SEC. ___. AFGHANISTAN SECURITY FORCES FUND.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 2020 for the Afghanistan Security Forces Fund, as established by section 1513 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 428), as most recently amended by section 1223(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), in the amount of $4,803,978,000.

(b) CONTINUATION OF PRIOR AUTHORITIES AND NOTICE AND REPORTING REQUIREMENTS.—Funds available to the Department of Defense for the Afghanistan Security Forces Fund for fiscal year 2020 shall be subject to the conditions contained in subsections (b) through (f) of such section 1513.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Subsection (b)(1) of such section 1513 is amended by striking "security forces of the Ministry of Defense and the Ministry of the Interior of the Government of the Islamic Republic of Afghanistan" and inserting "security forces of Afghanistan."

(2) TYPE OF ASSISTANCE.—Subsection (b)(2) of such section 1513 is amended by inserting "(including program and security assistance management support)" after "services".

(d) EQUIPMENT DISPOSITION.—

(1) ACCEPTANCE OF CERTAIN EQUIPMENT.—Subject to paragraph (2), the Secretary of Defense may accept equipment that is procured using amounts in the

Afghanistan Security Forces Fund authorized under this Act and is intended for transfer to the security forces of Afghanistan, but is not accepted by such security forces.

(2) CONDITIONS ON ACCEPTANCE OF EQUIPMENT.—Before accepting any equipment under the authority provided by paragraph (1), the Commander of United States forces in Afghanistan shall make a determination that the equipment was procured for the purpose of meeting requirements of the security forces of Afghanistan, as agreed to by both the Government of Afghanistan and the United States, but is no longer required by such security forces or was damaged before transfer to such security forces.

(3) ELEMENTS OF DETERMINATION.—In making a determination under paragraph (2) regarding equipment, the Commander of United States forces in Afghanistan shall consider alternatives to Secretary of Defense acceptance of the equipment. An explanation of each determination, including the basis for the determination and the alternatives considered, shall be included in the relevant quarterly report required under paragraph (5).

(4) TREATMENT AS DEPARTMENT OF DEFENSE STOCKS.—Equipment accepted under the authority provided by paragraph (1) may be treated as stocks of the Department of Defense upon notification to the congressional defense committees of such treatment.

(5) QUARTERLY REPORTS ON EQUIPMENT DISPOSITION.—Not later than 90 days after the date of the enactment of this Act and every 90-day period thereafter during which the authority provided by paragraph (1) is exercised, the Secretary of Defense shall submit to the congressional defense committees a report describing the equipment accepted under this subsection, under section 1531(d) of the National Defense

Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 938; 10 U.S.C. 2302 note), and under section 1532(b) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3612) during the period covered by the report. Each report shall include a list of all equipment that was accepted during the period covered by the report and treated as stocks of the Department, and copies of the determinations made under paragraph (2), as required by paragraph (3).

[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 authorize $4,803,978,000 for the Afghanistan Security Forces Fund (ASFF) for fiscal year (FY) 2020 and continue certain established provisions applicable to the ASFF. This proposal would also expand the group of eligible recipients of ASFF Funds to include all of the security forces of Afghanistan. This expansion will ensure the Commander of Combined Security Transition Command-Afghanistan has additional flexibility to manage emerging requirements of the Afghan government.

ASFF funding is necessary to attain U.S. national security objectives in Afghanistan and to provide the United States' contribution to an international effort to meet the funding requirements of the Afghan forces. At the NATO Summit in Brussels in July 2018, participating donor nations agreed to extend assistance for financial sustainment of the Afghan forces - about $1 billion per year - through 2024, and the Afghan government continues to increase the amount of funding it provides consistent with its commitment at the 2012 NATO Summit in Chicago. The ASFF appropriation and the expanded eligibility group supports the United States strategy in Afghanistan to work with Allies and partners to enable well-trained, well-equipped, and sustainable Afghan security forces to provide security in Afghanistan. It also enables all Afghan security forces to continue efforts to defeat the remnants of al Qaeda, the Islamic State, and other terrorist organizations in order to ensure that Afghanistan does not again become a safe haven for terrorist groups to plan and execute attacks against United States interests. Effective Afghan forces minimize the need to reintroduce U.S. and coalition forces to conduct counterinsurgency operations. We will continue to execute ASFF through Financial and Activity Plans with statutory oversight by the Afghanistan Resources Oversight Council to ensure the Department of Defense and Congress maintain control and oversight over these funds.

This funding supports operations by and sustainment of Afghan National Defense and Security Forces at an authorized level of 352,000, plus 30,000 Afghan Local Police, to

enhance the security and stability of Afghanistan by protecting the population, fostering the rule of law, preventing the establishment of terrorist safe havens, and developing a reliable long-term counterterrorism partnership with the United States.

Budget Implications: The resources reflected in the table below are funded within the FY 2020 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
ASFF	$4,804					Afghanistan Security Forces Fund
Total	$4,804					--

Changes to Existing Law: This proposal would amend section 1513(b) of the National Defense Authorization Act for Fiscal Year 2008 as follows:

SEC. 1513. AFGHANISTAN SECURITY FORCES FUND.

*** * * * ***

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds authorized to be appropriated by subsection (a) shall be available to the Secretary of Defense to provide assistance to the security forces of Afghanistan ~~security forces of the Ministry of Defense and the Ministry of the Interior of the Government of the Islamic Republic of Afghanistan~~.

(2) TYPES OF ASSISTANCE AUTHORIZED.—Assistance provided under this section may include the provision of equipment, supplies, services (including program and security assistance management support), training, facility and infrastructure repair, renovation, construction, and funds.

(3) SECRETARY OF STATE CONCURRENCE.—Assistance may be provided under this section only with the concurrence of the Secretary of State.

*** * * * ***

SEC. ___. REVISION TO ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN AUTHORITY.

Section 2807(b) of title 10, United States Code, is amended by striking "$1,000,000" and inserting "$5,000,000".

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

Section-by-Section Analysis

This proposal would modify the current $1,000,000 per project threshold for Congressional notification for Architectural and Engineering Services to $5,000,000. This increase in threshold would shorten the time to complete the design of projects funded by military construction appropriations (MILCON) by three weeks or more for projects having estimated design costs between $1,000,000 and $5,000,000. This threshold was last revised in 2003 from $500,000 to $1,000,000. Over the intervening years, there has been a steady increase in the value of planning and design dollars spent for architectural services and construction design. For the Department of Navy (DON) MILCON programs for fiscal years 2018 through 2020, the notification time delay could have been eliminated for approximately 60% of the DONs MILCON projects. Time saved could have been better spent on other equally important MILCON process flow efforts.

Budget Implications: This proposal has no significant budgetary impact. Incidental savings are accounted for within the Fiscal Year 9FY) 2020 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 2805 of title 10, United States Code:

§2807. Architectural and Engineering Services and Construction Design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds ~~$1,000,000~~ $5,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for

such services. The Secretary may then obligate funds for such services only after the end of the 14-day period beginning on the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the need for the increase, including the source of funds to be used for the increase.

(d) For architectural and engineering services and construction design related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

SEC. ___. AUTHORIZED COST VARIATIONS FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION.

Section 2853 of title 10, United States Code, is amended—

(a) in subsection (a)—

(1) by striking "the cost authorized for a military construction project" and all that follows;

(2) by adding a new subsection (a)(1) as follows:

"(1) the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress."; and

(3) by adding a new subsection (a)(2) as follows:

"(2) the cost of an unspecified minor military construction project undertaken pursuant to section 2805(b)(1) or section 2805(d) of this title may be increased above the applicable ceiling in section 2805(a)(2) or section 2805(d)(1) of this title by not more than 25 percent of such ceiling, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual and unanticipated variations in cost occurring after award of the project.";

(b) by redesignating subsection (c) as subsection (c)(1);

(c) in the newly redesignated subsection (c)(1)—

(1) by striking "The limitation on" and inserting "The limitations on the amount of";

(2) by striking "or" and inserting "and";

(3) by striking "does" and inserting "do";

(4) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) respectively;

(5) in the redesignated subparagraph (A), by redesignating (A) and (B) as (i) and (ii) respectively; and

(d) by adding a new subsection (c)(2) as follows:

"(2) An unspecified minor military construction project undertaken pursuant to section 2805(b)(1) or section 2805(d) may be decreased in cost or reduced in scope at the discretion of the Secretary concerned.".

[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 explicitly apply the authority provided by title 10 U.S.C. § 2853 to increase the cost of a military construction project, to allow unspecified minor military construction (UMMC) projects authorized by title 10 U.S.C. § 2805 to exceed the UMMC limit in section 2805(a)(2) when unforeseen cost increases occur.

Under current law, there is no authority for the Secretary concerned to exceed the applicable limits of section 2805(a)(2) for any UMMC project, except to satisfy a contractor claim under 10 U.S.C. § 2863. This proposal would extend the provision of 10 U.S.C. 2853 on project cost variations to include UMMC projects in need of exceeding the limit of section 2805(a)(2), and afford minor projects the same ability as major projects to respond to unforeseen cost growth. This would provide flexibility to complete projects with unusual variations and avoid (1) project cancellation; (2) constructing a facility or item of infrastructure that does not fully meet the planned mission requirement; or (3) reprogramming the project into the FY+2 Specified Military Construction program. The proposal does not limit the cost variation per project, but section 2805(a) limits the authority to carry out UMMC projects collectively to 125

percent of the amount authorized by law.

This authority is not often needed but nonetheless crucial. As an example, the lack of this authority compelled the Air Force to cancel eight FY 2011 Overseas Contingency Operations (OCO) UMMC projects that had been terminated for default when the projects were approximately 50% complete. The U.S. Army Corps of Engineers re-advertised the contract for all eight projects, but due to the sunk costs and risk associated with assuming the previous contractor's work, the new cost estimates exceeded the UMMC threshold. To complete the projects, the Air Force must resubmit them as specified major projects in the FY+2 Military Construction program—delaying completion by three years at greater cost and significant detriment to the mission.

Budget Implications: The resources impacted are estimated in the table below and are included within the Fiscal Year (FY) 2020 President's Budget. As the actual total amount of all cost variations allowed by this proposal is unknown, an estimate of 5% the total UMMC appropriation was used. For major MILCON projects, DoD adds 5 percent contingency to project estimates to account for unforeseen cost increases during construction, based on historical averages. Applying this to the UMMC program (the focus of this LP), 5 percent of the total UMMC program would be a theoretical worst-case amount, representing a scenario where all UMMC projects were awarded near the UMMC upper limit and subsequently experienced cost growth (in aggregate) matching the historical average for major projects."

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation**
Army	$4.70	$4.80	$4.89	$4.49	$5.09	Military Construction, Army
Navy	$1.95	$1.60	$3.73	$4.42	$2.83	Military Construction, Navy
Air Force	$3.34	$3.41	$3.48	$3.55	$3.62	Military Construction, Air Force
Total	$9.99	$9.81	$12.10	$12.96	$11.54	--

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. § 2853:

§2853. Authorized cost and scope of work variations.

(a) Except as provided in subsection (c), (d), or (e),

(1) the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(2) the cost of an unspecified minor military construction project undertaken pursuant to section 2805(b)(1) or section 2805(d) of this title may be increased above the applicable ceiling in section 2805(a)(2) or section 2805(d)(1) of this title by not more

than 25 percent of such ceiling, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual and unanticipated variations in cost occurring after award of the project.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term "scope of work" refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c)(1) The limitations on the amount of cost variations in subsection (a) and the limitation on scope reduction in subsection (b)(1) do not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and-

(A) in the case of a cost increase or a reduction in the scope of work-

(i) the Secretary concerned notifies the appropriate committees of Congress of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(ii) a 14-day period has elapsed after the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title; or

(B) in the case of a cost decrease, the Secretary concerned notifies, using an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(2) An unspecified minor military construction project undertaken pursuant to section 2805(b)(1) or section 2805(d) may be decreased in cost or reduced in scope at the discretion of the Secretary concerned.

(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if-

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the congressional defense committees in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(e) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(f)(1) In addition to the notification sent under paragraph (1) of subsection (c) of a cost increase with respect to a project, the Secretary concerned shall provide an additional report notifying the congressional defense committees and the Comptroller General of the United States of any military construction project or military family housing project with a total authorized cost greater than $40,000,000 that has a cost increase of 25 percent or more.

(2) The report under paragraph (1) shall include the following-

(A) A description of the specific reasons for the cost increase and the specific organizations and individuals responsible.

(B) A description of any ongoing or completed proceedings or investigation into a government employee, prime contractor, subcontractor, or non-governmental

organization that may be responsible for the cost increase, and the status of such proceeding or investigation.

(C) If any proceeding or investigation identified in subparagraph (B) resulted in final judicial or administrative action, the following:

(i) In the case of a judicial or administrative action taken against a government employee, the report shall identify the individual's organization, position within the organization, and the action taken against the individual, but shall exclude personally identifiable information about the individual.

(ii) In the case of a judicial or administrative action taken against a prime contractor, subcontractor, or non-governmental organization, the report shall identify the prime contractor, subcontractor, or non-governmental organization and the action taken against the prime contractor, subcontractor, or non-governmental organization.

(D) A summary of any changes the Secretary concerned believes may be required to the organizational structure, project management and oversight practices, policy, or authorities of a government organization involved in military construction projects as a result of problems identified and lessons learned from the project.

(3) If any proceeding or investigation described in paragraph (2)(C) is still ongoing at the time the Secretary concerned submits the report under paragraph (1), the Secretary shall provide a supplemental report to the congressional defense committees and the Comptroller General of the United States not later than 30 days after such proceeding or investigation has been completed. If such proceeding or investigation resulted in final judicial or administrative action against a government employee, prime contractor, subcontractor, or non-governmental organization, the Secretary shall include in the supplemental report the information required by paragraph (2)(C).

(4) Each report under this subsection shall be cosigned by the senior engineer authorized to supervise military construction projects and military family housing projects under section 2851(a).

