

1 **SEC. \_\_\_\_. CROSS FISCAL YEAR AUTHORITY FOR PROGRAMS TO PROVIDE**  
2 **ASSISTANCE TO THE NATIONAL SECURITY FORCES OF FOREIGN**  
3 **COUNTRIES.**

4 Section 333(g)(2) of title 10, United States Code, is amended—  
5 (1) by striking subparagraph (B);  
6 (2) in subparagraph (A), by striking “second” and inserting “fourth”; and  
7 (3) by striking “(2)” and all that follows through “(A) IN GENERAL.—Amounts  
8 available in a fiscal year” and inserting the following: “(2) AVAILABILITY OF FUNDS FOR  
9 PROGRAMS ACROSS FISCAL YEARS.—Amounts available in a fiscal year”.

**[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 1) extends the period of performance for programs under section 333 of title 10, United States Code, from three to five years, and 2) removes the provision permitting the use of funds for a certain period to achieve full operational capability (FOC). Current law provides for the availability of funds for a certain period of performance (section 333(g)(2)(A), the cross fiscal year authority provision) or to achieve FOC within a certain period after equipment is delivered (section 333(g)(2)(B)).

*Cross Fiscal Year Authority*

This proposal simplifies program planning by extending the period of performance of the cross fiscal year authority provision to match the maximum period of performance allowed under the existing FOC provision. Programs planned using cross fiscal year authority have a clearly defined start and end point for training and defense services, which promotes synchronization of effort among all stakeholders and streamlines execution across the Department of Defense (DoD). Because of the clearly defined timelines associated with the cross fiscal year authority, DoD prefers to rely solely on this provision. However, DoD proposes the extension of the period of performance from three to five years to facilitate careful and comprehensive program planning, in line with the requirements of section 333.

*Removal of FOC*

DoD does not rely on the FOC provision, and therefore proposes its removal. The FOC provision does not establish a consistent start and end to the permissible period of performance for training and services, which creates ambiguity and execution risk. FOC timelines depend upon two highly variable key planning milestones, project delivery to the Government (USG)

and delivery to the partner. Further, the FOC provision is only available if all the equipment from the program is delivered to the USG in the fiscal year after the program begins. Given constraints in production timelines, this is often not possible.

**Budget Implications:** The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget. Incidental costs or savings are accounted for within the FY 2020 President's Budget. The Department is not requesting additional funds; as a result, the budgetary implications of this proposal are neutral.

RESOURCE REQUIREMENTS (\$BILLIONS)						
Component/Military Department	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation
Security Cooperation Account	\$1.50	\$1.30	\$1.30	\$1.30	\$1.30	Operation and Maintenance Defense Wide (0100)
Total	\$1.50	\$1.30	\$1.30	\$1.30	\$1.30	

**Changes to Existing Law:** This proposal would make the following changes to section 333 of title 10, United States Code:

**§333. Foreign security forces: authority to build capacity**

\* \* \* \* \*

(g) FUNDING.—

(1) SOLE SOURCE OF FUNDS.-Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

~~(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—~~

~~(A) IN GENERAL.—~~Amounts available in a fiscal year ~~(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.-~~ Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the ~~second~~ fourth fiscal year thereafter.

~~(B) Achievement of full operational capacity.—~~If, in accordance with subparagraph (A), ~~equipment or training is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.~~

1 **SEC. \_\_. CLARIFICATION OF AUTHORITY AND EXPANSION OF MEMBERSHIP**  
2 **FOR THE INTERNATIONAL SPECIAL TRAINING CENTRE.**

3 (a) **AUTHORITY.**—Subchapter V of chapter 16 of title 10, United States Code, is  
4 amended by adding at the end the following new section:

5 **“§353. Authority to participate in the International Special Training Centre**

6 **“(a) PARTICIPATION AUTHORIZED.**—The Secretary of Defense may, with the concurrence  
7 of the Secretary of State, authorize participation in the International Special Training Centre for  
8 purposes of—

9 **“(1) conducting additional and advanced training for special operations forces**  
10 **and similar units; and**

11 **“(2) collecting, processing, and providing information in consideration of**  
12 **multinational military missions that may be useful to nations for further development of**  
13 **operational and tactical principles and doctrines, concepts, training, and equipment for**  
14 **special operations and similar units.**

15 **“(b) MEMORANDUM OF UNDERSTANDING.**—(1) Participation in the International Special  
16 Training Centre under subsection (a) shall be in accordance with the terms of one or more  
17 memoranda of understanding entered into by the Secretary of Defense, with the concurrence of  
18 the Secretary of State, and the foreign nation or nations concerned.

19 **“(2) If Department of Defense facilities, equipment, or funds are used to support the**  
20 **International Special Training Centre under subsection (a), the memoranda of understanding**  
21 **under paragraph (1) shall provide details of any cost-sharing arrangement or other funding**  
22 **arrangement.**

1           “(c) AVAILABILITY OF APPROPRIATED FUNDS.—(1) Funds appropriated to the  
2 Department of Defense for operation and maintenance are available as follows:  
3           “(A) To pay the United States share of the operating expenses of the  
4 International Special Training Centre in which the United States participates under this  
5 section.  
6           “(B) Except as provided in paragraph (2), to pay the costs of participation in the  
7 International Special Training Centre under this section.  
8           “(2) No funds may be used under this section to fund the pay or salaries of members of  
9 the armed forces and Department of Defense civilian personnel who participate in the  
10 International Special Training Centre under this section.”.

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

“353. Authority to participate in the International Special Training Centre.”

**Section-by-Section Analysis**

**Overview**

This proposal would add a new section to chapter 16 of title 10, United States Code (U.S.C.), based on 10 U.S.C. 344 (relating to North Atlantic Treaty Organization (NATO) multinational military centers of excellence), that would permit the Secretary of Defense to authorize participation in the International Special Training Centre (ISTC) in Pfullendorf, Germany.

**Need for Legislation**

This legislation is needed to provide the authority for the United States to participate in the ISTC, including the authority to participate in the ISTC together with non-NATO nations. Additionally, 10 U.S.C. 344 does not provide authority for the United States to participate in, or fund, the ISTC because the ISTC is not a “multinational center of excellence” as defined in 10 U.S.C. 344(e).

**Background**

The ISTC is a multinational training center located in Pfullendorf, Germany, that conducts training for special operations forces and similar units. It traces its origins to the

International Long Range Reconnaissance Patrol School (ILRRPS), established in Germany in 1979 through a memorandum of understanding. The United States joined the ILRRPS in 1987 and has been a member ever since. In 2001, the school was redesignated as the ISTC to reflect more accurately its focus on special operations training.

### **Clarification of Authority**

The U.S. authority to join the ISTC's predecessor in 1987 is unclear. It appears that authority under section 21(g) of the Arms Export Control Act (22 U.S.C. 2761(g)), relating to NATO standardization agreements, may have been relied on; however, we have not been able to locate documentation showing that the required congressional notification under such section 21(g) was made, nor do we believe that the current construct of the ISTC or the interpretations and applications of such section 21(g) clearly authorize participation in the ISTC moving forward.

Also, the ISTC is currently considering expanding membership to non-NATO signatories to the Partnership for Peace (PfP) Framework Documents, e.g., Finland. However, NATO standardization agreements like the one the United States uses to participate in the ISTC are essentially limited to NATO members. Therefore, the United States cannot support adding Finland or other non-NATO members because doing so would likely necessitate a U.S. withdrawal from the ISTC. Withdrawing from the ISTC is unacceptable to both U.S. European Command (USEUCOM) and U.S. Special Operations Command (USSOCOM) because it negatively affects special operations force (SOF) capabilities and readiness in Europe at a time when deterring Russia and countering its malign influence, especially in non-NATO partner nations like Finland and Ukraine, require a strong U.S. and partner SOF enterprise.

### **Multilateral Centers of Excellence (10 U.S.C. 344)**

10 U.S.C. 344 does not provide authority for the United States to participate in, or fund, the ISTC because the ISTC is not a "multinational center of excellence" as defined in 10 U.S.C. 344(e). Specifically, the ISTC is not "accredited and approved by the Military Committee of the North Atlantic Treaty Organization". There are several types of accreditation NATO may grant, including NATO Center of Excellence (NATO CoE) and Quality Assurance Accreditation (Institutional Accreditation); each type of accreditation has unique evaluation criteria.

Although the ISTC was granted Institutional Accreditation by NATO Allied Command Transformation in 2017, the ISTC is not accredited as a NATO CoE by the Military Committee. The criteria for accreditation as a NATO CoE mirrors the criteria of a multinational center of excellence as defined in 10 U.S.C. 344(e), namely that the entity: (1) enhances education and training; (2) improves interoperability and capabilities; (3) assists in the development of doctrine; and (4) validates concepts through experimentation. The ISTC does not possess the capability or capacity to assist in the development of doctrine or validate concepts through experimentation; therefore, it is unlikely to be able to receive CoE accreditation.

### **Need to Include Non-NATO members**

Currently, non-NATO countries may, with the consent of ISTC members, participate in selected training courses. Their status is essentially that of students. In our view, there are a number of nations that are not members of NATO that could provide real-world management and planning advice as fully participating members. Finland, Switzerland, and Sweden -- all non-NATO countries -- have expressed interest in joining.

In particular, Finland, an important non-NATO partner sharing a border with Russia, is in the process of seeking membership in the ISTC. Finland's accession as a full member of the ISTC would broaden the ISTC program, reduce costs for the United States, and help increase the capability of Special Forces on NATO's eastern flank.

Although supported by ISTC members, Finland's accession would require the unanimous consent of ISTC member nations. Because of the uncertainty surrounding U.S. authority, the United States would not be able to consent to such an accession without enactment of this legislative proposal into law. Under current law, should a non-NATO nation be admitted, it is possible that the United States would have to withdraw as a member of the Centre. Our inability to consent would likely result in Finland being unable to join the ISTC and the SOF enterprise, thereby losing a talented and valuable partner.

### **The ISTC Program**

The ISTC has an operational and tactical focus with two main areas of concentration:

- providing additional and advanced training for special operations forces and similar units at the operational and tactical unit level; and
- collection, processing, and distribution of lessons learned and other information that help nations develop operational and tactical principles, doctrines, training, and equipment for special operations units.

What is unique about the ISTC is its operational and tactical focus. It is the ISTC members, through their experience (including with current conditions in Europe), that determine priorities of training. As a member of the ISTC, a country can, among other things, shape the course curriculum, guarantee course participation for its nation, and participate in organizational and budget decisions of the Centre.

In large part, that is why allowing non-NATO countries to join would be so valuable. These are some of the countries that are dealing today with the kind of tactical issues others may be facing tomorrow. Without this legislation, it will be extremely difficult to bring that operational knowledge and experience to benefit other countries in the European theater.

### **Benefits to the United States**

The ISTC already contributes to the ability of the United States to conduct advanced special operations training and interoperability activities with NATO Allies. In addition, the ISTC conducts cooperative training efforts with other NATO-related entities such as the NATO School at Oberammergau, Germany, and the NATO Maritime Interdiction Operations Training Centre at Souda Bay in Greece. Making full membership available to non-NATO countries would contribute to the collaborative security approach against irregular, asymmetric, and hybrid warfare in Eastern Europe, as well as help prepare to address issues related to foreign fighters returning to Europe from the Middle East.

### **Costs**

Germany, where the ISTC is located, is responsible for basing, operation, maintenance, and repair of all ISTC infrastructure, facilities, and equipment. Costs are shared among the member countries. The annual U.S. contribution is currently approximately \$760,000. As more member nations join, the cost share may be marginally reduced.

**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
	.760	.760	.760	.760	.760	Operation and Maintenance, Army
Total	.760	.760	.760	.760	.760	

**Changes to Existing Law:** As set forth in the legislative text above, this proposal would add a new section to title 10, United States Code.

1 **SEC. \_\_\_\_. AUTHORIZATION OF FUNDS FOR IMPLEMENTATION OF**  
2 **POLITICALLY BINDING ARMS CONTROL AGREEMENTS.**

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

5 “(d) AVAILABILITY OF FUNDS.—Amounts appropriated to the Department of  
6 Defense for operation and maintenance may be used to pay travel, transportation, and  
7 subsistence expenses for meetings and demonstrations hosted by the Department of Defense  
8 for the implementation of multilateral arms control or confidence building international  
9 agreements, arrangements, or politically binding documents.”.

**[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 allow the Services to use funding that is already budgeted annually in arms control implementation budgets. The Department of Justice interpretation of the term “meeting” in 31 U.S. Code § 1345 has prevented the execution of budgeted funds for travel and lodging expenses of non-U.S. federal government personnel and expenditures required by the Vienna Document. While legally binding arms control Treaties are exempted from the prohibition of expenditures on foreign entities due to the advice and consent of the Senate, there is no such exemption for politically binding arms control agreements such as the Vienna Document. The section above seeks to provide a legal basis for the services to continue implementation of the Vienna Document. If the U.S. does not implement the portions of the Vienna Document that require payment for third country nationals, we will be out of compliance with our political obligations.

There is no additional budget impact for this; the money is budgeted each year already in the Services’ O&M funding.

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

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

**§2241. Availability of appropriations for certain purposes**



(a) Operation and Maintenance Appropriations.-Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the following purposes:

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

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

(c) Activities of the National Committee for Employer Support of the Guard and Reserve.-Amounts appropriated for operation and maintenance may, under regulations prescribed by the Secretary of Defense, be used by the Secretary for official reception, representation, and advertising activities and materials of the National Committee for Employer Support of the Guard and Reserve to further employer commitments to their employees who are members of a reserve component.

(d) Availability of Funds.-Amounts appropriated to the Department of Defense for operation and maintenance may be used to pay travel, transportation, and subsistence expenses for meetings and demonstrations hosted by the Department of Defense for the implementation of multilateral arms control or confidence building international agreements, arrangements, or politically binding documents.

1 **SEC. \_\_. AVAILABILITY OF FUNDS ACROSS FISCAL YEARS FOR INDO-PACIFIC**  
 2 **MARITIME SECURITY INITIATIVE PROGRAMS.**

3 Section 1263(f) of the National Defense Authorization Act for Fiscal Year 2016 (10  
 4 U.S.C. 333 note) is amended by adding at the end the following new paragraph:

5 “(3) LENGTH OF AVAILABILITY.—Amounts available in a fiscal year to carry out  
 6 the authority in subsection (a) may be used for the provision of assistance and training  
 7 under that authority that begins in such fiscal year and ends not later than the last day of  
 8 the fourth fiscal year thereafter.”.

**[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 provides a new cross fiscal year, “bona fide needs” exception to the funds availability provision in section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 to improve program planning and synchronization, increase utilization of appropriated funds, and reduce risk to the execution of programs that require long lead time. The proposal would extend the period of performance from one to five years. The longer periods of performance for training and defense services permitted by a cross fiscal year provision would allow the Department of Defense to align programming to the production and delivery capacity of the industrial base, as most programs are not usually produced in sufficient quantities to deliver to the U.S. Government in time. Because the periods of performance for training and services are contingent upon these key delivery milestones, there is considerable risk that key supporting services and training may not be completed as planned. Programs that utilize cross fiscal year authority have a clear start and end point for training and defense services, which improves planning, promotes synchronization of effort among all stakeholders, and streamlines execution across the Department. This provision is found in similar train and equip provisions of law (including DoD’s overarching train and equip authority (10 U.S.C. 333)) and allows the Department to efficiently plan and execute appropriated funds as intended by the Congress.

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

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Indo-Pacific Maritime Security Initiative	\$100	\$102	\$104	\$106	\$108	Operation and Maintenance, Defense Wide (0100)

Total	\$100	\$102	\$104	\$106	\$108	--
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**Changes to Existing Law:** This proposal makes the following changes to section 1263 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 333 note):

**SEC. 1263. INDO-PACIFIC MARITIME SECURITY INITIATIVE.**

(a) ASSISTANCE AND TRAINING.-

(1) IN GENERAL.-The Secretary of Defense is authorized, with the concurrence of the Secretary of State, for the purpose of increasing maritime security and maritime domain awareness of foreign countries along the South China Sea and the Indian Ocean-

(A) to provide assistance to national military or other security forces of such countries that have among their functional responsibilities maritime security missions; and

(B) to provide training to ministry, agency, and headquarters level organizations for such forces.

(2) DESIGNATION OF ASSISTANCE AND TRAINING.-The provision of assistance and training under this section may be referred to as the “Indo-Pacific Maritime Security Initiative”.

\* \* \* \* \*

(f) AVAILABILITY OF FUNDS.-

(1) IN GENERAL.-Of the amounts authorized to be appropriated for fiscal year 2016 for the Department of Defense, \$50,000,000 may be available for the provision of assistance and training under subsection (a).

(2) NOTICE ON SOURCE OF FUNDS.-If the Secretary of Defense uses funds available to the Department pursuant to paragraph (1) to provide assistance and training under subsection (a) during a fiscal half-year of fiscal year 2016, not later than 30 days after the end of such fiscal half-year, the Secretary shall submit to the congressional defense committees a notice on the account or accounts providing such funds.

(3) LENGTH OF AVAILABILITY.-Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for the provision of assistance and training under that authority that begins in such fiscal year and ends not later than the last day of the fourth fiscal year thereafter.

\* \* \* \* \*

1 **SEC. \_\_\_\_. PERMANENT AUTHORITY FOR CHARTER AIR TRANSPORTATION**  
2 **SERVICES.**

3 Section 9515(k) of title 10, United States Code, is repealed.

**[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 9515 of title 10, United States Code, by making permanent the authority to provide increased minimum assured business guarantees to Civil Reserve Air Fleet (CRAF) carriers providing airlift services to the Department of Defense. The current authority expires on December 31, 2020. The Department of Defense implemented the use of the assured business authority beginning with international airlift service contracts entered into by the Department for Fiscal Year (FY) 2011 contracts. Fortunately, business levels for services provided by CRAF air carriers since that time have not been reduced to levels where use of assured business authority has been necessary to maintain sufficient air carrier participation to meet program requirements. However, the current level of business is not assured, and is expected to diminish over time. Consequently, the ability to use assured business authority to maintain an adequate level of participation in the CRAF program is essential.

**Budget Implications:** This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the FY 2020 President’s Budget.

**Changes to Existing Law:** This proposal would make the following changes to section 9515 of title 10, United States Code:

**§9515. Charter air transportation services: minimum annual purchase amount for carriers participating in Civil Reserve Air Fleet**

- (a) IN GENERAL.—The Secretary of Defense shall take steps to—
  - (1) improve the predictability in Department of Defense charter requirements;
  - (2) strengthen Civil Reserve Airlift Fleet participation to assure adequate capacity is available to meet steady-state, surge and mobilization requirements; and
  - (3) provide incentives for commercial air carriers to provide newer, more efficient and reliable aircraft for Department of Defense service rather than older, fully depreciated aircraft.

(b) CONSIDERATION OF RECOMMENDATIONS.—In carrying out subsection (a), the Secretary of Defense shall consider the recommendations on courses of action for the Civil Reserve Air Fleet as outlined in the report required by Section 356 of the National Defense Authorization Act for 2008 (Public Law 110-181).

(c) CONTRACTS FOR CHARTER AIR TRANSPORTATION SERVICES.—The Secretary of Defense may award to an air carrier or an air carrier contractor team arrangement participating in the

Civil Reserve Air Fleet on a fiscal year basis a one-year contract for charter air transportation services with a minimum purchase amount under such contract determined in accordance with this section.

(d) ELIGIBLE CHARTER AIR TRANSPORTATION CARRIER.—In order to be eligible for payments under the minimum purchase amount provided by this section, an air carrier (or any air carrier participating in an air carrier contractor team arrangement)—

(1) if under contract with the Department of Defense in the prior fiscal year, shall have an average on-time pick up rate, based on factors within such air carrier's control, of at least 90 percent;

(2) shall offer such amount of commitment to the Civil Reserve Air Fleet in excess of the minimum required for participation in the Civil Reserve Air Fleet as the Secretary of Defense shall specify for purposes of this section; and

(3) may not have refused a Department of Defense request to act as a host for other Civil Reserve Air Fleet carriers at intermediate staging bases during the prior fiscal year.

(e) AGGREGATE MINIMUM PURCHASE AMOUNT.—(1) The aggregate amount of the minimum purchase amount for all contracts awarded under subsection (c) for a fiscal year shall be based on forecast needs, but may not exceed the amount equal to 80 percent of the average annual expenditure of the Department of Defense for charter air transportation services during the five-fiscal year period ending in the fiscal year before the fiscal year for which such contracts are awarded.

(2) In calculating the average annual expenditure of the Department of Defense for charter air transportation services for purposes of paragraph (1), the Secretary of Defense shall omit from the calculation any fiscal year exhibiting unusually high demand for charter air transportation services if the Secretary determines that the omission of such fiscal year from the calculation will result in a more accurate forecast of anticipated charter air transportation services for purposes of that paragraph.

(f) ALLOCATION OF MINIMUM PURCHASE AMONG CHARTER AIR TRANSPORTATION CONTRACTS.—(1) The aggregate amount of the minimum purchase amount for all contracts awarded under subsection (c) for a fiscal year, as determined under subsection (e), shall be allocated among all air carriers and air carrier contractor team arrangements awarded contracts under subsection (c) for such fiscal year in proportion to the commitments of such carriers to the Civil Reserve Air Fleet for such fiscal year.

(2) In determining the minimum purchase amount payable under paragraph (1) under a contract under subsection (c) for charter air transportation services provided by an air carrier or air carrier contractor team arrangement during the fiscal year covered by such contract, the Secretary of Defense may adjust the amount allocated to such carrier or arrangement under paragraph (2) to take into account periods during such fiscal year when charter air transportation services of such carrier or a carrier in such arrangement are unavailable for usage by the Department of Defense, including during periods of refused business or suspended operations or when such carrier is placed in nonuse status pursuant to section 2640 of this title for safety reasons.

(g) DISTRIBUTION OF AMOUNTS.—If any amount available under this section for the minimum purchase of charter air transportation services from a carrier or air carrier contractor team arrangement for a fiscal year under a contract under subsection (c) is not utilized to purchase charter air transportation services from the carrier or arrangement in such fiscal year, such amount shall be provided to the carrier or arrangement before the first day of the following fiscal year.

(h) COMMITMENT OF FUNDS.—(1) The Secretary of each military department shall transfer to the transportation working capital fund a percentage of the total amount anticipated to be required in such fiscal year for the payment of minimum purchase amounts under all contracts awarded under subsection (c) for such fiscal year equivalent to the percentage of the anticipated use of charter air transportation services by such military department during such fiscal year from all carriers under contracts awarded under subsection (c) for such fiscal year.

(2) Any amounts required to be transferred under paragraph (1) shall be transferred by the last day of the fiscal year concerned to meet the requirements of subsection (g) unless minimum purchase amounts have already been distributed by the Secretary of Defense under subsection (g) as of that date.

(i) AVAILABILITY OF AIRLIFT SERVICES.—(1) From the total amount of charter air transportation services available for a fiscal year under all contracts awarded under subsection (c) for such fiscal year, a military department shall be entitled to obtain a percentage of such services equal to the percentage of the contribution of the military department to the transportation working capital fund for such fiscal year under subsection (h).

(2) A military department may transfer any entitlement to charter air transportation services under paragraph (1) to any other military department or to any other agency, element, or component of the Department of Defense.

(j) DEFINITION.—In this section, the term ‘charter air transportation’ has the meaning given such term in section 40102(14) of title 49.

~~(k) SUNSET.—The authorities in this section shall expire on December 31, 2020.~~

1 **SEC. \_\_\_. CLARIFICATION OF UNITED STATES AIR FORCE INSTITUTE OF**  
2 **TECHNOLOGY ADMINISTRATIVE APPOINTMENTS.**

3 (a) CHIEF EXECUTIVE OFFICER—Section 9414b(a) of title 10, United States Code, is  
4 amended—

5 (1) in the subsection heading, by striking “COMMANDANT” and inserting “CHIEF  
6 EXECUTIVE OFFICER”;

7 (2) in paragraph (1), by striking “Commandant” and inserting “chief executive  
8 officer”;

9 (3) paragraph (2)—

10 (A) in the matter preceding subparagraph (A), by striking “Commandant”  
11 and inserting “chief executive officer”; and

12 (B) in subparagraph (B), by striking “of Commandant”;

13 (4) by redesignating paragraph (3) as paragraph (4);

14 (5) by inserting after paragraph (2) the following new paragraph:

15 “(3) POSITION TITLE.—

16 “(A) COMMANDANT.—An individual appointed under paragraph (2)(A)  
17 shall serve as the Commandant of the United States Air Force Institute of  
18 Technology.

19 “(B) CHANCELLOR.—An individual appointed under paragraph (2)(B) shall  
20 serve as the Chancellor of the United States Air Force Institute of Technology.”;

21 (6) in paragraph (4), as redesignated by paragraph (4) of this subsection—

22 (A) in the paragraph heading, by striking “CIVILIAN COMMANDANT” and  
23 inserting “CHANCELLOR”; and

24 (B) by striking “Commandant” and inserting “Chancellor”; and

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

26 “(5) COMPENSATION OF CHANCELLOR.—An individual serving as Chancellor who  
27 is not a member of the Senior Executive Service is entitled to such compensation for such  
28 service as the Secretary may prescribe under this section, but not more than the rate of  
29 compensation authorized for level III of the Executive Schedule.”.

30 (b) PROVOST (CHIEF ACADEMIC OFFICER).—Section 9414b(b) of such section is  
31 amended—

32 (1) in the subsection heading, by striking “PROVOST AND ACADEMIC DEAN” and  
33 inserting “PROVOST (CHIEF ACADEMIC OFFICER)”;

34 (2) by redesignating paragraph (3) as paragraph (4);

35 (3) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

36 “(1) IN GENERAL.—There is established at the United States Air Force Institute of  
37 Technology the civilian position of Provost (Chief Academic Officer) who shall be  
38 appointed by the Secretary.

39 “(2) RECOMMENDATIONS.—Before making an appointment to the position of  
40 Provost (Chief Academic Officer), the Secretary shall consider any recommendation of the  
41 leadership of the United States Air Force Institute of Technology regarding the  
42 appointment.

43 “(3) TERM.—An individual selected for the position of Provost (Chief Academic  
44 Officer) shall serve in that position for a term of not more than five years and may be  
45 continued in that position for an additional term of up to five years.”; and



46 (4) in paragraph (4), as redesignated by paragraph (2) of this subsection, by  
47 striking “Provost and Academic Dean” and inserting “Provost (Chief Academic Officer)”.

48 (c) APPLICABILITY.—The amendments made by this section shall apply to individuals  
49 appointed to positions in the United States Air Force Institute of Technology after the date of the  
50 enactment of this Act.

**[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 the current title of the “Commandant” for any civilian serving as the head of the Air Force Institute of Technology (AFIT) to “Chancellor” and the current title of the “Provost and Academic Dean” at AFIT to “Provost (Chief Academic Officer)”. Further, it would revise the terms of employment of the Chancellor and Provost at AFIT.

Section 9414b of title 10, United States Code, provides the authority for a position called the “Commandant,” which is the chief executive officer (CEO) of the institution. This title is inconsistent with both the duty title of the position and common terminology used in academia for civilian chief executive officers. Additionally, the title of “Commandant” is reserved for ranking military officers in training or educational units as well as the second most senior officer at the military academies. Therefore, AFIT proposes a change to the title of the CEO from “Commandant” to “Chancellor” for civilian CEOs of AFIT to provide consistency in titling. Air University and Air Education and Training Command concur that the title “Commandant” should not be used to refer to a civil-servant civilian.

Section 9414b establishes AFIT’s authority for a civilian position of “Provost and Academic Dean.” The duties and responsibilities of the position, which include oversight of academic operations and institutional continuity regarding academic affairs, calls for the more appropriate title of “Provost (Chief Academic Officer).” Additionally, the proposed change would provide clarity to AFIT’s organizational structure.

Section 9414b, as currently written, states the Provost will serve in that position for a term of five years. This language, as stated, introduces ambiguity in defining the term of appointment. For example, it could be interpreted as a *single* term of five years in length with no possibility of renewal. Alternatively, it could be interpreted as the length of a single term with the possibility of renewals, each not to exceed five years in length. While the Air Force currently interprets the language as meaning one non-renewable term not to exceed five-years, given the ambiguity of the language, AFIT assesses risk if the statute is not changed. Air University and Air Education and Training Command concur with this assessment of risk. AFIT is, therefore, submitting this proposal to remove the ambiguity in the existing language and provide clarity in the statute regarding the term of appointment for the Provost. Under the proposal, the Provost may serve an

initial term of not more than five years and be reappointed for a second term of up to five years. The change will also make AFIT's authority generally consistent with the academic oversight responsibilities of the Provost at the Naval Postgraduate School under section 7043 of title 10.

