| 1,400 | 65 | 14 |
| 1,500 | 70 | 15 |
| 1,600 | 75 | 16 |
| 1,700 | 80 | 17 |
| 1,800 | 85 | 18 |
| 1,900 | 89 | 19 |

| | | |
|---|---|---|
| 2,000 | 93 | 20 |
| 2,100 | 96 | 21 |
| 2,200 | 99 | 22 |
| 2,300 | 101 | 23 |
| 2,400 | 106 | 24 |
| 2,400 | ~~103~~ 106 | 24 |
| 2,500 | ~~105~~ 112 | 25 |
| 2,600 | ~~107~~ 116 | 26 |
| 2,700 | 121 | 27 |
| 2,800 | 125 | 28 |
| 2,900 | 130 | 29 |
| 3,000 | 134 | 30 |

**SEC.___. AUTHORITY TO ENTER INTO CONTRACTS FOR CONTRACTED ADVERSARY AIR AND CONTRACTED CLOSE AIR SUPPORT.**

(a) AUTHORITY TO ENTER INTO CONTRACTS.—In accordance with section 2401 of title 10, United States Code, the Secretary of a military department may enter into a long-term contract for contracted adversary air and contracted close air support to provide for the training of military personnel.

(b) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—The notification and certification requirements of section 2401(b) of title 10, United States Code, do not apply to contracted adversary air and contracted close air support training services authorized under this section.

(c) EFFECTIVE DATE.—This section shall be effective for fiscal year 2020 and each fiscal year thereafter.

**Section-by-Section Analysis**

This proposal would authorize the Secretaries of the military departments to enter into long-term contracts for contracted adversary air and contracted close air support training services in accordance with 10 U.S.C. § 2401 without seeking specific Congressional authorization each time. Additionally, the language eliminates the time consuming, burdensome notification and certification requirements of section 2401(b) for contracted services contracts. Any Department of Defense (DoD) agency/entity with requirements for contracted adversary air and contracted close air support for the training of military personnel would subsequently benefit from this granted authority and expedite increases to our military readiness.

Specifically, the language would allow the Secretary of the Air Force to enter into a contract to meet current needs for Combat Air Forces Contracted Air Support (hereinafter, "CAF CAS") training services, previously known as Combat Air Forces Adversary Air Services. The Air Force is currently unable to generate adequate resources needed to indigenously support Adversary Air requirements as the fourth-generation fleet draws down and transitions to a fifth-generation fleet. The Air Force is both manpower and asset limited to field adequate numbers of aircraft with sufficient technological sophistication to satisfy training requirements. Current fighter pilot manning levels necessitate utilizing all available manpower in operational units and supporting staff positions. The current procurement schedule for the Advanced Pilot Training Trainer-X combined with increased Headquarter Air Force fighter/bomber pilot production requirements and decreased maintenance efficiency/aircraft availability precludes the potential to use attrition reserve T-38Cs in adversary roles, even if flown by contractor personnel. As such, Commander, Air Combat Command initiated the CAF CAS acquisition in May 2016 to acquire

contracted adversaries to begin supporting both fighter pilot production increases and larger Air Force training requirements on behalf of multiple Air Force Major Commands. Additionally, fighter pilot shortfalls combined with high combat operations tempos and a reduced number of fielded fighter units following a decade of funding restrictions prevent the Air Force from supporting Joint Terminal Attack Controllers with required Air Force flight assets for Combat Mission Readiness training. Major Commands recently developed a Continuation Training program to improve Joint Terminal Attack Controller proficiency and readiness. This training will be supported by contractors flying contractor-owned, contractor-operated aircraft.

The proposed CAF CAS training services contract is for both the Combat Air Forces Adversary Air and Combat Air Forces Contracted Close Air Support training requirements. The primary purpose of CAF CAS training services contract is the provision of Adversary Air and Joint Terminal Attack Controller training support services. Both training needs will be met by contractors flying contractor-owned and contractor-operated aircraft. The CAF CAS contractor(s) will be contractually responsible for operating and maintaining its own aircraft to perform services that meet Air Force-established training objectives. Moreover, the Air Force will not have any privileges or rights to the contractor-owned aircraft and will not be taking possession of the contractor-owned aircraft at any time during the contract. Furthermore, the contractor will not be providing any direct instruction to Air Force personnel, nor will Air Force personnel be flying in contractor-owned aircraft. The contractor's performance on Contracted Close Air Support training sorties is that of a "training aid," supporting both fighter pilot and Joint Terminal Attack Controller production and training programs. Additionally, the contract will not involve "substantial termination liability" because it has annual periods of performance rather than a multiyear period.

The CAF CAS services contract is the central linchpin to mitigate pilot and Joint Terminal Attack Controller production and readiness issues. The program assists with production, absorption, and continuation training in a cost-effective manner. Therefore, it is critical to obtain authorization in the National Defense Authorization Act for Fiscal Year 2020 to avoid schedule delays and impacts that would negatively affect current efforts to reduce the quality gap incurred by the Fiscal Year 2017 pilot production increase and the resulting Joint Terminal Attack Controllers' readiness shortfalls.

The Air Force contracted solution sought by the CAF CAS contract was outlined in the Air Force's "Plan for Modernized Air Force Dedicated Adversary Air Training Enterprise," submitted June 17, 2017, to the congressional defense committees in accordance with section 350 of the National Defense Authorization Act for Fiscal Year 2017. Commander, Air Combat Command, later directed a contractual support arrangement for Joint Terminal Attack Controllers be merged with Combat Air Force's Adversary Air training services to support readiness and training shortfalls faced by both communities, prompting the program name change. Centralizing contracted Adversary Air and Contracted Close Air Support training under one program meets the Secretary's intent to provides for a greater efficiency and professionalization of contracted air services support DoD-wide. Centrally-managed acquisition helps further reduce the Service's liability while providing a cost-effective training solution with appropriate program oversight for units across the Joint Services. The ordering period for the CAF CAS contract will consist of a 5-year base period and an additional 5-year option pursuant to FAR

17.204(e) and DFARS 217.204(e)(i). Furthermore, CAF CAS will comply with all existing requirements and limitations regarding ordering periods and periods of performance, as outlined in law and regulations governing federal procurement contracts.

In accordance with 10 U.S.C. 2401(b)(1), the DoD needs specific authorizing legislation to enter into contracts for contracted adversary air and contracted close air support training services meeting the definition of "long-term lease or charter," as defined in 10 U.S.C. 2401(d)(1). Section 2401(d)(1)(A)(ii) distinctively defines "long-term lease or charter" as a service contract that provides for a contractor to use an aircraft in the performance of services for an initial contract period that is not less than five years but which, including all options, can extend beyond five years. Consequently, the requirement for authorization in accordance with 10 U.S.C. 2401(b)(1) applies to the CAF CAS services contract because it meets the statute's unique definition of "long-term lease or charter."

10 U.S.C. 2401(b)(1) applies only because the contract meets the statute's unique definition of "long-term lease or charter," since the contractor will use contractor-owned aircraft to perform services and the total contract period will be longer than five years. Specifically, the ordering period for the CAF CAS multiple award indefinite delivery, indefinite quantity training services contract is expected to be ten years, which consists of a five year base period with an additional five year option period. Market research indicates that a ten-year period of performance reduces contractor risk and provides the Air Force with better pricing. The longer performance period also allows contractors to satisfy higher-end training requirements that require aircraft modifications. It further increases stability in the pilot and Joint Terminal Attack Controller production training programs and decreases administrative costs to government personnel. All of these factors are key to the Air Force's ability to meet future pilot production needs while balancing Service retention issues. Further, the CAF CAS contract does not require the Government's exclusive use of contractor aircraft during the term of the contract nor will the Government be taking any ownership or rights to the contractor aircraft either during the term of the contract or upon contract completion.

The Air Force is planning on issuing a Multiple Award Indefinite Delivery Indefinite Quantity contract with contractor competition extending to the task order level for locations and/or operating capabilities. The Air Force intends to competitively award the CAF CAS contract in the Fall 2019 timeframe. The Department of the Navy intends to work with the Air Force and utilize its contract vehicle to meet Navy specific requirements.

In order to award the contract on schedule in the Fall 2019 timeframe, authorization is needed in the National Defense Authorization Act for Fiscal Year 2020. The award of a timely contract is essential to fulfilling current mission requirements. In 2016, Headquarters Air Force directed Air Education Training Command and Air Combat Command to increase fighter pilot production by approximately 20% to meet the current and pending manning crisis. The Air Force is short approximately 700 fighter pilots leaving a deficiency in meeting the needs of five fighter squadrons. Two options were identified to right-size the production line needed to solve the long term manning crisis. One option is utilizing contracted adversary support, while the other option calls for conversion of approximately five combat squadrons to full-time training units. This production increase clearly exceeds available resources needed to concurrently

support a production increase while continuing to support global combat operations, further compounding existing readiness challenges. To meet the production increase required in the short-term, the Air Force was forced to accept reduced training quality levels that forced student pilots to fly six to ten syllabus sorties fewer than levels previously deemed sustainable, while resourcing to return to Academic Year 2016 training standards. The longer pilots are produced at these lower-quality levels, the larger the existing readiness gap becomes in fielded units.

The Department of the Navy may decide in the future to work with the Air Force and expand the currently proposed contract vehicle to meet Navy specific requirements to support Fleet training, including air to air, air to surface, and electronic warfare. This includes a wide variety of airborne threat simulation capabilities to train, test, and evaluate shipboard and aircraft squadron weapon systems, operators and aircrew on how to counter potential enemy Electronic Warfare (EW) and Electronic Attack (EA) operations in today's Electronic Combat (EC) environment. Alternatively, Navy may use the proposed authority to establish its own contracts for adversary air training.

Additionally, this language allows the Secretaries of the other military departments to more expeditiously enter into contracts for contracted adversary air and contracted close air support to assist their efforts in reducing the DoD's pilot shortfalls and training requirements or use this Air Force contract for their support. Naval CAS has supported the Fleet for over 20 years providing Fleet training and exercise support as well as support to Test and Evaluation (T&E) of Naval Systems. The services are procured primarily using OM,N (1A1A) Fleet Flying Hour Program (FHP), Flight Other, as well as Fleet Air Training (1A2A) supporting primarily major Fleet pre-deployment exercises (e.g. CSG COMPTUEX), but has been receiving a greater demand signal to provide threats in the Air to Air environment (i.e. Red Air or Adversary Air (AdAir)) with the current aviation readiness issues. Naval programs use CAS to support T&E events (e.g. using EW configured contracted aircraft to fly (sometimes like missiles) against shipboard radar system and ESM tests). T&E usage has historically been approximately 10% relative to the Fleet. Due to the amount of flexibility required, IDIQ contracts are generally used. The following Navy budget plan is based on proposed allocation of the FHP and Fleet Air Training accounts to support Opposing Force (OPFOR) or threat representing CAS contract requirements and Joint Terminal Attack Controllers training (without fuel). It does not include CAS support for range and Fleet support contracts (e.g. PMRF helicopter, ocean range surveillance and telemetry (AMS), or air-to-air refueling.

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

| | |
|---|---|
| Total Initial Investment Cost | $15.8M |
| Total Annual Operations Cost | $244.2M |
| Cost Per Flight Hour/Price Per Flight Hour | $12.8K* |
| Total Cost | $6.435B** |
| Operations & Maintenance Personnel | 1757 |
| Government Oversight (Program Office) | 32 |
| Total Personnel | 1789 |
| Full Contracted Air Support Performance | FY25 |

* Expected Price Per Flight Hour varies across the enterprise based on required contractor aircraft capabilities to support a specific location's mission.
** Total cost is for the entire acquisition over the 10-year ordering period.

| RESOURCE REQUIREMENTS ($MILLIONS) | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Air Force | 260 | 414 | 611 | 706 | 707 | Operation and Maintenance, Air Force |
| Navy | 207 | 195 | 195 | 207 | 214 | Operation and Maintenance, Navy |
| Army does not intend to use this authority. | | | | | | |
| Total | 467 | 609 | 806 | 913 | 921 | -- |

Estimate methodology: (1) Based on market research of existing and projected Industry Price Per Flight Hour rates from both direct DoD engagement and RAND Corporation studies, (2) Computed both a High/Low Price Per Flight Hour mix of aircraft performance attributes (adversary threat levels) and an average Price Per Flight Hour rate for all required hours, (3) Anticipate competition effect on Price Per Flight Hour.