(5) The Secretary shall send the report required under paragraph (1) with respect to a project not later than 180 days after the Secretary sends to the appropriate committees of Congress the notification under paragraph (1) of subsection (c) of a cost increase with respect to the project.

(6) The Comptroller General of the United States shall review each report submitted under this subsection and validate or correct as necessary the information provided.

(g) Notwithstanding the authority under subsections (a) through (f), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the

construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act").

SEC. ___. EMPLOYMENT AUTHORITY FOR CIVILIAN FACULTY AT CERTAIN MILITARY DEPARTMENT SCHOOLS.

(a) ADDITION OF ARMY UNIVERSITY AND ADDITIONAL FACULTY.—

(1) IN GENERAL.—Section 7371 of title 10, United States Code, is amended—

(A) in subsection (a), by striking "the Army War College or the United States Army Command and General Staff College" and inserting "the Army War College, the United States Army Command and General Staff College, and the Army University"; and

(B) by striking subsection (c).

(2) CONFORMING AMENDMENTS.—

(A) SECTION HEADING.—Section 7371 of such title is amended by striking the section designation and heading and inserting the following:

"§7371. Army War College, United States Army Command and General Staff College, and Army University: civilian faculty members".

(B) TABLE OF CONTENTS.—The table of sections at the beginning of chapter 747 of such title is amended by striking the item relating to section 7371 and inserting the following:

"7371. Army War College, United States Army Command and General Staff College, and Army University: civilian faculty members.".

(b) NAVAL WAR COLLEGE AND MARINE CORPS UNIVERSITY—Section 8748 of such title is amended by striking subsection (c).

(c) AIR UNIVERSITY.—Section 9371 of such title is amended by striking 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 would give the Army War College, the Army Command and General Staff College, Army University, Air University, the Naval War College, and Marine Corps University the authority to hire Administratively Determined (AD) professional academic positions across all sectors of the university, regardless the duration of the school term. Additionally, this proposal would add Army University to section 7371 of title 10, United States Code.

Currently, section 9371 of title 10 authorizes the Secretary of the Air Force to hire AD faculty only at Air University schools and colleges whose school terms are at least ten months in duration; these schools and colleges are the Air War College, the Air Command and Staff College, and the School of Advanced Air and Space Studies. The same analysis applies to Army hiring under section 7371 of title 10, which authorizes the Secretary of the Army to hire AD faculty only at the Army War College and the Army Command and General Staff College. Currently, section 8748 of title 10 authorizes the Secretary of the Navy to hire AD faculty only at the Naval War College, the Marine Corps War College, the Marine Corps Command and Staff College, the School of Advanced Warfighting, and the Expeditionary Warfare School.

There are additional academic areas at Army, Navy, Marine Corps, and Air Force schools where the ability to hire AD faculty is important to sustaining the quality of force development programs through teaching, lecturing, instructing, facilitating discussions in seminars, conducting scholarly research and writing, and designing or developing curricula and learning support systems. In other words, instructors at these other schools perform duties that are commonly understood to be duties appropriate for a member of the faculty of a fully accredited post-secondary academic institution in the United States. Schools and colleges where the Secretary concerned lacks the authority to hire AD faculty include the full spectrum of enlisted professional military education, officer professional military education less than 10 months in duration (Senior Planners Course, Reserve Senior Staff Course, etc.), officer accessions (Reserve Officer Training Corps and Officer Training School), and civilian professional development programs.

The AD faculty hiring process allows the Secretary concerned to fill faculty vacancies on renewable contracts. This allows the Secretary concerned to replace faculty and to search for individuals with special talents and qualifications needed for the development of curricula and other academic functions in specific areas in a timely fashion. Hiring a typical Government Service (GS) civil servant assumes that the person will remain in the position for a long time, perhaps a career, and that the needs of the academic institution are static. Additionally, the constraints of the GS system preclude specifying degree and skill levels required in favor of general-purpose duty descriptions that are broadly applicable. Academia requires a different approach.

Unlike the GS personnel system, the AD authority is designed specifically to authorize the Secretary concerned to recruit and hire personnel with sufficient professional academic credentials, credentials necessary to ensure success at selected institutions such as the Army War College, the Marine Corps War College, the Naval War College, and the Air War College. The rationale for authorizing Service Secretaries to hire AD faculty at these schools and colleges

should also apply to extending the AD hiring authority at those previously mentioned military schools and colleges where AD hiring authority does not exist, e.g., enlisted professional military education programs, officer professional military education programs, officer accession programs, and civilian professional development programs—all such programs whose terms are less than 10 months in duration. Granting the Service Secretaries the authority to hire AD faculty at these institutions, authority Service secretaries urgently need, would allow Service Secretaries to recruit, develop, and retain personnel best suited to support Service educational and force development requirements.

This proposed change is especially important for the Barnes Center for Enlisted Education and the Marine Corps College of Enlisted Military Education. The Air Force and Marine Corps enlisted force requires educational programs that are built on a foundation of leadership and relevant military theory. This requires the same standards of academic excellence that the Air Force and Marine Corps have come to expect in officer education. Under the current authority, Air University and Marine Corps University cannot leverage the flexibility of the title 10 AD system for enlisted education because none of its programs are 10 months long.

The efficiencies made possible by the Services' consolidation of its educational activities under a single university system are sub-optimized by restricting AD faculty hiring authority only to schools and colleges whose terms are ten months or more in duration.

This proposal supports the Air Force's Human Capital strategy to ensure fully qualified, ready Airmen to execute Air Force missions. That strategy is operationalized through Air Force Instruction 36-2301, *Developmental Education*, which requires officer and enlisted education programs to "*prepare Air Force personnel to anticipate and successfully meet challenges across the range of military operations and build a professional corps*." The intended outcome of this legislative change would be to provide Air University the flexibility to hire the most appropriate academic personnel to meet the Air Force's force development education requirements.

This proposal similarly supports the Army Learning Model and Army Concept for Training and Education to support sequential and progressive education along a Soldier's career and learning continuum. The intended outcome of this legislative change would also provide Army University the flexibility to hire the most appropriate academic personnel to meet the Army's force development education requirements.

Moreover, this proposal supports the Marine Corps approach to profession military education throughout a Marine's career. Additionally, it supports the mandate in 2018 National Defense Strategy for a force that is more lethal, resilient, and agile. Furthermore, it supports Marine Corps Operating Concept education requirement to ensure the Marine Corps is developing Marines with the agility and perspectives to manage uncertainty, think critically, and solve complex problems. The intended outcome of this legislative change would also provide Marine Corps University the flexibility to hire the most appropriate academic personnel to meet the Marine Corps' force development education requirements.

The focus of this initiative is on developing military students, *the people* who are the essence of the warfighting capabilities, and on continuing to transform the force by providing the

best and most up-to-date education possible. To do this effectively, DoD schools must have the capability to *re-tool themselves academically* by adapting to the current needs of the forces. With educational institutions, as with military operations, it is neither effective nor efficient to allow the institution's academic human capital to become rigid and stagnant. The current and emerging security challenges require Air University, Army University, Naval War College, and Marine Corps University programs to field faculty and staff who have solid academic credentials and who have knowledge and skills that can be applied to preparing those Services' future leaders. The AD faculty system affords flexibility in managing the university's human capital through 3- to 6-year renewable term appointment as opposed to the permanent structure of the career civil service system. This flexibility in faculty recruiting and development facilitates the re-tooling the university system the Air Force, Army, and Marine Corps require for their educational programs.

It is critical that military education programs be on the cutting edge and that the universities are able to hire, and remove if necessary, academic faculty with appropriate degrees to maintain the currency and effectiveness of their programs. This capability is found best in the authority embodied in the title 10 AD academic faculty hiring practices.

In drafting a broader definition of title 10 Administratively Determined Civilian faculty to sustain the quality of the education enterprise, the Office of the Secretary of Defense General Counsel recommended including those necessary to support the "academic milieu." Without this change to the legislation, only a portion of the academic enterprise can be supported. The majority of the force development educational programs at Air University, Army University, and Marine Corps University are denied the crucial opportunity to field a faculty with a blend of military experts and highly qualified, credentialed civilian academic professionals.

Budget Implications: This proposal has insignificant budget implications. 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 sections 7371, 8748, and 9371 of title 10, United States Code:

§ 7371. Army War College ~~and~~, United States Army Command and General Staff College, and Army University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College, ~~or~~ the United States Army Command and General Staff College, and the Army University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS. (1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on November 29, 1989.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.~~

* * * * *

§8748. Naval War College and Marine Corps University: civilian faculty members

(a) Authority of Secretary. -The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) Compensation of Faculty Members. -The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) Application to Certain Faculty Members. -This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.~~

* * * * *

§9371. Air University: Civilian Faculty Members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at the Air University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—~~

~~(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University after February 27, 1990.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.~~

SEC. ___. CLARIFICATION OF INSPECTOR GENERAL AUTHORITIES CONCERNING OVERSEAS CONTINGENCY OPERATIONS.

Section 8L(d)(2) of the Inspector General Act of 1978 (5 U.S.C. App. 8L(d)(2)) is amended—

(1) in subparagraph (D)—

(A) in clause (i), by striking "to exercise responsibility for discharging oversight responsibilities in accordance with this Act with respect to such matter" and inserting "to identify and coordinate with the Inspector General with primary jurisdiction over the matter to ensure effective oversight"; and

(B) by adding at the end the following new clause:

"(iii) Upon the written request of an Inspector General with primary jurisdiction over a matter with respect to the contingency operation, and with the approval of the lead Inspector General, an Inspector General specified in subsection (c) may provide investigative support or may conduct an independent investigation of an allegation of criminal activity by United States personnel, contractors, subcontractors, grantees, or vendors within the theater of operations that relates to the matter. If the lead Inspector General determines that no Inspector General has primary jurisdiction over the matter, the lead Inspector General may conduct an independent investigation or may request that another Inspector General specified in subsection (c) conduct an independent investigation."; and

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

"(I) An Inspector General responsible for conducting oversight of any program or operation performed in support of the contingency operation shall coordinate such oversight activities with the lead Inspector General and shall provide information requested by the lead Inspector General relating to the lead Inspector General's responsibilities specified in subparagraphs (B), (C), and (G).".

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

Section-by-Section Analysis

The amendments included in this proposal would ensure more comprehensive Inspector General (IG) oversight of an overseas contingency operation (OCO) by clarifying the responsibilities of the lead IG and other IGs, as stated in section 8L(d)(2) of the Inspector General Act of 1978. First, it clarifies an ambiguity in section 8L(d)(2)(D)(i) as to how the lead IG is to discharge oversight responsibilities in instances where none of the three IGs listed in section 8L(c) have primary jurisdiction by specifying that the lead IG is to identify and coordinate oversight with the appropriate IG. Second, it adds a new clause (iii) to section 8L(d)(2)(D) clarifying the authority of the three IGs to investigate certain allegations of criminal activity in theater that might otherwise not be investigated. Third, it adds a new subparagraph (I) to section 8L(d)(2) clarifying (1) the authority of the lead IG to coordinate oversight activities with all other IGs conducting oversight related to an OCO, as well as (2) those IGs' responsibility to provide the lead IG information necessary for the lead IG to report Congress, as required by subparagraphs (B), (C), and (G) of section 8L(d)(2).

As written, section 8L(d)(2)(D)(i) does not state how the lead IG will exercise responsibility for discharging oversight responsibilities if none of the Inspectors General specified in subsection (c) has principal jurisdiction over a matter. To clarify this, the revised subsection emphasizes the lead IG's responsibility and authority to coordinate oversight with cognizant IGs to ensure that they exercise their section 2(1) responsibilities to conduct oversight of relevant programs and operations.

Due to limited access to in-theater programs and operations, cooperation between Inspectors General is an imperative. With respect to audits and evaluations, such inter-IG cooperation and support can be performed pursuant to section 6(a)(3) of the Inspector General Act. However, because the Department of Defense (DoD) Office of the Inspector General (OIG) and the other OIGs derive their law enforcement and criminal investigative responsibilities from separate statutory authorities, the extent to which the DoD IG is authorized to investigate non-DoD programs and operations and, conversely, the extent to which the State Department OIG and U.S. Agency for International Development OIG are authorized to investigate DoD programs and operations, is unclear.

Additionally, there may be a number of in-theater U.S. Government programs and operations that are not under the oversight of a cognizant IG. To remedy these gaps in criminal investigative oversight, section 8L(d)(2)(D)(iii) has been added. It provides that, upon the request of an IG, and with the approval of the lead IG, one of the three IGs may either provide criminal investigative support or, if need be, conduct an independent criminal investigation.

As stated in the draft, this support is limited to investigations of allegations of criminal activity by U.S. personnel, contractors, subcontractors, or vendors within the theater of operations that relate to an OCO matter. Also, it permits one of the three IGs, at the request of the lead IG, to conduct a criminal investigation of a matter that is not under the oversight of an established IG.

Section 8L(d)(2)(B) of the Inspector General Act mandates that the lead IG, in coordination with the other two IGs specified in subsection (c), prepare a joint strategic plan to conduct comprehensive oversight over all aspects of the contingency operation. Yet it provides the lead IG no authority to obtain relevant information from the many other IGs responsible for providing oversight of programs and operations related to the operation.

Additionally, section 8L(d)(2)(C) requires the lead IG 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. Yet it provides the lead IG no mechanism to obtain this information.

Finally, section 8L(d)(2)(G) mandates that the IG submit a report on the entire contingency operation, without any mechanism for obtaining relevant information. The proposed new subparagraph (I) of section 8L(d)(2) clarifies that IGs responsible for conducting oversight of OCO-related programs and operations shall coordinate with the lead IG and shall, at the lead IG's request, provide information relevant information to facilitate the lead IG's discharge of these responsibilities.

Budget Implications: This proposal would not have any budget implications.