**Budget Implications:** This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget. This proposal has minimal dollar impact to AFIT's appropriated funding since this change doesn't impact salaries or position details.

**Changes to Existing Law:** This proposal would make the following changes to section 9414b of title 10, United States Code:

**§9414b. United States Air Force Institute of Technology: administration**

(a) ~~COMMANDANT CHIEF EXECUTIVE OFFICER.~~-

(1) SELECTION.-The ~~Commandant chief executive officer~~ of the United States Air Force Institute of Technology shall be selected by the Secretary of the Air Force.

(2) ELIGIBILITY.-The ~~Commandant chief executive officer~~ shall be one of the following:

(A) An officer of the Air Force on active duty in a grade not below the grade of colonel who possesses such qualifications as the Secretary considers appropriate and is assigned or detailed to such position.

(B) A member of the Senior Executive Service or a civilian individual, including an individual who was retired from the Air Force in a grade not below brigadier general, who has the qualifications appropriate for the position of ~~Commandant~~ and is selected by the Secretary as the best qualified from among candidates for the position in accordance with a process and criteria determined by the Secretary.

(3) POSITION TITLE.—

(A) ~~COMMANDANT.~~—An individual appointed under paragraph (2)(A) shall serve as the Commandant of the United States Air Force Institute of Technology.

(B) ~~CHANCELLOR.~~—An individual appointed under paragraph (2)(B) shall serve as the Chancellor of the United States Air Force Institute of Technology.

~~(3)~~ (4) ~~TERM FOR CIVILIAN COMMANDANT CHANCELLOR.~~-An individual selected for the position of ~~Commandant Chancellor~~ under paragraph (2)(B) shall serve in that position for a term of not more than five years and may be continued in that position for an additional term of up to five years.

(5) ~~COMPENSATION OF CHANCELLOR.~~—An individual serving as Chancellor who is not a member of the Senior Executive Service is entitled to such compensation for such service as the Secretary shall prescribe for purposes of this section, but not more than the rate of compensation authorized for level III of the Executive Schedule.

(b) ~~PROVOST AND ACADEMIC DEAN~~ PROVOST (CHIEF ACADEMIC OFFICER).-

(1) ~~IN GENERAL.~~ There is established at the United States Air Force Institute of Technology the civilian position of Provost and Academic Dean who shall be appointed by the Secretary.

~~(2) TERM.—An individual appointed to the position of Provost and Academic Dean shall serve in that position for a term of five years.~~

(1) IN GENERAL.—There is established at the United States Air Force Institute of Technology the civilian position of Provost (Chief Academic Officer) who shall be appointed by the Secretary.

(2) RECOMMENDATIONS.—Before making an appointment to the position of Provost (Chief Academic Officer), the Secretary shall consider any recommendation of the leadership of the United States Air Force Institute of Technology regarding the appointment.

(3) TERM.—An individual selected for the position of Provost (Chief Academic Officer) shall serve in that position for a term of not more than five years and may be continued in that position for an additional term of up to five years.

~~(3)~~ (4) COMPENSATION.—The individual serving as Provost and Academic Dean Provost (Chief Academic Officer) is entitled to such compensation for such service as the Secretary shall prescribe for purposes of this section, but not more than the rate of compensation authorized for level IV of the Executive Schedule.

1 **SEC. 607. DEFENSE COMMISSARY AND EXCHANGE SYSTEMS.**

2 (a) EXISTENCE AND PURPOSE.—Section 2481(a) of title 10, United States Code, is  
3 amended to read as follows:

4 “(a) IN GENERAL.—The Secretary of Defense may operate, in the manner provided by  
5 this chapter and other provisions of law, a worldwide system of commissary and exchange  
6 stores. Commissary and exchange stores may sell, at reduced prices, food and other merchandise  
7 to members of the uniformed services on active duty, members of the uniformed services entitled  
8 to retired pay, dependents of such members, and persons authorized to use the system under  
9 chapter 54 of this title.”.

10 (b) RELATIONSHIP BETWEEN SYSTEMS.—Section 2487 of title 10, United State Code, is  
11 amended—

12 (1) by striking subsections (a) and (b);

13 (2) by redesignating subsections (c) and (d) as subsections (a) and (b),  
14 respectively; and

15 (3) in subsection (a), as so redesignated, by striking “Notwithstanding subsections  
16 (a) and (b), the” and inserting “The”.

17 (c) COMBINED EXCHANGE AND COMMISSARY STORES.—

18 (1) REPEAL.—Section 2488 of title 10, United States Code, is repealed.

19 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter  
20 II of chapter 147 of such title is amended by repealing the item relating to section 2488.

**[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 is an initial Community Services Reform proposal that would amend sections 2481 and 2487, and repeal section 2488, of title 10, United States Code, which will set the stage to provide the Department of Defense the flexibility to consolidate management of commissaries and exchanges, and identify future reforms necessary to adjust operations as required to meet mission requirements, as well as enable the ability of the defense retail activities to respond with agility to demographic, generational, and industry trends. For example, it would enable standardization and automation of nonappropriated fund-based, back-office processes and management, which will be extended across morale, welfare, and recreation activities, the exchange systems, and the commissary system. It would also enable the expansion of the integrated Community Services model employed by the U. S. Marine Corps. Further legislative proposals to complete the Community Service Reform will be developed and submitted as transformation progresses.

The proposal amends sections 2481 and 2487 in order to authorize the Department to consolidate the commissary and exchange systems, if it so chooses. By deleting the requirement to operate separate systems, the Department expects to consolidate business functions that are duplicated across the Commissary and Exchange systems and implement standard commercial practices for maximizing buying power. Specifically, the Department expects to save money by improving inventory management, reducing back-office and administrative costs, reducing spending on outside contractors, consolidating logistical systems, and reducing management overhead. The Department will also streamline product categories and consolidate purchasing.

This proposal repeals section 2488 because it limits the combining of commissary and exchange stores. This section severely constrains the Department's ability to manage and operate the defense retail activities as both an entitlement and a business in a dynamic and competitive environment.

**Budget Implications:** This proposal has no budgetary impacts in FY 2020. The FY20 Budget request includes the incidental cost required to continue preparing for a future Exchange-Commissary merger. Implementation costs will be included in the Department's FY 2021 Budget request.

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

## TITLE 10, UNITED STATES CODE

\* \* \* \* \*

### **§2481. Defense commissary and exchange systems: existence and purpose**

~~(a) Separate Systems. The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title. Any reference in this chapter to "the~~

exchange system" shall be treated as referring to each separate administrative entity within the Department of Defense through which the Secretary has implemented the requirement under this subsection for a world-wide system of exchange stores.

(a) IN GENERAL.-The Secretary of Defense may operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and exchange stores. Commissary and exchange stores may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

\* \* \* \* \*

### **§2487. Relationship between defense commissary system and exchange stores system**

~~(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.~~

~~(2) Paragraph (1) does not apply to the following:~~

~~(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.~~

~~(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.~~

~~(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.~~

~~(2) In this subsection, the term "defense retail systems" means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.~~

~~(ae) COMMON BUSINESS PRACTICES.—(1) Notwithstanding subsections (a) and (b), the Secretary of Defense may establish common business processes, practices, and systems—~~

~~(A) to exploit synergies between the defense commissary system and the exchange system; and  
(B) to optimize the operations of the defense retail systems as a whole and the benefits provided by the commissaries and exchanges.~~

~~(2) The Secretary may authorize the defense commissary system and the exchange system to enter into contracts or other agreements—~~

~~(A) for products and services that are shared by the defense commissary system and the exchange system; and~~

~~(B) for the acquisition of supplies, resale goods, and services on behalf of both the defense commissary system and the exchange system.~~

~~(3) For the purpose of a contract or agreement authorized under paragraph (2), the Secretary may—~~

(A) use funds appropriated pursuant to section 2483 of this title to reimburse a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the nonappropriated fund entity or instrumentality that is attributable to the defense commissary system; and

(B) authorize the defense commissary system to accept reimbursement from a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the defense commissary system that is attributable to the nonappropriated fund entity or instrumentality.

~~(b)~~ ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).

#### **~~§2488. Combined exchange and commissary stores~~**

~~(a) AUTHORITY.—The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.~~

~~(b) LIMITATIONS.—(1) Not more than ten combined exchange and commissary stores may be operated pursuant to this section.~~

~~(2) The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—~~

~~(A) the installation is to be closed, or has been or is to be realigned, under a base closure law; or~~

~~(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.~~

~~(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2736).~~

~~(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.~~

~~(e) USE OF APPROPRIATED FUNDS.—(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of~~

~~funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.~~

~~(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.~~

~~(f) NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.— In this section, the term "nonappropriated fund instrumentality" means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.~~



1 **SEC. \_\_\_\_. SMALL SCALE CONSTRUCTION IN SUPPORT OF COUNTER-DRUG**  
2 **ACTIVITIES AND ACTIVITIES TO COUNTER TRANSNATIONAL**  
3 **ORGANIZED CRIME.**

4 Section 284 of title 10, United States Code, is amended—

5 (1) in subsection (c), by amending paragraph (2) to read as follows:

6 “(2) SECRETARY OF STATE CONCURRENCE.—The Secretary may only provide  
7 support for a purpose described in this subsection with the concurrence of the Secretary  
8 of State.”; and

9 (2) in subsection (i)(3), by striking “\$750,000” and inserting “\$1,500,000”.

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

#### **Section-by-Section Analysis**

Changes enacted through the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 lowered the cap on construction projects in support of counter-drug activities and activities to counter transnational organized crime from \$3,000,000 to \$750,000, causing a number of previously planned and validated construction projects to be canceled unexpectedly. Due to the high cost of materials, transportation, and other costs associated with foreign construction, the lower cap is insufficient to achieve minimal requirements. In several instances, project cancellations followed previous and substantial investments by the U.S. Government, causing disruption to relationships and collaboration with key partners. Projects of this type are routinely planned to complement and mutually reinforce other U.S.-provided support such as equipment and training. Amending section 284 of title 10, United States Code, to define small scale construction as projects not to exceed \$1,500,000 would be consistent with the amendment to the small-scale construction definition for chapter 16 of title 10 that was included in the NDAA for FY 2019 and allow the Department of Defense (DoD) to meet minimal requirements for planned projects.

This proposal would also require the concurrence of the Secretary of State for DoD’s support to foreign law enforcement agencies related to counter-drug and counter-transnational organized crime activities.

**Budgetary Implications:** None.

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

**CHAPTER 15 – MILITARY SUPPORT FOR CIVILIAN LAW  
ENFORCEMENT AGENCIES**

**§284. Support for counterdrug activities and activities to counter transnational organized crime**

(a) SUPPORT TO OTHER AGENCIES.—The Secretary of Defense may provide support for the counterdrug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency for any of the purposes set forth in subsection (b) or (c), as applicable, if—

(1) in the case of support described in subsection (b), such support is requested—

(A) by the official who has responsibility for the counterdrug activities or activities to counter transnational organized crime of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government; or

(B) by the appropriate official of a State, local, or tribal government, in the case of support for State, local, or tribal law enforcement agencies; or

(2) in the case of support described in subsection (c), such support is requested by an appropriate official of a department or agency of the Federal Government, in coordination with the Secretary of State, that has counterdrug responsibilities or responsibilities for countering transnational organized crime.

\* \* \* \* \*

(c) TYPES OF SUPPORT FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

(1) PURPOSES.—The purposes for which the Secretary may provide support under subsection (a) for foreign law enforcement agencies are the following:

(A) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime within or outside the United States.

(B) The establishment (including small scale construction) and operation of bases of operations or training facilities for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime of a foreign law enforcement agency outside the United States.

(C) The detection, monitoring, and communication of the movement of—

(i) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(ii) surface traffic outside the geographic boundaries of the United States.

(D) Establishment of command, control, communications, and computer networks for improved integration of United States Federal and foreign law enforcement entities and United States Armed Forces.

(E) The provision of linguist and intelligence analysis services.

(F) Aerial and ground reconnaissance.

~~(2) COORDINATION WITH SECRETARY OF STATE.—In providing support for a purpose described in this subsection, the Secretary shall coordinate with the Secretary of State.~~

(2) SECRETARY OF STATE CONCURRENCE.—The Secretary may only provide support for a purpose described in this subsection with the concurrence of the Secretary of State.

\* \* \* \* \*

(i) DEFINITIONS.—In this section:

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

(A) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate.

(2) The term “Indian tribe” means a Federally recognized Indian tribe.

(3) The term “small scale construction” means construction at a cost not to exceed ~~\$750,000~~ \$1,500,000 for any project.

(4) The term “tribal government” means the governing body of an Indian tribe, the status of whose land is “Indian country” as defined in section 1151 of title 18 or held in trust by the United States for the benefit of the Indian tribe.

(5) The term “tribal law enforcement agency” means the law enforcement agency of a tribal government.

(6) The term “transnational organized crime” means self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary, or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organization structure and the exploitation of transnational commerce or communication mechanisms.

1 **SEC. \_\_\_\_. ESTABLISHMENT OF HEADQUARTERS COST LIMITS AND REPEAL OF**  
2 **MANPOWER LIMITS ON HEADQUARTERS.**

3 (a) ESTABLISHMENT OF COST LIMITS ON HEADQUARTERS.—Chapter 2 of title 10, United  
4 States Code, is amended by inserting after section 114 the following new section:

5 **“§114a. Major Department of Defense headquarters activities: limitation on funds**  
6 **available**

7 “(a) OVERALL LIMITATION.—In any fiscal year after fiscal year 2021, the aggregate  
8 amount of funds that may be distributed for obligation for major Department of Defense  
9 headquarters activities costs may not exceed an amount equal to 1.6 percent of the average  
10 amount authorized to be appropriated for the Department of Defense (including for overseas  
11 contingency operations) for a fiscal year over the 10-year period that ends on September 30 of  
12 the preceding year.

13 “(b) ESTABLISHMENT OF LIMITS BY COMPONENT.—The Secretary of Defense shall  
14 establish major Department of Defense headquarters activities cost limits for each component of  
15 the Department.

16 “(c) REPORT.—(1) The Secretary of Defense shall annually submit to Congress a report  
17 on major Department of Defense headquarters activities that includes:

18 “(A) The overall limit on major Department of Defense headquarters activities.

19 “(B) The aggregate component limitations established by subsection (b) for the  
20 Office of the Secretary of Defense, the Joint Staff, military departments, combatant  
21 commands, Defense Agencies, Department of Defense Field Activities, and other  
22 components as appropriate.

1           “(C) The manpower and cost data for major Department of Defense headquarters  
2           activities by appropriation and a narrative explanation for significant increases or  
3           decreases.

4           “(2) The Secretary shall include the report required by paragraph (1) with the materials  
5           the Secretary submits to Congress in support of the submission to Congress of the budget for a  
6           fiscal year pursuant to section 1105 of chapter 31.

7           “(d) DEFINITIONS.—In this section:

8                   “(1) The term ‘major Department of Defense headquarters activities  
9                   organizations’ means the following:

10                           “(A) Each of the following organizations (in this section referred to as  
11                           ‘category A organizations’):

12                                   “(i) The Office of the Secretary of Defense and the Joint Staff.

13                                   “(ii) The Office of the Secretary of the Army and the Army Staff.

14                                   “(iii) The Office of the Secretary of the Navy, the Office of the  
15                                   Chief of Naval Operations, and Headquarters, Marine Corps.

16                                   “(iv) The Office of the Secretary of the Air Force and the Air Staff.

17                                   “(v) The Office of the Chief of the National Guard Bureau and the  
18                                   National Guard Joint Staff.

19                           “(B)(i) Except as provided in clause (ii), each of the following  
20                           organizations (in this section referred to as ‘category B organizations’):

21                                   “(I) The combatant commands, the sub-unified commands, and  
22                                   subordinate commands that directly report to such commands.

1                   “(II) The major commands of the military departments and the  
2 subordinate commands that directly report to such commands.

3                   “(III) The component commands of the military departments and  
4 the National Guard Bureau.

5                   “(IV) The Defense Agencies, the Department of Defense Field  
6 Activities, and the Office of the Inspector General of the Department of  
7 Defense.

8                   “(V) Department of Defense components that report directly to the  
9 organizations specified in subparagraph (A).

10                  “(ii) Subordinate commands and direct-reporting components otherwise  
11 described in clause (i) that do not have significant functions other than military  
12 operational, operational intelligence, or tactical functions, or training for military  
13 operational, operational intelligence, or tactical functions, are not headquarters  
14 organizations for purposes of this subsection.

15                  “(2) The term ‘major Department of Defense headquarters activities costs’—

16                   “(A) with respect to category A organizations, includes—

17                   “(i) the cost of military and civilian personnel who are assigned or  
18 detailed to duty in, functions of, or direct support to a category A  
19 organization;

20                   “(ii) the cost of service support contracts providing direct support  
21 to the functions and missions of a category A organization;

22                   “(iii) the mission support costs for a category A organization,  
23 including core mission funds, administration, training, support, travel,

1 information technology expenses, and funds provided to other  
2 organizations for reimbursable support;

3 “(iv) the costs of studies, analysis, and decision support activities;  
4 and

5 “(v) the cost for programs and program management within a  
6 category A organization;

7 “(B) with respect to category B organizations, includes—

8 “(i) the cost of military and civilian personnel who are assigned or  
9 detailed to duty in, functions of, or direct support to the headquarters  
10 elements of a category B organization;

11 “(ii) the cost of service support contracts providing direct support  
12 to the functions and missions of the headquarters elements of a category B  
13 organization;

14 “(iii) the mission support costs for the headquarters elements of a  
15 category B organization, including core mission funds, administration,  
16 training, support, travel, information technology expenses, and funds  
17 provided to other organizations for reimbursable support to the  
18 headquarters element; and

19 “(iv) the costs of studies, analysis, and decision support activities  
20 providing direct support to the headquarters elements of a category B  
21 organization; and

22 “(C) does not include—

23 “(i) costs funded by the National Intelligence Program;

1 “(ii) costs funded through working capital funds;

2 “(iii) the costs of base operating support within mission support

3 costs; and

4 “(iv) the costs of supplies and infrastructure for investment items.”.

5 (b) TRANSFER OF GENERAL AND FLAG OFFICER LIMITATIONS.—

6 (1) CONSOLIDATION.—Section 525 of such title is amended—

7 (A) by adding at the end the following new subsection:

8 “(h)”;

9 (B) by adding at the end of such new subsection a new paragraph

10 consisting of paragraph (3) of section 7014(f) of such title;

11 (C) by redesignating such new paragraph as paragraph (1);

12 (D) by adding at the end of such new subsection a new paragraph

13 consisting of paragraph (3) of section 8014(f) of such title;

14 (E) by redesignating such new paragraph as paragraph (2);

15 (F) by adding at the end of such new subsection a new paragraph

16 consisting of paragraph (3) of section 9014(f) of such title; and

17 (G) by adding at the end of such new subsection a new paragraph

18 consisting of paragraph (4) of section 9014(f) of such title.

19 (c) ELIMINATION OF MANPOWER LIMITS IN HEADQUARTERS.—

20 (1) OFFICE OF THE SECRETARY OF DEFENSE.—Section 143 of such title is repealed.

21 (2) DEFENSE AGENCIES AND DOD FIELD ACTIVITIES.—Section 194 of such title is

22 repealed.



1 (3) MILITARY DEPARTMENTS.—Sections 7014, 8014, and 9014 of such title are  
2 each amended by striking subsection (f).

3 (4) JOINT STAFF.—Subsection (b) of section 903 of the National Defense  
4 Authorization Act for Fiscal Year 2017 (10 U.S.C. 155 note) is repealed.

5 (5) COMBATANT COMMANDS.—Subsection (a) of section 601 of the Goldwater-  
6 Nichols Department of Defense Reorganization Act of 1986 (10 U.S.C. 194 note) is  
7 repealed.

8 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) TABLE OF SECTIONS.—

10 (A) CHAPTER 2.—The table of sections at the beginning of chapter 2 of  
11 title 10, United States Code, is amended by inserting after the item relating to  
12 section 114 the following new item:

“114a. Major Department of Defense headquarters activities: limitation on funds available.”.

13 (B) CHAPTER 4.—The table of sections at the beginning of chapter 4 of  
14 such title is amended by striking the item relating to section 143.

15 (C) CHAPTER 8.—The table of sections at the beginning of chapter 8 of  
16 such title is amended by striking the item relating to section 194.

17 (2) CONFORMING AMENDMENTS.—

18 (A) MANPOWER REPORT.—Section 115a of such title is amended—

19 (i) by striking subsection (f); and

20 (ii) by redesignating subsections (g) and (h) as subsections (f) and

21 (g), respectively.

1 (B) EXCEPTIONS AND ADJUSTMENTS TO LIMITATIONS ON PERSONNEL.—  
2 Section 1111 of the Duncan Hunter National Defense Authorization Act for Fiscal  
3 Year 2009 (10 U.S.C. 143 note) is repealed.

**[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 the statutory constraints on Major Department of Defense Headquarters Activities (MHA) from cost and manpower limits to only cost limits. This change is aligned with recent statutory provisions on the overall costs of headquarters and the Department’s manpower management principles based upon sections 129 and 129a of title 10, United States Code.

The Department has eight statutory manpower limits (including the addition of the Joint Staff limit effective December 31, 2019) established predominately in 1986. These limits have remained the same over more than 20-30 years and have not been adjusted to accommodate additional statutory mission sets (e.g., establishment of four new Under Secretaries of Defense, establishment of the Principal Cyber Advisor, increased Special Operations oversight responsibilities, establishment of the U.S. Cyber Command). These include manpower limits on:

- Office of the Secretary of Defense (OSD) (enacted in 1996)
- Joint Staff (originally enacted in 1986 and removed in 1990; reintroduced in 2016, with an effective date of December 31, 2019)
- Office of the Secretary of the Army and the Army Staff (enacted in 1986)
- Office of the Secretary of the Navy, Office of the Chief of Naval Operations, and Headquarters, Marine Corps (enacted in 1986)
- Office of the Secretary of the Air Force and the Air Staff (enacted in 1986)
- Defense Agencies and DoD Field Activities (enacted in 1986; two limits – one on headquarters and one on overall manpower size)
- Combatant Commands (enacted in 1986)

In section 346(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, Congress introduced a new MHA framework and an MHA cost reduction target with a cost based ceiling on MHA (effective by Fiscal Year 2020). Following up in section 931 of the NDAA for FY 2019, Congress extended the cost limit through FY 2021.

The Department appreciates Congressional concerns and the need to keep headquarters size and cost to a minimum. However, managing to both a cost ceiling and an arbitrary constraint on military and civilian manpower causes the Department to use more costly contractor support in many cases and increases the risk of contractors inappropriately performing inherently governmental functions at the highest levels. A more appropriate measure would be to limit the costs of headquarters and allow individual organizations to make informed workforce

mix decisions based upon costs, which would be consistent with workforce management principals delineated in section 129 and 129a.

The Department supports the limit of 1.6% of the topline authorization of appropriation proposed by the Senate Armed Services Committee (SASC) in their NDAA for FY 2019 bill.

This proposal would do the following:

- Establish a new section in title 10, U.S.C., (§114a) fashioned after (with modifications) the SASC draft provision. The new provision would:
  - Limit the overall cost of MHA to 1.6% of the ten-year average of the topline appropriation.
  - Require the Secretary of Defense to establish cost limits by component and report on these limits and MHA costs in the budget materials.
  - Establish definitions of MHA and MHA costs (which would exclude the costs of the National Intelligence Program, working capital funds, base operating support, and capital investments; but would include Military Personnel (MILPERS) and detailee costs).
- Transfer the General Officer and Flag Officer (GOFO) limits in §§7014, 8014, and 9014 to section §525 (the statute on distribution of GOFO).
- Strike the eight manpower limitations.
- Remove the requirement to report MHA in the Defense Manpower Requirements Report.
- Strike the provision in the NDAA for FY 2009 on the “Exceptions and Adjustments to Limits on Personnel and Reports on Such Exceptions and Adjustments” (section 1111).

**Budget Implications:** This proposal would have insignificant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President’s Budget. This proposal would have no impact (i.e., no direct increases or reductions) to the ongoing MHA reduction activities. All MHA (including reporting requirements) would continue to be funded out of resources already designated for these functions.

**Changes to Existing Law:** This proposal would add a new section 114a to title 10, United States Code, the full text of which is shown in the legislative language above. The proposal would also make the following changes to existing law:

**TITLE 10, UNITED STATES CODE**

\* \* \* \* \*

**CHAPTER 2—Department of Defense**

\* \* \* \* \*

**§115a. Annual defense manpower requirements report**

(a) \*\*\*

(f) ~~The Secretary shall also include in each such report the following information with respect to personnel assigned to or supporting major Department of Defense headquarters activities:~~

~~(1) The military end strength and civilian full-time equivalents assigned to major Department of Defense headquarters activities for the preceding fiscal year and estimates of such numbers for the current fiscal year and subsequent fiscal years.~~

~~(2) A summary of the replacement during the preceding fiscal year of contract workyears providing support to major Department of Defense headquarters activities with military end strength or civilian full-time equivalents, including an estimate of the number of contract workyears associated with the replacement of contracts performing inherently governmental or exempt functions.~~

~~(3) The plan for the continued review of contract personnel supporting major Department of Defense headquarters activities for possible conversion to military or civilian performance in accordance with section 2463 of this title.~~

~~(4) The amount of any adjustment in the limitation on personnel made by the Secretary of Defense or the Secretary of a military department, and, for each adjustment made pursuant to section 1111(b)(2) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (10 U.S.C. 143 note), the purpose of the adjustment.~~

(fg) In each report submitted under subsection (a), the Secretary shall also include a detailed discussion of the following:

(1) \*\*\*

(gh) In each such report, the Secretary shall include a separate report on the Army and Air Force military technician programs. The report shall include a presentation, shown by reserve component and shown both as of the end of the preceding fiscal year and for the next fiscal year, of the following (displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians):

(1) \*\*\*

#### CHAPTER 4—Office of the Secretary of Defense

\* \* \* \* \*

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

~~(a) PERMANENT LIMITATION ON OSD PERSONNEL.—The number of OSD personnel may not exceed 3,767.~~

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

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

~~\*\*\*\*\*~~

## **CHAPTER 8—Defense Agencies and Department of Defense Field Activities**

~~\*\*\*\*\*~~

### **§194. Limitations on personnel**

~~(a) CAP ON HEADQUARTERS MANAGEMENT PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.~~

~~(b) CAP ON OTHER PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management headquarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.~~

~~(c) PROHIBITION AGAINST CERTAIN ACTIONS TO EXCEED LIMITATIONS.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.~~

~~(d) EXCLUSION OF NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.~~

~~(e) WAIVER.—The limitations in this section do not apply —~~

~~(1) in time of war; or~~

~~(2) during a national emergency declared by the President or Congress.~~

~~(f) DEFINITIONS.—In this section, the terms "management headquarters activities" and "management headquarters support activities" have the meanings given those terms in Department of Defense Instruction 5100.73, titled "Major DoD Headquarters Activities".~~

~~\*\*\*\*\*~~

## **CHAPTER 32—Officer Strength and Distribution in Grade**

\* \* \* \* \*

**§525. Distribution of commissioned officers on active duty in general officer and flag officer grades**

(a) \*\*\*

(d) An officer continuing to hold the grade of general or admiral under section 601(b)(5) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps shall not be counted for purposes of this section.

(e) The following officers shall not be counted for purposes of this section:

(1) An officer of that 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.

(2) At the discretion of the Secretary of Defense, an officer of that 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.

(f) An officer while serving as Attending Physician to the Congress is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above brigadier general or rear admiral (lower half) under subsection (a).

(g)(1) 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 officers from each reserve component who are covered by this subsection and are 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.

(2) Not later than 30 days after authorizing a number of reserve component general or flag officers in excess of the number specified in paragraph (1), the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives of such authorization, and shall include with such notice a statement of the reason for such authorization

(h)(1) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 67.

(2) The total number of general and flag officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 74.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 60.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war.