**Changes to Existing Law:** None.

**SEC. ___. MODIFICATION OF ELIGIBILITY FOR TRICARE RESERVE SELECT AND TRICARE RETIRED RESERVE OF CERTAIN MEMBERS OF THE RESERVE COMPONENTS.**

(a) TRICARE RESERVE SELECT.—Section 1076d(a) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking ‘‘(1) Except as provided in paragraph (2), a member’’ and inserting ‘‘A member’’; and

(2) by striking paragraph (2).

(b) TRICARE RETIRED RESERVE.—Section 1076e(a) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking ‘‘(1) Except as provided in paragraph (2), a member’’ and inserting ‘‘A member’’; and

(2) by striking paragraph (2).

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

**Section-by-Section Analysis**

This proposal would amend current law and remove the Federal Employees Health Benefits (FEHB) Program exclusion from the TRICARE Reserve Select (TRS) health plan and the TRICARE Retired Reserve (TRR) health plan. Repeal of this FEHB exclusion would allow all members of the Selected Reserve to purchase and maintain TRS coverage for themselves and their families when they are not activated. Although unlikely, any member of the Retired Reserve could purchase and maintain TRR coverage for themselves and their families as long as they are not activated.

Current law disqualifies Selected Reserve from TRS if they are eligible for, or enrolled in, the FEHB Program. That excludes virtually all Federal employees, including military technicians. Military technicians are Selected Reserve members who support the Reserve Components (RCs) during the workweek as full-time Federal employees and drill outside the Federal work hours as fully participating Selected Reserve members. Similarly, Retired Reserve members are excluded from TRR.

Administering and communicating the FEHB exclusion in both the TRS program and TRR program adds a significant level of complexity in policy and operational procedures. Although TRR premiums are significantly higher than FEHB premiums, TRS premiums are significantly lower. Federally employed Selected Reserve members have expressed that they perceive the FEHB exclusion as discriminatory, leaving them little choice but to pay the much higher FEHB premiums. These negative perceptions are particularly prevalent among the military technician community.

TRR premiums are full-cost with zero DoD contribution to the cost of premiums. As a result, TRR would be much more costly to the policy holder than FEHB. With the strong negative price incentive compared to FEHB, it is highly unlikely that anyone would ever chose TRR over FEHB given the opportunity and thus the FEHB exclusion probably never was necessary for TRR. It was likely that the TRS provision in §1076d was the model used to draft the TRR provision in §1076e and the FEHB exclusion was not stricken then and kept TRS qualifications aligned with TRS qualifications.

Affordable health care access for RC Service members is supremely important. The Senate-passed version of FY2018 National Defense Authorization Act included proposed legislation that would have removed the FEHB Exclusion, indicating Congressional interest in removing this FEHB exclusion from TRS as well TRR.

**Budget Implications:** Resource requirements associated with this proposal are based on a shift in the costs from Military Branch Federal employee accounts used to pay the government portion of FEHB plans to the DHP. Although the DHP would also absorb FEHB costs for non-DoD Federal employees who enroll into TRS, these costs are more than offset by the reduction in Military Branch accounts yielding a net cost avoidance to DoD.

The resources saved are reflected in the table below and are included with the FY 2020 President's Budget.

| **RESOURCE REQUIREMENTS ($MILLIONS)** | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Defense Health Program Direct Appropriation | 21.9 | 62.3 | 119.7 | 141.8 | 151.2 | Operation and Maintenance Defense Health Program |
| Army civilian personnel | (17.7) | (50.5) | (97.0) | (114.9) | (122.5) | Operation and Maintenance, Army |
| Navy civilian personnel | (1.7) | (4.9) | (9.5) | (11.2) | (12.0) | Operation and Maintenance, Navy |
| Air Force civilian personnel | (15.8) | (45.0) | (86.4) | (102.4) | (109.1) | Operation and Maintenance, Air Force |
| **DoD Net Impact** | **(13.4)** | **(38.1)** | **(73.2)** | **(86.7)** | **(92.4)** | |

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

**§ 1076d. TRICARE program: TRICARE Reserve Select coverage for members of the Selected Reserve**

(a) Eligibility.—

**~~(1) Except as provided in paragraph (2), a member~~** A member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces is eligible for health benefits under TRICARE Reserve Select as provided in this section.

**~~(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.~~**

*****

**§ 1076e. TRICARE program: TRICARE Retired Reserve coverage for certain members of the Retired Reserve who are qualified for a non-regular retirement but are not yet age 60**

(a) Eligibility.—

~~(1) Except as provided in paragraph (2), a member~~ A member of the Retired Reserve of a reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of this title, but is not age 60, is eligible for health benefits under TRICARE Retired Reserve as provided in this section.

**~~(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.~~**

*****

**SEC. ___. AUTHORIZED STRENGTH: EXCLUSION OF CERTAIN RESERVE COMPONENT GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.**

Section 526a of title 10, United States Code, is amended—

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

"(3) CERTAIN RESERVE COMPONENT GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.—(A) The Chairman of the Joint Chiefs of Staff may designate up to 15 general and flag officer positions in the unified and specified combatant commands, and up to three general and flag officer positions on the Joint Staff, as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

"(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for purposes of the limitations under subsection (a) and under section 525 of this title.";

(2) by redesignating subsections (c) through (h) as subsections (d) through (i), respectively; and

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

"(c) EXCLUSION OF CERTAIN RESERVE OFFICERS.—

"(1) GENERAL OR FLAG OFFICERS SERVING LESS THAN 180 DAYS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

"(2) GENERAL OR FLAG OFFICERS SERVING 365 DAYS OR LESS.—The limitations of this section also do not apply to a number, as specified by the Secretary of the military department concerned, of reserve component general or flag officers authorized to serve on active duty for a period of not more than 365 days. The number so specified for an armed force may not exceed the number equal to 10 percent of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of this title. In determining such number, any fraction shall be rounded down to the next whole number, except that such number shall be at least one.

"(3) GENERAL OR FLAG OFFICERS SERVING MORE THAN 365 DAYS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.".

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

**Section-by-Section Analysis**

The National Defense Authorization Act for Fiscal Year 2017 established new authorized strengths for general and flag officers in section 526a of title 10, United States Code (U.S.C.) and sunset the existing authorized strengths under 10 U.S.C. 526 effective on December 31, 2022. In doing so, existing Reserve Component exemptions to authorized general and flag officer (GO/FO) strength on active duty were removed. This proposal revises 10 U.S.C. 526a by re-incorporating the Reserve Component authorized GO/FO strength exemptions from 10 U.S.C. 526.

This proposal amends section 526a(b) to add a new paragraph (3) to reinstate the exemptions for 18 Chairman Reserve Positions (CRPs). This would allow the Chairman of the Joint Chiefs to allocate an additional 15 GO/FO billets in the COCOMs and 3 GO/FO billets on

the Joint Staff exclusively filled by reserve component officers, below the grade of O-9, that are exempt from joint-pool headspace. This ensures the active component will have the advice from reserve component leadership on their capabilities and other reserve matters; and also directly affects joint experience for the reserve component on the Joint Staff and in Combatant Commands.

The proposal also inserts a new subsection (c) in section 526a. Paragraph (1) of subsection (c) reinstates the exclusion for a reserve component GO/FO who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days. Reserve component GO/FOs are on active duty to enhance or refresh existing skills and allow for full-time attendance at organized and specialized skill, professional development, refresher, and proficiency training. The impact of not including this exemption in 10 U.S.C. 526a is that anytime a reserve component GO/FO is on active duty for any period of time and for any purpose, the GO/FO will be counted against the Service's active duty headspace.

Paragraph (2) of subsection (c) as added by this proposal reinstates the exclusion for reserve component GO/FOs who are authorized to serve on active duty for a period of not more than 365 days, as authorized by the Service secretary, and that number shall not exceed 10% of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of title 10. The reserve component provides unique capabilities that the active component does not possess. This provision allows a limited amount of reserve component GO/FOs to assist the active component in providing a unique capability, provide fulltime leadership to their respective component, and to meet a temporary requirement.

Paragraph (3) of subsection (c) as added by this proposal reinstates the exclusion for certain reserve component GO/FOs who are on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of title 10 may not exceed 5 per component. This exclusion helps the reserve component to fulfill its statutory requirement to man, train, and equip its force. Full-time leadership of each reserve component will be diminished, unless they are accounted for under active duty headspace, affecting resourcing requirements and representation at the strategic level.

The RC makes up well over 46% of the total force which includes the majority of sustainment force structure necessary to support global warfighting, peacekeeping, and military support to civil authority. The changes made to section 526a in removing the reserve component GO/FO exemptions, have the potential to eliminate capacity and incentive for total force integration. Total force integration helps the active component be more aware of reserve capabilities and how to best utilize and employ these capabilities with insight from senior leadership of the reserve component at the strategic and operational levels. Enacting this proposal will remove barriers to full integration of the reserve component into the Joint Force, allow reserve component leadership to represent their interests and equities in all matters within DOD, and will develop GO/FOs at the strategic level with regard to statutory requirements to man, train, and equip the total force.

The Chairman of the Joint Chiefs of Staff is responsible for the overall administration and execution of joint pool. Integrating the above proposals into section 526a will improve the readiness and lethality of the total force and provides the Chairman and the Secretary of Defense the decision space needed to identify current and future requirements and to fill requirements with an experienced and ready reserve component GO/FO. As the joint pool reduces from 310 to 232, opportunities for both reserve and active component GO/FOs are significantly reduced. If we do not preserve some reserve component participation in the joint force we will impede progress toward total force integration.

**Budgetary Implications:** None. This proposal is budget neutral as it will keep the status quo, involve no new growth of personnel, and only be used to meet total force requirements.

**Changes to Existing Law:** This proposal would make the following changes to section 526a of title 10, United States Code:

**§ 526a. Authorized strength after December 31, 2022: general officers and flag officers on active duty**

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, after December 31, 2022, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 220.
(2) For the Navy, 151.
(3) For the Air Force, 187.
(4) For the Marine Corps, 62.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of Defense may designate up to 232 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a).

(2) MINIMUM NUMBER.—Unless the Secretary of Defense determines that a lower number is in the best interest of the Department of Defense, the minimum number of officers serving in positions designated under paragraph (1) for each armed force shall be as follows:

(A) For the Army, 75.
(B) For the Navy, 53.
(C) For the Air Force, 68.
(D) For the Marine Corps, 17.

(3) CERTAIN RESERVE COMPONENT GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.—(A) The Chairman of the Joint Chiefs of Staff may designate up to 15 general and flag officer positions in the unified and specified combatant commands, and up to three general and flag officer positions on the Joint Staff, as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for purposes of the limitations under subsection (a) and under section 525 of this title.

(c) EXCLUSION OF CERTAIN RESERVE OFFICERS.—

(1) GENERAL OR FLAG OFFICERS SERVING LESS THAN 180 DAYS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(2) GENERAL OR FLAG OFFICERS SERVING 365 DAYS OR LESS.—The limitations of this section also do not apply to a number, as specified by the Secretary of the military department concerned, of reserve component general or flag officers authorized to serve on active duty for a period of not more than 365 days. The number so specified for an armed force may not exceed the number equal to 10 percent of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of this title. In determining such number, any fraction shall be rounded down to the next whole number, except that such number shall be at least one.

(3) GENERAL OR FLAG OFFICERS SERVING MORE THAN 365 DAYS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(~~c~~d) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to—

(1) an officer of an armed force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer; or

(2) an officer of an armed force who has been relieved from a position designated under section 601(a) of this title or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

(~~d~~e) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—

(1) IN GENERAL.—The limitations in subsection (a) do not apply to a general officer or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) DURATION OF EXCLUSION.—A general officer or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(~~e~~f) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by the additional extension at the same time.

(~~f~~g) ACTIVE-DUTY BASELINE.—

(1) NOTICE AND WAIT REQUIREMENTS.—If the Secretary of a military department proposes an action that would increase above the baseline the number of general officers or flag officers of an armed force under the jurisdiction of that Secretary who would be on active duty and would count against the statutory limit applicable to that armed force under subsection (a), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which the Secretary provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term "baseline" for an armed force means the lower of—

(A) the statutory limit of general officers or flag officers of that armed force under subsection (a); or

(B) the actual number of general officers or flag officers of that armed force who, as of January 1, 2023, counted toward the statutory limit of general officers or flag officers of that armed force under subsection (a).