Changes to Existing Law: This proposal would make the following changes to section 8L of the 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 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 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:

(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 oversight 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~~ identify and coordinate with the Inspector General with primary jurisdiction over the matter to ensure effective oversight.

(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.

(iii) Upon the written request of an Inspector General with primary jurisdiction over a matter with respect to the contingency operation, and with the approval of the lead Inspector General, an Inspector General specified in subsection (c) may provide investigative support or may conduct an independent investigation of an allegation of criminal activity by United States personnel, contractors, subcontractors, grantees, or vendors within the theater of operations that relates to the matter. If the lead Inspector General determines that no Inspector General has primary jurisdiction over the matter, the lead Inspector General may conduct an independent investigation or may request that another Inspector General specified in subsection (c) conduct an independent investigation..

(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, such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation.

(F) 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.

(I) An Inspector General responsible for conducting oversight of any program or operation performed in support of the contingency operation shall coordinate such oversight activities with the lead Inspector General and shall provide information requested by the lead Inspector General relating to the lead Inspector General's responsibilities specified in subparagraphs (B), (C), and (G).

(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.

(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.

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

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

SEC. ___. CLARIFICATION OF ELIGIBILITY FOR SEQUENTIAL PHASE II AWARDS.

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

"(3) CLARIFICATION OF SEQUENTIAL PHASE II AWARDS.—The head of a Federal agency shall ensure that any sequential Phase II award is made in accordance with the limitations on award sizes under subsection (aa).

"(4) CROSS-AGENCY SEQUENTIAL PHASE II AWARDS.—

"(A) IN GENERAL.—A small business concern that receives a sequential Phase II SBIR or Phase II STTR award for a project from a Federal agency is eligible to receive an additional sequential Phase II award that continues, or logically extends to other applications, the work on that project from another Federal agency.

"(B) DEPARTMENT OF DEFENSE.—In applying subparagraph (A), each component of the Department of Defense shall be considered a separate Federal agency.".

[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 DOD Components to award additional Phase II efforts, beyond the current limit of two per topic per small business, and would allow for awards on topics developed by other Federal Agencies or DOD Components. This change to 15 USC 638(ff) allows for additional Phase II awards and would allow DOD Components to make better use of limited budgets to support their customers. Components have become effective in taking technologies developed by others and adapting them for their own requirements to reduce costs, time, and risks.

Budget Implications: No budget implications.

Changes to Existing Law: This proposal would make the following changes to section 9(ff) of the Small Business Act (15 U.S.C. 638(ff)):

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.

* * * * *

(ff) ADDITIONAL SBIR AND STTR AWARDS.—

(1) EXPRESS AUTHORITY FOR AWARDING A SEQUENTIAL PHASE II AWARD.—A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) PREVENTING DUPLICATIVE AWARDS.—The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(3) CLARIFICATION OF SEQUENTIAL PHASE II AWARDS.—The head of a Federal agency shall ensure that any sequential Phase II award is made in accordance with the limitations on award sizes under subsection (aa).

(4) CROSS-AGENCY SEQUENTIAL PHASE II AWARDS.—

(A) IN GENERAL.—A small business concern that receives a sequential Phase II SBIR or Phase II STTR award for a project from a Federal agency is eligible to receive an additional sequential Phase II award that continues, or logically extends to other applications, the work on that project from another Federal agency.

(B) DEPARTMENT OF DEFENSE.—For purposes of subparagraph (A), each component of the Department of Defense shall be considered a separate Federal agency.

* * * * *

SEC. ___. COMMAND INFLUENCE UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) ARTICLE 37.—Section 837 of title 10, United States Code (article 37 of the Uniform Code of Military Justice), is amended—

(1) in the heading, by striking "**Unlawfully influencing action of court**" and inserting "**Command influence**";

(2) in subsection (a)—

(A) by striking "(a) No authority convening a general, special, or summary court-martial" and inserting "(a)(1) No court-martial convening authority";

(B) in paragraph (1) (as designated by subparagraph (A) of this paragraph), by striking "proceeding. No person" and inserting the following: "proceeding.

"(3) No person";

(C) by inserting before paragraph (3) (as designated by subparagraph (B) of this paragraph) the following new paragraph:

"(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.";

(D) in paragraph (3) (as so designated)—

(i) by inserting "attempt to" before "influence";

(ii) by striking "with respect to his judicial acts" and inserting "or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President"; and

(iii) by striking the second sentence; and

(E) by adding at the end the following new paragraphs:

"(4) Paragraphs (1) through (3) shall not apply with respect to—

"(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial;

"(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding, or sentence; or

"(C) statements and instructions given in open court by the military judge or counsel.

"(5)(A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

"(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

"(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

"(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the

discretion of such authority or such officer for that of the subordinate convening authority or officer.";

(3) in subsection (b)—

(A) by striking "to be advanced, in grade" and inserting "to be advanced in grade"; and

(B) by striking "accused before a court-martial" and inserting "person in a court-martial proceeding"; and

(4) by adding at the end the following new subsections:

"(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section, or the doctrine of apparent unlawful command influence, unless the violation materially prejudices the substantial rights of the accused.

"(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

"(2) Except as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.".

(b) ARTICLE 53a.—Section 853a(b)(5) of title 10, United States Code (article 53a of the Uniform Code of Military Justice), is amended by striking "the President" and inserting "the President, the Secretary of Defense, or the Secretary concerned.".

(c) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of subchapter VII of chapter 47 of title 10, United States Code, is amended by striking the item

relating to section 837 (article 37 of the Uniform Code of Military Justice) and inserting the following new item:

"837. Art. 37. Command influence.".

[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 the statutory unlawful command influence provision of the Uniform Code of Military Justice (UCMJ) to expressly permit convening authorities and commanding officers to engage in communications with subordinates that do not endanger the fairness of any military justice proceeding. Current unlawful command influence doctrine deters senior military leaders from effective communication with their subordinates due to concern that the communications will be considered unlawful command influence, even absent any resulting prejudice to any service member in a military justice proceeding. The proposal would facilitate senior leaders' messaging to their subordinates concerning activities that harm good order and discipline, enhancing senior leaders' ability to deter misconduct by personnel subject to their authority.

The proposal would codify current case law prohibiting convening authorities and commanding officers from impeding defense access to witnesses. *See*, *e.g.*, *United States v. Douglas*, 68 M.J. 349 (C.A.A.F. 2010); *United States v. Gleason*, 43 M.J. 69 (C.A.A.F. 1995). Specifically, the proposal will continue to prohibit the convening authority from interfering with an accused's right to prepare a defense through independent investigation as well as prohibit a convening authority from influencing witnesses or discouraging a witness from testifying at a court-martial in support of an accused. While protecting the rights of an accused, the proposal also protects a convening authority's right to deny a request for witness production consistent with established law.

The proposal would make clear that in Article 37(a), the words "attempt to" apply to both "coerce" and "by any unauthorized means, influence."

The proposal would remove the term "judicial acts" and instead permit the President to prescribe those acts protected from coercion or influence under the Article. The term "judicial acts" as used in the current version of Article 37(a) is vague and has not been defined by case law. Use of that vague term has created uncertainty regarding when a superior convening authority may or may not direct certain actions by subordinate convening authorities. Replacing the vague term "judicial acts" with acts as prescribed by the President promotes clarity and allows superior convening authorities to provide guidance to subordinate convening authorities regarding procedural matters not included in the specified UCMJ articles. In addition, the proposal adds preliminary hearing officers to the list of personnel who cannot be the subject of coercion or influence by unauthorized means.

The proposal would expand the list of categories of communications that are not prohibited and are considered lawful command influence. Article 37(a) currently includes two categories of communications that are not prohibited. This proposal would add two additional categories of lawful communications. The first category clarifies that statements condemning certain behavior, such as sexual assault or drug use, without directing a particular disposition in a particular case do not constitute unlawful command influence.

The second category protects communications between a superior convening authority or officer and a subordinate convening authority or officer regarding the disposition of alleged violations of the UCMJ, as long as the superior's statements do not direct a specific disposition or result or otherwise substitute the superior's discretion for that of the subordinate. These provisions will allow subordinate officers to seek advice and guidance from superior officers, and allow superior officers to communicate their experience in handling military justice actions, while preserving the independence of the subordinate commander and enhancing good order and discipline.

The proposal would expand the protections in subsection (b) to include all counsel who represent a person in a court-martial proceeding. Therefore, both defense counsel and Victims' Legal Counsel/Special Victims' Counsel are protected. This proposal ensures defense counsel and Victims' Legal Counsel/Special Victims' Counsel are evaluated based on their job performance and they are not given a less favorable rating or evaluation because of the zeal with which they represent their respective clients at a court-martial.

The proposal would add a subsection (c) to establish that a finding or sentence of a court-martial may not be held incorrect as a matter of law based on apparent unlawful command influence absent a showing of material prejudice to a substantial right of the accused. Military appellate courts have set aside findings and sentences under an "apparent unlawful command influence" theory notwithstanding the absence of any prejudice to the accused. *See*, *e.g.*, *United States v. Boyce*, 76 M.J. 242 (C.A.A.F. 2017). The enactment of the proposed subsection (c) would establish that an appellate standard similar to the one articulated at Article 59(a) would also apply to the question of whether relief should be granted under the "apparent unlawful command influence" doctrine. This section does not prohibit a Military Judge from offering relief at the trial level if he/she believes there is a due process violation or a violation of the accused's right to a fair trial.

The proposal would codify the longstanding provision of the military justice system that a superior commanding officer or convening authority may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. However, such authority to withhold cannot be used by a superior commanding officer or convening authority to limit the discretion of a subordinate to act on those cases in which authority has not been withheld by the superior.

Finally, the proposal would amend Article 53a of the Uniform Code of Military Justice, as enacted by the Military Justice Act of 2016, to expand the statutory authority to issue regulations with respect to the terms, conditions, or other aspects of plea agreements to include the Secretary of Defense, the Secretaries of the Military Departments, and the Secretary of Homeland Security.

Budget Implications: None

Changes to Existing Law: This proposal would make the following changes to sections 837 and 853a of title 10, United States Code (articles 37 and 53a of the Uniform Code of Military Justice):

§837. Art. 37. ~~Unlawfully influencing action of court~~ Command influence

(a)(1) No court-martial convening authority ~~convening a general, special, or summary court-martial~~, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding.

(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority or preliminary hearing officer with respect to ~~his judicial acts~~ such acts taken pursuant to this chapter as prescribed by the President.

(4) ~~The foregoing provisions of the subsection~~ Paragraphs (1) through (3) shall not apply with respect to—

~~(1)~~(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial~~, or~~;

(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding, or sentence; or

~~(2)~~(C) ~~to~~ statements and instructions given in open court by the military judge~~,~~ ~~president of a special court-martial,~~ or counsel.

(5)(A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the

armed forces is qualified to be ~~advanced, in grade~~ advanced in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any ~~accused before~~ person in a court-martial proceeding.

(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section, or the doctrine of apparent unlawful command influence, unless the violation materially prejudices the substantial rights of the accused.

(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.

* * * * *

§853a. Art. 53a. Plea agreements

(a) IN GENERAL.—(1) At any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(b) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2));

(4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President, the Secretary of Defense, or the Secretary concerned with respect to terms, conditions, or other aspects of plea agreements.

(c) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(d) BINDING EFFECT OF PLEA AGREEMENT.—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties and the court-martial.

SEC. ___. EXTENSION AND REVISION OF DIRECT HIRE AUTHORITY FOR TECHNICAL EXPERTS INTO THE DEFENSE ACQUISITION WORKFORCE.

Section 1113 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 1701 note) is amended—

(1) in subsection (a)—

(A) by striking "Each" and inserting "The Secretary of Defense and each";

(B) by striking "possessing a scientific or engineering degree"; and

(C) by striking "for that military department" and inserting "for the Department of Defense or for that military department, respectively,";

(2) in subsection (b), by striking "scientific and engineering positions" and inserting "scientific, technical, engineering, and mathematics positions, including technicians,";

(3) by amending subsection (c) to read as follows:

"(c) LIMITATION.—The total number of persons appointed by the Secretary of Defense or the Secretary of a military department under subsection (a) during a fiscal year may not exceed the number equal to 5 percent of the number of hires made into scientific, technical, engineering, and mathematics positions, including technicians, within the acquisition workforce of the Department of Defense or that military department, respectively.";

(4) by striking subsection (e);

(5) by redesignating subsection (f) as subsection (e); and

(6) in subsection (e) (as so redesignated), by striking "December 31, 2020" and inserting "December 31, 2023".

[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 1113 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 to apply to all scientific, technical, engineering, and mathematics (STEM) positions by removing the scientific or engineering degree limitation. The proposal would extend direct hiring authority for technical experts in STEM positions, including technicians, into the defense acquisition workforce. These adaptions allow the DoD to remain at the forefront of innovation and maintain its technical edge over adversaries, along with enabling all DoD components to more rapidly hire qualified candidates to STEM positions, including technicians. Section 1113 provided authority to each Secretary of a military department and this proposal extends that authority to each component of the DoD.

While section 1113 applies to the acquisition workforce as a whole (managed by the Under Secretary of Defense for Acquisition and Sustainment), a majority of the technical positions fall within technical career fields under the purview of the Under Secretary of Defense for Research and Engineering. Per usage data from the Defense Civilian Personnel Data System for FY 2017 and a large portion of FY 2018, section 1113 was used 156 times.

This proposal would also extend the termination date of the authority from December 31, 2020, to December 31, 2023. In order to compete for the best engineering talent, the DoD needs to be an employer of choice. To support this objective, there must be a focus on ensuring the Department utilizes modern recruiting and hiring techniques. Without extension of the termination date within this section, the Department is hindered in its ability to remain competitive with organizations outside of the DoD (i.e., private industry) with respect to attracting top-level talent with needed technical expertise.

Finally, the proposal revises subsection (c) to clearly identify the five percent cap limitation and strikes the definition of "employee" in subsection (e) since the term is not used within section 1113.