\* \* \* \* \*

## CHAPTER 703—Department of the Army

\* \* \* \* \*

### §7014. Office of the Secretary of the Army

(a) \*\*\*

~~(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Army assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 3,105.~~

~~(2) Not more than 1,865 officers of the Army on the active duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff.~~

~~(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 67.~~

~~(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war.~~

~~(5) Each limitation in paragraphs (1) and (2) may be exceeded by a number equal to 15 percent of such limitation in time of national emergency.~~

\* \* \* \* \*

## CHAPTER 803—Department of the Navy

\* \* \* \* \*

### §8014. Office of the Secretary of the Navy

(a) \*\*\*

~~(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Navy assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 2,866.~~

~~(2) Not more than 1,720 officers of the Navy and Marine Corps on the active duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.~~

~~(3) The total number of general and flag officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 74.~~

~~(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war.~~

~~(5) Each limitation in paragraphs (1) and (2) may be exceeded by a number equal to 15 percent of such limitation in time of national emergency.~~

\* \* \* \* \*

## CHAPTER 903—Department of the Air Force

\* \* \* \* \*

### §9014. Office of the Secretary of the Air Force

(a) \*\*\*

~~(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 2,639.~~

~~(2) Not more than 1,585 officers of the Air Force on the active duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff.~~

~~(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 60.~~

~~(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war.~~

~~(5) Each limitation in paragraphs (1) and (2) may be exceeded by a number equal to 15 percent of such limitation in time of national emergency.~~

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## Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433; October 1, 1986)

### SEC. 601. REDUCTION IN PERSONNEL ASSIGNED TO MANAGEMENT HEADQUARTERS ACTIVITIES AND CERTAIN OTHER ACTIVITIES.

~~(a) MILITARY DEPARTMENTS AND COMBATANT COMMANDS.—(1) The total number of members of the Armed Forces and civilian employees assigned or detailed to duty described in paragraph (2) may not exceed the number equal to 90 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.~~

~~(2) Duty referred to in paragraph (1) is permanent duty in the military departments and in the unified and specified combatant commands to perform management headquarters activities or management headquarters support activities.~~

~~(3) In computing and implementing the limitation in paragraph (1), the Secretary of Defense shall exclude members and employees who are assigned or detailed to permanent duty~~



to perform management headquarters activities or management headquarters support activities in the following:

(A) ~~The Office of the Secretary of the Army and the Army Staff.~~

(B) ~~The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.~~

(C) ~~The Office of the Secretary of the Air Force and the Air Staff.~~

(D) ~~The immediate headquarters staff of the commander of each unified or specified combatant command.~~

(4) ~~If the Secretary of Defense applies any reduction in personnel required by the limitation in paragraph (1) to a unified or specified combatant command, the commander of that command, after consulting with his directly subordinate commanders, shall determine the manner in which the reduction shall be accomplished.~~

(b) \*\*\*

(g) DEFINITIONS.—For purposes of this section, the terms “management headquarters activities” and “management headquarters support activities” have the meanings given those terms in Department of Defense Directive 5100.73, entitled 'Department of Defense Management Headquarters and Headquarters Support Activities' and dated January 7, 1985.

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**Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, as amended  
(Public Law 110-417; October 14, 2008)**

**~~SEC. 1111. EXCEPTIONS AND ADJUSTMENTS TO LIMITATIONS ON PERSONNEL  
AND REPORTS ON SUCH EXCEPTIONS AND ADJUSTMENTS.~~**

(a) ~~EXCEPTION TO LIMITATIONS ON PERSONNEL.—For fiscal year 2009 and fiscal years thereafter, the baseline personnel limitations in sections 143, 194, 7014, 8014, and 9014 of title 10, United States Code (as adjusted pursuant to subsection (b)), shall not apply to—~~

~~(1) acquisition personnel hired pursuant to the expedited hiring authority provided in section 1705(h) [now 1705(g)] of title 10, United States Code, as amended by section 833 of this Act, or otherwise hired with funds in the Department of Defense Acquisition Workforce Development Fund established in accordance with section 1705(a) of such title; or~~

~~(2) personnel hired pursuant to a shortage category designation by the Secretary of Defense or the Director of the Office of Personnel Management.~~

(b) ~~AUTHORITY TO ADJUST LIMITATIONS ON PERSONNEL.—For fiscal year 2009 and fiscal years thereafter, the Secretary of Defense or a Secretary of a military department may adjust the baseline personnel limitations in sections 143, 194, 3014, 5014 and 8014 of title 10, United States Code, to—~~

~~(1) fill a gap in the civilian workforce of the Department of Defense identified by the Secretary of Defense in a strategic human capital plan submitted to Congress in accordance with the requirements of [former] section 115b of such title; or~~

~~(2) accommodate increases in workload or modify the type of personnel required to accomplish work, for any of the following purposes:~~

~~(A) Performance of inherently governmental functions.~~

~~(B) Performance of work pursuant to section 2463 of title 10, United States Code.~~

~~(C) Ability to maintain sufficient organic expertise and technical capability.~~

~~(D) Performance of work that, while the position may not exercise an inherently governmental function, nevertheless should be performed only by officers or employees of the Federal Government or members of the Armed Forces because of the critical nature of the work.~~

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**National Defense Authorization Act for Fiscal Year 2017  
(Public Law 114-328; December 23, 2016)**

**SEC. 903. MAXIMUM NUMBER OF PERSONNEL IN THE OFFICE OF THE SECRETARY OF DEFENSE AND OTHER DEPARTMENT OF DEFENSE HEADQUARTERS OFFICES.**

(a) \*\*\*

~~(b) JOINT STAFF.—~~

~~(1) IN GENERAL.—Section 155 of such title is amended by adding at the end the following new subsection:~~

~~“(h) PERSONNEL LIMITATIONS.—(1) The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty for the Joint Staff may not exceed 2,069.~~

~~“(2) Not more than 1,500 members of the armed forces on the active-duty list may be assigned or detailed to permanent duty for the Joint Staff.~~

~~“(3) The limitations in paragraphs (1) and (2) do not apply in time of war.~~

~~“(4) Each limitation in paragraphs (1) and (2) may be exceeded by a number equal to 15 percent of such limitation in time of national emergency.”.~~

~~(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on December 31, 2019.~~

(c) \*\*\*

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**John S. McCain National Defense Authorization Act for Fiscal Year 2019  
(Public Law 115-232; August 13, 2018) [Shown for reference only; no changes]**

**SEC. 931. LIMITATION ON AVAILABILITY OF FUNDS FOR MAJOR HEADQUARTERS ACTIVITIES OF THE DEPARTMENT OF DEFENSE.**

(a) CERTIFICATION ON AVERAGE AMOUNTS EXPENDED ON MAJOR HEADQUARTERS ACTIVITIES.—Not later than February 1, 2019, the Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees a report that certifies each of the following percentages in connection with amounts expended on major headquarters activities:

(1) The average percentage of the amount authorized to be appropriated for the Department of Defense per fiscal year, during the 10 fiscal years ending with fiscal year 2018, that has been expended on major headquarters activities.

(2) The average percentage of the amount authorized to be appropriated for the Department of Defense per fiscal year, during the 10 fiscal years ending with fiscal year 2018, that has been expended on major headquarters activities of the Office of the Secretary of Defense.

(3) The average percentage of the amount authorized to be appropriated for each military department per fiscal year, during the 10 fiscal years ending with fiscal year 2018, that has been expended on major headquarters activities of such military department.

(4) The average percentage of the amount authorized to be appropriated for the Department of Defense per fiscal year, during the 10 fiscal years ending with fiscal year 2018, and available for the combatant commands that has been spent on major headquarters activities of the combatant commands.

(b) OVERALL LIMITATION.—In fiscal year 2021, the aggregate amount that may be obligated and expended on major headquarters activities may not exceed an amount equal to the percentage specified in subsection (a)(1) of the amount authorized to be appropriated for the Department of Defense for that fiscal year.

(c) LIMITATION FOR PARTICULAR ACTIVITIES.—Within the amount available for fiscal year 2021 pursuant to subsection (b), amounts shall be available as follows:

(1) For major headquarters activities of the Office of the Secretary of Defense, not more than an amount equal to the percentage specified in subsection (a)(2) of the amount authorized to be appropriated for the Department of Defense for fiscal year 2021.

(2) For major headquarters activities of each military department, not more than an amount equal to the percentage specified in subsection (a)(3) with respect to such military department of the amount authorized to be appropriated for such military department for fiscal year 2021.

(3) For major headquarters activities of the combatant commands, not more than an amount equal to the percentage specified in subsection (a)(4) of the amount authorized to be appropriated for the Department of Defense for fiscal year 2021 and available for the combatant commands.

(d) DEFINITIONS.—In this section:

(1) The term “major headquarters activities” has the meaning given the term “major Department of Defense headquarters activities” in section 346(b)(3) of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 111 note).

(2) The term “major headquarters activities of a military department” means the following:

(A) In the case of the Army, the Office of the Secretary of the Army and the Army Staff.

(B) In the case of the Navy, the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and Headquarters, Marine Corps.

(C) In the case of the Air Force, the Office of the Secretary of the Air Force and the Air Staff.

(3) The term “Office of the Secretary of Defense” includes the Joint Staff.

1 **SEC. \_\_\_\_. INCREASED ACCESS TO POTENTIAL RECRUITS.**

2 (a) SECONDARY SCHOOLS.—Section 503(c)(1) of title 10, United States Code, is  
3 amended—

4 (1) in subparagraph (A)—

5 (A) in clause (i), by striking “and” at the end;

6 (B) in clause (ii), by striking “and telephone listings,” and all that follows  
7 through the period at the end and inserting “email addresses, home telephone  
8 numbers, and mobile telephone numbers, notwithstanding subsection (a)(5)(B) or  
9 (b) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g);  
10 and”; and

11 (C) by adding at the end the following new clause:

12 “(iii) shall provide information requested pursuant to clause (ii) within a  
13 reasonable period of time, but in no case later than 30 days after the request has been  
14 made.”; and

15 (2) in subparagraph (B), by striking “and telephone listing” and inserting “email  
16 address, home telephone number, or mobile telephone number”.

17 (b) INSTITUTIONS OF HIGHER EDUCATION.—Section 983(b) of such title is amended—

18 (1) in paragraph (1), by striking “or” at the end;

19 (2) in paragraph (2)—

20 (A) in subparagraph (A), by striking “and telephone listings” and inserting  
21 “email addresses, home telephone numbers, and mobile telephone numbers,  
22 which information shall be made available not later than the 30th day following

1 the start of classes for the current semester or not later than the 30th day following  
2 the date of a request, whichever occurs last”; and  
3 (B) in subparagraph (B), by striking the period at the end and inserting “;  
4 or”; and  
5 (3) by adding at the end the following new paragraph:  
6 “(3) access by military recruiters for purposes of military recruiting to lists of  
7 students (who are 17 years of age or older) not returning to the institution after having  
8 been enrolled during the previous semester, together with student recruiting information  
9 and the reason why the student did not return, if collected by the institution.”.

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

### **Section-by-Section Analysis**

This legislative proposal would expand the types of information that military recruiters could have access to under sections 503 and 983 of title 10, United States Code, by adding email addresses and mobile telephone numbers to the list of required information to be provided to recruiters by institutions of higher education and secondary schools. This proposal would also require secondary schools to provide student information within 30 days of a request from a military recruiter. Additionally, this proposal would require colleges and universities to provide student directory information within 30 days of the start of a school year or 30 days after the date of a recruiter’s request as well as “stop-out” lists of those students who do not return to the institution from the previous semester.

Technology has significantly altered the way people communicate with each other. Many people prefer to communicate via email and text message; further, many people no longer have a landline phone number. The statutes as currently written only allow for the collection of outdated communication information, such as address and telephone listing. Further, no timeframe is added, so many schools do not provide this information until it is too late for military recruiters to make the best use of the information by providing students with pertinent information enabling them to explore their options.

Half of today’s youth admit they know little to nothing about the military. Our goal is to inform the target youth market about all the options available to them. We need the youth market and their influencers to understand the military, what the military does, and what service to country can do for them. This proposal will allow recruiters to collect better information for

contacting today's students, improving the Services' ability to inform students and influencers about the opportunities available to them.

Although the proposal allows for the collection information about secondary school students, many of whom are minors, their parents could still opt-out of releasing their child's information under the same terms and conditions as they currently available under 20 U.S.C. 7908.

Recruiting the volunteer force to serve in the military is a national security imperative, especially for Services in need to grow end strength to meet National Security Strategy requirements and Combatant Commander demand for forces. While many schools go above and beyond to support military recruiting, many do not. The Army recruited 70K Soldiers in Fiscal Year (FY) 2018, yet fell short of its goal for a number of reasons. Although the Services are taking a comprehensive look at the accessions enterprise, at a minimum, meeting increased recruiting needs requires our military recruiters to have meaningful access to the recruiting pool. Updating existing statutes to reflect cultural and technological changes in how our society communicates and receives information is a necessary first step. It will also assist in opening some hard-to-reach markets so that the military is reflective of the Nation it serves.

**Budget Implications:** This proposal has insignificant budget implications. Any incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget.

**Changes to Existing Law:** This proposal would make the following changes to sections 503 and 983 title 10, United States Code:

**§503. Enlistments: recruiting campaigns; compilation of directory information**

(a) RECRUITING CAMPAIGNS.—(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) COMPILATION OF DIRECTORY INFORMATION.—(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(c) ACCESS TO SECONDARY SCHOOLS.—(1)(A) Each local educational agency receiving assistance under the Elementary and Secondary Education Act of 1965—

(i) shall provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; ~~and~~

(ii) shall, upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, ~~and telephone listings,~~ notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)), email addresses, home telephone numbers, and mobile telephone numbers, notwithstanding subsection (a)(5)(B) or (b) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g); and

(iii) shall provide information requested pursuant to clause (ii) within a reasonable period of time, but in no case later than 30 days after the request has been made.

(B) A local educational agency may not release a student's name, address, ~~and telephone listing,~~ email address, home telephone number, or mobile telephone number under subparagraph (A)(ii) without the prior written consent of a parent of the student if the student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local educational agency shall notify parents of the rights provided under the preceding sentence.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day period, the Secretary of Defense determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a



request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Secretary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary—

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to-

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to a private secondary school that maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term "local educational agency" means-

(i) a local educational agency, within the meaning of that term in section 8101 of the Elementary and Secondary Education Act of 1965; and

(ii) a private secondary school.

(B) The term "recruiting access" means access requested as described in paragraph (1).

(C) The term "senior executive" has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term "specified congressional committees" means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term "member of the House of Representatives" includes a Delegate or Resident Commissioner to Congress.

(d) DIRECTORY INFORMATION DEFINED.—In this section, the term "directory information" has the meaning given that term in subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

**§983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies**

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654<sup>1</sup> of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents-

(1) the Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, ~~and telephone listings~~ email addresses, home telephone numbers, and mobile telephone numbers, which information shall be made available not later than the 30th day following the start of classes for the current semester or quarter or not later than the 30th day following the date of a request, whichever occurs last.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student; ; or

(3) access by military recruiters for purposes of military recruiting to lists of students (who are 17 years of age or older) not returning to the institution after having been enrolled during the previous semester, together with student recruiting information and the reason why the student did not return, if collected by the institution.

(c) EXCEPTIONS.—The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that-

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

(d) COVERED FUNDS.—(1) Except as provided in paragraph (2), the limitations established in subsections (a) and (b) apply to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available for any department or agency for which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(C) Any funds made available for the Department of Homeland Security.

(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

(E) Any funds made available for the Department of Transportation.

(F) Any funds made available for the Central Intelligence Agency.

(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary-

(1) shall transmit a notice of the determination to the Secretary of Education and to the head of each other department and agency the funds of which are subject to the determination; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

1 **SEC. \_\_. MODIFICATION OF THE AUTHORIZED NUMBER AND ACCOUNTING**  
2 **METHOD FOR SENIOR ENLISTED PERSONNEL.**

3 (a) IN GENERAL.—Section 517 of title 10, United States Code, is amended—

4 (1) in the section heading, by striking “**daily average**” and inserting “**enlisted**  
5 **end strength**”;

6 (2) in subsection (a)—

7 (A) by striking “daily average number of” and inserting “end strength for”;

8 (B) by striking “in a fiscal year” and inserting “as of the last day of a fiscal  
9 year”;

10 (C) by striking “2.5 percent” and inserting “3.0 percent”; and

11 (D) by striking “on the first day of that fiscal year”; and

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

13 “(d) Notwithstanding the limitations of subsection (a), the Secretary of a military  
14 department may increase the authorized end strength of enlisted members on active duty  
15 (other than for training) in an armed force in pay grade E-8 or E-9 by a number equal to not  
16 more than 0.25 percent of such end strength when such Secretary determines that an  
17 increase in that end strength would enhance manning and readiness in essential units or in  
18 critical specialties or ratings.”.

19 (b) CLERICAL AMENDMENT.—The table of chapters at the beginning of chapter 31 of  
20 such title is amended by striking the item relating to section 517 and inserting the following  
21 new item:

“517. Authorized enlisted end strength: members in pay grades E-8 and E-9.”.

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

## Section-by-Section Analysis

This proposal would change the method of calculating the authorized number of senior enlisted members in the grades of E-8 and E-9 from the daily average to an authorized end strength and would increase the authorized number of members in the grade of E-8 from 2.5 percent to 3.0 percent of the total number of enlisted members. Additionally, this proposal would authorize a Secretary of a military department to increase the authorized end strength of E-8s and E-9s by 0.25 percent when the Secretary of a military department determines that such an increase would enhance manning and readiness in essential units or in critical specialties or ratings.

Currently, section 517 limits the average daily strength of E-8s to 2.5 percent and E-9s to 1.25 percent of the total enlisted strength at the beginning of the fiscal year. The current metric (percent daily average number of enlisted members of the specified grade divided by the total enlisted strength at the first day of the fiscal year) is less flexible. By changing the method of calculating the authorized number of senior enlisted members, the military departments will have greater flexibility in determining the appropriate force structure.

Section 517 also limits the authorized number of members in the grade of E-8 to 2.5 percent of the total enlisted strength in a given armed force who are on active duty on the first day of a fiscal year. This limit is becoming too restrictive in today's modern high-tech Army, as the types of capabilities required for future conflicts are different from the past. The Army has seen a rise in the need for E-8s (as a proportion of the total enlisted force) from 2012 to 2018 for several reasons.

The leading factor was the drawdown from fiscal year 2012 (FY12) to FY16 where operational line units and support (mostly lower enlisted) were reduced. For example, a brigade combat team (BCT) has 52 E-8s, or 1.4 percent of the enlisted force. During the drawdown, the Army deactivated 14 BCTs, affecting over 50,000 enlisted authorizations. The reduction of BCTs disproportionately lowered the number of enlisted members in the Army, causing the active component Army E-8 percentage to increase by 0.2 percent.

Additionally, the types of units added were grade heavy (such as Special Forces, Cyber, and security force assistance brigades (SFABs)). For example, each SFAB has 31 E-8s, comprising 4.8 percent of enlisted members in the brigade. Over the Future Years Defense Program, the Army added six SFABs, increasing the E-8 rate by 0.11 percent. Additionally, the Army judiciously under-filled noncommissioned officer (NCO) ranks during the drawdown. The current growth and focus on readiness has reversed this practice, requiring an additional 500 E-8s and 100 E-9s. Promoting to required levels further increases the E-8 rate by 0.13 percent and E-9s by 0.03 percent. Finally, the calculation of the E-8 limit using beginning year strength is 0.08 percent higher than an end of year calculation.

The current limit of 2.5 percent for E-8s prevents the Army from fully manning the necessary formations, as determined by the deliberate and rigorous Total Army Analysis process, to support the current National Defense Policy.

Finally, this proposal would give the Secretaries of the military departments greater flexibility to enhance manning and readiness in essential units, like SFABs, or in critical specialties or ratings, like Cyber. Under section 517, the Secretaries of the military departments concerned lack the authority to exceed temporarily the authorized percentages of senior enlisted members. Furthermore, the Secretary of Defense may only suspend the limitations of section 517 when the President has suspended the operation of section 523, 525, or 526 of title 10, United States Code, in time of war or national emergency. This proposal would give flexibility to the Secretaries of the military departments when force structure changes, or unit missions require a greater number of senior enlisted members.

**Budget Implications:** The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President’s Budget. The amounts in the tables below represent the maximum possible cost and manning differential as a result of the proposed authority.

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Army	51.9	53.7	55.3	57.0	58.2	Military Personnel, Army
Navy	Navy does not intend to use this authority.					
Air Force	33.0	34.0	35.1	36.0	37.0	Military Personnel, Air Force
Marines	Marines do not intend to use this authority.					
Total	108.8	108.3	111.5	114.5	117.0	

NUMBER OF PERSONNEL AFFECTED						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Army	1950	1968	1979	1997	1996	Military Personnel, Army
Navy	Navy does not intend to use this authority.					
Air Force	1989	2001	2061	2014	2014	Military Personnel, Air Force
Marines	Marines do not intend to use this authority.					
Total	3939	3969	4040	4011	4010	

**Changes to Existing Law:** This proposal would amend section 517 of title 10, United States Code, as follows:

**§517. Authorized ~~daily average~~ enlisted end strength: members in pay grades E–8 and E–9**

(a) The authorized ~~daily average number of end strength for~~ enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 ~~in a fiscal year as of the last day of a fiscal year~~ may not be more than ~~2.5~~ 3.0 percent and 1.25 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for

training) ~~on the first day of that fiscal year~~. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.

(b) Whenever the number of members serving in pay grade E-9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E-8.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(d) Notwithstanding the limitations of subsection (a), the Secretary of a military department may increase the authorized end strength of enlisted members on active duty (other than for training) in an armed force in pay grade E-8 or E-9 by a number equal to not more than 0.25 percent of such end strength when such Secretary determines that an increase in that end strength would enhance manning and readiness in essential units or in critical specialties or ratings.

1 **SEC. \_\_\_\_ . REVISION OF STATUTORY REFERENCES TO NATO SUPPORT**  
 2 **ORGANIZATIONS AND RELATED NATO AGREEMENTS.**

3 Section 2350d(b)(1) of title 10, United States Code, is amended by inserting after “in  
 4 Europe” the following: “, out-of-area, and contingency operations”.

**Section-by-Section Analysis**

This carryover legislative proposal would insert the words “out-of-area, and contingency operations” in subsection 10 U.S.C. 2350d(b)(1) expanding the geographic area of support, which will positively support current and future NATO global operations. This legislative proposal would revise the statute to remove the geographic limitation associated with support or procurement partnership agreements with one or more governments of other member countries of the NATO participating in the operation of the NATO Support and Procurement Organization (NSPO) and its executive agencies. The “out-of-area, and contingency operations” removes the geographic limitation negatively impacting support to current and future NATO global operations, and inserting of the words “out-of-area, and contingency operations” would align with the President’s call for greater NATO support to defeat the Islamic State of Iraq and the Levant (ISIS). The rationale for the proposed change to 10 U.S.C. 2350d(b)(1) is to enable use of support or procurement partnership agreements to support ongoing operations in Afghanistan and enable effective assistance mechanisms to aid potential NATO operations in efforts, for example, to defeat terrorism in Iraq, Syria, Africa, or other areas of the world.

**Budget Implications:** This proposal would have no effect on the Department of Defense budget. The proposal neither changes any existing authorities nor provides any new authorities. Amending current law to conform to the existence of NATO global operations does not have any budget effect.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>Appropriation To</b>
State	0.0	0.0	0.0	0.0	0.0	
DOD	0.0	0.0	0.0	0.0	0.0	

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

**TITLE 10, UNITED STATES CODE**

**§2350d. Cooperative logistic support agreements: NATO countries**

(a) General Authority.-



(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Support or Procurement Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Support and Procurement Organization and its executive agencies. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement-

(A) shall be entered into pursuant to the terms of the charter of the NATO Support and Procurement Organization and its executive agencies; and

(B) shall provide for the common logistic support activities common to the participating countries.

(2) Such an agreement may provide for-

(A) the transfer of logistics support, supplies, and services by the United States to the NATO Support and Procurement Organization and its executive agencies; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) Authority of Secretary.-Under the terms of a Support or Procurement Partnership Agreement, the Secretary of Defense-

(1) may agree that the NATO Support and Procurement Organization and its executive agencies may enter into contracts for supply and acquisition of logistics support in Europe, out-of-area, and contingency operations for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the NATO Support and Procurement Organization and its executive agencies to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Support and Procurement Organization and its executive agencies to provide cooperative logistics support.

(c) Sharing of Administrative Expenses.-Each Support or Procurement Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) Application of Chapter 137.-Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a Support or Procurement Partnership Agreement.

(e) Application of Arms Export Control Act.-Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Support and Procurement Organization and its executive agencies for the purposes of a Support or Procurement Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) Supplemental Authority.-The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

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## ARMS EXPORT CONTROL ACT

### Sec 22. §2761. Sales from stocks

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(e) Charges; reduction or waiver

(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 2762 of this title shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operation costs) of administration of sales made under this chapter to all purchasers of such articles and services as specified in section 2792(b) of this title and section 2792(c) of this title;

(B) a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] or from funds made available on a nonrepayable basis under section 2763 of this title); and

(C) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

(2)

(A) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the

Armed Forces of Japan, Australia, the Republic of Korea, Israel, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.

(B) The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

(i) imposition of the charge or charges likely would result in the loss of the sale; or

(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.

(3)

(A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the North Atlantic Treaty Organization (NATO) Support and Procurement Organization and its executive agencies in support of—

(i) a support or procurement partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 2792(b) of this title in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

(i) the term support or procurement partnership agreement means an agreement between two or more member countries of the North Atlantic Treaty Organization (NATO) Support and Procurement Organization and its executive agencies that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of activities common to the participating countries; and

(ii) the term "NATO/SHAPE project" means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

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1 **SEC. \_\_\_\_. REVISION TO CERTAIN OVERSEAS CONTINGENCY OPERATIONS-**  
2 **RELATED INSPECTOR GENERAL AUTHORITIES: HIRING**  
3 **AUTHORITIES.**

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

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

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

8 “(C)(i) An annuitant receiving an annuity under the Foreign Service Retirement and  
9 Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign  
10 Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection shall  
11 continue to receive such annuity and shall not be considered a participant for purposes of chapter  
12 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for  
13 purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

14 “(ii) An annuitant described in clause (i) may elect in writing for the reemployment of  
15 such annuitant under this subsection to be subject to section 824 of the Foreign Service Act of  
16 1980 (22 U.S.C. 4064). A reemployed annuitant shall make an election under this clause not later  
17 than 90 days after the date of the reemployment of such annuitant.”; and

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

19 “(5)(A) A person employed by a lead Inspector General for an overseas contingency  
20 operation under this section shall acquire competitive status for appointment to any position in  
21 the competitive service for which the employee possesses the required qualifications upon the  
22 completion of two years of service as an employee under this section.

1 “(B) No person may acquire competitive status for appointment to any position in the  
2 competitive service 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 (but without regard to subsections (a) and (b)(2) of such section), such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation.

\* \* \* \* \*

(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 shall acquire competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications upon the completion of two years of service as an employee under this section.

(B) No person may acquire competitive status for appointment to any position in the competitive service under subparagraph (A) after December 31, 2024.

\* \* \* \* \*



1 **SEC. \_\_. ORGANIZATION OF MILITARY HEALTH SYSTEM.**

2 (a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES.—Section 1073c(a)  
3 of title 10, United States Code, is amended—

4 (1) in paragraph (1)—

5 (A) by redesignating subparagraphs (A) through (F) as subparagraphs (C)  
6 through (H), respectively;

7 (B) by inserting before subparagraph (C) (as redesignated by subparagraph  
8 (A) of this paragraph) the following new subparagraphs:

9 “(A) provision of care and healthcare delivery within each such facility;

10 “(B) privileging, scope of practice, and clinical quality management  
11 within each such facility;”; and

12 (C) by striking subparagraph (E) (as redesignated by subparagraph (A) of  
13 this paragraph) and inserting the following new subparagraph:

14 “(E) supply and equipment;”;

15 (2) in paragraph (2)—

16 (A) in subparagraph (C), by striking “the military personnel readiness  
17 requirements” and all that follows before the semicolon at the end and inserting  
18 “military personnel readiness requirements established by the military  
19 departments”;

20 (B) by redesignating subparagraphs (D) through (G) as subparagraphs (E)  
21 through (H), respectively;

22 (C) by inserting after subparagraph (C) the following new subparagraph:

1 “(D) to identify the capacity of each military medical treatment facility to  
2 support clinical readiness standards established by the military departments or the  
3 Assistant Secretary of Defense for Health Affairs;” and

4 (D) by amending subparagraph (F) (as redesignated by subparagraph (B)  
5 of this paragraph) to read as follows:

6 “(F) to determine, in coordination with the military departments, military  
7 manning assigned to military medical treatment facilities and intermediary  
8 organizations;” and

9 (3) in paragraph (3)—

10 (A) in subparagraph (A)—

11 (i) by inserting “on behalf of the military departments,” before  
12 “ensuring”;

13 (ii) by inserting “clinical” before “readiness”; and

14 (iii) by striking “and civilian employees”; and

15 (B) in subparagraph (B), by inserting “on behalf of the Defense Health  
16 Agency,” before “furnishing”.