(~~g~~h) JOINT DUTY ASSIGNMENT BASELINE.—

(1) NOTICE AND WAIT REQUIREMENT.—If the Secretary of Defense, the Secretary of a military department, or the Chairman of the Joint Chiefs of Staff proposes an action that would increase above the baseline the number of general officers and flag officers of the armed forces in joint duty assignments who count against the statutory limit under subsection (b)(1), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which such Secretary or the Chairman, as the case may be, provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term "baseline" means the lower of—

(A) the statutory limit on general officer and flag officer positions that are joint duty assignments under subsection (b)(1); or

(B) the actual number of general officers and flag officers who, as of January 1, 2023, were in joint duty assignments counted toward the statutory limit under subsection (b)(1).

(~~h~~i) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report specifying the following:

(1) The numbers of general officers and flag officers who, as of January 1 of the calendar year in which the report is submitted, counted toward the service-specific limits of subsection (a).

(2) The number of general officers and flag officers in joint duty assignments who, as of such January 1, counted toward the statutory limit under subsection (b)(1).

**SEC. ___. ONE-YEAR EXTENSION OF CERTAIN EXPIRING BONUS AND SPECIAL PAY AUTHORITIES.**

(a) AUTHORITIES RELATING TO RESERVE FORCES.—Section 910(g) of title 37, United States Code, relating to income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service, is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(b) TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS.—The following sections of title 10, United States Code, are amended by striking "December 31, 2019" and inserting "December 31, 2020":

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

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

(c) AUTHORITIES RELATING TO NUCLEAR OFFICERS.—Section 333(i) of title 37, United States Code, is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(d) AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.—The following sections of title 37, United States Code, are amended by striking "December 31, 2019" and inserting "December 31, 2020":

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

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

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

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

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

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

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

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

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

(e) AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING.—Section 403(b)(7)(E) of title 37, United States Code, is amended by striking "December 31, 2019" and inserting "December 31, 2020".

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

**Section-by-Section Analysis**

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

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2020. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member's average monthly civilian income and the member's total monthly military compensation.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2020. The Reserve components historically have found it challenging to meet the required manning in the health care professions. These incentives, which target nurse and critical health care profession skills, are essential to meet required manning levels. The financial assistance and health professions loan repayment programs have proven to be powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending these authorities is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2020. These incentives enable the Navy to

attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

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

Subsection (d) of this proposal would extend through December 31, 2020, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (e) of this proposal would extend through December 31, 2020, the Secretary of Defense authority to prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof is located in an area covered by a declaration by the President that a major disaster exists; or contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

**ONE-YEAR EXTENSION AUTHORITIES FOR RESERVE FORCES:**

**Budget Implications:** This section will extend for one year critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service. The resources required are reflected in the tables below and are included within the Fiscal Year (FY) 2020 President's Budget.

| NUMBER OF PERSONNEL AFFECTED | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation To** |
| Army | 0 | 0 | 0 | 0 | 0 | Military Personnel, Army |
| Navy, | 0 | 0 | 0 | 0 | 0 | Military Personnel, Navy, |
| Total | 0 | 0 | 0 | 0 | 0 | |

| RESOURCE REQUIREMENTS ($MILLIONS) | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation To** |
| Army | 0 | 0 | 0 | 0 | 0 | Military Personnel, Army |
| Navy | 0 | 0 | 0 | 0 | 0 | Military Personnel, Navy, |
| Total | $0 | $0 | $0 | $0 | $0 | |

***Values reflect FY2020 estimate in the Services FY2020 Budget Estimate.**

**ONE-YEAR EXTENSION OF TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS:**

**Budget Implications:** This section will extend for one year critical accession and retention incentive programs, which the military departments fund annually. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of approximately $52.9 million annually for FY2020 through FY2021 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. The tables below include the numbers and funding for the pay authorities listed in subsection (b). The resources required are reflected in the tables below and are included within the Fiscal Year (FY) 2020 President's Budget.

| | **FY 2020** | **FY 2021** | **Appropriation To** |
|---|---|---|---|
| Army* | 0 | 0 | Military Personnel, Army |
| Army Res* | 1,172 | 1,172 | Reserve Personnel, Army |
| Army National Guard* | 520 | 520 | National Guard Personnel, Army |
| Navy* | 0 | 0 | Military Personnel, Navy; |
| Navy Res* | 194 | 194 | Reserve Personnel, Navy |
| Air Force* | 0 | 0 | Military Personnel, Air Force |
| AF Res* | 83 | 83 | Reserve Personnel, Air Force |
| Air National Guard* | 430 | 430 | National Guard Personnel, Air Force |
| Total | 1,264 | 1,264 | |

| | **FY 2020** | **FY 2021** | **Appropriation To** |
|---|---|---|---|
| Army* | 0 | 0 | Military Personnel, Army; |
| Army Res* | $24.1 | $24.1 | Reserve Personnel, Army |
| Army National Guard* | $16.1 | $16.1 | National Guard Personnel, Army |
| Navy* | 0 | 0 | Military Personnel, Navy; |
| Navy Res* | $2.8 | $2.8 | Reserve Personnel, Navy |
| Air Force* | 0 | 0 | Military Personnel, Air Force |
| AF Res* | $2.3 | $2.3 | Reserve Personnel, Air Force |
| Air National Guard | $7.7 | $7.7 | National Guard Personnel, Air Force |
| Total | $52.9 | $52.9 | |

*** Values reflect FY2020 estimate in the Services FY2020 Budget Estimate.**

**ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:**

**Budget Implications:** This section will extend for one year the critical accession and retention incentive programs the Navy funds each year. The Navy has already projected expenditures for these incentives and programmed them into budget proposals. The Navy has projected expenditures of just over $88.8 million annually, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2020 through 2021. The Army and Air Force are not authorized in the statute to pay these bonuses. The resources required are reflected in the tables below and are included within the Fiscal Year (FY) 2020 President's Budget.

| | FY 2020 | FY 2021 | Appropriation To |
|---|---|---|---|
| Navy* | 2,750 | 2,750 | Military Personnel, Navy |
| Navy Res* | 175 | 175 | Reserve Personnel, Navy |
| Total | 2,925 | 2,925 | |

| | FY 2020 | FY 2021 | Appropriation To |
|---|---|---|---|
| Navy* | $86.2 | $86.2 | Military Personnel, Navy |
| Navy Res* | $2.6 | $2.6 | Reserve Personnel, Navy |
| Total | $88.8 | $88.8 | |

*** Values reflect FY2020 estimate in the Services FY2020 Budget Estimate.**

**ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.**

**Budget Implications:** This section will extend for one year the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted and officer bonuses, aviation bonuses and incentives, non-physician health professions pays, hazardous duty pays, assignment and special duty pays, skill incentive pays, and critical skill retention bonuses. This section does not include the nuclear officer pays, which are located above. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of approximately $5.4 billion annually from FY 2020 through FY 2021 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. The resources required are reflected in the tables below and are included within the Fiscal Year (FY) 2020 President's Budget.

| | FY 2020 | FY 2021 | Appropriation To |
|---|---|---|---|
| Army* | 287,926 | 287,926 | Military Personnel, Army |
| ARNG* | 50,440 | 50,440 | National Guard Personnel, Army |
| USAR* | 60,019 | 60,019 | Reserve Personnel, Army |
| Navy* | 344,357 | 344,357 | Military Personnel, Navy |
| USNR* | 5,649 | 5,649 | Reserve Personnel, Navy |
| Marine Corps* | 46,034 | 46,034 | Military Personnel, Marine Corps |
| USMCR* | 573 | 573 | Reserve Personnel, Marine Corps |
| Air Force* | 127,702 | 127,702 | Military Personnel, Air Force |
| ANG* | 14,207 | 14,207 | National Guard Personnel, Air Force |

| | | | |
|---|---|---|---|
| USAFR* | 5,818 | 5,818 | Reserve Personnel, Air Force |
| Total | 942,725 | 942,725 | |

| | FY 2020 | FY 2021 | Appropriation To |
|---|---|---|---|
| Army* | $1,648 | $1,648 | Military Personnel, Army |
| ARNG* | $305 | $305 | National Guard Personnel, Army |
| USAR* | $209.5 | $209.5 | Reserve Personnel, Army |
| Navy* | $1,651 | $1,651 | Military Personnel, Navy |
| USNR* | $39.8 | $39.8 | Reserve Personnel, Navy |
| Marine Corps* | $281 | $281 | Military Personnel, Marine Corps |
| USMCR* | $7.6 | $7.6 | Reserve Personnel, Marine Corps |
| Air Force* | $1,076 | $1,076 | Military Personnel, Air Force |
| ANG* | $85.2 | $85.2 | National Guard Personnel, Air Force |
| USAFR* | $57.6 | $57.6 | Reserve Personnel, Air Force |
| Total | $5,361 | $5,361 | |

*** Values reflect FY2020 estimate in the Services FY2020 Budget Estimate.**

**ONE-YEAR EXTENSION OF AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING:**

**Budget Implications:** This section will extend for one year the Secretary of Defense authority to temporarily increase basic allowance for housing rates for areas hit by a major disaster or experiencing a sudden increase in the number of members of the armed forces assigned to an installation. Currently the Department is not utilizing this authority, however, the authority is necessary to provide assistance to members impacted by a disaster such as Hurricane Florence in South Carolina and Hurricane Michael in Florida. The military departments do not project expenditures for this allowance in their budget proposals. The resources required are reflected in the tables below and are included within the Fiscal Year (FY) 2020 President's Budget.

| | FY 2020 | FY 2021 | Appropriation To |
|---|---|---|---|
| Army* | 0 | 0 | Military Personnel, Army |
| Navy* | 0 | 0 | Military Personnel, Navy |
| Marine Corps* | 0 | 0 | Military Personnel, Marine Corps |
| Air Force* | 0 | 0 | Military Personnel, Air Force |
| Total | 0 | 0 | |

| | FY 2020 | FY 2021 | Appropriation To |
|---|---|---|---|
| Army* | $0 | $0 | Military Personnel, Army |
| Navy* | $0 | $0 | Military Personnel, Navy |
| Marine Corps* | $0 | $0 | Military Personnel, Marine Corps |
| Air Force* | $0 | $0 | Military Personnel, Air Force |
| Total | $0 | $0 | |

**Changes to Existing Laws:** This proposal would make the following changes to title 10 and title 37, United States Code:

# TITLE 10, UNITED STATES CODE

*********

**§ 2130a. Financial assistance: nurse officer candidates**

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2019~~ December 31, 2020, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

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

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

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(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2019~~ December 31, 2020.

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# TITLE 37, UNITED STATES CODE

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**§ 331. General bonus authority for enlisted members**

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(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*****

**§ 332. General bonus authority for officers**

*********

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*****

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

*********

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*********

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

*********

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*********

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

*********

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*****

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

*********

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2019~~ December 31, 2020.

*****

**§ 351. Hazardous duty pay**

*********

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2019~~ December 31, 2020.

*****

**§ 352. Assignment pay or special duty pay**

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(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*********

**§ 353. Skill incentive pay or proficiency bonus**

*********

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2019~~ December 31, 2020.

*********

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

*********

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2019~~ December 31, 2020, and no agreement under this section may be entered into after that date.

*****

**§ 403. Basic allowance for housing**

*****

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

*****

(7)(A) *****

*****

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2019~~ December 31, 2020.

*****

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

*****

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2019~~ December 31, 2020, unless the entitlement of the member to payments under this section is commenced on or before that date.

*****

**SEC. ___. PROVISION OF GOODS AND SERVICES AT KWAJALEIN ATOLL, REPUBLIC OF THE MARSHALL ISLANDS.**

(a) IN GENERAL.—Chapter 767 of title 10, United States Code, is amended by adding at the end the following new section:

**"§7596. Goods and services at Kwajalein Atoll**

"(a) AUTHORITY.—(1) Subject to the requirements of this section, the Secretary of the Army may, with the concurrence of the Secretary of State, provide goods and services, including inter-atoll transportation, to the Government of the Republic of the Marshall Islands and to other eligible patrons, as determined by the Secretary, at Kwajalein Atoll.

"(2) The Secretary may not provide goods or services under this section if doing so would be inconsistent, as determined by the Secretary of State, with the Compact of Free Association between the Government of the United States of America and the Government of the Republic of the Marshall Islands or any subsidiary agreement or implementing arrangement.

"(b) REIMBURSEMENT.—(1) The Secretary of the Army may collect reimbursement from the Government of the Republic of the Marshall Islands and eligible patrons for the provision of goods and services under subsection (a).