Budget Implications: No budget implications

Changes to Existing Law: This proposal would make the following changes to section 1113 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 1701 note):

SEC. 1113. DIRECT HIRE AUTHORITY FOR TECHNICAL EXPERTS INTO THE DEFENSE ACQUISITION WORKFORCE.

(a) AUTHORITY.—~~Each~~ The Secretary of Defense and each Secretary of a military department may appoint qualified candidates ~~possessing a scientific or engineering degree~~ to positions described in subsection (b) for the Department of Defense or for that military department, respectively, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

(b) APPLICABILITY.—Positions described in this subsection are ~~scientific and engineering positions~~ scientific, technical, engineering, and mathematics positions, including technicians, within the defense acquisition workforce.

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

(c) LIMITATION.—The total number of persons appointed by the Secretary of Defense or the Secretary of a military department under subsection (a) during a fiscal year may not exceed the number equal to 5 percent of the number of hires made into scientific, technical, engineering, and mathematics positions, including technicians, within the acquisition workforce of the Department of Defense or that military department, respectively.

(d) NATURE OF APPOINTMENT.—Any appointment under this section shall be treated as an appointment on a full-time equivalent basis, unless such appointment is made on a term or temporary basis.

~~(e) EMPLOYEE DEFINED.—In this section, the term 'employee' has the meaning given that term in section 2105 of title 5, United States Code.~~

(~~f~~e) TERMINATION.—The authority to make appointments under this section shall not be available after ~~December 31, 2020~~ December 31, 2023.

SEC. ___. STRENGTHENING THE DEPARTMENT OF DEFENSE ACADEMIC HEALTH SYSTEM IN THE NATIONAL CAPITAL REGION.

(a) IN GENERAL.—Chapter 104 of title 10, United States Code, is amended by inserting after section 2113a the following new section:

"§2113b. Department of Defense Academic Health System

"(a) IN GENERAL.—The Secretary of Defense may establish an Academic Health System to integrate the health care, health professions education, and health research activities of the Military Health System in the National Capital Region.

"(b) LEADERSHIP.—The Secretary may, under the authority of this chapter, appoint employees to leadership positions in the Academic Health System. Such positions may include responsibilities for management of the health care, health professions education, and health research activities of the Military Health System in the National Capital Region. Such positions are in addition to similar leadership positions for members of the armed forces.

"(c) ADMINISTRATION.—The Secretary may use other authorities under this chapter for the administration of the Academic Health System authorized by this section.

"(d) NATIONAL CAPITAL REGION DEFINED.—In this section, the term "National Capital Region" means the area, or portion thereof, as determined by the Secretary, in the vicinity of Washington, D.C.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 104 of such title is amended by inserting after the item relating to section 2113a the following new item:

"2113b. Department of Defense Academic Health System.".

Section-by-Section Analysis

This proposal would add a new section to chapter 104 of title 10, United States Code (the chapter pertaining to the Uniformed Services University of the Health Sciences (USUHS)), to strengthen the Academic Health System in the National Capital Region. This initiative integrates the health care, health professions education, and health research activities of the USUHS and military treatment facilities of the Defense Health Agency National Capital Region – Walter Reed National Military Medical Center and Fort Belvoir Community Hospital. This involves authorities under multiple titles and chapters of law; therefore, this section allows use of certain authorities of chapter 104, which is currently directed primarily to educational and related research activities, for this integrated undertaking. This will enable the Military Health System to operate more effectively as an Academic Health System model, which is the prevailing model of excellence in the United States health care system for integrating patient care, medical education, and medical research activities.

Coordinated and synergistic professional health education, health research, and patient care services are the three pillars of quality healthcare. This legislation removes barriers that hinder the success of an integrated Academic Health System. This section would provide explicit authorization for the Academic Health System to appoint leadership positions and for use of other administrative authorities of USUHS for this important initiative.

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. As currently envisioned, this proposal would simply integrate the current health care, health professions education, and health research activities of National Capital Region components.

Changes to Existing Law: This proposal adds a new section to title 10, United States Code, as set forth above.

SEC.__. ECONOMIC ORDER QUANTITY CONTRACTING AUTHORITY F-35 JOINT STRIKE FIGHTER PROGRAM.

(a) IN GENERAL.—Subject to subsections (b) through (e), from amounts made available for obligation under the F-35 aircraft program, the Secretary of Defense may enter into one or more contracts, beginning with the fiscal year 2020 program year, for the procurement of economic order quantities of material and equipment that have completed formal hardware qualification testing for the F-35 aircraft program for use in procurement contracts to be awarded for such program during fiscal years 2021 through 2023.

(b) LIMITATION.—The total amount obligated under all contracts entered into under subsection (a) shall not exceed $574,000,000.

(c) PRELIMINARY FINDINGS.—Before entering into a contract under subsection (a), the Secretary shall make each of the following findings with respect to such contract:

(1) The use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contract.

(2) The minimum need for the property to be procured is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) There is a reasonable expectation that, throughout the contemplated contract period, the Secretary will request funding for the contract at the level required to avoid contract cancellation.

(4) There is a stable design for the property to be procured and the technical risks associated with such property are not excessive.

(5) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of an economic order quantity contract are realistic.

(6) Entering into the contract will promote the national security interests of the United States.

(d) CERTIFICATION REQUIREMENT.--Except as provided in subsection (e), the Secretary of Defense may not enter into a contract under subsection (a) until a period of 30 days has elapsed following the date on which the Secretary certifies to the congressional defense committees, in writing, that each of the following conditions is satisfied:

(1) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most recently available estimates of the program acquisition unit cost or procurement unit cost for such system to determine that the estimates of the unit costs are realistic.

(2) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program submitted to Congress under section 221 of title 10, United States Code, for that fiscal year will include the funding required to execute the program without cancellation.

(3) The contract is a fixed-price type contract.

(4) The proposed contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(5) The Secretary has determined that each of the conditions described in paragraphs (1) through (6) of subsection (c) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(6) The determination under paragraph (5) was made after the completion of a cost analysis performed by the Director of Cost Assessment and Program Evaluation for the purpose of section 2334(f)(2) of title 10, United States Code, and the analysis supports that determination.

(e) EXCEPTION.--Notwithstanding subsection (d), the Secretary of Defense may enter into a contract under subsection (a) on or after December 1, 2019, if—

(1) the Director of Cost Assessment and Program Evaluation has not completed a cost analysis of the preliminary findings made by the Secretary under subsection (c) with respect to the contract;

(2) the Secretary certifies to the congressional defense committees, in writing, that each of the conditions described in paragraphs (1) through (5) of subsection (d) is satisfied; and

(3) a period of 30 days has elapsed following the date on which the Secretary submits the certification under paragraph (2).

Section-by-Section Analysis

The Department of Defense is planning either a multi-year procurement for production Lots 15, 16, and 17 or annual procurements for those lots. Should the Department of Defense pursue a multi-year procurement, additional legislative authority will be requested in FY2021. The Department requests authority for the use of Department funds to award F-35 contracts to procure material and equipment in economic order quantities for the FY2021 (Lot 15) thru FY2023 (Lot 17).

Economic Order Quantity is only one element of overall savings that a multi-year procurement would be expected to achieve. The Department would gain benefit from economic order quantity independent of multi-year procurement and achieved significant savings during most recent application of economic order quantity in FY2018, which was applied towards annual procurements of FY2019 (Lot 13) and FY2020 (Lot 14).

Economic order quantity investment is estimated to contribute $847M in savings for the Department and a total of $1.27B in savings for the Department, International Partners, and

Foreign Military Sales. Not funding this investment in this budget cycle would create a significant funding shortfall in FY2021 through FY2023 for the United States Services.

This proposal is consistent with and required for the PB20 budget initiative to fund F-35 Economic Order Quantity (reference Final PDM, 7 Dec 2018). Similar language was enacted in the 2018 NDAA (section 141) but requires renewal.

Budget Implications:

Appropriation From	Budget Activity	Dash-1 Line Item	Program Element	FY 2020 ($M)	FY 2021 ($M)	FY 2022 ($M)	FY 2023 ($M)
Aircraft Procurement, Air Force – ATA000 - F-35							
Aircraft Procurement, Air Force	01	ATA000 P-1: 1	0207142F	4274.4	4444.8	4288.2	4164.3
Aircraft Procurement, Air Force – Advanced Procurement	01	ATA000 P-1: 2	0207142F	655.5	680.3	434.5	1030.2
Aircraft Procurement, Navy – BLI 0147 – Joint Strike Fighter CV							
Aircraft Procurement, Navy	01	0147 P-1: 3	0204146N	2272.3	1827.6	3170.7	2956.1
Aircraft Procurement, Navy – Advanced Procurement	01	0147 P-1: 4	0204146N	*339.1	443.8	278.3	249.1
Aircraft Procurement, Navy – BLI 0152 – JSF STOVL							
Aircraft Procurement, Navy	01	0152 P-1: 5	0204146M	1342.0	1718.4	1982.9	2399.5
Aircraft Procurement, Navy – Advanced Procurement	01	0152 P-1: 6	0204146M	291.8	303.0	221.6	231.3

*Note: FY 2020 budget request is for Advance Procurement (AP) for FY 2021. The budget request includes AP for long lead material for airframes and engines as well as economic order quantity material.

Changes to Existing Law: none.

SEC. ___. ELIMINATION OF REQUIREMENT TO SUBMIT REPORTS TO CONGRESS IN PAPER FORMAT.

Section 480 of title 10, United States Code, is amended—

(1) in subsection (a), by striking "a copy of";

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

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

"(c) ELIMINATION OF PAPER SUBMISSION REQUIREMENT.—Whenever the Secretary (or other official) provides a report to Congress (or any committee of either House of Congress) in an electronic medium under subsection (a), the Secretary (or other official) shall not be required to submit an additional copy of the report in a paper format.".

Section-by-Section Analysis

This proposal would enable the Department of Defense to provide reports required by the Congress in an electronic format rather than a paper format. By eliminating the delivery of congressional reports in paper format, the Department of Defense could streamline the reporting process both within the Department and in delivery of its reports to the Congress.

Budget Implications: This proposal has insignificant budget impact. Any savings from this proposal is reflected in the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 480 of title 10, United States Code:

§480. Reports to Congress: submission in electronic form

(a) REQUIREMENT.—Whenever the Secretary of Defense or any other official of the Department of Defense submits to Congress (or any committee of either House of Congress) a report that the Secretary (or other official) is required by law to submit, the Secretary (or other official) shall provide to Congress (or such committee) ~~a copy of~~ the report in an electronic medium.

(b) EXCEPTION.—Subsection (a) does not apply to a report submitted in classified form.

(c) ELIMINATION OF PAPER SUBMISSION REQUIREMENT.—Whenever the Secretary (or other official) provides a report to Congress (or any committee of either House of Congress) in an electronic medium under subsection (a), the Secretary (or other official) shall not be required to submit an additional copy of the report in a paper format.

~~(c)~~(d) DEFINITION.—In this section, the term "report" includes any certification, notification, or other communication in writing.

SEC. ___. ENDOWMENTS AT THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

Section 2113(g)(1) of title 10, United States Code, is amended—

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

(2) by redesignating subparagraph (F) as subparagraph (G); and

(3) by inserting after subparagraph (E) the following new subparagraph:

"(F) to establish endowments, under agreement with the Henry M. Jackson Foundation for the Advancement of Military Medicine, including with funding from gifts and bequests received under this section or royalties received under chapter 63 of title 15, to carry out medical research, medical consultation, and medical education, with such endowment funds available to the University until expended; and".

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

Section-by-Section Analysis

This section would allow the Nation's only Federal health sciences university, the Uniformed Services University of the Health Sciences (USUHS), to pursue medical research, medical consultation, and medical education impacting care provided throughout the Military Health System in a manner that is comparable with fully accredited schools of the health professions. Non-U.S. governmental institutions of higher learning are able to establish endowments for the purposes of programs, endowed chairs, and other research and educational activities that greatly benefit from the nature of no-year funds encompassed in an endowment construct. Presently, funds from gifts and royalties at USUHS are treated as having a limited lifecycle and must be used in a short period of time. This prevents the establishment of endowments that would provide enduring funds to foster continuity of military-relevant education and research. This proposal allows gifts and royalties received by USUHS to be used indefinitely as endowments for military-relevant medical education and research without having an expiration date.

Budget Implications: This proposal has no significant budget impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President's Budget. There are no budgetary implications with this proposal because the research and education endeavors already

occur. This simply permits the administrative change to allow gifts and royalties acquired by the USUHS from the current activities to not expire as is currently the situation.

Changes to Existing Law: This proposal would amend section 2113 of title 10, United States Code, as follows:

§2113. Administration of University

(a) The business of the University shall be conducted by the Secretary of Defense with funds appropriated for and provided by the Department of Defense.

(b) The Secretary shall appoint a President of the University (hereinafter in this chapter referred to as the "President").

(c)(1) The Secretary, after considering the recommendations of the President, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary (after due consideration by the Secretary) so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions identified by the Secretary for purposes of this paragraph.

(2) The Secretary may confer academic titles, as appropriate, upon military and civilian members of the faculty.

(3) The military members of the faculty shall include a professor of military, naval, or air science as the Secretary may determine.

(4) The limitations in sections 5307 and 5373 of title 5 do not apply to the authority of the Secretary under paragraph (1) to prescribe salary schedules and other related benefits. In no event may the total amount of compensation paid to an employee under paragraph (1) in any year (including salary, allowances, differentials, bonuses, awards, and other similar cash payments) exceed the total amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(d) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs.

(e) The Secretary of Defense may establish the following educational programs at the University:

(1) Postdoctoral, postgraduate, and technological institutes.

(2) A graduate school of nursing.

(3) Other schools or programs, including certificate, certification, and undergraduate degree programs, that the Secretary determines necessary in order to operate the University in a cost-effective manner.