17 (b) DHA ASSISTANT DIRECTOR.—Section 1073c(b)(3)(A) of title 10, United States Code,  
18 is amended by striking “health care administration and management” and inserting “provision of  
19 care and healthcare delivery”.

20 (c) DHA DEPUTY ASSISTANT DIRECTORS.—Section 1073c(c) of title 10, United States  
21 Code, is amended—

22 (1) in paragraph (2)(B), by striking “across the military health system” and  
23 inserting “in military medical treatment facilities”; and

1 (2) in paragraph (4)(B), by inserting “in military medical treatment facilities”  
2 before the period at the end.

3 (d) MILITARY MEDICAL TREATMENT FACILITY.—Section 1073c(f) of title 10, United  
4 States Code, is amended by adding at the end the following new paragraph:

5 “(3) The term ‘military medical treatment facility’ means any fixed facility of the  
6 Department of Defense that is outside of a deployed environment and constructed  
7 primarily for health care, except that other locations used for purposes of providing health  
8 care services may also be designated as military medical treatment facilities by the  
9 Secretary of Defense.”.

10 (e) TECHNICAL AMENDMENTS.—Section 1073c(a) of title 10, United States Code, is  
11 amended—

12 (1) in paragraph (1), by striking “paragraph (4)” and inserting “paragraph (5)”;

13 (2) by redesignating paragraph (5) as paragraph (6);

14 (3) by redesignating the paragraph (4) beginning with “The Secretary of Defense  
15 shall establish a timeline” as paragraph (5); and

16 (4) by moving the paragraph (4) beginning with “If the Secretary of Defense  
17 determines it appropriate” so as to appear before paragraph (5) (as redesignated by this  
18 paragraph (2) of this subsection).

19 (f) MEDICAL REQUIREMENTS OF THE COMBATANT COMMANDS.—Section 712 of the John  
20 S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-332) is  
21 amended—

1 (1) by striking the section heading and inserting “**THE MILITARY**  
2 **HEALTHCARE SYSTEM SUPPORT OF THE MEDICAL REQUIREMENTS OF**  
3 **THE COMBATANT COMMANDS.**”;

4 (2) in subsection (a), by amending paragraph (1) to read as follows:

5 “(1) IN GENERAL.—The Secretary of Defense shall, acting through the military  
6 departments and the Joint Staff, maximize the readiness of the medical force, promote  
7 interoperability, and integrate medical capabilities of the Armed Forces in order to  
8 enhance joint military medical operations in support of requirements of the combatant  
9 commands. The military departments shall be supported by the Director of the Defense  
10 Health Agency.”;

11 (3) by redesignating paragraphs (2) and (3) of subsection (e) as paragraphs (3) and  
12 (4), respectively, and moving the text of such paragraphs so as to appear at the end of  
13 subsection (d);

14 (4) by striking subsection (e) (as amended by paragraph (3) of this subsection);

15 (5) by redesignating subsections in subsections (b) through (d) as subsections (c)  
16 through (e), respectively;

17 (6) by inserting after subsection (a) the following new subsection:

18 “(b) **ADDITIONAL DUTIES OF SURGEONS GENERAL OF THE ARMED FORCES.**—The  
19 Surgeons General of the Armed Forces shall have the following duties:

20 “(1) To ensure the readiness for operational deployment of medical and dental  
21 personnel and deployable medical or dental teams or units of the Armed Force or Armed  
22 Forces concerned.

1           “(2) To set medical readiness standards, subject to minimum standards and  
2 metrics established by the Assistant Secretary of Defense for Health Affairs.

3           “(3) To assign uniformed medical and dental personnel of the military department  
4 concerned to military medical treatment facilities or partnerships with civilian or other  
5 medical facilities for training activities specific to such military department, and to  
6 maintain readiness for operational deployment.

7           “(4) To provide logistical support for operational deployment of medical and  
8 dental personnel and deployable medical or dental teams or units of the Armed Force or  
9 Armed Forces concerned.

10          “(5) To oversee mobilization and demobilization in connection with the  
11 operational deployment of medical and dental personnel of the Armed Force or Armed  
12 Forces concerned.

13          “(6) To develop operational medical capabilities required to support the  
14 warfighter, and to develop policy relating to such capabilities.

15          “(7) To provide health professionals to serve in leadership positions across the  
16 military healthcare system.

17          “(8) To deliver operational clinical services under the operational control of  
18 combatant commands; on ships and planes; and on installations outside of military  
19 treatment facilities.

20          “(9) To establish privileging, scope of practice, and clinical quality management  
21 in the settings described in paragraph (8).”;

22          (7) in subsection (c) (as redesignated by paragraph (5) of this subsection)—

1 (A) in the subsection heading, by inserting “AGENCY” before “REGIONS”;

2 and

3 (B) in paragraph (1)—

4 (i) in the paragraph heading, “by inserting “AGENCY” before  
5 “REGIONS”; and

6 (ii) by striking “defense health” and inserting “Defense Health  
7 Agency”;

8 (8) in subsection (d) (as redesignated by paragraph (5) of this subsection)—

9 (A) in the subsection heading, by inserting “AGENCY” before “REGIONS”;

10 (B) in the matter preceding paragraph (1), by striking “defense health” and  
11 inserting “Defense Health Agency”; and

12 (C) in paragraph (3), by striking “subsection (b)” and inserting “subsection  
13 (c)”;

14 (9) in subsection (e) (as redesignated by paragraph (5) of this subsection)—

15 (A) in paragraph (2)—

16 (i) by amending subparagraph (A) to read as follows:

17 “(A) IN GENERAL.—The military departments shall coordinate with the  
18 Chairman of the Joint Chiefs of Staff to conduct oversight and direct resources  
19 allocated to the military departments to support requirements related to readiness  
20 and operational medicine support that are validated by the Joint Staff.”; and

21 (ii) in subparagraph (B), in the matter preceding clause (i), by  
22 striking “Based on” and all that follows through “shall—” and inserting

1                   “The Director of the Defense Health Agency, in coordination with the  
2                   Assistant Secretary of Defense for Health Affairs, shall—”;

3                   (B) in paragraph (3) (as moved and redesignated by paragraph (3) of this  
4                   subsection), in the second sentence, by inserting “, by the military departments,”  
5                   after “the Defense Health Agency”; and

6                   (C) by adding at the end the following:

7                   “(5) MANPOWER.—

8                   “(A) ADMINISTRATIVE CONTROL OF MILITARY PERSONNEL.—Each military  
9                   department shall exercise administrative control of military personnel assigned to  
10                  military medical treatment facilities, including personnel assignment and issuance  
11                  of military orders.

12                  “(B) OVERSIGHT OF CERTAIN PERSONNEL BY THE DIRECTOR OF THE  
13                  DEFENSE HEALTH AGENCY.—In situations where military personnel, not under the  
14                  authority, direction, and control of the director of the military medical treatment  
15                  facility concerned, provide health care services in the facility, the Director of the  
16                  Defense Health Agency shall maintain oversight for the provision of care  
17                  delivered by these individuals through military medical treatment facility policies  
18                  and procedures and the privileging responsibility of the military medical treatment  
19                  facility.”;

20                  (10) in subsection (f)—

21                  (A) by striking paragraph (2);

22                  (B) by redesignating paragraph (3) as paragraph (2); and

1 (C) in paragraph (2) (as redesignated by subparagraph (B) of this  
2 paragraph), by striking “duplication” and inserting “unnecessary duplication”; and  
3 (11) by adding at the end the following:  
4 “(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the  
5 authority of the Secretary of Defense under section 113 of title 10, United States Code.”.

### **Section-by-Section Analysis**

This proposal would make a number of changes to current law governing the administration of the Defense Health Agency (DHA) and military medical treatment facilities and the organizational framework of the Military Health System. The purpose of these changes is to reaffirm the primary role of the Military Departments in military medical readiness. The responsibility of the Defense Health Agency would be more precisely tied to the provision of health care services in military medical treatment facilities in support of the Military Departments. It would also preserve Military Department responsibility for health care delivery in clinical sites on installations that are not constructed primarily for health care, sites generally proximate to operational units and focused on supporting readiness.

With respect to the organizational framework for the Military Health System, the proposal would make the central organizing principle the responsibility of the Military Departments to support the medical requirements of the combatant commands, with the Defense Health Agency supporting the Military Departments. This would include matters regarding the assignment of military health care personnel on installations and their command and control under the Military Departments, as well as allow the Military Departments to retain regional headquarters functions within and outside the Continental United States and continue to provide readiness and operational medicine support to the combatant commands. The Military Departments would also have authority to establish appropriate practice and training opportunities for military health care personnel. Additionally, the provision would revise a requirement for a report to the Armed Services Committees and make several technical corrections.

**Budget Implications:** This proposal has no significant budgetary impact as the provision simply clarifies authorities, responsibilities, and roles.

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

### **Title 10, United States Code**

\* \* \* \* \*

#### **§ 1073c. Administration of Defense Health Agency and military medical treatment facilities**

(a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES:



(1) In accordance with ~~paragraph (4)~~ paragraph (5), but not later than September 30, 2021, the Director of the Defense Health Agency shall be responsible for the administration of each military medical treatment facility, including with respect to--

(A) provision of care and healthcare delivery within each such facility;

(B) privileging, scope of practice, and clinical quality management within each such facility;

~~(A)~~ (C) budgetary matters;

~~(B)~~ (D) information technology;

~~(C)~~ ~~(E) health care administration and management;~~

(E) supply and equipment;

~~(D)~~ (F) administrative policy and procedure;

~~(E)~~ (G) military medical construction; and

~~(F)~~ (H) any other matters the Secretary of Defense determines appropriate.

(2) In addition to the responsibilities set forth in paragraph (1), the Director of the Defense Health Agency shall, commencing when the Director begins to exercise responsibilities under that paragraph, have the authority—

(A) to direct, control, and serve as the primary rater of the performance of commanders or directors of military medical treatment facilities;

(B) to direct and control any intermediary organizations between the Defense Health Agency and military medical treatment facilities;

(C) to determine the scope of medical care provided at each military medical treatment facility to meet the ~~military personnel readiness requirements of the senior military operational commander of the military installation~~ military personnel readiness requirements established by the military departments;

(D) to identify the capacity of each military medical treatment facility to support clinical readiness standards established by the military departments or the Assistant Secretary of Defense for Health Affairs;

~~(D)~~ (E) to determine total workforce requirements at each military medical treatment facility;

~~(E)~~ ~~(F) to direct joint manning at military medical treatment facilities and intermediary organizations;~~

(F) to determine, in coordination with the military departments, military manning assigned to military medical treatment facilities and intermediary organizations;

~~(F)~~ (G) to address personnel staffing shortages at military medical treatment facilities;

~~(G)~~ (H) to select among service nominations for commanders or directors of military medical treatment facilities.

(3) The military commander or director of each military medical treatment facility shall be responsible for--

(A) on behalf of the military departments, ensuring the clinical readiness of the members of the armed forces and civilian employees at such facility; and

(B) on behalf of the Defense Health Agency, furnishing the health care and medical treatment provided at such facility.

(4) If the Secretary of Defense determines it appropriate, a military director (or any other senior military officer or officers) of a military medical treatment facility may be a commanding officer for purposes of chapter 47 of this title (the Uniform Code of Military Justice) with respect to military personnel assigned to the military medical treatment facility.

~~(4)~~ (5) The Secretary of Defense shall establish a timeline to ensure that each Secretary of a military department transitions the administration of military medical treatment facilities from such Secretary to the Director of the Defense Health Agency pursuant to paragraph (1) by the date specified in such paragraph.

~~(5)~~ (6) The Secretary of Defense shall establish within the Defense Health Agency a professional staff to provide policy, oversight, and direction to carry out paragraphs (1) and (2). The Secretary shall carry out this paragraph by appointing the positions specified in subsections (b) and (c).

(b) DHA ASSISTANT DIRECTOR.—

(1) There is in the Defense Health Agency an Assistant Director for Health Care Administration. The Assistant Director shall--

(A) be a career appointee within the Department; and

(B) report directly to the Director of the Defense Health Agency.

(2) The Assistant Director shall be appointed from among individuals who have equivalent education and experience as a chief executive officer leading a large, civilian health care system.

(3) The Assistant Director shall be responsible for the following:

(A) Establishing priorities for ~~health care administration and management~~ provision of care and healthcare delivery.

(B) Establishing policies, procedures, and direction for the provision of direct care at military medical treatment facilities.

(C) Establishing priorities for budgeting matters with respect to the provision of direct care at military medical treatment facilities.

(D) Establishing policies, procedures, and direction for clinic management and operations at military medical treatment facilities.

(E) Establishing priorities for information technology at and between the military medical treatment facilities.

(c) DHA DEPUTY ASSISTANT DIRECTORS.—

(1) (A) There is in the Defense Health Agency a Deputy Assistant Director for Information Operations.

(B) The Deputy Assistant Director for Information Operations shall be responsible for policies, management, and execution of information technology operations at and between the military medical treatment facilities.

(2) (A) There is in the Defense Health Agency a Deputy Assistant Director for Financial Operations.

(B) The Deputy Assistant Director for Financial Operations shall be responsible for the policy, procedures, and direction of budgeting matters and financial management with respect to the provision of direct care ~~across the military health system~~ in military medical treatment facilities.

(3) (A) There is in the Defense Health Agency a Deputy Assistant Director for Health Care Operations.

(B) The Deputy Assistant Director for Health Care Operations shall be responsible for the policy, procedures, and direction of health care administration in the military medical treatment facilities.

(4) (A) There is in the Defense Health Agency a Deputy Assistant Director for Medical Affairs.

(B) The Deputy Assistant Director for Medical Affairs shall be responsible for policy, procedures, and direction of clinical quality and process improvement, patient safety, infection control, graduate medical education, clinical integration, utilization review, risk management, patient experience, and civilian physician recruiting in the military medical treatment facilities.

(5) Each Deputy Assistant Director appointed under paragraphs (1) through (4) shall report directly to the Assistant Director for Health Care Administration.

(d) CERTAIN RESPONSIBILITIES OF DHA DIRECTOR.—

(1) In addition to the other duties of the Director of the Defense Health Agency, the Director shall coordinate with the Joint Staff Surgeon to ensure that the Director most effectively carries out the responsibilities of the Defense Health Agency as a combat support agency under section 193 of this title.

(2) The responsibilities of the Director shall include the following:

(A) Ensuring that the Defense Health Agency meets the operational needs of the commanders of the combatant commands.

(B) Coordinating with the military departments to ensure that the staffing at the military medical treatment facilities supports readiness requirements for members of the armed forces and health care personnel.

(C) Ensuring that the Defense Health Agency meets the military medical readiness requirements of the senior military operational commanders of the military installations.

(e) ADDITIONAL DHA ORGANIZATIONS.—Not later than September 30, 2022, the Secretary of Defense shall, acting through the Director of the Defense Health Agency, establish within the Defense Health Agency the following:

(1) A subordinate organization, to be called the Defense Health Agency Research and Development—

(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Research and Development);

(B) comprised of the Army Medical Research and Materiel Command and such other medical research organizations and activities of the armed forces as the Secretary considers appropriate; and

(C) responsible for coordinating funding for Defense Health Program Research, Development, Test, and Evaluation, the Congressionally Directed Medical Research Program, and related Department of Defense medical research.

(2) A subordinate organization, to be called the Defense Health Agency Public Health—

(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Public Health); and

(B) comprised of the Army Public Health Command, the Navy–Marine Corps Public Health Command, Air Force public health programs, and any other related defense health activities that the Secretary considers appropriate, including overseas laboratories focused on preventive medicine, environmental health, and similar matters.

(f) DEFINITIONS.—In this section:

(1) The term "career appointee" has the meaning given that term in section 3132(a)(4) of title 5.

(2) The term "Defense Health Agency" means the Defense Agency established pursuant to Department of Defense Directive 5136.13, or such successor Defense Agency.

(3) The term "military medical treatment facility" means any fixed facility of the Department of Defense that is outside of a deployed environment and constructed primarily for health care, except that other locations used for purposes of providing health care services may also be designated as military medical treatment facilities by the Secretary of Defense.

\* \* \* \* \*

**JOHN S. McCAIN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019**

\* \* \* \* \*

**SEC. 712. ORGANIZATIONAL FRAMEWORK OF THE MILITARY HEALTHCARE SYSTEM TO SUPPORT THE MEDICAL REQUIREMENTS OF THE COMBATANT COMMANDS. THE MILITARY HEALTHCARE SYSTEM SUPPORT OF THE MEDICAL REQUIREMENTS OF THE COMBATANT COMMANDS.**

(a) ORGANIZATIONAL FRAMEWORK REQUIRED.—

~~(1) IN GENERAL.—The Secretary of Defense shall, acting through the Director of the Defense Health Agency, implement an organizational framework for the military healthcare system that most effectively implements chapter 55 of title 10, United States Code, in a manner that maximizes interoperability and fully integrates medical capabilities of the Armed Forces in order to enhance joint military medical operations in support of requirements of the combatant commands.~~

(1) IN GENERAL.—The Secretary of Defense shall, acting through the military departments and the Joint Staff, maximize the readiness of the medical force, promote interoperability, and integrate medical capabilities of the Armed Forces in order to enhance joint military medical operations in support of requirements of the combatant commands. The military departments shall be supported by the Director of the Defense Health Agency.

(2) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The organizational framework, as implemented, shall comply with all requirements of section 1073c of title 10, United States Code, except for the implementation date specified in subsection (a) of such section.

(b) ADDITIONAL DUTIES OF SURGEONS GENERAL OF THE ARMED FORCES.—The Surgeons General of the Armed Forces shall have the following duties:

(1) To ensure the readiness for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.

(2) To set medical readiness standards, subject to minimum standards and metrics established by the Assistant Secretary of Defense for Health Affairs.

(3) To assign uniformed medical and dental personnel of the military department concerned to military medical treatment facilities or partnerships with civilian or other medical facilities for training activities specific to such military department, and to maintain readiness for operational deployment.

(4) To provide logistical support for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.

(5) To oversee mobilization and demobilization in connection with the operational deployment of medical and dental personnel of the Armed Force or Armed Forces concerned.

(6) To develop operational medical capabilities required to support the warfighter, and to develop policy relating to such capabilities.

(7) To provide health professionals to serve in leadership positions across the military healthcare system.

(8) To deliver operational clinical services under the operational control of combatant commands on ships and planes and on installations outside of military treatment facilities.

(9) To establish privileging, scope of practice, and clinical quality management in the settings described in paragraph (8).

~~(b)~~ (c) DEFENSE HEALTH AGENCY REGIONS IN CONUS.—The organizational framework required by subsection (a) shall meet the requirements as follows:

(1) DEFENSE HEALTH AGENCY REGIONS.—There shall be not more than two ~~defense health~~ Defense Health Agency regions in the continental United States.

(2) LEADERS.—Each region under paragraph (1) shall be led by a commander or director who is a member of the Armed Forces serving in a grade not higher than major general or rear admiral, and who—

(A) shall be selected by the Director of the Defense Health Agency from among members of the Armed Forces recommended by the Secretaries of the military departments for service in such position; and

(B) shall be under the authority, direction, and control of the Director while serving in such position.

~~(e)~~ (d) DEFENSE HEALTH AGENCY REGIONS OCONUS.—The organizational framework required by subsection (a) shall provide for the establishment of not more than two ~~defense health~~ Defense Health Agency regions outside the continental United States in order—

(1) to enhance joint military medical operations in support of the requirements of the combatant commands in such region or regions, with a specific focus on current and future contingency and operational plans;

(2) to ensure the provision of high-quality healthcare services to beneficiaries; and

(3) to improve the interoperability of healthcare delivery systems in the defense health regions (whether under this subsection, ~~subsection (b)~~ subsection (c), or both).

~~(d)~~ (e) PLANNING AND COORDINATION.—

(1) SUSTAINMENT OF CLINICAL COMPETENCIES AND STAFFING.—The Director of the Defense Health Agency shall—

(A) provide in each defense health region under this section healthcare delivery venues for uniformed medical and dental personnel to obtain operational clinical competencies; and

(B) coordinate with the military departments to ensure that staffing at military medical treatment facilities in each region supports readiness requirements for members of the Armed Forces and military medical personnel.

(2) OVERSIGHT AND ALLOCATION OF RESOURCES.—

~~(A) IN GENERAL.—The Director shall, consistent with section 193 of title 10, United States Code, coordinate with the Chairman of the Joint Chiefs of Staff, through the Joint Staff Surgeon, to conduct oversight and direct resources to support requirements related to readiness and operational medicine support that are validated by the Joint Staff.~~

(A) IN GENERAL.—The military departments shall coordinate with the Chairman of the Joint Chiefs of Staff to conduct oversight and direct resources allocated to the military departments to support requirements related to readiness and operational medicine support that are validated by the Joint Staff.

~~(B) SUPPLY AND DEMAND FOR MEDICAL SERVICES.—Based on operational medical force readiness requirements of the combatant commands validated by the Joint Staff, the Director shall—~~ The Director of the Defense Health Agency, in coordination with the Assistant Secretary of Defense for Health Affairs, shall—

(i) validate supply and demand requirements for medical and dental services at each military medical treatment facility;

(ii) in coordination with the Surgeons General of the Armed Forces, provide currency workload for uniformed medical and dental personnel at each such facility to maintain skills proficiency; and

(iii) if workload is insufficient to meet requirements, identify alternative training and clinical practice sites for uniformed medical and dental personnel, and establish military-civilian training partnerships, to provide such workload.

~~(2)~~ (3) MEDICAL FORCE REQUIREMENTS OF THE COMBATANT COMMANDS.—The Surgeon General of each Armed Force shall, on behalf of the Secretary concerned, ensure that the uniformed medical and dental personnel serving in such Armed Force receive training and clinical practice opportunities necessary to ensure that such personnel are capable of meeting the operational medical force requirements of the combatant commands applicable to such personnel. Such training and practice opportunities shall be provided through programs and activities of the Defense Health Agency, by the military departments, and by such other mechanisms as the Secretary of Defense shall designate for purposes of this paragraph.

~~(3)~~ (4) CONSTRUCTION OF DUTIES.—The duties of a Surgeon General of the Armed Forces under this subsection are in addition to the duties of such Surgeon General under section 3036, 5137, or 8036 of title 10, United States Code, as applicable.

(5) MANPOWER.—

(A) ADMINISTRATIVE CONTROL OF MILITARY PERSONNEL.—Each military department shall exercise administrative control of military personnel assigned to military medical treatment facilities, including personnel assignment and issuance of military orders.

(B) OVERSIGHT OF CERTAIN PERSONNEL BY THE DIRECTOR OF THE DEFENSE HEALTH AGENCY.—In situations where military personnel, not under the authority, direction, and control of the director of the military medical treatment facility concerned, provide health care services in the facility, the Director of the Defense Health Agency shall maintain oversight for the provision of care delivered by these individuals through military medical treatment facility policies and procedures and the privileging responsibility of the military medical treatment facility.

~~(c) ADDITIONAL DUTIES OF SURGEONS GENERAL OF THE ARMED FORCES.—~~

~~(1) IN GENERAL.—The Surgeons General of the Armed Forces shall have the duties as follows:~~

~~(A) To assign uniformed medical and dental personnel of the military department concerned to military medical treatment facilities for training activities specific to such military department and for operational and training missions, during which assignment such personnel shall be under the operational control of the commander or director of the military medical treatment facility concerned, subject to the authority, direction, and control of the Director of the Defense Health Agency.~~

~~(B) To ensure the readiness for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.~~

~~(C) To provide logistical support for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.~~

~~(D) To oversee mobilization and demobilization in connection with the operational deployment of medical and dental personnel of the Armed Force or Armed Forces concerned.~~

~~(E) To carry out operational medical and dental force development for the military department concerned.~~

~~(F) In coordination with the Secretary concerned, to ensure that the operational medical force readiness organizations of the Armed Forces support the medical and dental readiness responsibilities of the Director.~~

~~(G) To develop operational medical capabilities required to support the warfighter, and to develop policy relating to such capabilities.~~

~~(H) To provide health professionals to serve in leadership positions across the military healthcare system.~~

(f) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that sets forth the following:

(1) A description of the organizational structure of the office of each Surgeon General of the Armed Forces, and of any subordinate organizations of the Armed Forces that will support the functions and responsibilities of a Surgeon General of the Armed Forces.

~~(2) The manning documents for staffing in support of the organizational structures described pursuant to paragraph (1), including manning levels before and after such organizational structures are implemented.~~

~~(3)~~ (2) Such recommendations for legislative or administrative action as the Secretary considers appropriate in connection with the implementation of such organizational structures and, in particular, to avoid ~~duplication~~ unnecessary duplication of functions and tasks between the organizations in such organizational structures and the Defense Health Agency.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Defense under section 113 of title 10, United States Code.

1 **SEC. \_\_\_\_. REVISION OF AUTHORITY FOR PROCEDURES TO ALLOW RAPID**  
2 **ACQUISITION AND DEPLOYMENT OF CAPABILITIES NEEDED**  
3 **UNDER SPECIFIED HIGH-PRIORITY CIRCUMSTANCES.**

4 (a) REVISION AND CODIFICATION OF RAPID ACQUISITION AUTHORITY.—

5 (1) IN GENERAL—Chapter 137 of title 10, United States Code, is amended by  
6 inserting after section 2316 the following new section:

7 **§2317. Procedures for urgent acquisition and deployment of capability needed in response**  
8 **to urgent operational needs or vital national security interest**

9 “(a) Procedures.—(1) The Secretary of Defense shall prescribe procedures for the urgent  
10 acquisition and deployment of capability needed in response to urgent operational needs. The  
11 capabilities for which such procedures may be used in response to an urgent operational need are  
12 those—

13 (A) that, subject to such exceptions as the Secretary considers appropriate for  
14 purposes of this section—

15 “(i) can be fielded within a period of two to 24 months;

16 “(ii) do not require substantial development effort;

17 “(iii) are based on technologies that are proven and available; and

18 “(iv) can appropriately be acquired under fixed price contracts; or

19 “(B) that can be developed or procured under a section 804 rapid acquisition  
20 pathway.

21 “(2) In this section, the term ‘section 804 rapid acquisition pathway’ means the rapid  
22 fielding acquisition pathway or the rapid prototyping acquisition pathway authorized under



1 section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92;  
2 10 U.S. C. 2302 note).

3 “(b) MATTERS TO BE INCLUDED.—The procedures prescribed under subsection (a) shall  
4 include the following:

5 “(1) A process for streamlined communications between the Chairman of the  
6 Joint Chiefs of Staff, the acquisition community, and the research and development  
7 community, including—

8 “(A) a process for the commanders of the combatant commands and the  
9 Chairman of the Joint Chiefs of Staff to communicate their needs to the  
10 acquisition community and the research and development community; and

11 “(B) a process for the acquisition community and the research and  
12 development community to propose capability that meet the needs communicated  
13 by the combatant commands and the Chairman of the Joint Chiefs of Staff.

14 “(2) Procedures for demonstrating, rapidly acquiring, and deploying a capability  
15 proposed pursuant to paragraph (1)(B), including—

16 “(A) a process for demonstrating performance and evaluating for current  
17 operational purposes the performance of the capability;

18 “(B) a process for developing an acquisition and funding strategy for the  
19 deployment of the capability; and

20 “(C) a process for making deployment and utilization determinations  
21 based on information obtained pursuant to subparagraphs (A) and (B).

22 “(3) A process to determine the disposition of a capability, including termination  
23 (demilitarization or disposal), continued sustainment, or transition to a program of record.