"(2) Any amount collected for goods or services under this subsection shall not be greater than the total amount of the actual costs to the United States of providing the goods or services.

"(c) NECESSARY EXPENSES.—Amounts appropriated to the Department of the Army may be used for all necessary expenses associated with providing goods and services under this section.

"(d) REGULATIONS.—The Secretary of the Army shall issue regulations to carry out this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7596. Goods and services at Kwajalein Atoll.".

**Section-by-Section Analysis**

This proposal would authorize the Secretary of the Army to provide goods and services, including inter-atoll transportation, at Kwajalein Atoll, Republic of the Marshall Islands (RMI), to the RMI government and other eligible patrons. This proposal will enable the Department of Defense (DoD) to accomplish its mission at this remote and isolated location where the economy is inadequate to provide the services needed.

Since July 1, 1964, the U.S. Army has operated a missile test range at a small, remote installation on Kwajalein Atoll in the RMI. U.S. Army Garrison-Kwajalein (USAG-KA) is located there and is home to the Ronald Reagan Ballistic Missile Defense Test Site (RTS). Command and responsibility for the installation was under the United States Army Space and Missile Defense Command/Army Forces Strategic Command (USASMDC/ARSTRAT) until October 1, 2013, when installation management responsibilities were transferred to the U.S Army Installation Management Command (IMCOM) and the Army installation standardized garrison was established. The Commander, USASMDC/ARSTRAT remained the senior commander for USAG-KA and RTS. RTS is a premier asset within the DoD Major Range and Test Facility Base (MRTFB). The unquestioned value of RTS to the MRTFB is based upon its strategic geographical location, unique instrumentation, and unsurpassed capability to support ballistic missile testing and space operations. With more than 50 years of successful support, RTS provides a vital role in the research, development, test, and evaluation of America's missile defense and space programs.

USAG-KA consists of 11 islands within Kwajalein Atoll, operated as Defense Sites per the Compact of Free Association, as amended (Public Law 108-188, 17 December 2003) with the RMI and the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as amended. The workforce at USAG-KA consists of a small contingent of military and civilian personnel and their families and a larger contingent of contractor personnel, some of whom are also accompanied by family members. Personnel reside permanently on two of the islands, Kwajalein and Roi-Namur, with the larger population and majority of base operations functions residing on Kwajalein.

Due to the remote and isolated location of USAG-KA and the lack of infrastructure in the RMI, USAG-KA is responsible for all base operations functions—many that are normally provided by or procured from adjacent local metropolises by all other installations. Base operations, logistics, and other mission functions at USAG-KA are operated pursuant to a cost-

reimbursement base operations contract and funded by congressionally enacted appropriations. The contract includes maintenance and operations of base facilities, including an international airport, harbor, power plant, water treatment plant, schools, grocery store, recreational facilities, and many other facilities similar to those that would be found in a small town.

Ebeye has approximately 13,000 residents, approximately 800 of whom work on Kwajalein. These workers are transported daily by ferry to work on Kwajalein. Local national Marshallese workers also reside on the neighboring island of Ennubirr (also known as "Third Island"). Marshallese workers residing on Ennubirr are transported daily by ferry to work on Roi Namur. Ennubirr has approximately 800 residents of whom 100 work on Roi Namur. There is very limited infrastructure on Ennubirr, as such the local national Marshallese worker and their families purchase subsistence items from a small contractor operated store located on Roi Namur known as the "Third Island Store." The Third Island Store usually operates at a break even or better profit margin comparable to like retail facilities at Kwajalein Island. Attempts have been made over the years to foster the establishment of a Marshallese owned and operated store located on Ennubirr but such efforts were never successful. Since that time, concern has grown over divesting U.S. control over the store because several similar retail facilities located on Ebeye are currently run by outside investors with ties to the People's Republic of China.

Over the course of the last 50 years, the Army (and before that the Navy) provided logistical support through various contractors to the RMI. This support was done through various arrangements under the Compact of Free Association. Unless otherwise noted, these sales and services provide to the RMI by the Army are on a cost reimbursement basis. Such support includes the following:

- Health Care Services. To the extent possible, and on a reimbursable basis, USAG-KA provides emergency health care services, emergency medical evacuations, morgue services, laboratory work for cultures and biopsies, and emergency provisions of pharmaceuticals and medical supplies upon request by an authorized RMI official.

- Water Deliveries. To the extent possible, and on a reimbursable basis, USAG-KA provides water deliveries on a case-by-case basis within Kwajalein Atoll upon request by an authorized RMI official.

- Subsistence to Enniburr (Third Island). To the extent possible, and on a reimbursable basis, USAG-KA provides cash sale of basic food and other subsistence provisions to Enniburr residents. USAG-KA also provides for the sale of limited petroleum products.

- Emergency Services to RMI Ships. To the extent possible, and on a reimbursable basis, USAG-KA provides emergency services and supplies (limited to fuel, water, and small repair parts for essential equipment) to RMI flagged ships and local government vessels upon request by an authorized RMI official.

- Search and Rescue (SAR). To the extent possible, and within capability, on a reimbursable basis, USAG-KA provides SAR upon request by an authorized RMI official.

- Aircraft Landing and Ground Services to the Air Marshall Islands and other Air Services Utilizing Airfields located at USAG-KA (Airport Services). To the extent possible, and on a reimbursable basis, RMI aircraft and other aircraft requesting landing privileges at the behest of the RMI (or on a pro-rata basis on jointly utilized aircraft) may utilize USAG-KA controlled airfields.

- Bottled Gas Sales. To the extent possible, and on a reimbursable basis, USAG-KA provides sale of bottled gases (oxygen and propane) to RMI government agencies and businesses on Ebeye upon request by an authorized RMI official.

- Explosive Ordnance Disposal (EOD). To the extent possible, and on a reimbursable basis, USAG-KA provides EOD services to government agencies on Ebeye and throughout Kwajalein Atoll upon request by an authorized RMI official.

- Provision of Supplies, Services, and Equipment. To the extent possible, and on a reimbursable basis, USAG-KA provides supplies, services, and equipment to government agencies on Ebeye and throughout the Kwajalein Atoll upon request by an authorized RMI official.

- Provisions of Limited Food and other Supplies to a Limited Number of RMI Traditional and Elected Leadership (Distinguished Visitor "DV" shopping). A weekly allocation of up to $250 worth of shopping privileges at the installation contractor run grocery store is allowed for a limited number (~4) of traditional and elected leaders of the RMI Government, as determined by an authorized Army official.

- Limited Retail Sales to Eligible RMI and other Designated Patrons for the Purchase of Retail Foodstuff and other Small Retail Items. As determined by an authorized Army official, patrons at USAG-KA are allowed to purchase retail food items such as bakery goods, prepared foods, and other retail items on a limited basis at contractor-run facilities.

- Transportation on USASMDC (USAG-KA) Vessels/Aircraft. USAG-KA provides non-reimbursable space required transportation for the local Marshallese workforce within Kwajalein Atoll and non-reimbursable space available transportation for eligible passengers on USAG-KA vessels/aircraft bound for Kwajalein, Roi-Namur, or other authorized destinations within the Kwajalein Atoll.

- Marshallese Cultural Center. A volunteer organization is made up of Kwajalein residents and local RMI traditional leaders who collectively contribute time and treasure in the oversight and operation of part time museum of a small but significant historical collection of Marshallese artifacts on display. These items are securely housed in an Army-owned building on Kwajalein Island. This museum represents the only reliable Western ideal of a properly curated Marshallese collection of artifacts in the Marshall Islands. There is no cost for admission to the center and no salaries paid to the volunteers. Utilities, maintenance, and upkeep of the building is borne by the Army on a non-reimbursable basis.

- Bank of Marshall Islands (BOMI). A RMI-chartered branch bank operating on USAG-KA is open to all customers living on USAG-KA and primarily for RMI workforce at USAG-KA. Authorization for the bank to operate at USAG-KA is, to the extent possible, on a reimbursable basis. USAG-KA provides maintenance and utilities to the U.S. Government owned building upon request by an authorized RMI official.

- RMI Post Office. A RMI-chartered post office operating on USAG-KA is open to all customers living on USAG-KA and primarily for RMI workforce at USAG-KA. Authorization for the post office to operate at USAG-KA is, to the extent possible, on a reimbursable basis. USAG-KA provides maintenance and utilities to the U.S. Government owned building upon request by an authorized RMI official.

The RMI's political support to the United States is essential. Beyond access to USAG-KA under the Compact of Free Association, the United States is granted the right to foreclose access to or use of the RMI by foreign militaries. This ability to strategically deny access effectively gives the U.S. control of the land, airspace, and water area between the Philippines and Hawaii—in essence virtual control of the Central Pacific. Politically, the United States has come to count on the support of the RMI in international bodies like the United Nations.

Despite the political and strategic importance of providing sales and services and limited transportation to the RMI and eligible patrons, questions regarding the permissible scope of and authority for such activities have occasionally arisen, leading to bilateral concerns about the continued provision of these sales and services pending the resolution of those questions. There is a significant desire to clarify the authority for and to expand the scope of this activity.

While limiting or interrupting access to privileges at USAG-KA, such as those just described may seem innocuous, the potential political ramifications are significant. Interrupting or limiting RMI access to basic supplies and services such as transportation, search and rescue, or even RMI traditional leadership's access to grocery shopping could have a ripple effect that could influence other U.S. Government entities, including the Department of State, in a very negative manner. Further, flexibility to expand the scope to other eligible patrons would allow the Army to ease certain logistical burdens and help promote continued goodwill towards the Army and the United States. Accordingly, legislation is requested to clarify and expand the U.S. Army's authority to continue and expand the provision of sales, services, and transportation to the RMI and eligible patrons on a largely reimbursable basis.

This legislative proposal would clarify and expand the authority of the U.S. Army to continue providing the RMI and eligible patrons sales, services, and transportation within the capability of the Army at USAG-KA.

**Budget Implications:** This proposal would enact the necessary authorities to provide the support/services with all reimbursements forwarded to the U.S. Treasury. In FY17, there was approximately $4.6M of USAG-KA provided goods and services where the proceeds were forwarded to the U.S. Treasury. A summary of the receipts, in various categories, follows below. The table below reflects the estimated resources required to provide the support/services and are included within the Fiscal Year (FY) 2020 President's Budget.

| FY17 Transfer of Receipts to U.S. Treasury—Categories | FY17 Receipts |
|---|---|
| Aviation Services – Continental/United | $695,502 |
| Aviation Services – Air Marshall Islands | $95,468 |
| Aviation Services – Aero Micronesia/Asia Pacific | $644 |
| Landing Fees – Air Marshall Islands | $12,140 |
| Landing Fees – Aero Micronesia/Asia Pacific | $332 |
| Landing Fees – Continental/United | $75,683 |
| Monthly Facility Space Rent – Air Marshall Islands | $15,552 |
| Monthly Facility Space Rent – Continental/United | $11,214 |
| Monthly House/BQ Rent – Continental/United | $10,400 |
| Bakery | $215,374 |
| Beauty/Barber Shop | $65,344 |
| Catering Services | $22,365 |
| Laundry Services | $2,010 |
| Surfway Grocery Store | $2,601,603 |
| Roi Surfway Grocery Store | $475,333 |
| Vet Services | $81 |
| Dining Hall Collections (Non-Meal Card Residents & Visitors) | $219,237 |
| Land Services Charged | $4,811 |
| Reimbursable Material – RMI | $1,813 |
| Sale of Excess Property (Bid Sales or RMI Right of First Refusal) | $5,227 |
| Reimbursable Material – Retail Sales | $1,901 |
| Reimbursable Labor Sales | $1,241 |
| Reimbursable Material – Sale to Local Organizations | $33,815 |
| KAJUR Ebeye Power Plant | $4,191 |
| **FY17 Total** | **$4,571,281** |

It is presently expected that the mission and workforce size at USAG-KA will remain basically constant throughout Fiscal Years 2020 through 2024. With this expectation, it is reasonable to assume that, in constant year dollars, the scope of the U.S. Treasury receipts from USAG-KA will remain at $4.6M.

| RESOURCE REQUIREMENTS ($MILLIONS) | | | | | | |
|---|---|---|---|---|---|---|
| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 | Appropriation From |
| Army | $4.6 | $4.7 | $4.8 | $4.9 | $5.0 | Research, Development, Test and Evaluation, Army |
| Total | $4.6 | $4.7 | $4.8 | $4.9 | $5.0 | |

**Changes to Existing Law:** This proposal would add section 7596 to chapter 767 of title 10, United States Code, as previously shown.