(f) The Secretary shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(g)(1) The Secretary also is authorized--

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, on such terms and conditions as the Secretary determines appropriate, such space, facilities, equipment, and support services within the University as the Secretary considers necessary to accomplish cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, under which the Secretary may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; ~~and~~

(F) to establish endowments, under agreement with the Henry M. Jackson Foundation for the Advancement of Military Medicine, including with funding from gifts and bequests received under this section or royalties received under chapter 63 of title 15 to carry out medical research, medical consultation, and medical education, with such endowment funds available to the University until expended; and

(~~F~~G) to accept the voluntary services of guest scholars and other persons.

(2) The Secretary may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Secretary may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for the work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be

considered to be a Federal employee for any other purpose by reason of the provision of such services.

SEC. ___. EXPANSION OF TEMPORARY AUTHORITY FOR ACCEPTANCE AND USE OF CONTRIBUTIONS FOR CERTAIN CONSTRUCTION, MAINTENANCE, AND REPAIR PROJECTS MUTUALLY BENEFICIAL TO THE DEPARTMENT OF DEFENSE AND THE MILITARY FORCES OF KUWAIT AND THE REPUBLIC OF KOREA.

Section 2804 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 2350j note) is amended—

(1) in the heading, by striking "**KUWAIT MILITARY FORCES**" and inserting "**THE MILITARY FORCES OF KUWAIT AND THE REPUBLIC OF KOREA**";

(2) in subsection (a)—

(A) by striking "government of Kuwait" and inserting "government of Kuwait and the Republic of Korea"; and

(B) by striking "Kuwait military forces" and inserting "military forces of the contributing country";

(3) in subsection (b), by inserting "for contributions from the contributing country" after "Secretary of Defense";

(4) in subsection (c), by striking "government of Kuwait" and inserting "government of the contributing country"; and

(5) in subsection (e)—

(A) in paragraph (1), by striking "government of Kuwait" and inserting "government of the contributing country"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “Kuwait military forces” and inserting “military forces of the contributing country”; and

(ii) in subparagraph (C), by striking “Kuwait military forces” and inserting “military forces of the contributing country”.

[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 expand the existing temporary authority of the Secretary of Defense to accept cash contributions from the Government of Kuwait for U.S. execution of certain mutually beneficial projects so as to also apply to the Republic of Korea. Existing statutory authority under sections 2350j and 2350k of title 10, United States Code, only allow the United States to accept burden sharing and relocation cash contributions from a country to cover costs exclusive to the Department of Defense. These two authorities do not allow the United States to accept cash contributions from a country to execute construction, maintenance, and repair projects that are beneficial to the military forces of both the contributing country and the United States. Adoption of this proposal would broaden the existing mutually beneficial authority that currently applies exclusively to Kuwait to apply to the Republic of Korea as well.

The United States has already derived substantial benefit from application of the existing authority for Kuwait. Since May 2016, the Government of Kuwait has provided cash contributions of around $164 million to implement 13 projects that will benefit the military forces of both the United States and Kuwait. Should the mutually beneficial authority be expanded as requested by this proposal, there is the potential for the United States to execute mutually beneficial projects with cash contributions received from the Republic of Korea (ROK). With respect to the ROK, U.S. Forces Korea currently has two projects identified that would construct facilities to be used by forces from both the United States and the ROK. Although the ROK is prepared to fund its portion of these projects, the U.S. Department of Defense has no authority under which it can accept cash contributions from the ROK to execute them. Thus, it is crucial that the authority for the United States to accept cash contributions for the execution of mutually beneficial projects be expanded in order to support more fully the infrastructure needs of U.S. forces stationed and operating in the ROK.

This proposal will not impede the Foreign Military Sales (FMS) program. The FMS program does not envisage projects beneficial to both the United States and a foreign country. Additionally, when the United States provides a foreign military construction project under FMS, there is no requirement for the host country to provide the United States with access to, or use of, that facility.

Budget Implications: No budgetary impact to the Department of Defense. It may result that construction of facilities using funds from Kuwait or the Republic of Korea will offset costs that

might otherwise have been required of the Department of Defense, but that is speculative and not quantifiable at this point.

Changes to Existing Law: This proposal would amend section 2804 of the National Defense Authorization Act for Fiscal Year 2016, as amended, as reflected below:

SEC. 2804. TEMPORARY AUTHORITY FOR ACCEPTANCE AND USE OF CONTRIBUTIONS FOR CERTAIN CONSTRUCTION, MAINTENANCE, AND REPAIR PROJECTS MUTUALLY BENEFICIAL TO THE DEPARTMENT OF DEFENSE AND ~~KUWAIT MILITARY FORCES~~ THE MILITARY FORCES OF KUWAIT AND THE REPUBLIC OF KOREA.

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from the ~~government of Kuwait~~ governments of Kuwait and the Republic of Korea for the purpose of paying for the costs of construction (including military construction not otherwise authorized by law), maintenance, and repair projects mutually beneficial to the Department of Defense and ~~Kuwait military forces~~ military forces of the contributing country.

(b) ACCOUNTING.—Contributions accepted under subsection (a) shall be placed in an account established by the Secretary of Defense for contributions from the contributing country and shall remain available until expended as provided in such subsection.

(c) PROHIBITION ON USE OF CONTRIBUTIONS TO OFFSET BURDEN SHARING CONTRIBUTIONS.—Contributions accepted under subsection (a) may not be used to offset any burden sharing contributions made by the ~~government of Kuwait~~ government of the contributing country.

(d) NOTICE.—When a decision is made to carry out a project using contributions accepted under subsection (a) and the estimated cost of the project will exceed the thresholds prescribed by section 2805 of title 10, United States Code, the Secretary of Defense shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives written notice of decision, the justification for the project, and the estimated cost of the project.

(e) MUTUALLY BENEFICIAL DEFINED.—A project described in subsection (a) shall be considered to be "mutually beneficial" if—

(1) the project is in support of a bilateral defense cooperation agreement between the United States and the ~~government of Kuwait~~ government of the contributing country; or

(2) the Secretary of Defense determines that the United States may derive a benefit from the project, including—

(A) access to and use of facilities of the ~~Kuwait military forces~~ military forces of the contributing country;

(B) ability or capacity for future force posture; and

(C) increased interoperability between the Department of Defense and ~~Kuwait military forces~~ military forces of the contributing country.

(f) EXPIRATION OF PROJECT AUTHORITY.—The authority to carry out projects under this section expires on September 30, 2030. The expiration of the authority does not prevent the continuation of any project commenced before that date.

SEC. ___. EXPENDITURE OF FUNDS FOR DEPARTMENT OF DEFENSE INTELLIGENCE AND COUNTERINTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Subchapter I of chapter 21 of title 10, United States Code, is amended by inserting after section 423 the following new section:

"§423a. Expenditure of funds by the Secretary of Defense

"(a) IN GENERAL.—Subject to subsections (b) and (c), the Secretary of Defense may expend covered funds for objects of a confidential, extraordinary, or emergency nature without regard to the provisions of law relating to the expenditure of Government funds.

"(b) LIMITATION ON AMOUNT.—The Secretary of Defense may not expend more than five percent of covered funds made available in a fiscal year for objects described in subsection (a) unless—

"(1) the Secretary notifies the congressional defense committees and the congressional intelligence committees of the intent to expend the amounts; and

"(2) 30 days have elapsed from the date on which the Secretary provides the notice described in paragraph (1).

"(c) CERTIFICATION.—For each expenditure of funds under this section, the Secretary shall certify that such expenditure was made for an object of a confidential, extraordinary, or emergency nature.

"(d) REPORT.—Not later than December 31 of each year, the Secretary of Defense shall submit to the congressional defense committees and the congressional intelligence committees a report on expenditures made under this section during the preceding fiscal year

"(e) DEFINITIONS.—In this section:

"(1) The term 'congressional intelligence committees' has the meaning given the term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

"(2) The term 'covered funds' means amounts made available to the Secretary of Defense for the Military Intelligence Program for intelligence and counterintelligence activities.".

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 423 the following new item:

"423a. Expenditure of funds by the Secretary of Defense.

Section-by-Section Analysis

This proposal would create authority for the secure and effective expenditure of Operations and Maintenance funds for Department of Defense (DoD) intelligence and counterintelligence (CI) activities. It is modeled on section 105(c) of the National Security Act of 1947 (50 U.S.C.3038(c)), which provides similar authority to the Defense Intelligence Agency for human intelligence (HUMINT) and CI expenses.

This proposal addresses a congressional-directed action. Section 1041 of the National Defense Authorization Act (NDAA) for 2018 makes clear that EEE funds are not appropriate for recurring or anticipated intelligence and CI expenses. Section 1041 of the NDAA for FY2018 also requires SECDEF notification to the congressional defense and intelligence committees for expenditures over $100,000. This proposal attempts to normalize secure spending for DoD intelligence and CI activities while preserving the EEE construct for those truly emergent and extraordinary expenses that are neither anticipated nor classified within a major funding program.

Currently, defense intelligence elements expend funds for intelligence and CI activities pursuant to section 127 of title 10, United States Code (Emergencies and extraordinary expenses (EEE funds)). Section 1041 of the NDAA for FY2018 directed the Secretary of Defense to identify an alternate funding solution for recurring intelligence and counterintelligence expenses to section 127 of title 10, and to request alternate authority to enable those expenditures, if required. The Office of the Under Secretary of Defense for Intelligence has consulted with the Defense intelligence elements that expend EEE funds to fulfill their intelligence and CI responsibilities.

Budget Implications: Defense intelligence elements will budget individually for their compliance costs. Based on the proposed 5% authorization proposed here, total MIP funds available for the intelligence and CI activities described will be provided in a separate, classified version of this document.

Changes to Existing Law: This proposal adds a new section 423a to chapter 21 of title 10, United States Code, the full text of which is shown in the legislative language above.

SEC. ___. FIVE-YEAR EXTENSION OF AUTHORITY TO CONTINUE THE DOD-VA HEALTH CARE INCENTIVE FUND.

Section 8111(d)(3) of title 38, United States Code, is amended by striking "September 30, 2020" and inserting, "September 30, 2025".

[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 38 U.S.C. 8111 to extend the termination date of the Department of Defense (DoD) and Department of Veterans Affairs (VA) Joint Health Care Sharing Incentive Fund (JIF) from September 30, 2020, through September 30, 2025.

The JIF is a high-visibility funding instrument between DoD and VA to improve patient care through increased integration, higher quality, better access, and higher patient satisfaction at lower costs to both Departments. Allocations from the JIF are used to fund creative coordination and sharing initiatives at the facility, intra-regional, and nationwide levels to facilitate the mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments, with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by Veterans Health Administration (VHA) and the Military Health System (MHS) to beneficiaries of both Departments.

The JIF program authority has been extended twice and is currently scheduled to sunset on September 30, 2020. Unless the program is extended by Congress, VA and DoD will not have the same flexibility to develop and pursue collaborative joint initiatives at the local, regional, and national levels. Extension of the JIF authority will ensure the continued development and implementation of joint projects that will benefit the delivery of health care to beneficiaries of both Departments.

The JIF helps launch high-performing, military-Veteran integrated health delivery systems in which Military Treatment Facilities (MTFs) form strong partnerships with VA Medical Centers (VAMCs). This integration enables the Departments to better provide services for beneficiaries and standardize back end processes and payments, supporting the intent of turnkey projects under section 717 of the National Defense Authorization Act (NDAA) for 2017 that support these efforts, including:

- A joint system to track all environmental exposures that could adversely affect the health of Service Members.
- A single DoD and VA system that credentials providers to increase efficiencies and patient care provision.
- Local projects that increase access to care and decrease wait times for patients requiring orthotic and prosthetic services throughout the Pacific.

The JIF program has been subjected to funding rescissions over the past few years due to perceptions of ineffective administration of projects that were not preforming. To ensure the viability of the JIF initiatives that support patient care and the NDAA's intent, the JIF program has progressively taken the following actions over the last several years:

- Concerted efforts to close down projects older than three years and retrieving unobligated JIF funds.
- Requiring existing projects to provide a forward-looking spend plan for the obligation of funds.
- Providing "just in time" funding for projects, as applicable.
- Realigning the selection of JIF projects to the DoD and VA Business Line co-leads (SES-level or equivalent).

These actions have increased oversight, financial management, and timeliness of JIF programs, and obligation of funds to the approved scope of the project. There has also been a recent shifting of priorities to strategic objectives at the national level. The Secretaries of DoD and VA have identified the following priorities to increase VA-DoD collaboration including cross-enterprise and joint governance efforts.

- Suicide Prevention – Establish a joint effort across VA and DoD to prevent suicide and ensure the needs of Service members, veterans, and their families are being met across the lifecycle of Service member and veteran care.

- Integrated Purchased Care Network – Determine the feasibility of combining TRICARE and VA Choice to increase purchasing power and decrease costs as part of the TRICARE Integration initiative.

- Joint Sharing and Reimbursements – Streamline and standardize the development and approval of all proposed VHA and DoD Health Affairs (HA) Health Care resources sharing agreements by providing a standardized set of referral and care coordination instructions, templated agreements, including for telemedicine, and an Advance Payment (AP) methodology that supports VA-DoD resource sharing.

- Defense Medical Logistics Standard Support (DMLSS**)** – Determine feasibility of adopting DMLSS enterprise-wide by VA to create synergy and save money.

- Telemedicine – Identify the practical implications for DoD to align with VA and optimize the use of VA's telemedicine capability.

- Professional Services Contracts – Examine the feasibility of single contracts for medical professionals that could serve both Departments to create synergy vice competition.

- Electronic Health Record (EHR) Interoperability – Maintain interoperability improvement of data between the DoD and VA EHR and the private sector in order to exchange and use information. Coordinate with VA EHR Modernization to transition VA to Cerner Platform.

These initiatives have been deemed a high priority at the top levels of both Departments, and have the potential to be facilitated through JIF funding.