1           “(4) Specific procedures in accordance with the guidance developed under section  
2           804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-  
3           92; 10 U.S. C. 2302 note).

4           “(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL  
5           NEEDS.—

6           “(1) DETERMINATION OF NEED FOR URGENT ACQUISITION AND DEPLOYMENT.—(A)  
7           In the case of any capability that, as determined in writing by the Secretary of Defense, is  
8           urgently needed to eliminate a documented deficiency that has resulted in combat  
9           casualties, or is likely to result in combat casualties, the Secretary may use the procedures  
10          developed under this section in order to accomplish the urgent acquisition and  
11          deployment of the needed capability.

12          “(B) In the case of any capability that, as determined in writing by the Secretary  
13          of Defense, is urgently needed to eliminate a documented deficiency that impacts an  
14          ongoing or anticipated contingency operation and that, if left unfulfilled, could  
15          potentially result in loss of life or critical mission failure, the Secretary may use the  
16          procedures developed under this section in order to accomplish the urgent acquisition and  
17          deployment of the needed capability.

18          “(C)(i) In the case of any cyber capability that, as determined in writing by the  
19          Secretary of Defense, is urgently needed to eliminate a deficiency that as the result of a  
20          cyberattack has resulted in critical mission failure, the loss of life, property destruction, or  
21          economic effects, or if left unfilled is likely to result in critical mission failure, the loss of  
22          life, property destruction, or economic effects, the Secretary may use the procedures

1 developed under this section in order to accomplish the urgent acquisition and  
2 deployment of the needed offensive or defensive cyber capability.

3 “(ii) In this subparagraph, the term ‘cyberattack’ means a deliberate action to  
4 alter, disrupt, deceive, degrade, or destroy computer systems or networks or the  
5 information or programs resident in or transiting these systems or networks.

6 “(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided  
7 under clause (ii), whenever the Secretary makes a determination under subparagraph (A),  
8 (B), or (C) of paragraph (1) that a capability is urgently needed to eliminate a deficiency  
9 described in that subparagraph, the Secretary shall designate a senior official of the  
10 Department of Defense to ensure that the needed capability is acquired and deployed as  
11 quickly as possible, with a goal of awarding a contract for the acquisition of the  
12 capability within 15 days.

13 “(ii) Clause (i) does not apply to an acquisition initiated in the case of a  
14 determination by the Secretary that funds are necessary to immediately initiate a project  
15 under a section 804 rapid acquisition pathway if the designated official for acquisitions  
16 using such pathway is a service acquisition executive.

17 “(B) Upon designation of a senior official under subparagraph (A) with respect to  
18 a needed capability, the Secretary shall authorize that official to waive any provision of  
19 law or regulation described in subsection (d) that such official determines in writing  
20 would unnecessarily impede the urgent acquisition and deployment of the needed  
21 capability. In a case in which the needed capability cannot be acquired without an  
22 extensive delay, the senior official shall require that an interim solution be implemented

1 and deployed using the procedures developed under this section to minimize adverse  
2 consequences resulting from the urgent need.

3 “(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a  
4 determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the  
5 Secretary making a determination that funds are necessary to immediately initiate a  
6 project under a section 804 rapid acquisition pathway based on compelling national  
7 security need, the Secretary may use any funds available to the Department of Defense if  
8 the determination includes a written finding that the use of such funds is necessary to  
9 address in a timely manner the deficiency documented or identified under such  
10 subparagraph (A), (B), or (C) or the compelling national security need identified for  
11 purposes of such section 804 pathway, respectively.

12 “(B) Except as provided under subparagraph (C), the authority provided by this  
13 section may only be used to acquire capability—

14 “(i) in the case of determinations by the Secretary under paragraph (1)(A),  
15 in an amount aggregating not more than \$200,000,000 during any fiscal year;

16 “(ii) in the case of determinations by the Secretary under paragraph (1)(B),  
17 in an amount aggregating not more than \$200,000,000 during any fiscal year;

18 “(iii) in the case of determinations by the Secretary under paragraph  
19 (1)(C), in an amount aggregating not more than \$200,000,000 during any fiscal  
20 year; and

21 “(iv) in the case of a determination by the Secretary that funds are  
22 necessary to immediately initiate a project under a section 804 rapid acquisition

1 pathway, in an amount aggregating not more than \$200,000,000 during any fiscal  
2 year.

3 “(C) For each fiscal year, the limits set forth in clauses (i) and (ii) of subparagraph  
4 (B) do not apply to the exercise of authority under such clauses provided that the total  
5 amount of capabilities acquired as provided under such subparagraph does not exceed  
6 \$800,000,000 during such fiscal year.

7 “(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of  
8 a determination by the Secretary under paragraph (1)(A) or (1)(C), the Secretary shall  
9 notify the congressional defense committees of the determination within 15 days after the  
10 date of the determination.

11 “(B) In the case of a determination by the Secretary under paragraph (1)(B), the  
12 Secretary shall notify the congressional defense committees of the determination at least  
13 10 days before the date on which the determination is effective.

14 “(C) In the case of a determination by the Secretary under paragraph (3)(A) that  
15 funds are necessary to immediately initiate a project under a section 804 rapid acquisition  
16 pathway, the Secretary shall notify the congressional defense committees of the  
17 determination within 10 days after the date of the use of such funds.

18 “(D) A notice under this paragraph shall include the following:

19 “(i) Identification of the capability to be acquired.

20 “(ii) The amount anticipated to be expended for the acquisition.

21 “(iii) The source of funds for the acquisition.

22 “(E) A notice under this paragraph shall fulfill any requirement to provide  
23 notification to Congress for a program (referred to as a ‘new start program’) that has not

1 previously been specifically authorized by law or for which funds have not previously  
2 been appropriated.

3 “(F) A notice under this paragraph shall be provided in consultation with the  
4 Director of the Office of Management and Budget.

5 “(5) LIMITATION ON OFFICERS WITH AUTHORITY.—The authority to make a  
6 determination under subparagraph (A), (B), or (C) of paragraph (1) and under paragraph  
7 (3)(A) that funds are necessary to immediately initiate a project under a section 804 rapid  
8 acquisition pathway, to designate a senior official responsible under paragraph (3), and to  
9 provide notification to the congressional defense committees under paragraph (4) may be  
10 exercised only by the Secretary or Deputy Secretary of Defense.

11 “(d) AUTHORITY TO WAIVE CERTAIN LAWS AND REGULATIONS.—

12 “(1) AUTHORITY.—The Secretary or Deputy Secretary of Defense, for a capability  
13 required to address the needs described in subsection (c)(1) or, upon a determination  
14 described in subsection (c)(1), and the senior official designated in accordance with  
15 subsection (c)(2), with respect to that designation, is authorized to waive any provision of  
16 law or regulation addressing—

17 “(A) the establishment of a requirement or specification for the capability  
18 to be acquired;

19 “(B) the research, development, test, and evaluation of the capability to be  
20 acquired;

21 “(C) the production, fielding, and sustainment of the capability to be  
22 acquired; or

1                   “(D) the solicitation, selection of sources, and award of the contracts for  
2 procurement of the capability to be acquired.

3                   “(2) LIMITATIONS.—Nothing in this subsection authorizes the waiver of—

4                   “(A) the requirements of this section;

5                   “(B) any provision of law imposing civil or criminal penalties; or

6                   “(C) any provision of law governing the proper expenditure of  
7 appropriated funds.

8                   “(e) OPERATIONAL ASSESSMENTS.—(1) The process prescribed under subsection  
9 (b)(2)(A) for demonstrating performance and evaluating the current operational performance of a  
10 capability proposed pursuant to subsection (b)(1)(B) shall include the following:

11                   “(A) An operational assessment in accordance with procedures prescribed by the  
12 Director of Operational Test and Evaluation.

13                   “(B) A requirement to provide information about any deficiency of the capability  
14 in meeting the original requirements for the capability (as stated in a statement of the  
15 urgent operational need or similar document) to the deployment decision-making  
16 authority.

17                   “(2) The process may not include a requirement for any deficiency of capability  
18 identified in the operational assessment to be the determining factor in deciding whether to  
19 deploy the capability.

20                   “(3) If a capability is deployed under the procedures prescribed pursuant to this section,  
21 or under any other authority, before operational test and evaluation of the capability is  
22 completed, the Director of Operational Test and Evaluation shall have access to operational  
23 records and data relevant to such capability in accordance with section 139(e)(3) of this title for

1 the purpose of completing operational test and evaluation of the capability. Such access shall be  
2 provided in a time and manner determined by the Secretary of Defense consistent with  
3 requirements of operational security and other relevant operational requirements.”.

4 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
5 chapter is amended by inserting after the item relating to section 2316 the following new  
6 item:

“2317. Procedures for urgent acquisition and deployment of capabilities needed in response to urgent operational  
needs or vital national security interest.”

7 (b) CONFORMING REPEALS.—The following provisions of law are repealed:

8 (1) Section 806 of the Bob Stump National Defense Authorization Act for Fiscal  
9 Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note).

10 (2) Section 804 of the Ike Skelton National Defense Authorization Act for Fiscal  
11 Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note).

12 (3) Section 806 of the National Defense Authorization Act for Fiscal Year 2016  
13 (Public Law 114-92; 10 U.S.C. 2302 note).

### **Section-by-Section Analysis**

This proposal would consolidate and harmonize sections of legislation related to rapid acquisition and urgent operational needs, specifically:

1. Pub. L. 111–383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256, is repealed. The required review process is incorporated into Enclosure 13, “Urgent Capability Acquisition,” to DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015, incorporating change 2, February 2, 2017. The deletion of Pub. L. 111–383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256, and incorporation of selected items from Section 806(c) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, in the proposed changes resolves inconsistencies between multiple laws associated with urgent acquisition in support of urgent operational needs.

2. Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) is codified in title 10, United States Code, and as codified is revised as follows:



Revision to subsection (a): Changes first sentence to reflect a continuing Secretary responsibility to proscribe procedures rather than the one time requirement from December 2002. Introduces the phrase “urgent acquisition” to distinguish acquisition in response to urgent needs from acquisition associated with “section 804 rapid acquisition pathway.” Urgent acquisition is used, where appropriate in the remaining subsections.

Proposed subsection (a)(1)(A): Aligns the requirements for capabilities subject to the procedures for urgent acquisition and deployment in response to an urgent operational need that were required by section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note) and were subsequently incorporated into DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015.

Proposed subsection (a)(2) allows for the use, throughout the proposal of the shorter phrase, “section 804 rapid acquisition pathway,” in lieu of the full cite: “for capabilities that are developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note).”

Proposed subsections (b) through (e), except subsection (c)(3): Except as noted in the paragraph below, regarding “Subsection (c)(3) “USE OF FUNDS:”, “Supplies and associated services” is replaced throughout with “capability,” This provides consistency with the terminology used by the Chairman, Joint Chiefs of Staff in the Joint Staff Instructions and processes for the validation of capability gaps associated with urgent operational needs. It is also consistent with the terminology adopted by the Department of Defense in DoD Directive 5000.71, “Rapid Fulfillment of Combatant Commander Urgent Operational Needs,” August 24, 2012, and Enclosure 13, “Urgent Capability Acquisition,” to DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015. Paragraph (b)(2)(A), of the current legislation, is modified by replacing the word “capability” with “performance” for purposes of clarity.

Proposed subsection (b)(3): Adds a process that makes subsection (c)(5) “Time for transitioning to Normal Acquisition System,” unnecessary and subsection (c)(5) is therefore proposed to be deleted. Proposed subparagraph (b)(3) requires a process to evaluate and determine the disposition of a capability, including termination (demilitarization or disposal), sustainment for current contingency operation, or transition to program of record. This process is established in Enclosure 13, “Urgent Capability Acquisition,” to DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015 with revision 2, February 2, 2017. The process in Enclosure 13 to DoD Instruction 5000.02 establishes a more suitable and flexible process for determining the ultimate disposition of capability fielded in response to an urgent operational need. The process describes specific responsibility and accountability for accomplishing the disposition analyses and decision which, the Department believes, is more comprehensive and effective than what is currently required by subsection (c)(5).

Proposed subsection (b)(4) renumbered (old subparagraph (b)(3))

Proposed subsection (c)(1)(C): Modified to delete the phrase, “without delegation.” Deleting this phrase conforms (c)(1)(C) with the paragraphs (A) and (B) above it, and also makes the subparagraph consistent with subparagraph (c)(5) that allows that the authority to make a determination under subparagraph(A), (B), (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

Subsection (c)(2)(B): Clarifies that the Secretary’s authorization to designated official is with regard to a needed capability.

Subsection (c)(3) “USE OF FUNDS:” The term “supplies and associated support services,” is deleted as it can be misinterpreted to unnecessarily restrict the Secretary to using only those funds appropriated for “supplies and associated support services,” rather than allowing the Secretary to, more appropriately, use any funds available to the Department of Defense. Clarifies that the use of funds is for the documented or identified deficiency or compelling national security interest.

Subsection (c)(3)(B): Provides an exception for new subparagraph (c)(3)(C). Clarifies the authority provided by the section.

Subsection (c)(3)(C): Provides permanent authority to increase the limitations established in subparagraph (c)(3)(B)(i) and (ii). This flexibility in authority will enable the Department to quickly address more of its most urgent operational needs.

Subsection (c)(4)(A): Amended to also add paragraph (c)(1)(C). This corrects an administrative oversight in the FY16 NDAA that omitted notification of the Congressional Defense Committees when the cyber attack provision of (c)(1)(C) is used.

Subsection (c)(4)(C): Added to require notification to the Defense Committees within 10 days after the date of the use of such funds.

New section (c)(4)(E): This subsection is amended to clarify and better conform to legislative language regarding “new starts.”

Subsection (c)(5): Subsection deleted - replaced by subsection (b)(3), as discussed previously, above, under the explanation for subsection (b)(3).

Subsection (c)(5) (old Subsection (c)(5)): “LIMITATION ON OFFICERS WITH AUTHORITY ...” amended to incorporate a section 804 rapid acquisition pathway provision and to enable both the Secretary and the Deputy Secretary of Defense, only, to exercise the listed authorities.

Subsection (d)(1)(C): Adds new subparagraph (C) and re-letters subparagraph (D). New subparagraph (C) adds authority for waivers associated with the production, fielding and sustainment of the capability. This aligns the waiver authority to that for the “Rapid Acquisition and Deployment Procedures for United States Special Operations Command” [Public Law 113-291, section 851, December 19, 2014] and “Secretary of Defense Waiver of Acquisition Laws to

Acquire Vital National Security Capabilities” [Public Law 114-92, section 806, November 25, 2015].

Subsection (e): Replaces the term “Testing Requirement” with “Operational Assessment” to better convey that the evaluation of a proposed solution for an urgent operational need may simply be a report on its capabilities and limitations. This allows the warfighter to determine if the proposed solution will adequately address the urgent need in a timely manner. “Testing Requirement” if wrongly interpreted can lead to a formal and time consuming process that results in a more sophisticated solution that arrives too late to be useful to the warfighter.

Subsection (f): The “Limitation” established in (previous) subsection (f) is recommended for deletion. The majority of urgent need solutions have not been associated with major systems. The current language in subsection (f) is therefore inappropriate in the majority of instances. The quantities procured in fulfillment of urgent needs are limited to those required by the urgent operational need submitted by the Warfighter. Urgent need solutions are not procured to equip general forces unless they are later transitioned to the normal acquisition system.

Subsection (g): The definition of associated support services is deleted. The term is no longer needed with the use of the term “capability” throughout the revised Section 806(c) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

The final paragraph in Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 regarding the Secretary of Defense certification is deleted. The required certification was made by the Secretary of Defense in the notification letters to the Defense Committees on August 21, 2013.

**Budgetary Implications:** This proposed has no budgetary implications.

**Changes to Existing Law:** This proposal would revise:

- 1.. Pub. L. 111–383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256 , is deleted
- 2.. Section 806(c) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) is amended:

**Pub. L. 111–383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256 , deleted:**

~~Review of Acquisition Process for Rapid Fielding of Capabilities in Response to Urgent Operational Needs~~

~~(a) Review of Rapid Acquisition Process Required.–~~

~~(b) Discriminating Urgent Operational Needs From Traditional Requirements.–~~

~~(1) Expedited review process. Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.~~

~~(2) Elements. The review process developed and implemented pursuant to paragraph (1) shall–~~

- (A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;
  - (B) identify officials responsible for making determinations described in paragraph (1);
  - (C) establish appropriate time periods for making such determinations;
  - (D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life cycle management;
  - (E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and
  - (F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.
- (3) ~~Covered capabilities.~~ The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—
- (A) can be fielded within a period of two to 24 months;
  - (B) do not require substantial development effort;
  - (C) are based on technologies that are proven and available; and
  - (D) can appropriately be acquired under fixed price contracts.
- (4) ~~Inclusion in report.~~ The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).

**SEC. REVISION OF AUTHORITY FOR PROCEDURES TO ALLOW RAPID ACQUISITION AND DEPLOYMENT PROCEDURES OF CAPABILITIES NEEDED UNDER SPECIFIED HIGH-PRIORITY CIRCUMSTANCES**

(a) REVISION AND CODIFICATION OF RAPID ACQUISITION AUTHORITY.

- (1) IN GENERAL. – Chapter 137 of title 10, United States Code, is amended by inserting after section 2316 the following new section:

**§ 2317. Procedures for urgent acquisition and deployment of capability needed in response to urgent operational needs or vital security interest**

(a) ~~REQUIREMENT TO ESTABLISH PROCEDURES.~~ Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the

- (1) IN GENERAL. - The Secretary of Defense shall prescribe procedures for the ~~rapid urgent acquisition and deployment of capability supplies and associated support services that are~~ needed in response to urgent operational needs. The capabilities for which such procedures for urgent acquisition and deployment may be used in response to urgent operational needs are those

=

- ~~(1)(A) currently under development by the Department of Defense or available from the commercial sector; or~~
- ~~(B) require only minor modifications to supplies described in subparagraph (A);~~

~~(C) developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note); and~~

~~(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.~~

(A) that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, -

(i) can be fielded within a period of two to 24 months;

(ii) do not require substantial development effort;

(iii) are based on technologies that are proven and available; and

(iv) can appropriately be acquired under fixed price contracts.

or

(B) that can be developed or procured under a section 804 rapid acquisition pathway

(2) DEFINITION. – In this section, the term ‘section 804 rapid acquisition pathway’ means the rapid fielding acquisition pathway or the rapid prototyping acquisition pathway authorized under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note);

~~(b) ISSUES MATTERSTO BE ADDRESSED INCLUDED.~~-The procedures prescribed under subsection (a) shall include the following:

(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including-

(A) a process for the commanders of the combatant commands and the Chairman of the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

(B) a process for the acquisition community and the research and development community to propose ~~supplies and associated support services capability~~ that meet the needs communicated by the combatant commands and the Chairman of the Joint Chiefs of Staff.

(2) Procedures for demonstrating, ~~rapidly~~ urgently acquiring, and deploying ~~supplies and associated support services~~ a capability proposed pursuant to paragraph (1)(B), including-

(A) a process for demonstrating performance and evaluating for current operational purposes the ~~existing capability performance~~ of the ~~supplies and associated support services capability~~;

(B) a process for developing an acquisition and funding strategy for the deployment of the ~~supplies and associated support services capability~~; and

(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

(3) a process to determine the disposition of a capability, including termination (demilitarization or disposal), continued sustainment, or transition to a program of record.

~~(3)~~(4) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note)

(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

(1) DETERMINATION OF NEED FOR ~~RAPID~~ URGENT ACQUISITION AND DEPLOYMENT.—(A) In the case of any ~~supplies and associated support services capability~~ that, as determined in writing by the Secretary of Defense, ~~are~~ is urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid~~ urgent acquisition and deployment of the needed ~~supplies and associated support services capability~~.

(B) In the case of any ~~supplies and associated support services capability~~ that, as determined in writing by the Secretary of Defense, ~~are~~ is urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid~~ urgent acquisition and deployment of the needed ~~supplies and associated support services capability~~.

(C)(i) In the case of any ~~supplies and associated support services cyber capability~~ that, as determined in writing by the Secretary of Defense ~~without delegation~~, ~~are~~ is urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid~~ urgent acquisition and deployment of the needed offensive or defensive cyber ~~capabilities, supplies, and associated support services capability~~.

(ii) In this subparagraph, the term “cyber attack” means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided under clause (ii), whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that ~~certain supplies and associated support services a capability~~ ~~are~~ is urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed ~~supplies and associated support services capability~~ ~~are~~ is acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the ~~supplies and associated support services capability~~ within 15 days.

(ii) Clause (i) does not apply to an acquisition ~~acquisitions~~ initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under

the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114 92; 10 U.S.C. 2302 note) if the designated official for acquisitions using such pathway pathways is the service acquisition executive.

(B) Upon designation of a senior official under subparagraph (A) with respect to a needed capability, the Secretary shall authorize that official to waive any provision of law, ~~policy, directive,~~ or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid urgent acquisition and deployment of the needed supplies and associated support services capability. In a case in which the needed supplies and associated support services capability cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the Secretary making a determination that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114 92; 10 U.S.C. 2302 note) based on a compelling national security need, the Secretary may use any funds available to the Department of Defense ~~for acquisitions of supplies and associated support services~~ if the determination includes a written finding that the use of such funds is necessary to address ~~the deficiency~~ in a timely manner the deficiency documented or identified under such subparagraph (A), (B), or (C) or the compelling national security need identified for purposes of such section 804 rapid acquisition pathway, respectively.

(B) ~~The authority of~~ Except as provided under subparagraph (C), the authority provided by this section may only be used to acquire ~~supplies and associated support services capability—~~

(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than \$200,000,000 during any fiscal year;

(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than \$200,000,000 during any fiscal year;

(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than \$200,000,000 during any fiscal year; and

(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114 92; 10 U.S.C. 2302 note); in an amount not more than \$200,000,000 during any fiscal year.

(C) For each ~~of fiscal year~~ years 2017 and 2018, the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of supplies and associated support services acquired as provided under such subparagraph does not exceed \$800,000,000 during such fiscal year.

(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A) and (1)(C), the Secretary shall notify the congressional defense committees [~~Committees on Armed Services and Appropriations of the senate and the House of Representatives~~] of the determination within 15 days after the date of the determination.

(B) In the case of a determination by the Secretary under paragraph (1)(B), the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are necessary to immediately initiate a project under a the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), the Secretary shall notify the congressional defense committees [~~Committees on Armed Services and Appropriations of the Senate and the House of Representatives~~] of the determination within 10 days after the date of the use of such funds.

(D) A notice under this paragraph shall include the following:

(i) Identification of ~~t~~The supplies and associated support services capability to be acquired.

(ii) The amount anticipated to be expended for the acquisition.

(iii) The source of funds for the acquisition.

(E) A notice under this paragraph shall ~~be sufficient to fulfill~~ any requirement to provide notification to Congress for a program (referred to as a “new start program”) that has not previously been specifically authorized by law or for which funds have not previously been appropriated.

(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

~~(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—(A) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.~~

~~(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).~~

~~(6) LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A DETERMINATION.—~~The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) and under paragraph (3)(A), that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, to designate a senior official responsible under paragraph (3), and



to provide notification to the congressional defense committees under paragraph (4) may be exercised only by the Secretary or Deputy Secretary of Defense.

(d) AUTHORITY TO WAIVER OF CERTAIN LAWS, STATUTES, AND REGULATIONS.-(1) The Secretary and Deputy Secretary of Defense, for a capability required to address the needs described in subsection (c)(1), or, upon ~~Upon~~ a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation, is authorized to waive any provision of law, policy, directive or regulation addressing-

(A) the establishment of the requirement or specification for the supplies and associated support services capability to be acquired;

(B) the research, development, test, and evaluation of the supplies and associated support services capability to be acquired; or

(C) the production, fielding, and sustainment of the capability to be acquired, or

(D) the solicitation, and selection of sources, and the award of the contracts for procurement of the supplies and associated support services capability to be acquired.

(2) LIMITATIONS. - Nothing in this subsection authorizes the waiver of-

(A) the requirements of this section or the regulations implementing this section;  
~~or~~

(B) any provision of law imposing civil or criminal penalties; or

(C) any provision of law governing the proper expenditure of appropriated funds.

(e) Testing Requirement. OPERATIONAL ASSESSMENTS.-(1) The process prescribed under subsection (b)(2)(A) for demonstrating performance and evaluating for the current operational purposes performance the existing capability of the supplies and associated support services capability proposed pursuant to subsection (b)(1)(B) prescribed under subsection (b)(2)(A) shall include the following:-

(A) aAn operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation, and

(B) aA requirement to provide information about any deficiency of the supplies and associated support services capability in meeting the original requirements for the supplies and associated support services capability (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

(2) The process may not include a requirement for any deficiency of supplies and associated support services capability identified in the operational assessment to be the determining factor in deciding whether to deploy the supplies and associated support services capability.

(3) If supplies and associated support services a capability are is deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services capability is completed, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services capability in accordance with section 139(e)(3) of this title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support

services capability. TheSuch access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

~~(f) Limitation. In the case of supplies that are part of a major system for which a low rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low rate initial production for the system concerned.~~

~~(g) Associated Support Services Defined. In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.~~

~~[ Pub. L. 112-81, div. A, title VIII, §845(c), Dec. 31, 2011, 125 Stat. 1515, provided that: The authority to acquire associated support services pursuant to section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107-314, set out above], as amended by this section, shall not take effect until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed and implemented an expedited review process in compliance with the requirements of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4256; 10 U.S.C. 2302 note).]~~

(2) CLERICAL AMENDMENT. – The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2316 the following new item:

“2317. Procedures for urgent acquisition and deployment of capabilities needed in response to urgent operational needs or vital national security interest.”

(b) CONFORMING REPEALS. – The following provisions of law are repealed:

- (1) Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note).
- (2) Section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note).
- (3) Section 806 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note).

1 **SEC. \_\_\_\_ . REIMBURSEMENT OF ENVIRONMENTAL PROTECTION AGENCY FOR**  
2 **CERTAIN COSTS IN CONNECTION WITH THE TWIN CITIES ARMY**  
3 **AMMUNITION PLANT, MINNESOTA.**

4 (a) **AUTHORITY TO REIMBURSE.—**

5 (1) **TRANSFER AMOUNT.—**Using funds described in subsection (b) and without  
6 regard to section 2215 of title 10, United States Code, the Secretary of Defense may  
7 transfer to the Hazardous Substance Superfund—

8 (A) not more than \$890,790 in fiscal year 2020; and

9 (B) not more than \$150,000 per year in fiscal years 2021 through 2026.

10 (2) **PURPOSE OF REIMBURSEMENT.—**The amount authorized to be transferred  
11 under paragraph (1) are to reimburse the Environmental Protection Agency for costs the  
12 Agency has incurred and will incur relating to the response actions performed at the Twin  
13 Cities Army Ammunition Plant, Minnesota, through fiscal year 2025.

14 (3) **INTERAGENCY AGREEMENT.—**The reimbursement described in paragraph (2)  
15 is intended to satisfy certain terms of the interagency agreement entered into by the  
16 Department of the Army and the Environmental Protection Agency for the Twin Cities  
17 Army Ammunition Plant that took effect in December 1987 and that provided for the  
18 recovery of expenses by the Agency from the Department of the Army.

19 (b) **SOURCE OF FUNDS.—**The transfer of funds authorized in subsection (a) shall be made  
20 using funds authorized to be appropriated for fiscal years 2020 through 2026 for operation and  
21 maintenance for Environmental Restoration, Army.

**Section-by-Section Analysis**

This proposal would authorize the Department of Defense to provide reimbursement to the U.S. Environmental Protection Agency (EPA) for that agency's costs for environmental

oversight from October 1, 2010, through September 30, 2025, at the Twin Cities Army Ammunition Plant (TCAAP). Under the interagency agreement (IAG) for TCAAP, DoD agreed to reimburse EPA for certain oversight costs of the remedial program at TCAAP. This measure would authorize payment of prior year costs back to the previous payment made pursuant to specific congressional authorization in section 311 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. This measure would also authorize payments for future oversight costs, with closeout payments ending in fiscal year 2026.