**SEC. ___. INCLUSION OF OVER-THE-HORIZON RADARS IN EARLY OUTREACH PROCEDURES AND VOLUNTARY CONTRIBUTIONS.**

Section 183a of title 10, United States Code, is amended—

(1) in subsection (c)(6) in the second sentence, by striking "or airport surveillance radar" and inserting ", airport surveillance radar, or wide area surveillance over-the-horizon radar"; and

(2) in subsection (f) in the first sentence, by striking "applicant for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49" and inserting "entity requesting a review by the Clearinghouse under this section".

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

**Section-by-Section Analysis**

This proposal would include the Department's Relocatable Over the Horizon Radar (ROTHR) system in the coverage of early outreach procedures issued by the Military Aviation and Installation Assurance Siting Clearinghouse. Currently, the ROTHR is not explicitly covered by the early outreach procedures and also is not eligible for voluntary contributions until an application is filed with the Federal Aviation Administration (FAA).

As the lead Federal agency for the detection and monitoring of illicit drug shipments bound for the United States (per 10 U.S.C. 124), DoD maintains a variety of aerial and ground surveillance systems to support interdiction efforts coordinated by USSOUTHCOM's Joint Interagency Task Force – South (JIATF-S) in Key West, FL. ROTHR is a network of three high-frequency sky-wave radars (located in Virginia, Texas, and Puerto Rico) that provide persistent domain awareness of suspected drug-smuggling aircraft in the principal drug transit corridors in the Eastern Pacific and Caribbean. ROTHR is the only persistent wide area surveillance asset available to JIATF-S and is responsible for 92% of initial detections and assists in nearly 99% of aerial tracking carried out by JIATF-S.

In recent years, wind development projects have begun to encroach upon transmit/receive sites in Virginia and Texas, leading to a degradation of the radar signal, threatening continued effectiveness of the ROTHR system in identifying suspect aircraft. The impact of wind turbines on the sensitivity of the radar is highly technical and dependent upon a variety of factors, including distance, number of turbines, prevailing wind angles for power generation, foliage, surface water and time of year.

Although the Siting Clearinghouse is required to provide procedures for early outreach, that outreach does not explicitly identify a ROTHR-type radar system. Additionally, since much of the modeling for such a system would be done during early outreach, i.e., before an application is filed with the Administrator of the FAA, the Clearinghouse cannot accept voluntary contributions to pay the costs of such modeling at the time the modeling is performed. This proposal would extend early outreach procedures to explicitly include ROTHR-type radars and allow the Clearinghouse to accept voluntary contributions from developers who participate in early outreach. It would also allow voluntary contributions from other entities requesting review by the Clearinghouse who, because of the nature of their proposal (e.g., ocean-sited windfarms) will not be seeking FAA review. This will more accurately reflect the interaction between the Clearinghouse and wind turbine developers, to the advantage of both.

**Budgetary Implications:** The funding currently expended on modeling studies comes from Counter-Drug Activities, Defense Account and the DoD Military Aviation and Installation Assurance Siting Clearinghouse. Those accounts will remain the same; the funds currently expended on modeling will be used in other part of DoD's counter-drug activities and Clearinghouse activities. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget..

| **RESOURCE REQUIREMENTS ($MILLIONS)** | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Drug Interdiction and Counter Drug Activities, Defense | $0.5 | $0.5 | $0.5 | $0.5 | $0.5 | Drug Interdiction and Counter Drug Activities, Defense |
| Total | $0.5 | $0.5 | $0.5 | $0.5 | $0.5 | |

**§183a. Military Aviation and Installation Assurance Clearinghouse for review of mission obstructions**

(a) ESTABLISHMENT.—(1) The Secretary of Defense shall establish a Military Aviation and Installation Assurance Siting Clearinghouse (in this section referred to as the "Clearinghouse").

(2) The Clearinghouse shall be—

(A) organized under the authority, direction, and control of an Assistant Secretary of Defense designated by the Secretary; and

(B) assigned such personnel and resources as the Secretary considers appropriate to carry out this section.

* * * * *

(c) REVIEW OF PROPOSED ACTIONS.—(1) Not later than 60 days after receiving from the Secretary of Transportation a proper application for an energy project under section 44718 of title 49 that may have an adverse impact on military operations and readiness, the Clearinghouse shall conduct a preliminary review of such application. The review shall—

(A) assess the likely scope, duration, and level of risk of any adverse impact of such energy project on military operations and readiness; and

(B) identify any feasible and affordable actions that could be taken by the Department, the developer of such energy project, or others to mitigate the adverse impact and to minimize risks to national security while allowing the energy project to proceed with development.

* * * * *

(6) The Clearinghouse shall develop procedures for conducting early outreach to parties carrying out energy projects that could have an adverse impact on military operations and readiness and to clearly communicate to such parties actions being taken by the Department of Defense under this section. The procedures shall provide for filing by such parties of a project area and preliminary project layout at least one year before expected construction of any project proposed within a military training route or within line-of-sight of any air route surveillance radar, ~~or~~ airport surveillance radar, or wide area surveillance over-the-horizon radar operated or used by the Department of Defense in order to provide adequate time for analysis and negotiation of mitigation options. Material marked as proprietary or competition sensitive by a party filing for this preliminary review shall be protected from public release by the Department of Defense.

* * * * *

(f) AUTHORITY TO ACCEPT CONTRIBUTIONS OF FUNDS.—The Secretary of Defense is authorized to request and accept a voluntary contribution of funds from an ~~applicant for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49~~ entity requesting a review by the Clearinghouse under this section. Amounts so accepted shall remain available until expended for the purpose of offsetting the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of such a project on military operations and readiness or to conduct studies of potential measures to mitigate such impacts.

* * * * *

**SEC. ___. REVISION TO CERTAIN OVERSEAS CONTINGENCY OPERATIONS-RELATED INSPECTOR GENERAL AUTHORITIES: HIRING AUTHORITIES.**

Section 8L(d) of the Inspector General Act of 1978 (5 U.S.C. App. 8L(d)) is amended—

(1) in paragraph (2)(E), by inserting "(but without regard to subsection (b)(2) of such section)" after "United States Code,";

(2) in paragraph (3), by amending subparagraph (C) to read as follows:

"(C)(i) An annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection shall continue to receive such annuity and shall not be considered a participant for purposes of chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

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

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

"(5)(A) A person employed by a lead Inspector General for an overseas contingency operation under this section is eligible for noncompetitive conversion to a career-conditional or career appointment in the same position upon the completion of two years of service as an employee under this section.

"(B) No person may be converted to a career-conditional or career appointment under subparagraph (A) after December 31, 2024.".

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

**Section-by-Section Analysis**

This proposal would amend section 8L of the Inspector General Act of 1978 to: (1) clarify the period of employment for temporary employees; (2) grant competitive status for federal hiring purposes to temporary employees hired by lead IG after two years of service; (3) provide the same authority to provide waivers to Foreign Service annuitants as currently provided for reemployed Civil Service annuitants.

*1) Hiring Temporary Employees*

As written, section 8L(d)(2)(E) and (d)(3)(C) limit the period of employment of temporary employees and annuitants to five years, as provided for in 5 U.S.C. 3161(a) and (b)(2). This provision was enacted to accommodate the anticipated five-year duration of a temporary organization. However, an OCO may last beyond five years. Without a remedy, lead IG agencies will have to terminate temporary appointments and rehire temporary employees, possibly during key periods of OCO oversight.

To remedy this discrepancy, we propose that section 8L(d)(2)(E) and (d)(3)(C) be revised to clarify that the period of employment is without regard to the limitations stated in 5 U.S.C. 3161(a) and (b)(2).

*2) Granting Competitive Status to Temporary Employees*

Section 3161 of title 5, U.S.C., contains no provision for granting competitive status for federal hiring purposes to temporary employees hired by a lead IG. This creates a disincentive for individuals to accept these appointments. To remedy this, we propose amending section 8L(d)(2) to permit employees hired by a lead IG or one of the other section 8L(c) IGs under 5 U.S.C. 3161 to be granted "competitive status" for federal hiring purposes after two years of service.

*3) Hiring Foreign Service Annuitants*

Section 3161 of title 5, U.S.C., contains no authority for hiring Foreign Service annuitants. This limits the State Department and U.S. Agency for International Development IGs' ability to hire qualified temporary employees. To remedy this, we propose that section 8L(d)(3)(C) be revised to extend authority to provide the same waivers for Foreign Service annuitants that are available for reemployed Civil Service annuitants.

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

**Changes to Existing Law:** This proposal would make the following changes to section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L):

**SEC. 8L. SPECIAL PROVISIONS CONCERNING OVERSEAS CONTINGENCY OPERATIONS**

(a) ADDITIONAL RESPONSIBILITIES OF CHAIR OF COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY.—Upon the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days, the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) shall, in consultation with the members of the Council, have the additional responsibilities specified in subsection (b) with respect to the Inspectors General specified in subsection (c).

* * * * *

(d) LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATION.—(1) A lead Inspector General for an overseas contingency operation shall be designated by the Chair of the Council of Inspectors General on Integrity and Efficiency under subsection (b)(1) not later than 30 days after the commencement or designation of the military operation concerned as an overseas contingency operation that exceeds 60 days. The lead Inspector General for a contingency operation shall be designated from among the Inspectors General specified in subsection (c).

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

* * * * *

(E) To employ, or authorize the employment by the other Inspectors General specified in subsection (c), on a temporary basis using the authorities in section 3161 of title 5, United States Code <u>(but without regard to subsections (a) and (b)(2) of such section)</u>, such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation.

* * * * *

(3)(A) The lead Inspector General for an overseas contingency operation may employ, or authorize the employment by the other Inspectors General specified in subsection (c) of, annuitants covered by section 9902(g) of title 5, United States Code, for purposes of assisting the lead Inspector General in discharging responsibilities under this subsection with respect to the contingency operation.

(B) The employment of annuitants under this paragraph shall be subject to the provisions of section 9902(g) of title 5, United States Code, as if the lead Inspector General concerned was the Department of Defense.

~~(C) The period of employment of an annuitant under this paragraph may not exceed three years, except that the period may be extended for up to an additional two years in accordance with the regulations prescribed pursuant to section 3161(b)(2) of title 5, United States Code.~~

(C)(i) An annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection shall continue to receive such annuity and shall not be considered a participant for purposes of chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

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

(4) The lead Inspector General for an overseas contingency operation shall discharge the responsibilities for the contingency operation under this subsection in a manner consistent with the authorities and requirements of this Act generally and the authorities and requirements applicable to the Inspectors General specified in subsection (c) under this Act.

(5)(A) A person employed by a lead Inspector General for an overseas contingency operation under this section is eligible for noncompetitive conversion to a career-conditional or career appointment in the same position upon the completion of two years of service as an employee under this section.

(B) No person may be converted to a career-conditional or career appointment under subparagraph (A) after December 31, 2024.

* * * * *

**SEC.____. ORIGINAL APPOINTMENT AUTHORITY.**

Section 531 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking “and captain” and inserting “captain, major, and lieutenant colonel”; and

(B) by striking “and lieutenant” and inserting “lieutenant, lieutenant commander, and commander”; and

(2) in subsection (a)(2)—

(A) by striking “grades” both places it appears and inserting “grade”;

(B) by striking “major, lieutenant colonel, and”; and

(C) by striking “lieutenant commander, commander, and”.

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

**Section-by-Section Analysis**

This proposal would change original appointment authority for regular officers so that appointment of regular officers in the grades of major and lieutenant colonel in the Regular Army, Regular Air Force, and Regular Marine Corps (and lieutenant commander and commander in the Regular Navy) shall be made by the President alone. This will align appointment authority for regular officers with the current original appointment authority for reserve officers, which is with the President alone for officers in the grades of lieutenant colonel and commander and below under 10 U.S.C. § 12203, and is further delegable to the Secretary of Defense through Executive Order.

This change will result in a faster, streamlined original appointment process for regular officers in the affected grades because it will eliminate the time it takes for the White House to process a nomination request from the Department and for the President to sign the nomination scroll, and the time it takes for Senate confirmation. Accordingly, the time it takes to appoint a reserve officer transferring in one of the affected grades to a regular component could be reduced, on average, by as much as 60 days.