Budget Implications: From 2003 to present, VA and DoD have each contributed a minimum of $15 million annually to the Fund. Since FY 2004, the HEC has approved 185 initiatives totaling over $680 million. 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**
DoD-VA Health Incentive Fund	0	15	15	15	15	Defense Health Program (DHP)
Total	0	15	15	15	15	--

Changes to Existing Law: This proposal would amend title 38, United States Code, as follows:

* * * * *

§8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources

* * * * *

(d) JOINT INCENTIVES PROGRAM.—(1) Pursuant to subsection (b)(4), the two Secretaries shall carry out a program to identify, provide incentives to, implement, fund, and evaluate creative coordination and sharing initiatives at the facility, intraregional, and nationwide levels. The program shall be administered by the Department of Veterans Affairs-Department of Defense Joint Executive Committee, under procedures jointly prescribed by the two Secretaries.

(2) To facilitate the incentive program, there is established in the Treasury a fund to be known as the "DOD-VA Health Care Sharing Incentive Fund". Each Secretary shall annually contribute to the fund a minimum of $15,000,000 from the funds appropriated to that Secretary's Department. Such funds shall remain available until expended and shall be available for any purpose authorized by this section.

(3) The program under this subsection shall terminate on ~~September 30, 2020~~ September 30, 2025.

* * * * *

SEC. ___. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) EXTENSION OF AUTHORITY.—Section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as most recently amended by section 1104 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is further amended by striking "through 2019" and inserting "through 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2020.

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

Section-by-Section Analysis

This proposal has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAAs, most recently section 1104 of the FY 2019 NDAA. The provision is currently in effect through calendar year2019. The authority under that section is similar to that previously provided in the NDAAs since FY 2006.

This proposal would provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in the geographic area of U.S. Central Command (CENTCOM) and former USCENTCOM regions that are now part of U.S. Africa Command and are military operations or in response to a national emergency declared by the President.

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a

Federal agency head, during calendar year 2020, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2020 President's Budget. The Department of Defense estimates this proposal would cost $2.784 million for FY 2020. This proposal would be funded from the Component and Defense Agency operation and maintenance fund accounts. The limitation relief is for those people who are deployed in support of Overseas Contingency Operations (OCO). The funding is requested in the military departments' Operation and Maintenance OCO budgets by cost breakdown structure category. The number of personnel affected in FY 2019 was approximately 2,760. The number of affected personnel Defense-wide in FY 2020 is estimated to be the same. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	$2.056					Operation and Maintenance, Army OCO
Navy	$.166					Operation and Maintenance, Navy OCO
USMC	$.083					Operation and Maintenance, USMC OCO
Air Force	$.195					Operation and Maintenance, Air Force OCO
DLA	$.150					Defense Working Capital Funds, Defense-Wide, OCO
DCMA	$.070					Operation and Maintenance, Defense-wide OCO
DISA	$.025					Operation and Maintenance, Defense-wide OCO
DCAA	$.007					Operation and Maintenance, Defense-wide OCO
OSD	$.020					Operation and Maintenance, Defense-wide OCO
DFAS	$.006					Defense Working Capital Funds, Defense-Wide , OCO
WHS	$.003					Operation and Maintenance, Defense-wide OCO
Joint Staff	$.003					Operation and Maintenance, Defense-wide OCO
Total	$2.784					

PERSONNEL AFFECTED (END STRENGTH)

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Appropriation From
Army	2,044					Operation and Maintenance, Army OCO
Navy	166					Operation and Maintenance, Navy OCO
USMC	81					Operation and Maintenance, USMC OCO
Air Force	193					Operation and Maintenance, Air Force OCO
DLA	149					Defense Working Capital Funds, Defense-Wide, OCO
DCMA	69					Operation and Maintenance, Defense-wide OCO
DISA	24					Operation and Maintenance, Defense-wide OCO
DCAA	6					Operation and Maintenance, Defense-wide OCO
OSD	19					Operation and Maintenance, Defense-wide OCO
DFAS	5					Defense Working Capital Funds, Defense-Wide , OCO
WHS	2					Operation and Maintenance, Defense-wide OCO
Joint Staff	2					Operation and Maintenance, Defense-wide OCO
Total	2,760					

Cost Methodology: The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2018, the additional cost for overtime in excess of the annual premium pay limitation was approximately $2.7 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2020, but the above scenario illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

Changes to Existing Law: This proposal would amend section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615) as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During calendar years 2009 ~~through 2019~~ through 2020, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency

may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

(1) a military operation, including a contingency operation; or

(2) an operation in response to a national emergency declared by the President.

(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.

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SEC. ___. ONE-YEAR EXTENSION OF TEMPORARY AUTHORITY TO GRANT ALLOWANCES, BENEFITS, AND GRATUITIES TO CIVILIAN PERSONNEL ON OFFICIAL DUTY IN A COMBAT ZONE.

Paragraph (2) of section 1603(a) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443), as added by section 1102 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4616) and as most recently amended by section 1115 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is further amended by striking "2020" and inserting "2021".

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

Section-by-Section Analysis

This proposal would extend through Fiscal Year (FY) 2021 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

This authority has been granted since 2006 to provide certain allowances, benefits, and gratuities to individuals on official duty in Pakistan or a combat zone. The extension of the authority would ensure employees receive benefits promptly and for the periods of time when the conditions warrant the designation of a combat zone. This is a provision that applies to all Federal agencies, not just the Department of Defense (DoD), and is necessary to incentivize and support all Federal civilian employees taking assignments in Pakistan or a combat zone.

Budget Implications: The resources required are reflected in the table below and are funded within the Fiscal Year (FY) 2020 President's Budget. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below. The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (i.e., death gratuity equal to EX-II ($189,600 in 2018); and payment of commercial roundtrip travel

for Rest and Recuperation (R&R) breaks (up to three per year for employees deployed for 12 consecutive months and home leave). Specifically, the total cost for the death gratuity is calculated based on the assumption that there is one civilian death per Component during the two-year period. Payment of commercial roundtrip travel for R&R is based on the estimated number of currently deployed civilians who will remain deployed for 12 consecutive months, and thus are entitled to up to three R&R breaks and home leave. Estimates of the number of employees are: Army – 503; Navy – 333; Air Force – 55; Defense Agencies – 109 (see breakdown below). The average cost for each roundtrip travel for R&R is $18,000.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	9.05					Operation and Maintenance, Army OCO
Navy	5.99					Operation and Maintenance, Navy OCO
Air Force	0.99					Operation and Maintenance, Air Force OCO
DLA	1.49					Defense Working Capital Funds, Defense-Wide (OCO)
DCMA	0.32					Operation and Maintenance, Defense-Wide OCO
DISA	0.07					Operation and Maintenance, Defense Wide OCO
DCAA	0.07					Operation and Maintenance, Defense Wide OCO
Total	17.98					

PERSONNEL AFFECTED (END STRENGTH)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	503					Operation and Maintenance, Army OCO
Navy	333					Operation and Maintenance, Navy OCO
Air Force	55					Operation and Maintenance, Air Force OCO
DLA	83					Defense Working Capital Funds, Defense-Wide (OCO)
DCMA	18					Operation and Maintenance, Defense-Wide OCO
DISA	4					Operation and Maintenance, Defense Wide OCO
DCAA	4					Operation and Maintenance, Defense Wide OCO
Total	1,000					

Changes to Existing Law: This proposal would make the following change to section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443):

SEC. 1603. (a) IN GENERAL.—(1) During fiscal years 2006 (including the period beginning on October 1, 2005, and ending on June 15, 2006), 2007, and 2008 the head of an

agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Iraq or Afghanistan.

(2) During fiscal years 2009 through ~~2020~~ 2021**,** the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

(b) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect the authority of the head of an agency under any other provision of law.

(c) APPLICABILITY OF CERTAIN AUTHORITIES.—Section 912(a) of the Internal Revenue Code of 1986 shall apply with respect to amounts received as allowances or otherwise under this section in the same manner as section 912 of the Internal Revenue Code of 1986 applies with respect to amounts received by members of the Foreign Service as allowances or otherwise under chapter 9 of title I of the Foreign Service Act of 1980.

SEC. ___. EXTENSION OF AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OF THE OFFICE OF SECURITY COOPERATION IN IRAQ.

Subsections (c), (d), and (f)(1) of section 1215 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 113 note), as most recently amended by section 1235 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), are each amended by striking "fiscal year 2019" and inserting "fiscal year 2020".

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

Section-by-Section Analysis

This proposal would continue and extend the authorization of funds for the operations and activities of the Office of Security Cooperation in Iraq (OSCI) and security assistance teams, including life support, transportation and personal security, and facilities renovation and construction in fiscal year 2020. This proposal would continue the authorization of funds for OSCI training activities in support of Iraqi Ministry of Defense and Counter Terrorism Service Personnel. The additional authorities in this proposal are critical to continue momentum for a secure Iraq with multiple nationally coordinated security institutions as well as regional and local security elements, including after operations to defeat the Islamic State of Iraq and Syria (ISIS) have concluded. In particular, this proposal includes special authority for OSCI to conduct defense institution building, professionalization of security forces, and institutional-level development and training to enable effective, affordable, and sustainable defense institutions, which in turn will improve national and regional stability for Iraq. This authority is not to be duplicative of or replace any other authority to provide assistance to foreign forces, groups, or individuals, including Foreign Military Sales (FMS), Foreign Military Financing (FMF), or other activities authorized by the National Defense Authorization Act (NDAA), such as activities authorized under section 1236 of the NDAA for fiscal year 2015, as amended. Rather, this authority is intended to fill gaps that are not covered by these otherwise authorized programs and to address defense institution building and professionalization of the unique structure of Iraq security organizations and forces.

This proposal is an extension of an existing authority and reflects the importance of a responsible transition from an international coalition-assisted effort to counter ISIS to a normalized and nationally integrated Iraqi security force capable of conducting counterterrorism, border security, and critical infrastructure protection. The temporary authority demonstrates and continues a reliable partnership with unique Iraqi security organizations and forces performing a national security mission. These authorities are intended to phase U.S. security assistance and cooperation responsibly as ISIS is defeated.

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

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
OSCI	45.3					Operation and Maintenance, Air Force OCO
Total	45.3					

Changes to Existing Law: This proposal would make the following changes to section 1215 of the NDAA for FY 2012 (Public Law 112–81; 10 U.S.C. 113 note):

SEC. 1215. AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OF THE OFFICE OF SECURITY COOPERATION IN IRAQ.

(a) AUTHORITY.—The Secretary of Defense may support United States Government transition activities in Iraq by providing funds for the following:

(1) Operations and activities of the Office of Security Cooperation in Iraq.

(2) Operations and activities of security assistance teams in Iraq.

(b) TYPES OF SUPPORT.—The operations and activities for which the Secretary may provide funds under the authority in subsection (a) may include life support, transportation and personal security, and construction and renovation of facilities.

(c) LIMITATION ON AMOUNT.—The total amount of funds provided under the authority in subsection (a) in ~~fiscal year 2019~~ fiscal year 2020 may not exceed $45,300,000.

(d) SOURCE OF FUNDS.—Funds for purposes of subsection (a) for ~~fiscal year 2019~~ fiscal year 2020 shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

(e) COVERAGE OF COSTS OF OSCI IN CONNECTION WITH SALES OF DEFENSE ARTICLES OR DEFENSE SERVICES TO IRAQ.—The President shall ensure that any letter of offer for the sale to Iraq of any defense articles or defense services issued after the date of the enactment of this Act [Dec. 31, 2011] includes, consistent with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.), charges sufficient to recover the costs of operations and activities of security assistance teams in Iraq in connection with such sale.

(f) ADDITIONAL AUTHORITY FOR ACTIVITIES OF OSCI.—

(1) IN GENERAL.—During ~~fiscal year 2019~~ fiscal year 2020, the Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Office of Security Cooperation in Iraq to conduct activities to support the following:

(A) Defense institution building to mitigate capability gaps and promote effective and sustainable defense institutions.

(B) Professionalization, strategic planning and reform, financial management, manpower management, and logistics management of military and other security forces with a national security mission.

(2) REQUIRED ELEMENTS OF TRAINING.—The training conducted under paragraph (1) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Military professionalism.

(C) Respect for legitimate civilian authority within Iraq.

(g) REPORTS.—

(1) IN GENERAL.—Not later than September 30, 2015, and every 180 days thereafter until the authority in this section expires, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the appropriate committees of Congress a report on the activities of the Office of Security Cooperation in Iraq.

(2) ELEMENTS.—Each report under this subsection shall include the following:

(A) A current description of capability gaps in the security forces of Iraq, including capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance, and a current description of the extent, if any, to which the Government of Iraq has requested assistance in addressing such capability gaps.

(B) A current description of the activities of the Office of Security Cooperation in Iraq and the extent, if any, to which the programs conducted by the Office in conjunction with other United States programs (such as the Foreign Military Financing program, the Foreign Military Sales program, and the assistance provided pursuant to section 1236 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291 [128 Stat. 3558])) will address the capability gaps described pursuant to subparagraph (A).

(C) A current description of how the activities of the Office of Security Cooperation in Iraq are coordinated with, and complement and enhance, the assistance provided pursuant to section 1236 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015.

(D) A current description of end use monitoring programs, and any other programs or procedures, used to improve accountability for equipment provided to the Government of Iraq.

(E) A current description of the measures of effectiveness used to evaluate the activities of the Office of the Security Cooperation in Iraq, and an analysis of any determinations to expand, alter, or terminate specific activities of the Office based on such evaluations.

(F) A current evaluation of the effectiveness of the training described in subsection (f)(2) in promoting respect for human rights, military professionalism, and respect for legitimate civilian authority in Iraq.

(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, 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.

SEC. ___. EXTENSION OF AFGHAN SPECIAL IMMIGRANT PROGRAM.

Section 602(b)(3)(F) of the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note) is amended—

(1) in the heading, by striking "2015, 2016, AND 2017" and inserting "2015 THROUGH 2020";

(2) in the matter preceding clause (i), by striking "18,500" and inserting "22,500";

(3) in clause (i), by striking "December 31, 2020" and inserting "December 31, 2021"; and

(4) in clause (ii), by striking "December 31, 2020" and inserting "December 31, 2021".