Subsection (a)(1)(A) authorizes \$890,790 to be paid by the Army to the Hazardous Substance Superfund for past costs. The actual amount DOD pays EPA will be based on the detailed bills that EPA provides DOD for oversight completed in FY 2018 and 2019. This amount is based on the following EPA oversight costs that were incurred in the calendar year preceding the fiscal year bill date:

Bill Date:	Bill Amount:
2013	\$198,627.86
2014	\$95,545.25
2015	\$103,511.48
2016	\$69,910.18
2017	\$78,605.28
2018	\$94,589.45
2019	\$100,000.00 (assumed no more than this amount)
2020	\$150,000.00 (assumed no more than this amount)
Total:	\$890,790

Subsection (a)(1)(B) authorizes not more than \$150,000 per year in fiscal years 2020 through 2026 to be paid by the Army to the Hazardous Substance Superfund for future costs.

Subsection (a)(2) provides that the payments are in furtherance of the Army’s IAG with EPA to pay EPA oversight costs.

Subsection (a)(3) identifies the IAG.

Subsection (b) provides that the source of funds to be used by the DoD are from the Army’s environmental restoration account.

**Budget Implications:** This will constitute a one-time payment of past costs, and authorization for annual payments to EPA through Fiscal Year ending in 2025, to be paid out of Army Environmental Restoration Account funds. This proposal is funded in the Fiscal Year 2020 President’s Budget Request. Note that the out-year reimbursement requirements shown in the table below will be budgeted annually in the Defense Environmental Restoration, Army account.

	<b>RESOURCE REQUIREMENTS (\$ MILLIONS)</b>
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	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation From</b>
Army	\$0.841	\$0.100	\$0.100	\$0.100	\$0.100	\$0.100	Defense Environmental Restoration, Army

**Changes to Existing Law:** This is a new provision of law.

1 **SEC. \_\_\_\_. REPEAL AND MODIFICATION OF REPORTING REQUIREMENTS.**

2 (a) ANNUAL REPORT ON ENGAGEMENT WITH THE GOVERNMENT OF BURMA.—Section  
3 1253(b) of the National Defense Authorization Act for Fiscal Year 2015 (22 U.S.C. 2151 note) is  
4 amended—

5 (1) in the heading, by striking “REPORTS” and inserting “BRIEFINGS”;

6 (2) in paragraph (1), by striking “submit to the appropriate committees of  
7 Congress a report” and inserting “provide to the appropriate committees of Congress a  
8 briefing”;

9 (3) in paragraph (2) in the matter preceding subparagraph (A), by striking “report”  
10 and inserting “briefing”;

11 (4) by striking paragraph (3);

12 (5) by redesignating paragraph (4) as paragraph (3); and

13 (6) in paragraph (3) (as so redesignated), by striking “submit additional reports”  
14 and inserting “provide additional briefings”.

15 (b) ANNUAL REPORT ON MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE  
16 PEOPLE’S REPUBLIC OF CHINA.—Section 1202(b) of the National Defense Authorization Act for  
17 Fiscal Year 2000 (10 U.S.C. 113 note) is amended—

18 (1) by striking paragraphs (16), (25), (27), and (28); and

19 (2) by redesignating paragraphs (17), (18) through (24), and (26) as paragraphs  
20 (16) through (24), respectively.

21 (c) PRESIDENTIAL PROTECTION ASSISTANCE ACT OF 1976.—Section 9 of the Presidential  
22 Protection Assistance Act of 1976 (18 U.S.C. 3056 note) is hereby repealed.

1 (d) OPEN SKIES: REPORT ON OBSERVATION FLIGHTS.—Section 1236(c) of the National  
2 Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328) is amended—

3 (1) in the heading, by striking “QUARTERLY REPORT” and inserting “ANNUAL  
4 BRIEFING”;

5 (2) in paragraph (1), by striking “submit to” and all that follows and inserting  
6 “provide to the appropriate congressional committees on an annual basis a briefing on all  
7 observation flights by the Russian Federation over the United States during the preceding  
8 calendar year.”; and

9 (3) in paragraph (2), by striking “report” and inserting “briefing”.

10 (e) OPEN SKIES: IMPLEMENTATION PLAN.—Section 1235(a) of the National Defense  
11 Authorization Act for Fiscal Year 2018 (Public Law 115–91) is amended—

12 (1) in paragraph (1)—

13 (A) by striking “during such fiscal year” and inserting “during a calendar  
14 year”; and

15 (B) by striking “the President submits” and all that follows and inserting  
16 “the Secretary of Defense provides to the appropriate congressional committees a  
17 briefing on a plan described in paragraph (2) with respect to such calendar year.”;

18 (2) in paragraph (2), by striking “such fiscal year” and inserting “such calendar  
19 year”; and

20 (3) in paragraph (3), by striking “a fiscal year and submit the updated plan” and  
21 inserting “a calendar year and provide a briefing on the updated plan”.

22 (f) MILITARY ASSISTANCE TO UKRAINE.—Section 1275 of the National Defense  
23 Authorization Act for Fiscal Year 2015 (Public Law 113–291) is amended—

1 (1) in the heading, by striking “**REPORT**” and inserting “**BRIEFING**”;

2 (2) in subsection (b)—

3 (A) in the heading, by striking “REPORT” and inserting “BRIEFING”; and

4 (B) by striking “submit to the congressional defense committees a report”  
5 and inserting “provide to the congressional defense committees a briefing”;

6 (3) in subsection (c), by striking “report” and inserting “briefing”;

7 (4) by striking subsection (d); and

8 (5) by redesignating subsection (e) as subsection (d).

9 (g) HUMANITARIAN ASSISTANCE.—Section 2561 of title 10, United States Code, is  
10 amended—

11 (1) by striking subsection (c); and

12 (2) by redesignating subsections (d) and (e) as subsections (c) and (d),  
13 respectively.

14 (h) ANNUAL REPORT ON STATUS OF OVERSEAS CLOSURES AND REALIGNMENTS AND  
15 MASTER PLANS.—Section 2687a(a)(1) of title 10, United States Code is amended is amended by  
16 striking “a report on—“ and all that follows through “the status of development” and inserting “a  
17 report on the status of development”.

18 (i) QUARTERLY REPORT ON TRAINING OF PERSONNEL OF FOREIGN MINISTRIES WITH  
19 SECURITY MISSIONS.—Section 332(b) of title 10, United States Code, is amended—

20 (1) by striking “WITH SECURITY MISSIONS.—“ and all that follows through “The  
21 Secretary of Defense may” and inserting “WITH SECURITY MISSIONS.—The Secretary of  
22 Defense may”;

23 (2) by striking paragraph (2);



1 (3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2),  
2 respectively, and conforming the margins accordingly; and

3 (4) in paragraph (1) (as so redesignated), by redesignating clauses (i) through (iv)  
4 as subparagraphs (A) through (D) and conforming the margins accordingly.

5 (j) REPORT ON BUILDING THE CAPACITY OF FOREIGN SECURITY FORCES.—Section 1205 of  
6 the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291) is  
7 amended—

8 (1) by striking subsection (e); and

9 (2) by redesignating subsections (f) and (g) as subsections (e) and (f),  
10 respectively.

11 (k) ANNUAL REPORT ON TRAINING OF SECURITY FORCES TO PROMOTE RESPECT FOR THE  
12 RULE OF LAW AND HUMAN RIGHTS.—Section 1206 of the National Defense Authorization Act  
13 for Fiscal Year 2015 (10 U.S.C. 333 note) is amended—

14 (1) by striking subsection (e); and

15 (2) by redesignating subsections (f) and (g) as subsections (e) and (f),  
16 respectively.

17 (l) NOTIFICATION OF COORDINATION WITH ALLIES REGARDING INF TREATY.—Section  
18 1243 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129  
19 Stat. 1061) is amended—

20 (1) by striking subsection (c); and

21 (2) by redesignating subsections (d) and (e) as subsections (c) and (d),  
22 respectively.

1 (m) ANNUAL BRIEFING ON THE COSTS OF FORWARD-DEPLOYING NUCLEAR WEAPONS IN  
2 EUROPE.—Section 1656 of the National Defense Authorization Act for Fiscal Year 2016 (Public  
3 Law 114–92; 129 Stat. 1124) is hereby repealed.

4 (n) ANNUAL REPORT ON PLAN FOR NUCLEAR WEAPONS STOCKPILE; STRATEGIC DELIVERY  
5 SYSTEMS.—

6 (1) NUCLEAR WEAPONS STOCKPILE.—Section 1043 of the National Defense  
7 Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576) is  
8 amended—

9 (A) in subsection (a)(1), by striking “each of fiscal years” and inserting  
10 “each odd-numbered fiscal year of fiscal years”; and

11 (B) in subsection (b)—

12 (i) by striking “BUDGET OFFICE.—” and all that follows through  
13 “Not later than” and inserting “BUDGET OFFICE.—Not later than”;

14 (ii) by striking paragraphs (2) and (3);

15 (iii) by redesignating subparagraphs (A), (B), and (C) as  
16 paragraphs (1), (2), and (3), respectively, and conforming the margins  
17 accordingly; and

18 (iv) by striking “covered odd-numbered fiscal year report” each  
19 place it appears and inserting “report required under subsection (a)(1)”.

20 (2) STRATEGIC DELIVERY SYSTEMS.—Section 495 of title 10, United States Code,  
21 is amended—

22 (A) in subsection (a)—

1 (i) in the heading, by striking “ANNUAL” and inserting  
2 “BIENNIAL”; and  
3 (ii) in the matter preceding paragraph (1), by striking “annually”  
4 and inserting “biennially”; and  
5 (B) in subsection (b) in the matter preceding paragraph (1), by striking  
6 “next annual report” and inserting “next report”.

7 (o) BRIEFINGS ON NUCLEAR WEAPONS EMPLOYMENT STRATEGY.—Section 491(b) of title  
8 10, United States Code, is amended—

9 (1) in the heading, by striking “ANNUAL” and inserting “BIENNIAL”; and  
10 (2) by striking “each year” and inserting “each odd-numbered year”.

11 (p) INITIAL PLAN ON INCREASED SPECIAL DEFENSE ACQUISITION FUND.—Section 1202(c)  
12 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. 114 note) is  
13 amended—

14 (1) by striking paragraph (1); and  
15 (2) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3),  
16 respectively.

17 (q) CONSOLIDATED BUDGET FOR SECURITY COOPERATION.—Section 381(b) of title 10,  
18 United States Code, is amended—

19 (1) in the heading, by striking “QUARTERLY” and inserting “ANNUAL”; and  
20 (2) by striking “calendar quarter” each place it appears and inserting “calendar  
21 year”.

22 (r) ANNUAL REPORT ON SECURITY COOPERATION.—Section 386(b) of title 10, United  
23 States Code, is amended—

1 (1) in paragraph (1)—

2 (A) by striking “training, equipment, or assistance or reimbursement  
3 provided” and inserting “security cooperation activity conducted”; and

4 (B) by striking “the theater security cooperation strategy of the combatant  
5 command, as appropriate” and inserting “Department of Defense objectives”;

6 (2) by amending paragraph (2) to read as follows:

7 “(2) The obligations and expenditures of such activity.”;

8 (3) in paragraph (3), by striking “training, equipment, or assistance or  
9 reimbursement provided” and inserting “activity”;

10 (4) by amending paragraph (4) to read as follows:

11 “(4) A list of the foreign organizations involved in the activity.”; and

12 (5) by amending paragraph (5) to read as follows:

13 “(5) The number of members of the United States armed force involved in such  
14 activity and, if applicable, a description of the military benefits for such members.”.

15 (s) SMALL BUSINESS ACT.—

16 (1) REPORTING OF AWARDS MADE FROM SINGLE PROPOSAL, TO MULTIPLE AWARD  
17 WINNERS, OR TO CRITICAL TECHNOLOGY TOPICS.—Subsection (l) of section 9 of the  
18 Small Business Act (15 U.S.C. 638) is amended—

19 (A) in the heading, by striking “, TO MULTIPLE AWARD WINNERS,”;

20 (B) by striking paragraph (2); and

21 (C) by redesignating paragraph (3) as paragraph (2).

22 (2) COMMERCIALIZATION READINESS PROGRAM.—Subsection (b)(7) of section 9  
23 of the Small Business Act (15 U.S.C. 638) is amended—

1 (A) by striking subparagraph (F); and

2 (B) by redesignating subparagraph (G) as subparagraph (F).

3 (3) ENCOURAGING INNOVATION IN ENERGY EFFICIENCY.—Subsection (z)(1) of  
4 section 9 of the Small Business Act (15 U.S.C. 638) is amended—

5 (A) by striking “Administrator shall” and all that follows through “ensure  
6 that” and inserting “Administrator shall ensure that”;

7 (B) by striking “projects; and” and inserting “projects.”; and

8 (C) by striking subparagraph (B).

9 (t) RECOMMENDATIONS FOR INTERAGENCY VETTING OF FOREIGN INVESTMENTS

10 AFFECTING NATIONAL SECURITY.—Section 1069 of the National Defense Authorization Act for  
11 Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1580) is hereby repealed.

12 (u) ANNUAL REPORT ON DEFENSE ENVIRONMENTAL PROGRAMS.—

13 (1) IN GENERAL.—Section 2711 of title 10, United States Code, is hereby  
14 repealed.

15 (2) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of  
16 chapter 160 of title 10, United States Code, is amended by striking the item relating to  
17 section 2711.

18 (v) ANNUAL REPORT ON SCHEDULE DELAYS RELATED TO MILITARY CONSTRUCTION AND  
19 MILITARY FAMILY HOUSING.—Section 2851 of title 10, United States Code, is amended by  
20 striking subsection (d).

21 (w) CERTIFICATIONS ON COST SAVINGS ACHIEVED BY REDUCTIONS IN MAJOR

22 DEPARTMENT OF DEFENSE HEADQUARTERS ACTIVITIES.—Section 346(b) of the National Defense

1 Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 796; 10 U.S.C. 111 note)  
2 is amended by striking paragraph (6).

3 (x) ANNUAL DETERMINATION ON PLAN ON FULL INTEGRATION AND EXPLOITATION OF  
4 OVERHEAD PERSISTENT INFRARED CAPABILITY.—Section 1618 of the National Defense  
5 Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1108; 10 U.S.C. 2431  
6 note) is amended—

7 (1) by striking subsection (c); and

8 (2) by redesignating subsection (d) as subsection (c).

**[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 represents the Department of Defense’s latest effort to reduce the burden of recurring reporting requirements on the Department while ensuring that Congress continues to receive the information it requires.

This proposal would repeal and modify the statutory requirement for the submission of various recurring reports currently required by law. These proposed changes would allow the Department to employ its finite resources more efficiently and would improve Congress’s ability to conduct effective oversight by focusing that effort on reports of substantial importance and utility.

**Budget Implications:** This proposal has insignificant budget impact. Any incidental costs are accounted for within the Fiscal Year (FY) 2020 President's Budget.

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

#### **NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000**

SEC. 1202. ANNUAL REPORT ON MILITARY POWER OF THE PEOPLE'S REPUBLIC OF CHINA.

(a) ANNUAL REPORT.—Not later than January 31 of each year through January 31, 2021, the Secretary of Defense shall submit to the specified congressional committees a report, in both classified and unclassified form, on military and security developments involving the People's Republic of China. The report shall address the current and probable future course of military-

technological development of the People's Liberation Army and the tenets and probable development of Chinese security strategy and military strategy, and of military organizations and operational concepts, through the next 20 years. The report shall also address United States-China engagement and cooperation on security matters during the period covered by the report, including through United States-China military-to-military contacts, and the United States strategy for such engagement and cooperation in the future.

(b) MATTERS TO BE INCLUDED.—Each report under this section shall include analyses and forecasts of the following:

- (1) The goals and factors shaping Chinese security strategy and military strategy.
- (2) Trends in Chinese security and military behavior that would be designed to achieve, or that are inconsistent with, the goals described in paragraph (1).
- (3) The security situation in the Taiwan Strait.
- (4) Chinese strategy regarding Taiwan.
- (5) The size, location, and capabilities of Chinese strategic, land, sea, and air forces, including detailed analysis of those forces facing Taiwan.
- (6) China's overseas military basing and logistics infrastructure.
- (7) Developments in Chinese military doctrine and training.
- (8) Efforts, including by espionage and technology transfers through investment, industrial espionage, cybertheft, academia, and other means, by the People's Republic of China to develop, acquire, or gain access to information, communication, space and other advanced technologies that would enhance military capabilities or otherwise undermine the Department of Defense's capability to conduct information assurance. Such analyses shall include an assessment of the damage inflicted on the Department of Defense by reason thereof.
- (9) An assessment of any challenges during the preceding year to the deterrent forces of the Republic of China on Taiwan, consistent with the commitments made by the United States in the Taiwan Relations Act (Public Law 96–8) [22 U.S.C. 3301 et seq.].
- (10) Developments in China's asymmetric capabilities, including its strategy and efforts to develop and deploy cyberwarfare and electronic warfare capabilities, details on the number of malicious cyber incidents originating from China against Department of Defense infrastructure, and associated activities originating or suspected of originating from China.
- (11) The strategy and capabilities of Chinese space and counterspace programs, including trends, global and regional activities, the involvement of military and civilian organizations, including state-owned enterprises, academic institutions, and commercial entities, and efforts to develop, acquire, or gain access to advanced technologies that would enhance Chinese military capabilities.
- (12) Developments in China's nuclear program, including the size and state of China's stockpile, its nuclear strategy and associated doctrines, its civil and military production capacities, and projections of its future arsenals.
- (13) A description of China's anti-access and area denial capabilities.
- (14) A description of China's command, control, communications, computers, intelligence, surveillance, and reconnaissance modernization program and its applications for China's precision guided weapons.

(15) A description of the roles and activities of the People's Liberation Army Navy and those of China's paramilitary and maritime law enforcement vessels, including their capabilities, organizational affiliations, roles within China's overall maritime strategy, activities affecting United States allies and partners, and responses to United States naval activities.

~~(16) In consultation with the Secretary of Energy and the Secretary of State, developments regarding United States-China engagement and cooperation on security matters.~~

~~(17)~~ (16) The current state of United States military-to-military contacts with the People's Liberation Army, which shall include the following:

(A) A comprehensive and coordinated strategy for such military-to-military contacts and updates to the strategy.

(B) A summary of all such military-to-military contacts during the period covered by the report, including a summary of topics discussed and questions asked by the Chinese participants in those contacts.

(C) A description of such military-to-military contacts scheduled for the 12-month period following the period covered by the report and the plan for future contacts.

(D) The Secretary's assessment of the benefits the Chinese expect to gain from such military-to-military contacts.

(E) The Secretary's assessment of the benefits the Department of Defense expects to gain from such military-to-military contacts, and any concerns regarding such contacts.

(F) The Secretary's assessment of how such military-to-military contacts fit into the larger security relationship between the United States and the People's Republic of China.

(G) The Secretary's certification whether or not any military-to-military exchange or contact was conducted during the period covered by the report in violation of section 1201(a).

~~(18) An assessment of relations between China and the Russian Federation with respect to security and military matters.~~

~~(19)~~ (17) Other military and security developments involving the People's Republic of China that the Secretary of Defense considers relevant to United States national security.

~~(20)~~ (18) A description of Chinese military-to-military relationships with other countries, including the size and activity of military attache offices around the world and military education programs conducted in China for other countries or in other countries for the Chinese.

~~(21)~~ (19) A description of any significant sale or transfer of military hardware, expertise, and technology to or from the People's Republic of China, including a forecast of possible future sales and transfers, a description of the implications of those sales and transfers for the security of the United States and its partners and allies in Asia, and a description of any significant assistance to and from any selling state with military-related research and development programs in China.



~~(2220)~~ The status of the 5th generation fighter program of the People's Republic of China, including an assessment of each individual aircraft type, estimated initial and full operational capability dates, and the ability of such aircraft to provide air superiority.

~~(2321)~~ A summary of the order of battle of the People's Liberation Army, including anti-ship ballistic missiles, theater ballistic missiles, and land attack cruise missile inventory.

~~(2422)~~ A description of the People's Republic of China's military and nonmilitary activities in the South China Sea.

~~(25)~~ Any Chinese laws, regulations, or policies that could jeopardize the economic security of the United States.

~~(2623)~~ The relationship between Chinese overseas investment, including initiatives such as the Belt and Road Initiative, and Chinese security and military strategy objectives.

~~(27)~~ Efforts by the Government of the People's Republic of China to influence the media, cultural institutions, business, and academic and policy communities of the United States to be more favorable to its security and military strategy and objectives.

~~(28)~~ Efforts by the Government of the People's Republic of China to use nonmilitary tools in other countries, including diplomacy and political coercion, information operations, and economic pressure, including predatory lending practices, to support its security and military objectives.

\* \* \* \* \*

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

### SEC. 1043. ANNUAL REPORT ON THE PLAN FOR THE NUCLEAR WEAPONS STOCKPILE, NUCLEAR WEAPONS COMPLEX, NUCLEAR WEAPONS DELIVERY SYSTEMS, AND NUCLEAR WEAPONS COMMAND AND CONTROL SYSTEM.

(a) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 30 days after the submission to Congress of the budget of the President under section 1105(a) of title 31, United States Code, for each odd-numbered fiscal year of fiscal years 2013 through 2023, the President, in consultation with the Secretary of Defense and the Secretary of Energy, shall transmit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a detailed report on the plan for the nuclear weapons stockpile, nuclear weapons complex, nuclear weapons delivery systems, and nuclear weapons command and control system.

(2) ELEMENTS.—Each report required under paragraph (1) shall include the following:

(A) A detailed description of the plan to enhance the safety, security, and reliability of the nuclear weapons stockpile of the United States.

(B) A detailed description of the plan to sustain and modernize the nuclear weapons complex, including improving the safety of facilities, modernizing the infrastructure, and maintaining the key capabilities and competencies of the nuclear weapons workforce, including designers and technicians.

(C) A detailed description of the plan to maintain, modernize, and replace delivery systems for nuclear weapons.

(D) A detailed description of the plan to sustain and modernize the nuclear weapons command and control system.

(E) A detailed description of any plans to retire, dismantle, or eliminate any nuclear warheads or bombs, nuclear weapons delivery systems, or any platforms (including silos and submarines) which carry such nuclear warheads, bombs, or delivery systems.

(F) In accordance with paragraph (3), a detailed estimate of the budget requirements associated with sustaining and modernizing the nuclear deterrent of the United States and the nuclear weapons stockpile of the United States, including the costs associated with the plans outlined under subparagraphs (A) through (E), over the 10-year period following the date of the report, including the applicable and appropriate costs associated with the procurement, military construction, operation and maintenance, and research, development, test, and evaluation accounts of the Department of Defense. The Secretary may include information and data for a period beyond such 10-year period if the Secretary determines that such information and data is accurate and useful in understanding the long-term nuclear modernization plan.

(G) A detailed description of the steps taken to implement the plan submitted in the previous year, including difficulties encountered in implementing the plan in the previous year.

(3) BUDGET ESTIMATE CONTENTS AND METHODOLOGY.—Each budget estimate under paragraph (2)(F) shall include a detailed description of the costs included in such estimate and the methodology used to create such estimate.

(4) EXTENSION OF DEADLINE FOR REPORT.—

(A) IN GENERAL.—Subject to subparagraph (B), if the Secretary of Defense and the Secretary of Energy jointly determine that a report required by paragraph (1) for a fiscal year will not be able to be transmitted to the committees specified in that paragraph by the time required under that paragraph, such Secretaries shall—

(i) promptly, and before the submission to Congress of the budget of the President for that fiscal year under section 1105(a) of title 31, United States Code, notify those committees of the expected date for the transmission of the report; and

(ii) not later than 30 days after the submission of that budget to Congress, provide a briefing to those committees on the content of the report.

(B) LIMITATION.—In no case may the President transmit a report required by paragraph (1) for a fiscal year to the committees specified in that paragraph later than 60 days after the submission to Congress of the budget of the President for that fiscal year.

(b) ESTIMATE OF COSTS BY CONGRESSIONAL BUDGET OFFICE.—

~~(1) BUDGETS FOR ODD-NUMBERED FISCAL YEARS.—~~Not later than July 1 of each year in which the President transmits a ~~covered odd-numbered fiscal year report~~ report

required under subsection (a)(1), the Director of the Congressional Budget Office shall submit to the congressional defense committees a report that includes—

~~(A1)~~ an estimate of the costs during the 10-year period beginning on the date of such ~~covered odd-numbered fiscal year report~~ report required under subsection (a)(1) associated with fielding and maintaining the current nuclear weapons and nuclear weapon delivery systems of the United States;

~~(B2)~~ an estimate of the costs during such period of any life extension, modernization, or replacement of any current nuclear weapons or nuclear weapon delivery systems of the United States that is anticipated as of the date of such ~~covered odd-numbered fiscal year report~~ report required under subsection (a)(1); and

~~(C3)~~ an estimate of the relative percentage of total defense spending during such period represented by the costs estimated under subparagraphs (A) and (B).

~~(2) BUDGETS FOR EVEN-NUMBERED FISCAL YEARS.—If the Director determines that a covered even-numbered fiscal year report contains a significant change that affects the estimates of the Director included in the report submitted under paragraph (1) in the year prior to the year in which such covered even-numbered fiscal year report is submitted, the Director shall submit to the congressional defense committees a letter describing such significant changes.~~

~~(3) DEFINITIONS.—In this subsection:~~

~~(A) The term “covered even-numbered fiscal year report” means a report required to be transmitted under subsection (a)(1) not later than 30 days after the submission to Congress of the budget of the President for an even-numbered fiscal year.~~

~~(B) The term “covered odd-numbered fiscal year report” means a report required to be transmitted under subsection (a)(1) not later than 30 days after the submission to Congress of the budget of the President for an odd-numbered fiscal year.~~

\* \* \* \* \*

## **CARL LEVIN AND HOWARD P. ‘BUCK’ MCKEON NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015**

### **SEC. 1205. CODIFICATION AND ENHANCEMENT OF AUTHORITY TO BUILD THE CAPACITY OF FOREIGN SECURITY FORCES.**

~~(a) CODIFICATION, EXTENSION, AND ENHANCEMENT OF AUTHORITY.—~~

\* \* \* \* \*

~~(e) ANNUAL SECRETARY OF DEFENSE REPORTS.—~~

~~(1) IN GENERAL.—Not later than 90 days after the end of each of fiscal years 2015 through 2020, the Secretary of Defense shall submit to the appropriate committees of Congress a report summarizing the findings of the assessments of programs carried out~~

under subsection (f) of section 2282 of title 10, United States Code (as so added), during such fiscal year.

(2) ELEMENTS.— Each report under paragraph (1) shall include, for each program assessed under such subsection (f) during the fiscal year covered by such report, the following:

(A) A description of the nature and the extent of the potential or actual terrorist threat, if any, that the program is intended to address.

(B) A description of the program, including the objectives of the program, the types of recipient country units receiving assistance under the program, and the baseline operational capability and performance of the units receiving assistance under the program before the commencement of receipt of assistance under the program.

(C) A description of the extent to which the program is implemented by United States Government personnel or contractors.

(D) A description of the assessment framework to be used to develop capability and performance metrics associated with operational outcomes for units receiving assistance under the program.

(E) An assessment of the program using the assessment framework described in subparagraph (D).

(F) An assessment of the effectiveness of the program in achieving its intended purpose.

(~~f~~e) BIENNIAL COMPTROLLER GENERAL OF THE UNITED STATES AUDITS.—

(1) IN GENERAL.— Not later than March 31 of each of 2016, 2018 and 2020, the Comptroller General of the United States shall submit to the appropriate committees of Congress an audit of such program or programs conducted or supported pursuant to section 2282 of title 10, United States Code (as so added), during the preceding two fiscal years as the Comptroller General shall select for purposes of such report.

(2) ELEMENTS.— Each report should, to the extent information is available, include, for the program or programs covered by such report, the following:

(A) A description of the program or programs, including—

(i) the objectives of the program or programs;

(ii) the types of units receiving assistance under the program or programs;

(iii) the delivery and completion schedules for assistance under the program or programs; and

(iv) the baseline operational capability and performance of the units receiving assistance under the program or programs before the commencement of receipt of assistance under the program or programs.

(B) An assessment of the capacity of each recipient country to absorb assistance under the program or programs.

(C) An assessment of the arrangements, if any, for the sustainment of the program or programs, including any source of funds to support sustainment of the capabilities and performance outcomes achieved under the program or program beyond completion date, if applicable.

(D) An assessment of the effectiveness of the program or programs in achieving their intended purpose.

(E) Such other matters as the Comptroller considers appropriate.