The Department of Defense does not use 10 U.S.C. § 531(c) because the Department of Justice does not consider the Secretaries of the Military Departments to be "heads of departments" for

purposes of the Appointments Clause of the Constitution. Rather, the Secretary of Defense is the "head of department" for the Department of Defense. Accordingly, because 10 U.S.C. § 531(c) gives appointment authority to the Secretaries of the Military Departments, it is unconstitutional. As a result, Reserve component officers who are "transferring" to the Regular component must receive an original appointment under 10 USC § 531(a).

**Budget Implications:** This proposal has no significant budgetary impact. Incidental cost or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget.

**Changes to Existing Law:** This proposal would amend section 531 of title 10, United States Code, as follows:

**§ 531. Original appointments of commissioned officers.**

(a)(1) Original appointments in the grades of second lieutenant, first lieutenant~~, and~~ captain, major, and lieutenant colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign, lieutenant (junior grade)~~, and~~ lieutenant, lieutenant commander, and commander in the Regular Navy shall be made by the President alone.

(2) Original appointments in the grade~~s~~ of ~~major, lieutenant colonel, and~~ colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grade~~s~~ of ~~lieutenant commander, commander, and~~ captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps may be made by the Secretary concerned in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).

**SEC. ___. AVAILABILITY OF APPROPRIATIONS FOR RI'KATAK GUEST STUDENT PROGRAM AT UNITED STATES ARMY GARRISON−KWAJALEIN ATOLL.**

(a) AUTHORITY FOR RI'KATAK GUEST STUDENT PROGRAM.—The Secretary of the Army, with the concurrence of the Secretary of State, is authorized to conduct an assistance program to educate up to five local national students per grade, per academic year, on a space-available basis at the contractor-operated schools on United States Army Garrison─Kwajalein Atoll. Such program shall be known as the "Ri'katak Guest Student Program".

(b) SOLE SOURCE OF FUNDS.—Amounts for the program carried out pursuant to subsection (a) may be derived only from amounts authorized to be appropriated for Research, Development, Test and Evaluation, Army and available for the operation and maintenance of the activities of the United States Army Garrison─Kwajalein Atoll.

(c) STUDENT ASSISTANCE.—Assistance that may be provided to students participating in the program carried out pursuant to subsection (a) includes the following:

(1) Classroom instruction.

(2) Extracurricular activities.

(3) Student meals.

(4) Transportation.

**Section-by-Section Analysis**

This legislative proposal would authorize the U.S. Army to continue the Ri'katak Guest Student Program, which allows up to five Republic of the Marshall Islands (RMI) students per grade per year to attend school, on a space available basis, in the contractor-operated schools at U.S. Army Garrison−Kwajalein Atoll (USAG-KA), and to fund the program with congressionally appropriated funds.

The USAG-KA consists of 11 islands within the RMI's Kwajalein Atoll, operating as Defense Sites per a Compact of Free Association (Public Law 108-188; 117 Stat. 2720; 48 USC 1921 note). Due to the remote and isolated location of USAG-KA and the lack of infrastructure in the RMI, USAG-KA is responsible for all base operations functions, including many functions that are normally provided by or procured from adjacent local communities near other installations. Base operations, logistics, and other mission functions at USAG-KA are operated pursuant to a cost-reimbursement base operations contract and funded by congressionally enacted appropriations. The contract includes maintenance and operations of base facilities, including an international airport, harbor, power plant, water treatment plant, schools, grocery store, recreational facilities, and many other facilities similar to those that would be found in a small town.

Since 1987, pursuant to a local agreement with the RMI government, the Kwajalein schools have admitted three to five RMI non-resident students per year on a space available basis into the kindergarten class at the Kwajalein George Seitz Elementary School. This program is known as the Ri'katak Guest Student Program. The Ri'katak students continue their education in the Kwajalein schools through twelfth grade graduation. Ri'katak students who drop from the program are not replaced by another Ri'katak student. A typical graduating class has between two to four Ri'katak students.

Establishment of the Ri'katak Guest Student program was seen as a way to break down cultural barriers and diffuse tensions between the Army and the local community because of the contentious debate over the adoption of the 1986 Compact of Free Association. The United States is harvesting the fruits of this initiative that began in 1986, as it works with a new generation of Marshallese leaders, many of whom have matriculated from the program. These graduates understand the tangible benefits from the United States' presence in the Atoll and reinforce the message of respect, cooperation, and mutual benefit.

The Ri'katak Guest Student Program is widely viewed as a preeminent education system in the RMI. Over the years, this program has received much attention from the RMI Government and is a benefit RMI citizens covet for their children. Students who have graduated from the Ri'katak Guest Student Program have gone on to universities in the United States, have joined the U.S. military, and have become leaders in the RMI government, including a former RMI Ambassador to the United States. This program helps foster the mutually beneficial relationship with the host nation created by the Compact of Free Association, which in turn contributes to the installation's mission and to our Nation's national security.

The RMI's political support to the United States is essential. Programs such as the Ri'katak Guest Student Program are essential to promoting good will with the RMI, and especially with creating a positive narrative regarding the benefits the RMI enjoys by hosting the USAG-KA. The military and strategic importance of the RMI to the United States goes beyond hosting our military facilities; under the Compact of Free Association, the United States has special and extensive access to operate in these nations' territories, and has the authority to deny access to these nations by other countries' militaries and their personnel. This authority, coupled with that we enjoy in the FSM and Palau, gives the United States a strategic advantage in our military posture in the area between the Philippines and Hawaii. In essence, the Compacts of

Free Association with RMI, FSM, and Palau provide the United States with control of access to the Central Pacific. Politically, the United States has come to count on the support of the RMI in international bodies like the United Nations.

Despite the political and strategic importance of the Ri'katak Guest Student Program, recent questions regarding available funds and authorities for the Ri'katak Guest Student Program have created political tensions that undermine the cooperative nature of the US-RMI relationship and the goodwill of the RMI population towards the U.S. military presence in the RMI.

The U.S. Ambassador to the RMI has expressed significant concerns over the Army's potential decision to terminate the Ri'katak Guest Student Program and the likely adverse reaction and disproportionate effect it could have on larger U.S. national security interests. Further, on August 9, 2016, RMI President Hilda Heine sent a letter to President Obama expressing the importance of the program to the RMI and urging that the program continue.

While altering or eliminating access to privileges at USAG-KA, such as the Ri'katak Guest Student Program, may seem innocuous, the potential political ramifications are significant. Ending the Ri'katak Guest Student Program could have a ripple effect that could influence other U.S. Government entities, including the Department of State, in a very negative manner. Accordingly, legislation is requested to authorize the U.S. Army to continue the Ri'katak Guest Student Program.

**Budget Implications**: This legislation would authorize the Ri'katak students to attend Kwajalein schools on a space available basis up to a maximum of five students per class per year. The annual cost for transportation and lunches for a fully populated (65 students) Ri'katak Guest Student Program is estimated to be $41,280.00. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget.

| **RESOURCE REQUIREMENTS ($MILLIONS)** | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Army | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | Research, Development, Test and Evaluation, Army |
| Total | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | |

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

**SEC. ___. EXTENSION OF PROTECTIONS FOR SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.**

(a) CLARIFICATION OF AFFIDAVIT REQUIREMENT. — Paragraph (1) of section 201(b) of the Servicemember Civil Relief Act (50 U.S.C. 3931(b)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) in the matter preceding clause (i), as redesignated by paragraph (1)—

(A) by striking "the court, before entering judgment for the plaintiff, shall require the plaintiff to" and inserting "the plaintiff, when seeking a default judgment, shall"; and

(B) by inserting "(A)" before "In any action"; and

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

"(B) The affidavit shall set forth all steps taken to determine the defendant's military status and shall have attached the records on which the plaintiff relies in preparing the affidavit. Attached records shall include at least a copy of the certificate produced by the Department of Defense Manpower Data Center or a certificate produced by a successor to such Center.".

(b) EXTENSION OF PROTECTIONS FOR SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.—Paragraph (2) of section 201(b) of the Servicemembers Civil Relief Act (50 U.S.C. 3931(b)) is amended—

(1) by inserting after the first sentence the following new sentence: "The court may not appoint an attorney to represent a defendant who is selected by, or has a business

affiliation with, the plaintiff, an attorney representing the plaintiff, or an employee of an entity that has a business affiliation with an attorney representing the plaintiff."; and

(2) by adding at the end the following new sentence: "Nothing in this paragraph shall be construed to prohibit a court from assessing court-appointed attorney fees and costs against the plaintiff.".

(c) SEARCHES OF DEPARTMENT OF DEFENSE MANPOWER DATA CENTER DATABASE.—Subsection (b) of such section is further amended by adding at the end the following new paragraphs:

"(5) REQUIRED SEARCH OF DEPARTMENT OF DEFENSE DATABASE.—Before filing an affidavit under paragraph (b)(1), the plaintiff shall conduct a diligent and reasonable investigation to determine whether or not the defendant is in military service, including a search of available Department of Defense Manpower Data Center records or records from a successor to such Center, and of any other information available to the plaintiff. The plaintiff shall obtain and provide to the court copies of any status reports obtained through such search.

"(6) DUTIES OF COURT-APPOINTED ATTORNEY.—(A) An attorney appointed to represent a defendant under paragraph (b)(2) shall act only in the best interests of the defendant.

"(B) The court appointed attorney, when appropriate to represent the best interests of the defendant, shall request a stay of proceedings under this Act.

"(C) The plaintiff shall provide to the court appointed attorney all contact information the plaintiff has for the defendant.

"(D) The court appointed attorney shall conduct a diligent and reasonable investigation to confirm the defendant's military status, including a search of the Department of Defense Manpower Data Center or a successor to such Center. The attorney shall file any status reports obtained through such search with the court.

"(E) Upon making contact with the defendant, the court appointed attorney shall advise the defendant of the nature of the lawsuit and the defendant's rights provided by this Act, including rights to obtain a stay and to request the court to adjust an obligation. The attorney shall communicate to the court whether or not the defendant requests a stay or requests a continuance to obtain counsel.

"(F) If the court appointed attorney is unable to make contact with the defendant, the attorney shall assert rights provided by this Act on behalf of defendant, provided there is an adequate basis in law and fact.

"(G) A court appointed attorney unable to make contact with the defendant shall report to the court on all of the attorney's efforts to make contact by filing an affidavit indicating the following:

"(i) The date such attorney reviewed the court record and pleadings to ascertain contact information for the defendant.

"(ii) All of the attorney's attempts to contact the defendant, including the date, time, and method of communication.

"(iii) That such attorney was unable to contact the defendant.

"(7) EFFECT OF DEPARTMENT OF DEFENSE DISCONTINUING AVAILABILITY OF INFORMATION.—If the Department of Defense discontinues the availability of active duty status information through the Department of Defense Manpower Data Center, a

successor to such Center, or another related entity, then all requirements under this subsection that are related to the Department of Defense Manpower Data Center, the successor to such Center, or the other related entity shall cease to apply until such time as the Department of Defense resumes making such information available.".

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

**Section-by-Section Analysis**

Currently, section 201 of the Servicemembers Civil Relief Act (SCRA) provides that state courts must appoint an attorney to protect a servicemember's interests if the aforementioned servicemember is unable to attend court due to their military service. Essentially, the current statute requires the court appointed attorney to attempt to contact the servicemember to ascertain whether or not the servicemember wants to invoke the right to a stay or continuance under the SCRA. In practice, field attorneys regularly see evidence of "robo-signing" requests for entry of default judgment by creditor plaintiffs and by creditor plaintiffs' attorneys. In a few of these instances, a state attorney general or the Department of Justice became involved and required the offending parties to incorporate a DMDC active duty check in all subsequent default request matters as a condition of the stipulated settlement agreement. Navy regularly encounters servicemembers who seek assistance to set aside default judgments where the court record contains only one sheet of paper signed by an attorney stating he or she was unable to locate the servicemember. Many of those servicemembers were able to prove that their mailing addresses, email addresses and phone numbers that existed remained the same on the day they sought legal assistance services as existed on the date of execution of the underlying contracts. The servicemembers received no U.S. mail, no email, and no phone calls from the plaintiffs or the court appointed attorneys. There was no evidence of due diligence in the court records. The court appointed attorney provisions in section 3931 are a strong measure in support of a servicemember's rights. However, these rights can and should be strengthened through amendments to the SCRA.