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

Section-by-Section Analysis

This proposal would modify the Afghan Special Immigrant Program to reflect the continuing nature of the U.S. and international missions in Afghanistan by amending the law to add an additional 4,000 visas.

Budget Implications: This proposal is not budgetary for DOD. This proposal would have an associated cost due to the mandatory entitlement programs which accompany special immigrant visas (SIVs) as well as visa processing costs incurred through the Department of State.

Changes to Existing Law: This proposal would make the following changes to section 602(b)(3)(F) of the Afghan Allies Protection Act of 2009 (title VI of division F of Public Law 111–8; 8 U.S.C. 1101 note) as most recently amended by section 1214 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328, 130 Stat. 2479):

Afghan Allies Protection Act of 2009
(Public Law 111–8; 8 U.S.C. 1101 note)

TITLE VI
AFGHAN ALLIES PROTECTION ACT OF 2009

SEC. 601. SHORT TITLE.

This title may be cited as the "Afghan Allies Protection Act of 2009".

SEC. 602. PROTECTION FOR AFGHAN ALLIES.

(a) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

(b) SPECIAL IMMIGRANT STATUS FOR CERTAIN AFGHANS.—

* * * * *

(3) NUMERICAL LIMITATIONS.—

* * * * *

(F) FISCAL YEARS ~~2015, 2016, AND 2017~~ 2015 THROUGH 2020.—In addition to any unused balance under subparagraph (D), for the period beginning on the date of the enactment of this subparagraph until such time that available special immigrant visas under subparagraphs (D) and (E) and this subparagraph are exhausted, the total number of principal aliens who may be provided special immigrant status under this section shall not exceed ~~18,500~~ 22,500. For purposes of status provided under this subparagraph—

(i) the period during which an alien must have been employed in accordance with paragraph (2)(A)(ii) must terminate on or before ~~December 31, 2020~~ December 31, 2021;

(ii) the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) not later than ~~December 31, 2020~~ December 31, 2021; and

(iii) the authority to issue visas shall commence on the date of the enactment of this subparagraph and shall terminate on the date such visas are exhausted.

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SEC.___. INCLUSION OF VETERANS ON TEMPORARY DISABILITY OR PERMANENT DISABLED RETIREMENT LISTS IN MILITARY ADAPTIVE SPORTS PROGRAMS.

(a) INCLUSION OF VETERANS.—Section 2564a(a)(1) of title 10, United States Code, is amended by striking "for members of the armed forces who" and all that follows through the period at the end and inserting the following: "for—

"(A) any member of the armed forces who is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

"(B) any veteran (as defined in section 101 of title 38), during the one-year period following the veteran's date of separation, who—

"(i) is on the Temporary Disability Retirement List or Permanently Disabled Retirement List;

"(ii) is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

"(iii) was enrolled in the program authorized under this section prior to the veteran's date of separation.".

(b) CONFORMING AMENDMENT.—Section 2564a(b) of such title is amended by inserting "and veterans" after "members".

[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 Military Services Adaptive Sports programs to continue rehabilitative services for veterans who were enrolled in their respective service's Wounded Warrior Program prior to their date of separation. This proposal would also apply to military

members enrolled in the U.S. Special Operations Command Wounded Warrior Program. This amendment allows Department of Defense appropriated funds to cover travel, lodging, and per diem for veterans who have been placed on the Temporary Disability Retirement List or Permanently Disabled Retirement List for a finite time period of one year from date of separation for the sole purpose of continuing or completing the member's physical, psychological, and social rehabilitation. This type of rehabilitation is not offered through programs sponsored by the Department of Veterans Affairs and members cannot be sponsored by the Department of Veterans Affairs to attend the Military Service events. This change also includes members diagnosed with illnesses that meet the criteria for significant life altering circumstances causing an unfit determination for continued service in the military.

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**
Air Force	0.36	0.36	0.37	0.37	0.38	Operation and Maintenance, Air Force
Navy	0.30	0.30	0.30	0.31	0.32	Operation and Maintenance, Navy
Marine Corps	0.18	0.19	0.22	0.24	0.25	Operation and Maintenance, Marine Corps
Army	Army will not use this authority.					
Total	0.84	0.85	0.89	0.92	0.95	--

Changes to Existing Law: This proposal would make the following changes to section 2564a of title 10, United States Code:.

§2564a. Provision of assistance for adaptive sports programs for members of the armed forces

(a) Program Authorized.-(1) The Secretary of Defense may establish a military adaptive sports program to support the provision of adaptive sports programming ~~for members of the armed forces who are eligible to participate in adaptive sports because of an injury or wound incurred in the line of duty in the armed forces.~~ for—

(A) any member of the armed forces who is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

(B) any veteran (as defined in section 101 of title 38), during the one-year period following the veteran's date of separation, who—

(i) is on the Temporary Disability Retirement List or Permanently Disabled Retirement List;

(ii) is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

(iii) was enrolled in the program authorized under this section prior to the veteran's date of separation.

(2) In establishing the military adaptive sports program, the Secretary of Defense shall-

(A) consult with the Secretary of Veterans Affairs; and

(B) avoid duplicating programs conducted by the Secretary of Veterans Affairs under section 521A of title 38.

(b) Provision of Assistance; Purpose.-(1) Under such criteria as the Secretary of Defense may establish under the military adaptive sports program, the Secretary may award grants to, or enter into contracts and cooperative agreements with, entities for the purpose of planning, developing, managing, and implementing adaptive sports programming for members and veterans described in subsection (a).

(2) The Secretary of Defense shall use competitive procedures to award any grant or to enter into any contract or cooperative agreement under this subsection.

(c) Use of Assistance.-Assistance provided under the military adaptive sports program shall be used-

(1) for the purposes specified in subsection (b); and

(2) for such related activities and expenses as the Secretary of Defense may authorize.

SEC. ___. EXPANSION OF AUTHORITY FOR ACCESS AND INFORMATION RELATING TO CYBERATTACKS ON DEPARTMENT OF DEFENSE OPERATIONALLY CRITICAL CONTRACTORS.

Section 391(c) of title 10, United States Code, is amended—

(1) in paragraph (3)–

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

"(A) include mechanisms for Department personnel—

"(i) if requested by an operationally critical contractor, to assist the contractor in detecting and mitigating penetrations; or

"(ii) at the request of the Department, to obtain access to equipment or information of an operationally critical contractor necessary to conduct a forensic analysis, in addition to any analysis conducted by the contractor; and"; and

(B) in subparagraph (B)—

(i) by striking "to determine whether information" and inserting the following: "to determine whether —

"(i) information";

(ii) in clause (i), as so designated—

(I) by inserting "or compromised on" after "exfiltrated from"; and

(II) by striking the period at the end and inserting "or compromised; or"; and

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

"(ii) the ability of the contractor to provide operationally critical support has been affected and, if so, how and to what extent it has been affected."; and

(2) in paragraph (4), by inserting ", so as to minimize delays in or any curtailing of the Department's cyber response and defensive actions" after "specific person"; and

(3) in paragraph (5)(C), by inserting " or counterintelligence activities" after "investigations".

[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 391 of title 10, United States Code, by extending the ability of the Department of Defense (DoD) to react immediately to reports of intrusions that may affect critical DoD data.

A number of the Department's commercial transportation service providers are operationally critical contractors as defined in section 391 of title 10, United States Code. They are key conduits of logistics-related data, including the personally identifiable information relating to the transportation of DoD personnel and their belongings. Due to this interconnected relationship, the security of defense contractor networks and information systems has been highlighted as a key risk in the mission assurance analysis of support to a contingency operation or in times of crisis. Although Department-related data residing in these systems is usually unclassified, its security and integrity is absolutely critical to the effective management of the worldwide logistics enterprise, especially during wartime or a contingency. The purpose of this legislative proposal is to facilitate the same level of proactive DoD support in responding to a cyber incident as that authorized for cleared defense contractors. Specifically, this proposal would require DOD to contract in such a way that operationally critical contractors would provide through contract, at Department request, access to contractor systems and information to the extent necessary to determine the impact of the incident on the DoD. At present, the operationally critical contractor may request forensic support from the Department in the event of a cyber-incident, but the implementing contract clauses do require the operationally critical contractor to accept such support if offered.

The enhanced level of DoD access sought in this proposal may be required by contract and would thus appear to make additional legislation unnecessary. However, the liability protections provided to an operationally critical contractor under section 391 for collaborating

with DoD only extend to the activities currently addressed in that section. While a contractor may agree by contract to provide greater access to DoD than the law requires, it does so at its own risk. Not only does this increase the contractor's potential liability exposure, but it may also serve as a deterrent to doing business with DoD in the first place. Since DoD needs greater access than the law currently requires, it is imperative that this greater level of access be incorporated into section 39--rather than just required by contract--in order to accord the contractor liability protections commensurate with the level of access it is required to provide.

This proposal would facilitate proactive DoD support to operationally critical contractors to allow for immediate forensic analysis and the protection of crucial DoD information. In addition, it would expand the liability protections currently available to such contractors under the law to cover the level of access being sought by DoD with this proposal.

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

Changes to Existing Law: This proposal would make the following changes to section 391 of title 10, United States Code:

§391. Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors

(a) DESIGNATION OF DEPARTMENT COMPONENT TO RECEIVE REPORTS.—The Secretary of Defense shall designate a component of the Department of Defense to receive reports of cyber incidents from contractors in accordance with this section and section 393 of this title or from other governmental entities.

(b) PROCEDURES FOR REPORTING CYBER INCIDENTS.—The Secretary of Defense shall establish procedures that require an operationally critical contractor to report in a timely manner to component designated under subsection (a) each time a cyber incident occurs with respect to a network or information system of such operationally critical contractor.

(c) PROCEDURE REQUIREMENTS.—

(1) DESIGNATION AND NOTIFICATION.—The procedures established pursuant to subsection (a) shall include a process for—

(A) designating operationally critical contractors; and

(B) notifying a contractor that it has been designated as an operationally critical contractor.

(2) RAPID REPORTING.—The procedures established pursuant to subsection (a) shall require each operationally critical contractor to rapidly report to the component of the Department designated pursuant to subsection (d)(2)(A) on each cyber incident with respect to any network or information systems of such contractor. Each such report shall include the following:

(A) An assessment by the contractor of the effect of the cyber incident on the ability of the contractor to meet the contractual requirements of the Department.

(B) The technique or method used in such cyber incident.

(C) A sample of any malicious software, if discovered and isolated by the contractor, involved in such cyber incident.

(D) A summary of information compromised by such cyber incident.

(3) DEPARTMENT ASSISTANCE AND ACCESS TO EQUIPMENT AND INFORMATION BY DEPARTMENT PERSONNEL.—The procedures established pursuant to subsection (a) shall—

~~(A) include mechanisms for Department personnel to, if requested, assist operationally critical contractors in detecting and mitigating penetrations; and~~

(A) include mechanisms for Department personnel—

(i) if requested by an operationally critical contractor, to assist the contractor in detecting and mitigating penetrations; or

(ii) at the request of the Department, to obtain access to equipment or information of an operationally critical contractor necessary to conduct a forensic analysis, in addition to any analysis conducted by the contractor; and

(B) provide that an operationally critical contractor is only required to provide access to equipment or information as described in subparagraph (A) ~~to determine whether information~~ to determine whether—

(i) information created by or for the Department in connection with any Department program was successfully exfiltrated from or compromised on a network or information system of such contractor and, if so, what information was exfiltrated~~.~~ or compromised; or

(ii) the ability of the contractor to provide operationally critical support has been affected and, if so, how and to what extent it has been affected.

(4) PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.—The procedures established pursuant to subsection (a) shall provide for the reasonable protection of trade secrets, commercial or financial information, and information that can be used to identify a specific person, so as to minimize delays in or any curtailing of the Department's cyber response and defensive actions.

(5) DISSEMINATION OF INFORMATION.—The procedures established pursuant to subsection (a) shall limit the dissemination of information obtained or derived through the procedures to entities—

(A) with missions that may be affected by such information;

(B) that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(C) that conduct counterintelligence or law enforcement investigations or counterintelligence activities; or

(D) for national security purposes, including cyber situational awareness and defense purposes.

(d) PROTECTION FROM LIABILITY OF OPERATIONALLY CRITICAL CONTRACTORS.—

(1) No cause of action shall lie or be maintained in any court against any operationally critical contractor, and such action shall be promptly dismissed, for compliance with this section that is conducted in accordance with procedures established pursuant to subsection (b).

(2)(A) Nothing in this section shall be construed—

(i) to require dismissal of a cause of action against an operationally critical contractor that has engaged in willful misconduct in the course of complying with the procedures established pursuant to subsection (b); or

(ii) to undermine or limit the availability of otherwise applicable common law or statutory defenses.

(B) In any action claiming that paragraph (1) does not apply due to willful misconduct described in subparagraph (A), the plaintiff shall have the burden of proving by clear and convincing evidence the willful misconduct by each operationally critical contractor subject to such claim and that such willful misconduct proximately caused injury to the plaintiff.

(C) In this subsection, the term "willful misconduct" means an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(e) DEFINITIONS.—In this section:

(1) CYBER INCIDENT.—The term "cyber incident" means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system or the information residing therein.

(2) OPERATIONALLY CRITICAL CONTRACTOR.—The term "operationally critical contractor" means a contractor designated by the Secretary for purposes of this section as a critical source of supply for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

SEC. ___. EXTENSION AND CLARIFICATION OF AUTHORITY FOR THE JOINT DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITY DEMONSTRATION PROJECT.