(gf) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In subsections (e) and (f), the term “appropriate committees of Congress” has the meaning given that term in subsection (g) of section 2282 of title 10, United States Code (as so added).

\* \* \* \* \*

#### SEC. 1206. TRAINING OF SECURITY FORCES AND ASSOCIATED SECURITY MINISTRIES OF FOREIGN COUNTRIES TO PROMOTE RESPECT FOR THE RULE OF LAW AND HUMAN RIGHTS.

(a) IN GENERAL.—The Secretary of Defense is authorized to conduct human rights training of security forces and associated security ministries of foreign countries.

\* \* \* \* \*

~~(e) ANNUAL REPORTS.—Not later than March 31 each year through 2020, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the use of the authority in this section during the preceding fiscal year. Each report shall include information on any human rights training (as defined in subsection (f)) or other assistance that was provided during the fiscal year to foreign security forces.~~

(fe) DEFINITIONS.—In this section:

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

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

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

(2) The term “human rights training” means training for the purpose of directly improving the conduct of foreign security forces to—

(A) prevent gross violations of human rights and support accountability for such violations;

(B) strengthen compliance with the laws of armed conflict and respect for civilian control over the military;

(C) promote and assist in the establishment of a military justice system and other mechanisms for accountability; and

(D) prevent the use of child soldiers.

(gf) SUNSET.—The authority in subsection (a) shall expire on September 30, 2020.

\* \* \* \* \*

SEC. 1253. MILITARY-TO-MILITARY ENGAGEMENT WITH THE GOVERNMENT OF BURMA.

(a) AUTHORIZATION.—The Department of Defense is authorized to provide the Government of Burma the following:

- (1) Consultation, education, and training on human rights, the laws of armed conflict, civilian control of the military, rule of law, and other legal matters.
- (2) Consultation, education, and training on English-language, humanitarian and disaster relief, and improvements to medical and health standards.
- (3) Courses or workshops on defense institution reform.
- (4) Observer status to bilateral or multilateral humanitarian assistance and disaster relief exercises.
- (5) Aid or support in the event of a humanitarian crisis or natural disaster.

(b) ANNUAL ~~REPORTS~~ BRIEFINGS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and each March 1 thereafter, the Secretary of Defense shall, in consultation with the Secretary of State, ~~submit~~ provide to the appropriate committees of Congress a ~~report~~ briefing on military-to-military engagement between the United States Armed Forces and the Burmese military.

(2) ELEMENTS.—Each ~~report~~ briefing under paragraph (1) shall include the following:

(A) A description of the military-to-military activities between the United States and Burma, and how engagement with the Burmese military supports the United States national security strategy and promotes reform in Burma.

(B) A description of the objectives of the United States for developing the military-to-military relationship with the Burmese military, how the United States measures progress toward such objectives, and the implications of failing to achieve such objectives.

(C) A description and assessment of the political, military, economic, and civil society reforms being undertaken by the Government of Burma, including those affecting—

- (i) individual freedoms and human rights of the Burmese people, including those of ethnic and religious minorities and internally displaced populations;
- (ii) the peaceful settlement of armed conflicts between the Government of Burma and ethnic minority groups in Burma;
- (iii) civilian control of the armed forces;
- (iv) constitutional and electoral reforms;
- (v) access for the purposes of human rights monitoring and humanitarian assistance to all areas in Burma, and cooperation with civilian authorities to investigate and resolve cases of human rights violations;
- (vi) governmental transparency and accountability; and
- (vii) respect for the laws of armed conflict and human rights, including with respect to child soldiers.

(D) A description and assessment of relationships of the Government of Burma with unlawful or sanctioned entities.

~~(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.~~

(43) SUNSET.—The requirement to ~~submit additional reports~~ provide additional briefings under this subsection shall terminate at the end of the 5-year period beginning on the date of the enactment of this Act.

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#### SEC. 1275. REPORT BRIEFING ON MILITARY ASSISTANCE TO UKRAINE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should provide lethal and nonlethal military assistance to the Government of Ukraine to defend its territory and sovereignty from further aggressive actions designed to undermine regional peace and stability to the extent such assistance is defensive and non-provocative in nature.

(b) REPORT BRIEFING REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of Defense shall conduct an assessment and ~~submit~~ provide to the congressional defense committees a ~~report~~ briefing related to military assistance to Ukraine.

(c) ELEMENTS.—At a minimum, the ~~report~~ briefing required under subsection (b) should provide a detailed explanation of the following matters:

(1) Military equipment, supplies, and defense services, including type, quantity, and prioritization of such items, requested by the Government of Ukraine.

(2) Military equipment, supplies, and defense services, including type, quantity, and actual or estimated delivery date, that the United States Government has provided, is providing, and plans to provide to the Government of Ukraine.

(3) An assessment of what United States military assistance to the Government of Ukraine, including type and quantity, would most effectively improve the military readiness and capabilities of the Ukrainian military, including a discussion of those defensive, lethal capabilities that could be provided by the United States that would enable the Government of Ukraine to better ensure the territorial integrity of Ukraine.

(4) An assessment of the need for, appropriateness of, and force protection concerns of any United States military advisors that may be made available to the armed forces of Ukraine.

(5) Military training requested by the Government of Ukraine.

(6) Military training the United States Government has conducted with Ukraine in the previous six months.

(7) Military training the United States Government plans to conduct with the Government of Ukraine in the next year.

~~(d) FORM.—The report required under subsection (b) shall be unclassified in form, but may contain a classified annex.~~

(ed) SUNSET.—The requirements in this section shall terminate on January 31, 2021.

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

### SEC. 346. REDUCTION IN AMOUNTS AVAILABLE FOR DEPARTMENT HEADQUARTERS, ADMINISTRATIVE, AND SUPPORT ACTIVITIES.

\* \* \* \* \*

(b) HEADQUARTERS REDUCTIONS.—

\* \* \* \* \*

~~(6) CERTIFICATIONS ON COST SAVINGS ACHIEVED.~~ Not later than 120 days after the date of the enactment of this paragraph, and not later than 60 days after the end of each of fiscal years 2018 through 2020, the Director of Cost Assessment and Program Evaluation shall certify to the Secretary of Defense, and to the congressional defense committees, the following:

~~(A) The validity of the cost savings achieved for each major Department of Defense headquarters activity during the previous fiscal year, including the cost of personnel detailed by another Department entity to the headquarters activity.~~

~~(B) Whether the cost savings achieved for each major Department of Defense headquarters activity during that fiscal year met the savings objective for the headquarters activity for that fiscal year, as established pursuant to paragraph (1).~~

\* \* \* \* \*

### SEC. 1243. MEASURES IN RESPONSE TO NON-COMPLIANCE BY THE RUSSIAN FEDERATION WITH ITS OBLIGATIONS UNDER THE INF TREATY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the development and deployment of a nuclear groundlaunched cruise missile by the Russian Federation is in violation of the INF Treaty, and the Russian Federation should return to compliance with the INF Treaty;

(2) the increasing role for nuclear weapons in the Russian Federation's military strategy, and the continuing violation of the INF Treaty threatens the viability of the INF Treaty;

(3) efforts taken by the President to compel the Russian Federation to return to compliance with the INF Treaty, including by developing military and nonmilitary options, must be persistent and are in the best interests of the United States, but cannot be open-ended;

(4) not only should the Russian Federation end its cheating with respect to the INF Treaty, but also its illegal occupation of the sovereign territory of another nation, its plans for stationing nuclear weapons on that nation's territory, and its cheating and violation of as many as eight of its 12 arms control obligations and agreements; and



(5) there are several United States military requirements that would be addressed by the development and deployment of systems currently prohibited by the INF Treaty.

(b) NOTIFICATIONS OF RUSSIAN FEDERATION VIOLATIONS OF INF TREATY.—

(1) IN GENERAL.—The President shall submit to the appropriate congressional committees a notification of—

(A) whether the Russian Federation has flight-tested, deployed, or possesses a military system that has achieved an initial operating capability that is either a groundlaunched ballistic missile or ground-launched cruise missile with a flight-tested range of between 500 and 5,500 kilometers; and

(B) whether the Russian Federation has begun steps to return to full compliance with the INF Treaty, including by agreeing to inspections and verification measures necessary to achieve high confidence that any missile described in subparagraph (A) will be eliminated, as required by the INF Treaty upon its entry into force.

(2) DEADLINE.—The notification required under paragraph (1) shall be submitted not later than 30 days after the date of the enactment of this Act and not later than 30 days after the date on which the Russian Federation meets any of the conditions described in subparagraphs (A) and (B) of paragraph (1).

(3) FORM.—The notification required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

~~(c) NOTIFICATION OF COORDINATION WITH ALLIES REGARDING INF TREATY.—~~

~~(1) IN GENERAL.—Not later than 120 days after the date of the enactment, and every 120-day period thereafter for a period of 5 years, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall jointly, in coordination with the Secretary of State and the Director of National Intelligence, submit to the appropriate congressional committees a notification on the status and content of updates provided to the North Atlantic Treaty Organization (NATO) and allies of the United States in East Asia, on the Russian Federation's flight testing, operating capability and deployment of ground launched ballistic missiles or ground launched cruise missiles with a flighttested range of between 500 and 5,500 kilometers, including updates on the status and a description of efforts with such allies to develop collective responses (including economic and military responses) to arms control violations of the Russian Federation (including violations of the INF Treaty).~~

~~(2) FORM.—The notification required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.~~

~~(d)~~ (d) MILITARY RESPONSE OPTIONS TO RUSSIAN FEDERATION VIOLATION OF INF TREATY.—

(1) IN GENERAL.—If, as of the date of the enactment of this Act, the Russian Federation has not begun taking measures to return to full compliance with the INF Treaty, including by agreeing to verification measures necessary to achieve high confidence that any ground-launched ballistic missile or ground-launched cruise missile with a flight-tested range of between 500 and 5,500 kilometers will be eliminated, the Secretary of Defense shall, not later than 120 days after that date, submit to the

appropriate congressional committees a plan for the development of the following military capabilities:

(A) Counterforce capabilities to prevent intermediaterange ground-launched ballistic missile and cruise missile attacks, whether or not such capabilities are in compliance with the INF Treaty and including capabilities that may be acquired from allies of the United States.

(B) Countervailing strike capabilities to enhance the forces of the United States or allies of the United States, whether or not such capabilities are in compliance with the INF Treaty and including capabilities that may be acquired from allies of the United States.

(C) Active defenses to defend against intermediaterange ground-launched cruise missile attacks.

(2) COST AND SCHEDULE ESTIMATES.—The Secretary of Defense shall include in the plan required by paragraph (1), with respect to each military capability described in subparagraphs (A), (B), and (C) of that paragraph, an estimate of cost and the approximate time for achieving a Milestone A decision, if such a decision is required.

(3) AVAILABILITY OF FUNDS.—Using amounts authorized to be appropriated for fiscal year 2016 by section 201 and available for research, development, test, and evaluation, Defensewide, or otherwise made available, the Secretary of Defense shall carry out the development of capabilities pursuant to paragraph (1) that are recommended by the Chairman of the Joint Chiefs of Staff to meet military requirements and current capability gaps with respect to missiles described in paragraph (1). In making such a recommendation, the Chairman shall give priority to such capabilities that the Chairman determines could be tested and fielded most expediently, with the most priority given to capabilities that the Chairman determines could be fielded in two years.

(4) OTHER RESPONSE OPTIONS.—The Secretary of Defense shall also include in the plan required by paragraph (1) such other options as the Secretary of Defense or the Secretary of State consider useful to encourage the Russian Federation to return to full compliance with the INF Treaty or necessary to respond to the failure of the Russian Federation to return to full compliance with the INF Treaty.

(5) REPORTS ON DEVELOPMENT.—

(A) IN GENERAL.—During each 180-day period beginning on the date on which funds are first obligated to develop capabilities under paragraph (1), the Chairman of the Joint Chiefs of Staff shall submit to the appropriate congressional committees a report on such capabilities, including the costs of development (and estimated total costs of each system if pursued to deployment) and the time for development flight testing and deployment.

(B) SUNSET.—The provisions of subparagraph (A) shall not be in effect after the date on which the President certifies to the appropriate congressional committees that the INF Treaty is no longer in force or the Russian Federation has fully returned to compliance with its obligations under the INF Treaty.

(6) REPORT ON DEPLOYMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in coordination with the Secretary of State, submit to the appropriate congressional committees a report on the following:

(A) Potential deployment locations of the military capabilities described in paragraph (1) in East Asia and Eastern Europe, including any potential basing agreements that may be required to facilitate such deployments.

(B) Any required safety and security measures, estimates of potential costs of deployments described in subparagraph (A) and an assessment of whether or not such deployments in Eastern Europe may require a decision of the North Atlantic Council.

(ed) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INF TREATY.—The term “INF Treaty” means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate- Range and Shorter-Range Missiles, commonly referred to as the Intermediate-Range Nuclear Forces (INF) Treaty, signed at Washington, December 8, 1987, and entered into force June 1, 1988.

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#### SEC. 1618. PLAN ON FULL INTEGRATION AND EXPLOITATION OF OVERHEAD PERSISTENT INFRARED CAPABILITY.

(a) PLAN.—Not later than 180 days after the date of the enactment of this Act, the Commander of the United States Strategic Command and the Director of Cost Assessment and Program Evaluation, in coordination with the Director of National Intelligence, shall jointly submit to the appropriate congressional committees a plan for the integration of overhead persistent infrared capabilities to support the missions specified in subsection (b)(1).

(b) ELEMENTS.—The plan under subsection (a) shall—

(1) ensure that all overhead persistent infrared capabilities of the United States, including such capabilities that are planned to be developed, are integrated to allow for such capabilities to be exploited to support the requirements of the missions of the Department of Defense relating to—

(A) strategic and theater missile warning;

(B) ballistic and cruise missile defense, including with respect to missile tracking, fire control, and kill assessment;

(C) technical intelligence supporting missile warning;

(D) battlespace awareness;

(E) other technical intelligence;

(F) civil and environmental missions, including with respect to the collection of weather data; and

(G) battle damage assessments; and

(2) establish clear benchmarks by which to establish acquisition plans, manning, and budget requirements.

~~(c) ANNUAL DETERMINATION.—The Secretary of Defense shall include, together with, or not later than 30 days after, the budget justification materials submitted to Congress in support of the budget of the Department of Defense for a fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a written determination of how the plan under subsection (a) is being implemented.~~

~~(dc) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—~~

~~(1) the congressional defense committees; and~~

~~(2) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.~~

\* \* \* \* \*

#### ~~SEC. 1656. ANNUAL BRIEFING ON THE COSTS OF FORWARD-DEPLOYING NUCLEAR WEAPONS IN EUROPE.~~

~~(a) IN GENERAL.—Not later than 30 days after the date on which the President submits to Congress the budget for each of fiscal years 2017 through 2021 under section 1105 of title 31, United States Code, the Secretary of Defense shall provide to the congressional defense committees a briefing on the costs of forward-deploying nuclear weapons in Europe (not including costs relating to the life extension program for the B61 nuclear bomb).~~

~~(b) ELEMENTS.—Each briefing required under paragraph (1) shall include the following:~~

~~(1) The contributions of the United States, including with respect to sustainment (operations and maintenance) and manpower, to support forward-deployed nuclear weapons in Europe, but not costs that are attributed to non-nuclear missions, during the fiscal year following the date of the briefing and the period covered by the future years defense program submitted to Congress under section 221 of title 10, United States Code, for that fiscal year.~~

~~(2) Contributions made by the North Atlantic Treaty Organization (NATO) or member states of NATO relating to the extended deterrence mission.~~

~~(3) Recent or planned contributions of the United States for security enhancements (site-by-site) relating to support for such forward-deployed nuclear weapons and any other contributions, including burden-share costs by the United States, for other security enhancements and upgrades relating to such forward-deployed nuclear weapons, including infrastructure upgrades at weapons storage sites in Europe.~~

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017**

**SEC. 1202. SPECIAL DEFENSE ACQUISITION FUND MATTERS.**

(a) INCREASE IN SIZE.—

\* \* \* \* \*

(c) REPORTS.—

~~(1) INITIAL PLAN ON USE OF AUTHORITY.—Before exercising authority for use of amounts in the Special Defense Acquisition Fund in excess of the size of that Fund as of September 30, 2016, by reason of the amendments made by this section, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report on the plan for the use of such amounts.~~

(21) QUARTERLY SPENDING PLAN.—Not later than 30 days before the beginning of each fiscal year quarter, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a detailed plan for the use of amounts in the Special Defense Acquisition Fund for such fiscal year quarter.

(32) ANNUAL UPDATES.—Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report setting forth the inventory of defense articles and services acquired, possessed, and transferred through the Special Defense Acquisition Fund in such fiscal year.

(43) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term “appropriate committees of Congress” has the meaning given that term in section 301(1) of title 10, United States Code (as added by section 1241(a)(3) of this Act).

\* \* \* \* \*

**SEC. 1236. LIMITATION ON USE OF FUNDS TO VOTE TO APPROVE OR OTHERWISE ADOPT ANY IMPLEMENTING DECISION OF THE OPEN SKIES CONSULTATIVE COMMISSION AND RELATED REQUIREMENTS.**

(a) LIMITATION.—None of the funds authorized to be appropriated or otherwise made available by this Act or any other Act for fiscal year 2017 or any subsequent fiscal year may be used to vote to approve or otherwise adopt any implementing decision of the Open Skies Consultative Commission pursuant to Article X of the Open Skies Treaty to authorize approval of requests by state parties to the Treaty to certify infra-red or synthetic aperture radar sensors pursuant to Article IV of the Treaty unless and until the Secretary of Defense, jointly with the relevant United States Government officials, submits to the appropriate congressional committees the following:

(1) A certification that the implementing decision would not be detrimental or otherwise harmful to the national security of the United States.

(2) A report on the Open Skies Treaty that includes the following:

(A) The annual costs to the United States associated with countermeasures to combat potential abuses of observation flights by the Russian Federation carried out

under the Treaty over European and United States territories involving infra-red or synthetic aperture radar sensors.

(B) A plan, and its estimated comparative cost, to replace the Treaty architecture with a more robust sharing of overhead commercial imagery, consistent with United States national security, with covered state parties, excluding the Russian Federation.

(C) An evaluation by the Director of National Intelligence of matters concerning how an observation flight described in subparagraph (A) could implicate intelligence activities of the Russian Federation in the United States and United States counterintelligence activities and vulnerabilities.

(D) An assessment of how such information is used by the Russian Federation, for what purpose, and how the information fits into the Russian Federation's overall collection posture.

\* \* \* \* \*

~~(c) QUARTERLY REPORT~~ ANNUAL BRIEFING.—

(1) IN GENERAL.—The Secretary of Defense, jointly with the Secretary of Energy, the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall ~~submit~~ provide to the appropriate congressional committees on ~~a quarterly~~ an annual basis a ~~report~~ briefing on all observation flights by the Russian Federation over the United States during the preceding calendar ~~quarter~~ year.

(2) CONTENTS.—The ~~report~~ briefing required under paragraph (1) shall include the following with respect to each such observation flight:

(A) A description of the flight path.

(B) An analysis of whether and the extent to which any United States critical infrastructure was the subject of image capture activities of such observation flight.

(C) An estimate for the mitigation costs imposed on the Department of Defense or other United States Government agencies by such observation flight.

(D) An assessment of how such information is used by the Russian Federation, for what purpose, and how the information fits into the Russian Federation's overall collection posture.

(3) SUNSET.—The requirements of this subsection shall terminate 5 years after the date of the enactment of this Act.

## **NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018**

### ~~SEC. 1069. RECOMMENDATIONS FOR INTERAGENCY VETTING OF FOREIGN INVESTMENTS AFFECTING NATIONAL SECURITY.~~

~~(a) PLAN AND RECOMMENDATIONS REQUIRED.—The Secretary of Defense, in concurrence with the Secretary of State, the Secretary of Treasury, and the Director of National Intelligence, shall assess and develop a plan and recommendations for agencies of the United States Government, other than the Department of Defense, to improve the effectiveness of the~~

interagency vetting of foreign investments that could potentially impair the national security of the United States.

(b) ~~OBJECTIVES.~~—The recommendations required by subsection (a) shall have the following objectives:

~~(1) To increase collaboration and coordination among agencies of the United States Government in the identification and prevention of foreign investments that could potentially impair the national security of the United States.~~

~~(2) To increase collaboration and cooperation among the United States Government and governments of United States allies and partners on investments described in paragraph (1), including through information sharing.~~

~~(3) To increase collaboration and cooperation among agencies of the United States Government to identify and mitigate potential threats to critical United States technologies from foreign state-owned or state-controlled entities.~~

(c) ~~ANALYSIS.~~—The recommendations required by subsection (a) shall be based upon analysis of the following:

~~(1) Whether the current interagency vetting processes and policies place adequate focus on the potential threats presented by influence of the foreign governments over business entities seeking investment in the United States.~~

~~(2) The current or projected major vulnerabilities of the defense industrial base pertaining to foreign investment, including in the areas of cybersecurity, reliance on foreign suppliers in the defense supply chain access to materials that are essential for national defense, and the use of transportation assets and other critical infrastructure for training, mobilizing, and deploying forces.~~

~~(3) Whether the current interagency vetting process for foreign investments—~~

~~(A) requires additional resources to be effective;~~

~~(B) permits the interagency establishment adequate time to thoroughly review transactions and to conduct national security threat assessments;~~

~~(C) assesses the risks posed by transactions before they are implemented;~~

~~and~~

~~(D) provides adequate monitoring and compliance of agreements to mitigate such risks.~~

~~(4) The counterintelligence risks posed by purchases or leases of Federal land.~~

~~(5) Whether and to what extent industrial espionage is occurring against private United States companies to obtain commercial secrets related to critical or foundational technologies.~~

~~(6) Whether and to what extent foreseeable foreign investments have the potential to—~~

~~(A) reduce any United States technological or industrial advantage of the United States; or~~

~~(B) increase the vulnerability of the United States to information operations, including the purposeful dissemination of false or misleading information to the American public and the manipulation of American public opinion on critical public policy issues.~~

~~(7) Whether currently mandated annual reports to Congress on the interagency vetting of foreign investments should be revised to ensure that they provide valuable information.~~

~~(d) CONSIDERATIONS.—The recommendations required by subsection (a) shall take into consideration each of the following:~~

~~(1) Trends in foreign investment transactions, including joint ventures, the sale of assets pursuant to bankruptcy, and the purchase or lease of real estate in proximity to Government installations that could impair national security.~~

~~(2) Strategies used by foreign investors to exploit vulnerabilities in existing foreign investment vetting processes and regulations.~~

~~(3) Any market distortion or unfair competition incurred by foreign transactions that directly or indirectly impairs the national security or the United States.~~

~~(e) REPORTS.—~~

~~(1) INTERIM REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the progress of the Secretary in developing the recommendations required by subsection (a).~~

~~(2) FINAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report setting forth the recommendations developed pursuant to subsection (a).~~

~~(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.~~

~~(4) APPROPRIATE COMMITTEES OF CONGRESS.—In this subsection, the term “appropriate committees of Congress” means—~~

~~(A) the Committees on Armed Services of the Senate and the House of Representatives;~~

~~(B) the Committee on Foreign Affairs of the House of Representatives;~~

~~(C) the Committee on Foreign Relations of the Senate;~~

~~(D) the Committee on Financial Services of the House of Representatives;~~

~~(E) the Committee on Finance of the Senate;~~

~~(F) the Permanent Select Committee on Intelligence of the House of Representatives; and~~

~~(G) the Select Committee on Intelligence of the Senate.~~

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## SEC. 1235. LIMITATION ON AVAILABILITY OF FUNDS RELATING TO IMPLEMENTATION OF THE OPEN SKIES TREATY.

~~(a) LIMITATION ON CONDUCT OF FLIGHTS.—~~

~~(1) IN GENERAL.—None of the funds authorized to be appropriated by this Act or otherwise made available for any fiscal year after fiscal year 2017 for the Department of Defense for operation and maintenance, Defense-wide, or operation and maintenance, Air Force, may be obligated or expended to conduct any flight during such fiscal year a~~



calendar year for purposes of implementing the Open Skies Treaty until the date that is seven days after the date on which the President submits the Secretary of Defense provides to the appropriate congressional committees a briefing on a plan described in paragraph (2) with respect to such ~~fiscal~~ calendar year.

(2) PLAN DESCRIBED.—The plan described in this paragraph is a plan developed by the Secretary of Defense, in coordination with the Secretary of State, the Chairman of the Joint Chiefs of Staff, and the Director of National Intelligence, that contains a description of the objectives for all planned flights described in paragraph (1) during such ~~fiscal~~ calendar year.

(3) UPDATE.—To the extent necessary and appropriate, the Secretary of Defense, in coordination with the Secretary of State, the Chairman of the Joint Chiefs of Staff, and the Director of National Intelligence, may update the plan described in paragraph (2) with respect to a ~~fiscal~~ calendar year and ~~submit the~~ provide a briefing on the updated plan to the appropriate congressional committees.

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

(A) the congressional defense committees; and

(B) the Select Committee on Intelligence and Committee on Foreign Relations of the Senate and the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives.

(5) SUNSET.—The requirements of this subsection shall terminate on the date that is five years after the date of the enactment of this Act.

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## **PRESIDENTIAL PROTECTION ASSISTANCE ACT OF 1976**

~~SEC. 9. The Director, the Secretary of Defense, and the Commandant of the Coast Guard shall each transmit a detailed semi-annual report of expenditures made pursuant to this Act during the six-month period immediately preceding such report by the Secret Service, the Department of Defense, and the Coast Guard, respectively, to the Committees on Appropriations, Committees on the Judiciary, and Committees on Government Operations [now Committee on Oversight and Government Reform of the House of Representatives and Committee on Homeland Security and Governmental Affairs of the Senate] of the House of Representatives and the Senate, respectively, on March 31 and September 30, of each year.~~

### **Title 10, United States Code**

#### **§332. Friendly foreign countries; international and regional organizations: defense institution capacity building**

(a) MINISTRY OF DEFENSE ADVISOR AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to assign civilian employees of the Department of Defense and members of the armed forces as advisors to the ministries of defense (or security agencies serving a similar defense function) of foreign countries or regional organizations with security missions in order to—

(1) provide institutional, ministerial-level advice, and other training to personnel of the ministry or regional organization to which assigned in support of stabilization or post-conflict activities; or

(2) assist such ministry or regional organization in building core institutional capacity, competencies, and capabilities to manage defense-related processes.

(b) TRAINING OF PERSONNEL OF FOREIGN MINISTRIES WITH SECURITY MISSIONS.—

~~(1) IN GENERAL.~~—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to provide advisors or trainers to provide training and associated training support services to personnel of foreign ministries of defense (or ministries with security force oversight) or regional organizations with security missions—

~~(A1)~~ for the purpose of—

~~(iA)~~ enhancing civilian oversight of foreign security forces;

~~(iiB)~~ establishing responsible defense governance and internal controls in order to help build effective, transparent, and accountable defense institutions;

~~(iiiC)~~ assessing organizational weaknesses and establishing a roadmap for addressing shortfalls; and

~~(ivD)~~ enhancing ministerial, general or joint staff, or service level core management competencies; and

~~(B2)~~ for such other purposes as the Secretary considers appropriate, consistent with the authority in subsection (a).

~~(2) NOTICE TO CONGRESS.~~— Each fiscal year quarter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on activities under the program under paragraph (1) during the preceding fiscal year quarter. Each report shall include, for the fiscal year quarter covered by such report, the following:

~~(A) A list of activities under the program.~~

~~(B) A list of any organization described in paragraph (1) to which the Secretary provided advisors or trainers under the program, including the number of such advisors or trainers so provided, the duration of each provision of such an advisor or trainer, a brief description of the activities of each advisor or trainer so provided, and a statement of the cost of each provision of such an advisor or trainer.~~

~~(C) A comprehensive justification of any activities conducted pursuant to paragraph (1)(B).~~

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### §381. Consolidated budget

(a) CONSOLIDATED BUDGET.—The budget of the President for each fiscal year, as submitted to Congress by the President pursuant to section 1105 of title 31, shall set forth by budget function and as a separate item the amounts requested for the Department of Defense for such fiscal year for all security cooperation programs and activities of the Department of Defense, including the military departments, to be conducted in such fiscal year, including the specific country or region and the applicable authority, to the extent practicable.