In practice, there is often a close relationship between creditors and the court appointed attorney. Some courts currently allow the creditor to nominate a court appointed attorney to represent the servicemember, giving rise to the appearance of a conflict of interest. Military legal assistance field attorneys have confirmed that some state court judges permit plaintiff's counsel to select a local attorney to serve as the court appointed attorney for the servicemember. Several court records have only one signed paper by the court appointed attorney indicating only an inability to locate the servicemember but no evidence of any due diligence to contact the contact or locate the servicemember. Adding a provision that directly prohibits the creditor or the creditor's attorney from selecting or having an affiliation with the court appointed attorney will give a state court power to sanction a plaintiff or plaintiff's attorney if this provision is not followed.

Further, the changes to this section will elevate the requirements regarding proof of non-military status and permit servicemembers to confidently invoke their right to an independent/neutral court appointed attorney and give the servicemember peace of mind that reliable DMDC evidence of military/non-military status is in fact produced for the court before the court agrees to enter a default judgment. Currently, plaintiffs and court appointed attorneys do not have a requirement to prove non-military status beyond an affirmation, leading to default judgments against servicemembers. This section would require plaintiffs to provide the court with an affidavit that includes-

(1) all steps taken to determine defendant's military status, including a copy of the DMDC database search; and

(2) a copy of all records on which the plaintiff relies in preparing the affidavit.

Regardless of whether the plaintiff's DMDC Status report shows that the servicemember is on active duty, once the court has appointed an attorney, that court appointed attorney must provide the court with an affidavit that includes-

(1) a freshly obtained (not a duplicate) DMDC Status Report;

(2) the dates, times and results of the court appointed attorney's review of the court record and pleadings to ascertain the servicemembers' contact information;

(3) the dates, times, and methods that communications by the court appointed attorney were attempted with the servicemember; and

(4)(A) a statement indicating contact was made with the servicemember and stating whether the servicemember wishes to enforce the servicemember's SCRA rights to a stay or requests a continuance to obtain counsel; or

(B) a statement indicating contact could not be made with the servicemember.

These provisions would greatly strengthen the rights of servicemembers under the SCRA and will permit the servicemember the opportunity to invoke their rights via the court appointed attorney in the court room setting. Further, use of the DMDC database will give plaintiffs confidence that they are not acting in violation of the SCRA.

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

**Changes to Existing Law**: This proposal would make the following changes to section 201(b) of the Servicemembers Civil Relief Act (50 U.S.C. 3931(b)):

§3931. PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

(a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b) Affidavit requirement

(1) Plaintiff to file affidavit. —(A) In any action or proceeding covered by this section, ~~the court, before entering judgment for the plaintiff, shall require the plaintiff to~~ the plaintiff, when seeking a default judgment, shall file with the court an affidavit—

(~~A~~i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(~~B~~ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(B) The affidavit shall set forth all steps taken to determine the defendant's military status and shall have attached the records on which the plaintiff relies in preparing the affidavit. Attached records shall include at least a copy of the certificate produced by the Department of Defense Manpower Data Center or a certificate produced by a successor to such Center.

(2) Appointment of attorney to represent defendant in military service. If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. The court may not appoint an attorney to represent a defendant who is selected by, or has a business affiliation with, the plaintiff, an attorney representing the plaintiff, or an employee of an entity that has a business affiliation with an attorney representing the plaintiff. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember. Nothing in this paragraph shall be construed to prohibit a court from assessing court-appointed attorney fees and costs against the plaintiff.

(3) Defendant's military status not ascertained by affidavit. If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act.

(4) Satisfaction of requirement for affidavit. The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(5) REQUIRED SEARCH OF DEPARTMENT OF DEFENSE DATABASE.—Before filing an affidavit under paragraph (b)(1), the plaintiff shall conduct a diligent and reasonable investigation to determine whether or not the defendant is in military service, including a search of available Department of Defense Manpower Data Center records or records from a successor to such Center, and of any other information available to the plaintiff. The plaintiff shall obtain and provide to the court copies of any status reports obtained through such search.

(6) DUTIES OF COURT-APPOINTED ATTORNEY. —(A) An attorney appointed to represent a defendant under paragraph (b)(2) shall act only in the best interests of the defendant.

(B) The court appointed attorney, when appropriate to represent the best interests of the defendant, shall request a stay of proceedings under this Act.

(C) The plaintiff shall provide to the court appointed attorney all contact information the plaintiff has for the defendant.

(D) The court appointed attorney shall conduct a diligent and reasonable investigation to confirm the defendant's military status, including a search of the Department of Defense Manpower Data Center or a successor to such Center. The attorney shall file any status reports obtained through such search with the court.

(E) Upon making contact with the defendant, the court appointed attorney shall advise the defendant of the nature of the lawsuit and the defendant's rights provided by this Act, including rights to obtain a stay and to request the court to adjust an obligation. The attorney shall communicate to the court whether or not the defendant requests a stay or requests a continuance to obtain counsel.

(F) If the court appointed attorney is unable to make contact with the defendant, the attorney shall assert rights provided by this Act on behalf of defendant, provided there is an adequate basis in law and fact.

(G) A court appointed attorney unable to make contact with the defendant shall report to the court on all of the attorney's efforts to make contact by filing an affidavit indicating the following:

(i) The date such attorney reviewed the court record and pleadings to ascertain contact information for the defendant.

(ii) All of the attorney's attempts to contact the defendant, including the date, time, and method of communication.

(iii) That such attorney was unable to contact the defendant.

(7) EFFECT OF DEPARTMENT OF DEFENSE DISCONTINUING AVAILABILITY OF INFORMATION.—If the Department of Defense discontinues the availability of active duty status information through the Department of Defense Manpower Data Center, a successor to such Center, or another related entity, then all requirements under this subsection that are related to the Department of Defense Manpower Data Center, the successor to such Center, or the other related entity shall cease to apply until such time as the Department of Defense resumes making such information available.

(c) Penalty for making or using false affidavit. A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Stay of proceedings. In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that-

(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 3932 procedures. A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 3932.

(f) Section 3932 protection. If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 3932.

(g) Vacation or setting aside of default judgments.

(1) Authority for court to vacate or set aside judgment. If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application. An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser. If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

**SEC. ___. TRANSITION FROM SERVICE-SPECIFIC DEFENSE READINESS REPORTING SYSTEMS**.

Section 358(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) is amended by striking "October 1, 2019" and inserting "October 1, 2020".

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

**Section-by-Section Analysis**

This proposal would amend section 358 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA) by changing the date specified for the services to complete the transition to the Defense Readiness Reporting System – Strategic (DRRS-S) from October 1, 2019 to October 1, 2020.

This proposal aligns to the transition completion date specified in the FY19 NDAA conference report.

**Budget Implications:** This proposal has no budget implications.

**Changes to Existing Law:** This section would amend the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) as follows:

**SEC. 358. LIMITATION ON AVAILABILITY OF FUNDS FOR SERVICE-SPECIFIC DEFENSE READINESS REPORTING SYSTEMS.**

(a) LIMITATION.—None of the funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2019 for research, development, test, and evaluation or procurement, and available to develop service specific Defense Readiness Reporting Systems (referred to in this section as ''DRRS'') may be made available for such purpose except for required maintenance and in order to facilitate the transition to DRRS-Strategic (referred to in this section as ''DRRS-S'').

(b) PLAN.—Not later than February 1, 2019, the Under Secretary for Personnel and Readiness shall submit to the congressional defense committees a resource and funding plan to include a schedule with relevant milestones on the elimination of service specific DRRS and the migration of the military services and other organizations to DRRS-S.

(c) TRANSITION.—The military services shall complete the transition to DRRS-S not later than ~~October 1, 2019~~ October 1, 2020. The Secretary of Defense shall notify the congressional defense committees upon the complete transition of the services.

(d) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Under Secretary for Personnel and Readiness, the Under Secretary for Acquisition and Sustainment, and the Under Secretary for Research and Engineering, in coordination with the Secretaries of the military departments and other organizations with relevant technical expertise, shall establish a working group including individuals with expertise in application or software development, data science, testing, and development and assessment of performance metrics to assess the current process for collecting, analyzing, and communicating readiness data, and develop a strategy for implementing any recommended changes to improve and establish readiness metrics using the current DRRS-Strategic platform.

(2) ELEMENTS.—The assessment conducted pursuant to paragraph (1) shall include—

(A) identification of modern tools, methods, and approaches to readiness to more effectively and efficiently collect, analyze, and make decision based on readiness data; and

(B) consideration of cost and schedule.

(3) SUBMISSION TO CONGRESS.—Not later than February 1, 2020, the Secretary of Defense shall submit to the congressional defense committees the assessment conducted pursuant to paragraph (1).

(E) DEFENSE READINESS REPORTING REQUIREMENTS.—To the maximum extent practicable, the Secretary of Defense shall meet defense readiness reporting requirements consistent with the recommendations of the working group established under subsection (d)(1).

**SEC. ___. TRANSFER OF ADMINISTRATIVE JURISDICTION AND CONTROL OVER PUBLIC LANDS LOCATED IN ARLINGTON, VIRGINIA.**

(a) TRANSFER TO SECRETARY OF THE ARMY.—

(1) TRANSFER.—Effective on the date of the enactment of this Act, administrative jurisdiction and control is transferred from the Secretary of the Interior to the Secretary of the Army over the approximately 16.09 acre parcel of real property described in paragraph (2).

(2) LAND DESCRIPTION.—The parcel of real property described in this paragraph is the parcel in Arlington, Virginia, adjacent to and comprising Memorial Avenue from the western side of the Route 110 overpass west to and including the hemicycle used by the Women in Military Service for America Memorial, as depicted in blue on the map titled "Arlington National Cemetery, Memorial Ave – NPS Parcel", dated November 25, 2018.

(b) TRANSFER TO SECRETARY OF THE INTERIOR.—

(1) TRANSFER.—Effective on the date of the enactment of this Act, administrative jurisdiction and control is transferred from the Secretary of the Army to the Secretary of the Interior over the approximately 1.04 acre parcel of real property described in paragraph (2).

(2) LAND DESCRIPTION.—The parcel of real property described in this paragraph is the parcel in Arlington, Virginia, adjacent to the Chaffee parking lot and comprising of one structure and bounded on the northeast by Sherman Drive, as depicted in green on the map titled "Arlington National Cemetery – Chaffee NPS Land Swap", dated October 31, 2018.

(c) LAND SURVEYS.—The exact acreage and legal description of the parcels of real property described in subsections (a)(2) and (b)(2) shall be determined by a survey satisfactory to the Secretary of the Army and the Secretary of the Interior.

(d) AUTHORITY TO CORRECT ERRORS.—The Secretary of the Army and the Secretary of the Interior may correct clerical and typographical errors in the maps referred to in subsections (a)(2) and (b)(2).

(e) TERMS AND CONDITIONS.—

(1) NO REIMBURSEMENT OR CONSIDERATION.—The transfers under subsections (a) and (b) shall be without reimbursement or consideration.

(2) MANAGEMENT OF PARCEL TRANSFERRED TO SECRETARY OF THE ARMY.—The real property transferred to the Secretary of the Army under section (a) shall be administered as part of Arlington National Cemetery in accordance with applicable laws and regulations, including section 2409 of title 38, United States Code, which shall govern the erection of monuments on the property.

(3) MANAGEMENT OF PARCEL TRANSFERRED TO SECRETARY OF THE INTERIOR.—The land transferred to the Secretary of the Interior under subsection (b) shall be included within the boundary of the Robert E. Lee Memorial (Arlington House) and shall be administered as part of that park in accordance with applicable laws and regulations.

**Section-by-Section Analysis**

This proposal would transfer administrative jurisdiction and control of 16.09 acres in Arlington, Virginia, adjacent to and comprising Memorial Avenue from the western side of the Route 110 overpass west to and including the hemicycle used by the Women in Military Service for America Memorial from the Department of the Interior (DOI) to the Department of the Army (DA). Further this proposal would transfer administrative jurisdiction and control of 1.04 acres

in Arlington, Virginia, adjacent to the Chaffee parking lot and comprising of one structure and bounded on the northeast by Sherman Drive from DA to DOI.

This transfer proposal would simplify Federal land jurisdictions enabling more effective safety, force protection, and vehicular and pedestrian flow into and out of Arlington National Cemetery (ANC) by moving control of the primary entrance to ANC—known as Memorial Avenue—from DOI to the purview of the Army. This proposal is also needed to provide DOI with specific authority to transfer a portion of a National Park unit, George Washington Memorial Parkway. Control of this property would enhance the appearance and improve the maintenance of the space, would provide potential interpretive space on lands unsuitable for interment, and may provide additional future inurnment space for veterans and their families. This transfer will provide DOI with needed space to administer and maintain their Arlington House property that is located across Sherman Drive.