(b) ~~QUARTERLY ANNUAL~~ REPORT ON USE OF FUNDS.—Not later than 30 days after the end of each calendar ~~quarter~~ year, the Secretary shall submit to the appropriate committees of Congress a report on the obligation and expenditure of funds for security cooperation programs and activities of the Department of Defense during such calendar ~~quarter~~ year.

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### §386. Annual report

(a) ANNUAL REPORT REQUIRED.—Not later than January 31 of each year beginning in 2018, the Secretary of Defense shall submit to the appropriate congressional committees a report that sets forth, on a country-by-country basis, a description of each program carried out by the Department of Defense under the authorities in subsection (c) to provide training, equipment, or other assistance or reimbursement during the fiscal year ending in the year before the year in which such report is submitted.

(b) ELEMENTS OF REPORT.—Each report required under subsection (a) shall provide for each program covered by such report, and for the reporting period covered by such report, the following:

(1) A description of the purpose, duration, and type of the ~~training, equipment, or assistance or reimbursement provided~~ security cooperation activity conducted, including how the training, equipment, or assistance or reimbursement provided advances ~~the theater security cooperation strategy of the combatant command, as appropriate~~ Department of Defense objectives.

(2) ~~The cost and expenditures of such training, equipment, or assistance or reimbursement, including by type of support provided~~ The obligations and expenditures of such activity.

(3) A description of the metrics, if any, used for assessing the effectiveness of such ~~training, equipment, or assistance or reimbursement provided~~ activity.

(4) ~~For each foreign country in which defense articles, defense services, supplies (including consumables), small-scale construction, or reimbursement were provided, a description of the extent of participation, if any, by the military forces and security forces or other government organizations of such foreign country~~ A list of the foreign organizations involved in the activity.

(5) ~~The number of members of the United States armed forces involved in providing such defense articles, defense services, supplies (including consumables), and small-scale construction, and, if applicable, a description of the military benefits for such members involved in providing such training, equipment, or assistance~~ The number of members of the United States armed force involved in such activity and, if applicable, a description of the military benefits for such members.

(6) A summary, by authority, of the activities carried out under each authority specified in subsection (c).

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### §491. Nuclear weapons employment strategy of the United States: reports on modification of strategy

(a) **REPORTS.**—By not later than 60 days before the date on which the President implements a nuclear weapons employment strategy of the United States that differs from the nuclear weapons employment strategy of the United States then in force, the President shall submit to Congress a report setting forth the following:

(1) A description of the modifications to the nuclear weapons employment strategy, plans, and options of the United States made by the strategy so issued.

(2) An assessment of effects of such modification for the nuclear posture of the United States.

(3) The implication of such changes on the flexibility and resilience of the strategic forces of the United States and the ability of such forces to support the goals of the United States with respect to nuclear deterrence, extended deterrence, assurance, and defense.

(4) The extent to which such modifications include an increased reliance on conventional or non-nuclear global strike capabilities or missile defenses of the United States.

(b) **ANNUAL BIENNIAL BRIEFINGS.**—Not later than March 15 of each odd-numbered year, the Secretary of Defense shall provide to the congressional defense committees a briefing regarding the nuclear weapons employment strategy, plans, and options of the United States.

(c) **REPORTS ON 2010 NUCLEAR POSTURE REVIEW IMPLEMENTATION STUDY DECISIONS.**—During each of fiscal years 2012 through 2021, not later than 60 days before the date on which the President carries out the results of the decisions made pursuant to the 2010 Nuclear Posture Review Implementation Study that would alter the nuclear weapons employment strategy, guidance, plans, or options of the United States, the President shall-

(1) ensure that the annual report required under section 1043(a)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576) is transmitted to Congress, if so required;

(2) ensure that the report required under section 494(a)(2)(A) of this title is transmitted to Congress, if so required under such section; and

(3) transmit to the congressional defense committees a report providing the high-, medium-, and low- confidence assessments of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) as to whether the United States will have significant warning of a strategic surprise or breakout caused by foreign nuclear weapons developments.

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#### **§495. Strategic delivery systems**

(a) **ANNUAL BIENNIAL CERTIFICATION.**—The President shall ~~annually~~ biennially certify in writing to the congressional defense committees whether plans to modernize or replace strategic delivery systems are fully funded at levels equal to or more than the levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense

Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2549), including plans regarding—

- (1) a heavy bomber and air-launched cruise missile;
- (2) an intercontinental ballistic missile;
- (3) a submarine-launched ballistic missile;
- (4) a ballistic missile submarine; and
- (5) maintaining the nuclear command and control system (as first reported under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576)).

(b) **ADDITIONAL REPORT MATTERS FOLLOWING CERTAIN CERTIFICATIONS.**—If in any year before fiscal year 2020 the President certifies under subsection (a) that plans to modernize or replace strategic delivery systems are not fully funded, the President shall include in the next ~~annual~~ report transmitted to Congress under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 the following:

(1) A determination of whether or not the lack of full funding will result in a loss of military capability when compared with the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010.

(2) If the determination under paragraph (1) is that the lack of full funding will result in a loss of military capability—

(A) a plan to preserve or retain the military capability that would otherwise be lost; or

(B) a report setting forth—

(i) an assessment of the impact of the lack of full funding on the strategic delivery systems specified in subsection (a); and

(ii) a description of the funding required to restore or maintain the capability.

(3) A certification by the President of whether or not the President is committed to accomplishing the modernization and replacement of strategic delivery systems and will meet the obligations concerning nuclear modernization as set forth in declaration 12 of the Resolution of Advice and Consent to Ratification of the New START Treaty.

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## **§2561. Humanitarian assistance**

(a) **AUTHORIZED ASSISTANCE.**—(1) To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

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

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

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

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

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

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

~~(B) The number of scheduled and completed transportation missions for purposes of providing humanitarian assistance under this section.~~

~~(C) A description of any transfer of excess nonlethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2557 of this title. The description shall include the date of the transfer, the entity to whom the transfer is made, and the quantity of items transferred.~~

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

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

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

~~(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.~~

~~(2) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.~~

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## **§2687a. Overseas base closures and realignments and basing master plans**

(a) ANNUAL REPORT ON STATUS OF OVERSEAS CLOSURES AND REALIGNMENTS AND MASTER PLANS.—(1) At the same time that the budget is submitted under section 1105(a) of title 31 for a fiscal year, the Secretary of Defense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on—

~~(A) the status of overseas base closure and realignment actions undertaken as part of a global defense posture realignment strategy; and~~

(B) the status of development and execution of comprehensive master plans for overseas military main operating bases, forward operating sites, and cooperative security locations.

(2) A report under paragraph (1) shall address the following:

(A) How the master plans described in paragraph (1)(B) would support the security commitments undertaken by the United States pursuant to any international security treaty.

(B) The impact of such plans on the current security environments in the combatant commands, including United States participation in theater security cooperation activities and bilateral partnership, exchanges, and training exercises.

(C) Any comments of the Secretary of Defense resulting from an interagency review of these plans that includes the Department of State and other Federal departments and agencies that the Secretary of Defense considers necessary for national security.

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#### **~~§2711. Annual report on defense environmental programs~~**

~~(a) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on defense environmental programs. Each report shall include:~~

~~(1) With respect to environmental restoration activities of the Department of Defense, and for each of the military departments, the following elements:~~

~~(A) Information on the Environmental Restoration Program, including the following:~~

~~(i) The total number of sites in the Environmental Restoration Program.~~

~~(ii) The number of sites in the Environmental Restoration Program that have reached the Remedy in Place Stage and the Response Complete Stage, and the change in such numbers in the preceding fiscal year.~~

~~(iii) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, the Environmental Restoration Program during the fiscal year for which the budget is submitted.~~

~~(iv) The Secretary's assessment of the overall progress of the Environmental Restoration Program.~~

~~(B) Information on the Military Munitions Restoration Program (MMRP), including the following:~~

~~(i) The total number of sites in the MMRP.~~

(ii) ~~The number of sites that have reached the Remedy in Place Stage and the Response Complete Stage, and the change in such numbers in the preceding fiscal year.~~

(iii) ~~A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, the MMRP during the fiscal year for which the budget is submitted.~~

(iv) ~~The Secretary's assessment of the overall progress of the MMRP.~~

(2) ~~With respect to each of the major activities under the environmental quality program of the Department of Defense and for each of the military departments—~~

~~(A) a statement of the amount expended, or proposed to be expended, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the current fiscal year, the fiscal year for which the budget is submitted, and the fiscal year following the fiscal year for which the budget is submitted; and~~

~~(B) an explanation for any significant change in such amounts during the period covered.~~

(3) ~~With respect to the environmental technology program of the Department of Defense—~~

~~(A) a report on the progress made in achieving the objectives and goals of its environmental technology program during the preceding fiscal year and an overall trend analysis for the program covering the previous four fiscal years; and~~

~~(B) a statement of the amount expended, or proposed to be expended, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year for which the budget is submitted, and the fiscal year following the fiscal year for which the budget is submitted.~~

(b) ~~DEFINITIONS.— For purposes of this section—~~

~~(1) the term "environmental quality program" means a program of activities relating to environmental compliance, conservation, pollution prevention, and other activities relating to environmental quality as the Secretary may designate; and~~

~~(2) the term "major activities" with respect to an environmental program means—~~

~~(A) environmental compliance activities;~~

~~(B) conservation activities; and~~

~~(C) pollution prevention activities.~~

\* \* \* \* \*

## **§2851. Supervision of military construction projects**

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or



Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.-A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(c) MAINTENANCE OF MILITARY CONSTRUCTION INFORMATION ON INTERNET; ACCESS.-(1) The Secretary of Defense shall maintain an Internet site that will permit a person to access and view on a separate page of the Internet site a document or other file containing the information required by paragraph (2) for the following:

(A) Each military construction project or military family housing project that has been specifically authorized by Act of Congress.

(B) Each project carried out with funds authorized for the operation and maintenance of military family housing.

(C) Each project carried out with funds authorized for the improvement of military family housing units.

(D) Each unspecified minor construction project carried out under the authority of section 2805(a) of this title.

(E) Each military construction project or military family housing project regarding which a statutory requirement exists to notify Congress.

(2) The information to be provided via the Internet site required by paragraph (1) for each project described in such paragraph shall include the following:

(A) The solicitation date and award date (or anticipated dates) for each contract entered into (or to be entered into) by the United States in connection with the project.

(B) The contract recipient, contract award amount, construction milestone schedule proposed by the contractor, and construction completion date stipulated in the awarded contract.

(C) The most current Department of Defense Form 1391, Military Construction Project Data, for the project.

(D) The progress of the project, including the percentage of construction currently completed and the current estimated construction completion date.

(E) The current contract obligation of funds for the project, including any changes to the original contract award amount.

(F) If funds appropriated for the project have been diverted for use in another project, the project to which the funds were diverted and the amount so diverted.

(G) For accounts such as planning and design, unspecified minor construction, and family housing operation and maintenance, detailed information regarding expenditures and anticipated expenditures under these accounts and the purposes for which the expenditures are made.

(3) The information required to be provided for each project described in paragraph (1) shall be made available on the Internet site required by such paragraph not later than 90 days after the award of a contract or delivery order for the project. The Secretary of Defense shall update the required information as promptly as practicable, but not less frequently than once a month, to ensure that the information is available in a timely manner.

~~(d) ANNUAL REPORT ON SCHEDULE DELAYS. Not later than March 1 of each year (beginning with 2018), the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and Senate a report on each military construction project or military family housing project for which, as of the end of the most recent fiscal year, the estimated completion date is more than 1 year later than the completion date proposed at the time the contract for the project was awarded.~~

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## **Small Business Act**

SEC. 9. (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

(b) It shall be the duty of the Administration, and it is hereby empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;

(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section; and

(4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs and small business technology transfer programs;

(5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small business' opportunities to respond to solicitations;

(6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies;

(7) to report not less than annually to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including—

(A) the data on output and outcomes collected pursuant to subsections (g)(8) and (o)(9);

(B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns and firms with venture capital, hedge fund, or private equity firm investment (including those majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms) under each of the SBIR and STTR programs;

(C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women or by socially or economically disadvantaged individuals under each of the SBIR and STTR programs;

(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (dd) for firms owned in majority part by venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program;

(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies; and

~~(F) an accounting of funds, initiatives, and outcomes under the Commercialization Readiness Program; and~~

~~(G)~~ a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k);

(8) to provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(9) to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data.

\* \* \* \* \*

~~(1) REPORTING OF AWARDS MADE FROM SINGLE PROPOSAL, TO MULTIPLE AWARD WINNERS, OR TO CRITICAL TECHNOLOGY TOPICS.—~~

~~(1) SINGLE PROPOSAL.—~~If a Federal agency required to establish an SBIR program under subsection (f) makes an award with respect to an SBIR solicitation topic or subtopic for which the agency received only 1 proposal, the agency shall provide written justification for making the award in its next quarterly report to the Administration and in the agency's next annual report required under subsection (g)(8).

~~(2) MULTIPLE AWARDS.—~~An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) an accounting of the awards the agency has made for Phase I of an SBIR program during the reporting period to entities that have received more than 15 awards for the Phase II of an SBIR program during the preceding 5 fiscal years.

~~(3) CRITICAL TECHNOLOGY AWARDS.—~~An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8), an accounting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3), including an identification of the specific critical technologies topics, and the

percentage by number and dollar amount of the agency's total SBIR awards to such critical technology topics.

\* \* \* \* \*

(z) ENCOURAGING INNOVATION IN ENERGY EFFICIENCY.—

(1) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its duties under this section relating to SBIR and STTR solicitations by Federal departments and agencies, the Administrator shall—

~~(A) ensure that such departments and agencies give high priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects; and~~

~~(B) include in the annual report to Congress under subsection (b)(7) a determination of whether the priority described in subparagraph (A) is being carried out.~~

(2) CONSULTATION REQUIRED.—The Administrator shall consult with the heads of other Federal departments and agencies in determining whether priority has been given to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects, as required by this subsection.

(3) GUIDELINES.—The Administrator shall, as soon as is practicable after the date of enactment of this subsection, issue guidelines and directives to assist Federal agencies in meeting the requirements of this subsection.

(4) DEFINITIONS.—In this subsection—

(A) the term “biomass” —

(i) means any organic material that is available on a renewable or recurring basis, including—

(I) agricultural crops;

(II) trees grown for energy production;

(III) wood waste and wood residues;

(IV) plants (including aquatic plants and grasses);

(V) residues;

(VI) fibers;

(VII) animal wastes and other waste materials; and

(VIII) fats, oils, and greases (including recycled fats, oils,

and greases); and

(ii) does not include—

(I) paper that is commonly recycled; or

(II) unsegregated solid waste;

(B) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(C) the term “renewable energy system” means a system of energy derived from—

(i) a wind, solar, biomass (including biodiesel), or geothermal source; or

(ii) hydrogen derived from biomass or water using an energy source described in clause (i).

\* \* \* \* \*

1 **SEC. \_\_. REVISION OF AUTHORITY TO SUPPORT A UNIFIED COUNTERDRUG**  
2 **AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.**

3 Section 1021(a)(1) of the National Defense Authorization Act for Fiscal Year 2005  
4 (Public Law 108–375; 118 Stat. 2042) is amended by striking “organizations designated as” and  
5 all that follows through the period at the end and inserting “terrorist organizations or other  
6 illegally armed groups that the Secretary of Defense, with the concurrence of the Secretary of  
7 State, determines pose a threat to the national security interests of the United States.”.

**[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 seeks to amend DoD’s authority to support Colombia’s unified counternarcotics and counterterrorism campaign to allow DoD support related to the implementation of the Colombian peace accord agreed to in 2016. This change intends to enhance DoD’s support to the National Drug Control Strategy and the President’s Executive Order of February 9, 2017, which calls for efforts to “identify, interdict, disrupt, and dismantle transnational criminal organizations and subsidiary organizations” and to “enhance cooperation with foreign counterparts against transnational criminal organizations.”

The proposal would revise section 1021 of the National Defense Authorization Act for Fiscal Year 2005 to enhance U.S. support for Colombia’s efforts to confront the intertwined issues of drug trafficking and terrorism. Section 1021 eliminated a distinction between counter-drug support and counter-terrorism, which had begun to create operational inefficiencies. Section 1021 and similar expanded authorities provided to the Department of State were therefore tailored to Colombia’s unique context. These authorities have been instrumental to the Government of Colombia’s efforts to bring about a lasting end to the longest running civil war in the Western Hemisphere. As the Government of Colombia continues to implement a peace agreement with the Revolutionary Armed Forces of Colombia (FARC), Colombia will continue to be challenged by terrorist organizations and other illegal armed groups that threaten Colombian and U.S. national security interests by conducting sophisticated attacks against Colombian security forces, assassinations, and kidnappings, while maintaining control of lucrative cocaine production and trafficking routes.

When section 1021 was first enacted in 2002, the focus of Colombia’s efforts was centered on three principal groups—the FARC, the National Liberation Army (ELN), and the United Self-Defense Forces (AUC)—each of which was designated as both a drug trafficking organization and a terrorist organization. Although the ELN is the only active group of the three terrorist organizations listed in section 1021, these groups have splintered into more than a dozen

groups with varying levels of sophistication. This proposal would therefore expand support available to counter illegal armed groups that may or may not be designated as terrorist organizations, but it would be limited to those that the Secretary of Defense determines pose a threat to U.S. national security interests. These changes to section 1021 are intended to adapt the authority to the current challenges Colombia is facing, while preserving the critical elements that have made it successful to date.

The proposal would also require that the Secretary of State concur with DoD’s determination of what terrorist organizations in Colombia are threats to the national security of the United States.

**Budget Implications:** The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President’s Budget. Funds used under this authority would come from the Drug Interdiction and Counter-Drug Activities, Defense appropriation.

<b>RESOURCE REQUIREMENTS (\$MILLIONS)</b>						
	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Appropriation From</b>
Drug Interdiction and Counter Drug Activities, Defense	\$45	\$45	\$45	\$45	\$45	Drug Interdiction and Counter Drug Activities, Defense
<b>Total</b>	<b>\$45</b>	<b>\$45</b>	<b>\$45</b>	<b>\$45</b>	<b>\$45</b>	

**Changes to Existing Law:** This proposal would make the following changes to section 1021 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375):

**SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.**

(a) **AUTHORITY.**—(1) In fiscal years 2005 through 2022, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by ~~organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)~~ terrorist organizations or other illegally armed groups that the Secretary of Defense, with the concurrence of the Secretary of State, determines pose a threat to the national security interests of the United States.

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations

(b) **APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.**—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(c) **NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.**—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia under subsection (a) in fiscal years 2005 through 2022, shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) **LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.**—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) **RELATION TO OTHER AUTHORITY.**—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) **REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.**—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.



1 **SEC. \_\_\_\_. REVISION TO CERTAIN OVERSEAS CONTINGENCY OPERATIONS-**  
2 **RELATED INSPECTOR GENERAL AUTHORITIES: WRITTEN**  
3 **NOTIFICATION.**

4 (a) NOTICE BY SECRETARY OF DEFENSE.—Section 113 of title 10, United States Code, is  
5 amended by adding at the end the following new subsection:

6 “(n) NOTIFICATION OF CERTAIN CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR  
7 GENERAL ACT OF 1978.—(1) The Secretary of Defense shall provide to the Chair of the Council  
8 of Inspectors General on Integrity and Efficiency written notification of the commencement or  
9 designation of a military operation as an overseas contingency operation upon the earlier of—

10 “(A) a determination by the Secretary that the overseas contingency operation is  
11 expected to exceed 60 days; or

12 “(B) the date on which the overseas contingency operation exceeds 60 days.

13 “(2) The Secretary shall provide written notification of the termination of an overseas  
14 contingency operation for which the Secretary provided notice in accordance with paragraph (1)  
15 to the Chair and the lead Inspector General for such overseas contingency operation designated  
16 by the Chair under section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L).”.

17 (b) ESTABLISHMENT AND TERMINATION OF LEAD INSPECTOR GENERAL BASED ON  
18 NOTIFICATION.—Section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L) is  
19 amended—

20 (1) in subsection (a), by striking “Upon the commencement or designation of a  
21 military operation as an overseas contingency operation that exceeds 60 days” and  
22 inserting “Upon receipt of a notification under section 113(n)(1) of title 10, United States  
23 Code, with respect to an overseas contingency operation”;

1 (2) in subsection (d)(1), by striking “the commencement or designation of the  
2 military operation concerned as an overseas contingency operation that exceeds 60 days”  
3 and inserting “receipt of a notification under section 113(n)(1) of title 10, United States  
4 Code, with respect to an overseas contingency operation”; and

5 (3) in subsection (e), by striking “shall cease at the end of the” and inserting  
6 “shall cease upon the earlier of—

7 “(1) the date that is 90 days after the date on which the Chair of the Council of  
8 Inspectors General on Integrity and Efficiency and the lead Inspector General for such  
9 overseas contingency operation receive notice of the termination of such overseas  
10 contingency operation provided in accordance with section 113(n)(2) of title 10, United  
11 States Code; or

12 “(2) the end of the”.

**[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 113 of title 10, United States Code (U.S.C.), to direct the Secretary of Defense to provide written notice to the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) of the designation or the commencement of an overseas contingency operation (OCO), and that such notice occurs upon the earlier of (1) a determination by the Secretary that an OCO is expected to exceed 60 days or (2) the date on which the OCO exceeds 60 days. This proposal also would modify section 8L of the Inspector General Act of 1978 to clarify that the CIGIE Chair’s additional responsibilities commence upon receipt of the notification provided for in 10 U.S.C. 113. In addition, this proposal would amend section 8L to clarify when the lead IG’s responsibilities for an OCO conclude.

#### *1) CIGIE Chair OCO Notification*

Section 8L(a) and (d)(1) state that the CIGIE Chair shall have additional responsibilities “upon the commencement or designation of a military operation as an overseas contingency operation.” Yet there exists no mechanism to ensure that the CIGIE Chair is made aware of such events. Specifically, there exists no mechanism to ensure notification of a 10 U.S.C. 101(a)(13)(A) Secretary of Defense OCO designation. As a result, the lead IG designation for

Operation FREEDOM'S SENTINEL (OFS) was delayed because neither the CIGIE Chair nor the Department of Defense Office of Inspector General (DoD OIG) was notified of the Secretary of Defense's January 1, 2015, OFS OCO designation. Additionally, there exists no mechanism to ensure CIGIE Chair notification of 10 U.S.C. 101(a)(13)(B) events comprising the commencement of an OCO. As a result, no notification was provided to the CIGIE Chair or DoD OIG that reservists had been called to support Operation UNITED ASSISTANCE (OUA) in November 2014.

To remedy this, we propose adding a provision to 10 U.S.C. 113 directing the Secretary of Defense to provide written notice to the CIGIE Chair of the designation or the commencement of an OCO.

### *2) The Lead IG Triggering Event*

In section 8L(a) and (d)(1), an ambiguity exists as to when responsibilities of the CIGIE Chair are to be activated. As written, they become effective upon "the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days." Yet no provision exists specifying exactly when an OCO exceeds 60 days. Additionally, there are no provisions to address instances when the commencement of a military operation and the designation of it as an OCO occur on different days. For example, when military operations in Iraq and Syria began in July 2014, and Operation INHERENT RESOLVE (OIR) was designated an OCO in October 2014, subsections (a) and (d)(1) provided conflicting information as to when the CIGIE Chair's responsibilities commenced.

Additionally, in discussions with congressional staff members, we learned that the 60-day provision was originally written into subsections (a) and (d)(1) in order to ensure that lead IGs were not designated for short-term OCOs. However, in situations where the Department of Defense fully anticipates that an OCO will last for many months or years, the 60-day requirement results in unnecessary delays. For example, execute orders for both OIR and OFS, issued the day each was designated an OCO, clearly indicated that multiyear operations were expected. Yet in both instances, CIGIE Chair responsibilities did not commence until 60 days had elapsed, resulting in a full 90 days before lead IG designations occurred.

To remedy this, we propose adding a provision to 10 U.S.C. 113 directing the Secretary of Defense to provide written notice to the CIGIE Chair if the Secretary expects an OCO to exceed 60 days or, if the expected duration is unknown, after the 60<sup>th</sup> day of operations. We also propose that section 8L(a) and (d)(1) be revised to clarify that the CIGIE Chair's additional responsibilities commence upon receipt of the notification provided for in 10 U.S.C. 113.

### *3) The Lead IG Sunset*

The current section 8L(e) contains no provision for concluding a lead IG's oversight responsibilities of an OCO other than at the end of a fiscal year in which appropriations are less than \$100,000,000. Yet Operation ENDURING FREEDOM concluded in December 2014 and OUA concluded in June 2016. Clarity in linking the termination of lead IG oversight of an OCO

with the conclusion of an OCO may lead to more efficient allocation and prioritization of limited IG oversight resources.

To remedy this, we propose that the section 8L(e) sunset criteria be amended to require that a lead IG’s responsibilities for an OCO conclude upon the earlier of: (1) the end of the fiscal year (FY) in which OCO appropriations are less than \$100,000,000; or (2) 90 days after the CIGIE Chair receives official written notification that an OCO has concluded. We also recommend that 10 U.S.C. 113 be amended to include a provision ensuring that the CIGIE Chair is provided notification of the conclusion of an OCO.

**Budget Implications:** This proposal would not have any budget implications.

**Changes to Existing Law:** This proposal would make the following changes to section 113 of title 10, United States Code, and section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L):

*TITLE 10, UNITED STATES CODE*

**§ 113. Secretary of Defense**

(a)\*\*\*

\* \* \* \* \*

(n) NOTIFICATION OF CERTAIN CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR GENERAL ACT OF 1978.—(1) The Secretary of Defense shall provide to the Chair of the Council of Inspectors General on Integrity and Efficiency written notification of the commencement or designation of a military operation as an overseas contingency operation upon the earlier of—

(A) a determination by the Secretary that the overseas contingency operation is expected to exceed 60 days; or

(B) the date on which the overseas contingency operation exceeds 60 days.

(2) The Secretary shall provide written notification of the termination of an overseas contingency operation for which the Secretary provided notice in accordance with paragraph (1) to the Chair and the lead Inspector General for such overseas contingency operation designated by the Chair under section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L).

*INSPECTOR GENERAL ACT OF 1978*

**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~~receipt of a notification under section 113(n)(1) of title 10, United States Code, with respect to 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).

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

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

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

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

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

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

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

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

(d) LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATION.—(1) 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 a military operation as~~ receipt of a notification under section 113(n)(1) of title 10, United States Code, with respect to 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:

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

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

(C) To review and ascertain the accuracy of information provided by Federal agencies relating to obligations and expenditures, costs of programs and projects,

accountability of funds, and the award and execution of major contracts, grants, and agreements in support of the contingency operation.

(D)(i) If none of the Inspectors General specified in subsection (c) has principal jurisdiction over a matter with respect to the contingency operation, to exercise responsibility for discharging oversight responsibilities in accordance with this Act with respect to such matter.

(ii) If more than one of the Inspectors General specified in subsection (c) has jurisdiction over a matter with respect to the contingency operation, to determine principal jurisdiction for discharging oversight responsibilities in accordance with this Act with respect to such matter.

(F) To submit to Congress on a bi-annual basis, and to make available on an Internet website available to the public, a report on the activities of the lead Inspector General and the other Inspectors General specified in subsection (c) with respect to the contingency operation, including—

(i) the status and results of investigations, inspections, and audits and of referrals to the Department of Justice; and

(ii) overall plans for the review of the contingency operation by inspectors general, including plans for investigations, inspections, and audits.

(G) To submit to Congress on a quarterly basis, and to make available on an Internet website available to the public, a report on the contingency operation.

(H) To carry out such other responsibilities relating to the coordination and efficient and effective discharge by the Inspectors General specified in subsection (c) of duties relating to the contingency operation as the lead Inspector General shall specify.

(e) SUNSET FOR PARTICULAR CONTINGENCY OPERATIONS.—The requirements and authorities of this section with respect to an overseas contingency operation shall cease upon the earlier of—

(1) the date that is 90 days after the date on which the Chair of the Council of Inspectors General on Integrity and Efficiency and the lead Inspector General for such overseas contingency operation receive notice of the termination of such overseas contingency operation provided in accordance with section 113(n)(2) of title 10, United States Code; or

(2) at the end of the first fiscal year after the commencement or designation of the contingency operation in which the total amount appropriated for the contingency operation is less than \$100,000,000.

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