The responsibility to provide a safe and secure cemetery for our Nation, the extraordinarily high demand for burial space, and the limited space remaining at ANC demand the most efficient and effective use of any available land. Although Memorial Avenue and associated parcels of land are already viewed by much of the public as part of ANC property, in fact, these lands fall under the administrative jurisdiction of the DOI (National Park Service). The separate jurisdictions along Memorial Avenue hampers security screening and traffic flow for the almost 3 million pedestrians and 200,000 vehicles annually entering into the properties. It does not allow for collaborative and integrated interpretive spaces and portrays differing standards of care between interior cemetery spaces and the entrance to ANC.

This proposal would improve safety, traffic flow, and security in this area of high pedestrian and vehicle flow. Consolidation would enable the relocation of security checkpoints, which will improve pedestrians' ability to safely and freely move among the interpretive spaces along the avenue, queue in a more orderly manner, and better manage vehicular lanes for screening and funeral queuing.

Additionally, this proposal would elevate the level of care for the transferred property in a manner consistent with the high standards that are currently found within ANC and are expected of our Nation's most sacred military shrine. This would demand that Memorial Avenue be maintained consistent with the Historic 1932 Landscape Plan, which the Army intends to fully support.

Finally, of the 16.09 total acres, approximately 7.93 acres of land are currently unused. Consolidation could allow ANC to potentially provide above ground inurnment opportunities to extend the life of the cemetery as an active burial ground and to more efficiently utilize these lands for interpretive space.

The transfer of property from DA is at the request of the DOI as they are badly in need of staff space for the proper administration of Arlington House. The 1.04 acres will provide sufficient office space for the staff needed to operate Arlington House as well as space for the upkeep and maintenance of the property, both of which is currently lacking.

As outlined, this proposal would improve operations across all facets of ANC's mission by the consolidation of these lands under the jurisdiction of the Secretary of the Army.

**Budget Implications:** The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget. Annual operation and maintenance costs for the land transferred to ANC will increase slightly due to ANC's commitment to maintain the highest quality standards of care intended in the original design for these grounds. However, the long-term benefit in improved operations, in potential increased inurnment and interpretive space, and in enhanced security and traffic flow will more than outweigh the cost of these added maintenance costs. The maintenance costs discussed do not increase ANC's personnel needs. The costs are absorbed within existing annual service contracts.

| **RESOURCE REQUIREMENTS ($MILLIONS)** | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Army | $.70 | $.67 | $.69 | $.71 | $.73 | Cemeterial Expenses, Army |
| Total | $.70 | $.67 | $.69 | $.71 | $.73 | |

**Changes to Existing Law:** None.

**SEC. ___. TRICARE PAYMENT OPTIONS FOR RETIREES.**

(a) IN GENERAL.—Section 1099 of title 10, United States Code, is amended—

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

**"§1099. Health care enrollment system and payment options";**

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection:

"(d) PAYMENT OPTIONS.—(1) A member or former member of the uniformed services, or a dependent thereof, eligible for medical care and dental care under section 1074(b) or 1076 of this title shall pay premiums charged for the coverage under this chapter.

"(2) To the maximum extent practicable, the premiums shall be withheld from the retired, retainer, or equivalent pay of the member, former member, or dependent. In all other cases, the premiums shall be paid in a frequency and method determined by the Secretary.".

(b) CONFORMING AMENDMENTS.—Section 1097a of title 10, United States Code, is amended—

(1) in the section heading, by striking "**; payment options**";

(2) by striking subsection (c); and

(3) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 55 of such title is amended—

(1) by striking the item relating to section 1097and inserting the following new item:

"1097a. TRICARE Prime: automatic enrollments."; and

(2) by striking the item relating to section 1099 and inserting the following new item:

"1099. Health care enrollment system and payment options.".

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

**Section-by-Section Analysis**

This proposal would amend sections 1097a and 1099 of title 10, United States Code, to change a voluntary election of payroll deduction by a beneficiary for payment of TRICARE Prime enrollment fees to a mandatory election payment of payroll deduction (allotment) for any TRICARE plan that requires enrollment fees or premiums, where feasible. Where circumstances prevent allotment, the Secretary will determine appropriateness. This change will affect all beneficiaries who are subject to TRICARE enrollment fees or premiums and have sufficient retired, retainer, or equivalent pay to support an allotment for such required amounts.

Under existing statutory direction in section 1097a(c), beneficiaries may choose to pay TRICARE Prime enrollment fees in a variety of methods: electronic funds transfer (EFT), credit/debit cards, or allotment from retired military pay and frequency, including annually. Our experience is the EFT and credit/debit cards methods result in higher than desirable rates of non-payment of fees than allotments, which results in termination of TRICARE coverage, denial of health care claims, and negatively affects beneficiary satisfaction. For calendar year (CY) 2017, there were 20,540 failure to pay disenrollments. In the West Region, over 88% of these disenrollments involved beneficiaries who chose payment by credit card or EFT. In the North and South (now East) regions, 80% of the disenrollments involved beneficiaries who chose credit card or EFT as payment methodology. It is expected that these numbers will be consistent for CY 2018 based on data currently available.

**Budgetary Impact:** There are estimated cost savings to the Government in reduced reimbursement to the TRICARE contractors for transaction fees charged by credit card or other financial institutions when beneficiaries elect to pay their TRICARE enrollment fees via credit or debit cards. We estimate the 48% of retirees who currently pay their enrollment fees via credit and debit card transactions would have those transactions replaced by monthly allotments from military retired, retainer, or survivor pay, which have no transactions fees charged by the Defense Finance and Accounting Service nor other Uniformed Service Pay Centers. The average cost to the Government for a credit or debit transaction fee is about 2% of the enrollment fee amount.

With an adjustment of $600,000 in fiscal year (FY) 2021 for one-time startup costs, the Department of Defense (DoD) should save about $20.5 million from FY 2021 – FY 2025 if credit and debit cards payments are largely eliminated.

Otherwise, the TRICARE contractors are reimbursed on a per member, per month basis to process enrollment fee transactions and update required data systems, so the costs to process the enrollment fee transaction is generally the same whether it is accomplished via an allotment or via credit or debit card.

The cost savings reflected in the table below would start to be realized within the FY 2020 President's budget. The table below details resource requirements associated with this proposal.

| RESOURCE REQUIREMENTS ($MILLIONS) | | | | | | |
|---|---|---|---|---|---|---|
| | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024** | **Appropriation From** |
| Defense Health Program | $0 | ($3.5) | ($5.5) | ($5.7) | ($5.8) | Defense Health Program |

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

*** * * * ***

**§1097a. TRICARE Prime: automatic enrollments~~; payment options~~**

(a) AUTOMATIC ENROLLMENT OF CERTAIN DEPENDENTS.—

(1) In the case of a dependent of a member of the uniformed services who is entitled to medical and dental care under section 1076(a)(2)(A) of this title [10 USCS § 1076(a)(2)(A)] and resides in a catchment area in which TRICARE Prime is offered, the Secretary--

(A) shall automatically enroll the dependent in TRICARE Prime if the member is in pay grade E-4 or below; and

(B) may automatically enroll the dependent in TRICARE Prime if the member is in pay grade E-5 or higher.

(2) Whenever a dependent of a member is enrolled in TRICARE Prime under paragraph (1), the Secretary concerned shall provide written notice of the enrollment to the member.

(3) The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.

(b) AUTOMATIC RENEWAL OF ENROLLMENTS OF COVERED BENEFICIARIES.—An enrollment of a covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.

~~(c) PAYMENT OPTIONS FOR RETIREES. A member or former member of the uniformed services eligible for medical care and dental care under section 1074(b) of this title may elect to have any fee payable by the member or former member for an enrollment in TRICARE Prime withheld from the member's retired pay, retainer pay, or equivalent pay, as the case may be, or to be paid from a financial institution through electronic transfers of funds. The fee shall be paid in accordance with the election. A member may elect under this section to pay the fee in full at the beginning of the enrollment period or to make payments on a monthly or quarterly basis.~~

~~(d)~~ (c) REGULATIONS AND EXCEPTIONS.—The Secretary of Defense shall prescribe regulations, including procedures, to carry out this section. Regulations prescribed to carry out the automatic enrollment requirements under this section may include such exceptions to the

automatic enrollment procedures as the Secretary determines appropriate for the effective operation of TRICARE Prime.

~~(e)~~ (d) NO COPAYMENT FOR IMMEDIATE FAMILY.—No copayment shall be charged a member for care provided under TRICARE Prime to a dependent of a member of the uniformed services described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

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

(1) The term "TRICARE Prime" means the managed care option of the TRICARE program.

(2) The term "catchment area", with respect to a facility of a uniformed service, means the service area of the facility, as designated under regulations prescribed by the administering Secretaries.

*** * * * ***

**§1099. Health care enrollment system and payment options**

(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM.—Such system shall—

(1) allow covered beneficiaries to elect to enroll in a health care plan, or modify a previous election, from eligible health care plans designated by the Secretary of Defense during—

(A) an annual open enrollment period; and

(B) any period based on a qualifying event experienced by the beneficiary, as determined appropriate by the Secretary; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

(1) Use of facilities of the uniformed services.

(2) A plan under the TRICARE program.

(3) Any other health care plan contracted for by the Secretary of Defense.

(4) Any combination of the plans described in paragraphs (1), (2), and (3).

(d) PAYMENT OPTIONS.—(1) A member or former member of the uniformed services, or a dependent thereof, eligible for medical care and dental care under section 1074(b) or 1076 of this title shall pay premiums charged for the coverage under this chapter.

(2) To the maximum extent practicable, the premiums shall be withheld from the retired, retainer, or equivalent pay of the member, former member, or dependent. In all other cases, the premiums shall be paid in a frequency and method determined by the Secretary.

~~(d)~~ (e) REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

* * * * *

**SEC. ___. TWO YEAR EXTENSION OF PROGRAM AUTHORITY FOR THE GLOBAL SECURITY CONTINGENCY FUND.**

Section 1207 of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 2151 note) is amended—

(1) in subsection (i)(1), by striking "September 30, 2019" and inserting "September 30, 2021"; and

(2) in subsection (o)—

(A) by striking "September 30, 2019" and inserting "September 30, 2021"; and

(B) by striking "through 2019" and inserting "through 2021".

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

**Section-by-Section Analysis**

This proposal would extend the GSCF program authority by two years (from 2019 to 2021). GSCF remains a unique authority that provides the Secretaries of Defense and State a mechanism when existing authorities are not adequate, or when pooling resources across Departments is beneficial. Its distinctive multi-year funding is not bound by fiscal year contracting restrictions, allowing the Departments to notify programs that might otherwise be deferred to the following fiscal year. The comprehensive, joint planning and program design and pooled resources allows the GSCF program to blend military and civilian implementers without the need for cumbersome Economy Act transfer actions. While this authority remains a niche capability to address specific requirements, its extension will retain a valuable tool for use by both Secretaries to be available when necessary.

**Budget Implications:** The budgetary implications are neutral. This proposal would extend the availability of the Global Security Contingency Fund authority to use existing funds requested within the Fiscal Year (FY) 2020 President's Budget.

**Changes to Existing Law:** This proposal would make the following changes to section 1207 of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 2151 note):

SEC. 1207. GLOBAL SECURITY CONTINGENCY FUND.

(a) ESTABLISHMENT.—There is established on the books of the Treasury of the United States an account to be known as the "Global Security Contingency Fund" (in this section referred to as the "Fund").

* * * * *

(i) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2),amounts in the Fund shall remain available until ~~September 30, 2019~~ September 30, 2021, except that amounts appropriated or transferred to the Fund before that date shall remain available for obligation and expenditure after that date for activities under programs commenced under subsection (b) before that date.

(2) EXCEPTION.—Amounts appropriated and transferred to the Fund before the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 shall remain available for obligation and expenditure after September 30, 2015, only for activities under programs commenced under subsection (b) before September 30, 2015.

* * * * *

(o) EXPIRATION.—The authority under this section may not be exercised after ~~September 30, 2019~~ September 30, 2021. An activity under a program authorized by subsection (b) commenced before that date may be completed after that date, but only using funds available for fiscal years 2012 through ~~2019~~ 2021 and subject to the requirements contained in paragraphs (1) and (2) of subsection (i).