Title XVII of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2567) is amended—

(1) in section 1701(a)—

(A) by striking "Subject to subsection (b), the" and inserting "The";

(B) by striking subsection (b); and

(C) by redesignating subsections (c) through (f) as subsections (b) through (e), respectively;

(2) in section 1702(a)(1), by striking "hereafter in this title" and inserting "hereafter in this section";

(3) in subsections (a) and (c) of section 1703, by striking "the facility" and inserting "the James A. Lovell Federal Health Care Center";

(4) in section 1704—

(A) in subsections (a)(3), (a)(4)(A) and (b)(1), by striking "the facility" and inserting "the James A. Lovell Federal Health Care Center"; and

(B) in subsection (e), as amended by section 722 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3417), section 723 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 869), section 741 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 129 Stat. 2237), section 719 of the National

Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1283), and section 731 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law115-232) by striking "September 30, 2020" and inserting "September 30, 2023"; and

(5) in section 1705—

(A) in subsection (a), by striking "the facility" and inserting "the James A. Lovell Federal Health Care Center (hereafter in this section referred to as the 'JALFHCC')";

(B) in the matter preceding paragraph (1) of subsection (b), by striking "the facility" and inserting "the JALFHCC"; and

(C) in subsection (c)—

(i) by striking "the facility" each place it appears and inserting "the JALFHCC"; and

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

"(4) To permit the JALFHCC to enter into personal services contracts to carry out health care responsibilities in the JALFHCC to the same extent and subject to the same conditions and limitations as apply under section 1091 of title 10, United States Code, to the Secretary of Defense in relation to health care responsibilities in medical treatment facilities of the Department of Defense.".

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

Section-by-Section Analysis

This proposal would amend five sections of title XVII the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Public Law 111-84; 123 Stat. 2567), which authorized the Department of Defense (DoD)-Department of Veterans (VA) Affairs

Medical Facility Demonstration Project in North Chicago and Great Lakes, Illinois. The purpose of this proposal is to authorize the continuation of this demonstration project, with some appropriate clarifications of authority. A comprehensive assessment of the demonstration project concluded that continued joint operation of a medical center in the North Chicago-Great Lakes area serves the needs of both departments and continues to provide a valuable demonstration of VA-DoD medical system collaboration.

In section 1701, this proposal would amend the demonstration project authority to permit revisions to the original executive agreement that are appropriate for continuing joint VA-DoD operation of the James A. Lovell Federal Health Care Center.

In section 1702, this proposal would make a conforming amendment that clarifies the meaning of the word "facility" in section 1702.

In section 1703, this proposal would replace two instances of the use of the word "facility" with "James A. Lovell Federal Health Care Center".

In section 1704, this proposal would amend the term of the life of the Joint Medical Facility Demonstration Fund, from September 30, 2020, to September 30, 2023. Continued use of the joint fund is essential to the program. The proposal would also replace three instances of the use of the word "facility" with "James A. Lovell Federal Health Care Center".

In section 1705, this proposal would replace five instances of the use of the word "facility" with "James A. Lovell Federal Health Care Center" or "JALFHCC" to mirror language in section 1413 of the FY 2015 NDAA. This amendment clarifies applicability of the term "facility" in this section. In the FY 2010 NDAA the word "facility" is defined in section 1702(a)(1) as limited to DoD assets. Access to care under section 1705 should be for the entire joint facility. Another proposed amendment to section 1705 would allow the JALFHCC to enter into personal services contracts (under 10 U.S.C. 1091) with health care providers to the same extent that DoD medical facilities have been doing successfully for many years.

Budget Implications: The resources reflected in the table below are included within the FY 2020 President's Budget; however, they are subject to update based upon the final reconciliation of prior year costs, as agreed to by the Department of Defense and the Department of Veterans Affairs. The proposal to modify the language in the eligibility section has no budgetary impact as this change would only reflect current practice in waiving TRICARE cost shares for DoD beneficiaries seen in facilities of the Uniformed Services and also aligns FY 2010 NDAA language with language in other legislation.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Defense Health Program	127.00	130.404	134.043	137.783	141.622	Defense Health Program, Operation and Maintenance
Total	127.00	130.404	134.043	137.783		--

Changes to Existing Law: This proposal would make the following changes to sections 1701, 1702, 1703, 1704, and 1705 of title XVII of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2190):

TITLE XVII--DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITY DEMONSTRATION PROJECT

SEC. 1701. DEMONSTRATION PROJECT AUTHORITY**.**

(a) EXECUTIVE AGREEMENT AUTHORIZED**.--Subject to subsection (b), the** The Secretary of Defense, in consultation with the Secretary of the Navy, and the Secretary of Veterans Affairs may execute a signed executive agreement pursuant to section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 455) for the joint use by the Department of Defense and the Department of Veterans Affairs of the following:

(1) A new Navy ambulatory care center (on which construction commenced in July 2008), parking structure, and supporting structures and facilities in North Chicago, Illinois, and Great Lakes, Illinois.

(2) Medical personal property and equipment relating to the center, structures, and facilities described in paragraph (1).

(b) DEADLINE FOR ENTRY INTO AGREEMENT. --The executive agreement authorized by subsection (a) shall be entered into, if at all, by not later than 180 days after the date of the enactment of this Act.

(c*b)* SCOPE.--The executive agreement under subsection (a) shall--

(1) be a binding operational agreement on matters under the areas specified in section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009; and

(2) contain additional terms and conditions as required by the provisions of this title.

(~~d~~c) REPORTS.--

(1) NOTICE OF AGREEMENT.--Not later than seven days before executing an executive agreement under subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report setting forth a copy of the proposed executive agreement.

(2) FINAL REPORT.--Not later than 180 days after the fifth anniversary of the date of the execution of the executive agreement under subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the exercise of the authorities in this title at the facility (as defined in section 1702(a)(1)). The report shall include the following:

(A) A comprehensive description and assessment of the exercise of the authorities in this title.

(B) The recommendation of the Secretaries as to whether the exercise of the authorities in this title should continue.

(3) REPORT ON ADDITIONAL LOCATIONS FOR SIMILAR AGREEMENTS.--Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report setting forth such recommendations as the Secretaries jointly consider appropriate for additional locations, if any, at which executive agreements like the executive agreement under subsection (a) would be advisable.

(~~e~~d) COMPTROLLER GENERAL REVIEWS.--

(1) IN GENERAL.-- Not later than one year after the execution of an executive agreement under subsection (a), not later than two years after the execution of the executive agreement, and not later than September 30, 2015, the Comptroller General shall conduct a review and assessment of the following:

(A) The progress made in implementing the agreement.

(B) The effects of the agreement on the provision of care and operation of the facility (as so defined).

(2) REPORTS.-- Not later than 90 days after the commencement of each review and assessment conducted under paragraph (1), the Comptroller General shall submit to the appropriate committees of Congress a report on such review and assessment. Each report shall set forth the following:

(A) The results of such review and assessment.

(B) Such recommendations for modifications of the executive agreement, or the authorities in this title, as the Comptroller General considers appropriate in light of the results of such review and assessment.

(~~f~~e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.--In this section, the term `appropriate committees of Congress' means--

(1) the Committees on Armed Services and Veterans' Affairs of the Senate; and

(2) the Committees on Armed Services and Veterans' Affairs of the House of Representatives.

SEC. 1702. TRANSFER OF PROPERTY.

(a) TRANSFER.—

(1) TRANSFER AUTHORIZED.--The Secretary of Defense, acting through the Administrator of General Services, may transfer, without reimbursement, to the Secretary of Veterans Affairs jurisdiction, custody, and control over the center, structures, facilities, and property and equipment covered by the executive agreement under section 1701 **(~~hereafter in this title~~ hereafter in this section** referred to as the ``facility'').

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SEC. 1703. TRANSFER OF CIVILIAN PERSONNEL OF THE DEPARTMENT OF DEFENSE.

(a) TRANSFER OF FUNCTIONS.—The Secretary of Defense and the Secretary of the Navy may transfer to the Secretary of Veterans Affairs functions necessary for the effective

operation of ~~**the facility**~~ **the James A. Lovell Federal Health Care Center.** The Secretary of Veterans Affairs may accept any functions so transferred.

(b) TERMS.—

(1) EXECUTIVE AGREEMENT.—Any transfer of functions under subsection (a) shall be carried out as provided in the executive agreement under section 1701. The functions to be so transferred shall be identified utilizing the provisions of section 3503 of title 5, United States Code.

(2) ELEMENTS.—In providing for the transfer of functions under subsection (a), the executive agreement under section 1701 shall provide for the following:

(A) The transfer of civilian employee positions of the Department of Defense identified in the executive agreement to the Department of Veterans Affairs, and of the incumbent civilian employees in such positions, and the transition of the employees so transferred to the pay, benefits, and personnel systems that apply to employees of the Department of Veterans Affairs (to the extent that different systems apply).

(B) The transition of employees so transferred to the pay systems of the Department of Veterans Affairs in a manner which will not result in any reduction in an employee's regular rate of compensation (including basic pay, locality pay, any physician comparability allowance, and any other fixed and recurring pay supplement) at the time of transition.

(C) The continuation after transfer of the same employment status for employees so transferred who have already successfully completed or are in the process of completing a one-year probationary period under title 5, United States Code, notwithstanding the provisions of section 7403(b)(1) of title 38, United States Code.

(D) The extension of collective bargaining rights under title 5, United States Code, to employees so transferred in positions listed in subsection 7421(b) of title 38, United States Code, notwithstanding the provisions of section 7422 of title 38, United States Code, for a two-year period beginning on the effective date of the executive agreement.

(E) At the end of the two-year period beginning on the effective date of the executive agreement, for the following actions by the Secretary of Veterans Affairs with respect to the extension of collective bargaining rights under subparagraph (D):

(i) Consideration of the impact of the extension of such rights.

(ii) Consultation with exclusive employee representatives of the transferred employees about such impact.

(iii) Determination, after consultation with the Secretary of Defense and the Secretary of the Navy, whether the extension of such rights should be terminated, modified, or kept in effect.

(iv) Submittal to Congress of a notice regarding the determination made under clause (iii).

(F) The recognition after transfer of each transferred physician's and dentist's total number of years of service as a physician or dentist in the Department of Defense for purposes of calculating such employee's rate of base

pay, notwithstanding the provisions of section 7431(b)(3) of title 38, United States Code.

(G) The preservation of the seniority of the employees so transferred for all pay purposes.

(c) RETENTION OF DEPARTMENT OF DEFENSE EMPLOYMENT AUTHORITY.—Notwithstanding subsections (a) and (b), the Department of Defense may employ civilian personnel at ~~**the facility**~~ **the James A. Lovell Federal Health Care Center** if the Secretary of the Navy, or a designee of the Secretary, determines it is necessary and appropriate to meet mission requirements of the Department of the Navy.

SEC. 1704. JOINT FUNDING AUTHORITY.

(a) JOINT MEDICAL FACILITY DEMONSTRATION FUND.--

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

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

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

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

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

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

(4) TRANSFERS FROM MEDICAL CARE COLLECTIONS.--

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

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

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

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

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

(5) ADMINISTRATION.--The Fund shall be administered in accordance with such provisions of the executive agreement under section 1701 as the Secretary of Defense and

the Secretary of Veterans Affairs shall jointly include in the executive agreement. Such provisions shall provide for an independent review of the methodology established under paragraph (3).

(b) AVAILABILITY.--

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

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

(3) PERIOD OF AVAILABILITY.--

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

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

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

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

(e) TERMINATION.--The authorities in this section shall terminate on ~~**September 30, 2020**~~**September 30, 2023.**

SEC. 1705. ELIGIBILITY OF MEMBERS OF THE UNIFORMED SERVICES FOR CARE AND SERVICES.

(a) IN GENERAL.--For purposes of eligibility for health care under chapter 55 of title 10, United States Code**,** ~~**the facility**~~ **the James A Lovell Federal Health Care Center (hereafter in this section referred to as the "JALFHCC")** may be treated as a facility of the uniformed services to the extent provided in the executive agreement under section 1701.

(b) PRIORITY OF TREATMENT.--The executive agreement under section 1701 shall provide an integrated priority list for access to health care at ~~**the facility**~~ **the JALFHCC**, which list shall--

(1) integrate the respective health care priority lists of the Secretary of Defense and the Secretary of Veterans Affairs, giving first priority of care to members of the Armed Forces on active duty; and

(2) take into account categories of beneficiaries, enrollment program status, and such other matters as the Secretary of Defense and the Secretary of Veterans Affairs jointly consider appropriate.

(c) ADDITIONAL ELEMENTS.--The executive agreement under section 1701 may include provisions as follows:

(1) To incorporate any resource-related limitations for access to health care at ~~the facility~~ the JALFHCC that the Secretary of Defense may establish for purposes of administering space-available eligibility for care in facilities of the uniformed services under chapter 55 of title 10, United States Code.

(2) To waive the applicability to **~~the facility~~** **the JALFHCC** of any provision of section 8111(e) of title 38, United States Code, that the Secretary of Defense and the Secretary of Veterans Affairs shall jointly specify.

(3) To allocate financial responsibility for care provided at **~~the facility~~** **the JALFHCC** for individuals who are eligible for care under both chapter 55 of title 10, United States Code, and title 38, United States Code.

***(*4) To permit the JALFHCC to enter into personal services contracts to carry out health care responsibilities in the JALFHCC to the same extent and subject to the same conditions and limitations as apply under section 1091 of title 10, United States Code, to the Secretary of Defense in relation to health care responsibilities in medical treatment facilities of the Department of Defense.**

* * * * *

SEC. ___. LICENSURE REQUIREMENTS FOR DEPARTMENT OF DEFENSE VETERINARY PROFESSIONALS: EMERGENCIES AND DISASTERS.

(a) LICENSURE REQUIREMENTS.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1094a the following new section:

"**§ 1094b. Licensure requirement for veterinary professionals: emergencies and disasters**

"(a) Notwithstanding any provision of law regarding the licensure of veterinary care and service providers, a veterinary professional described in subsection (b) may practice the veterinary profession of the veterinary professional at any location in any State, the District of Columbia, or a territory or possession of the United States, without regard to where such veterinary professional or the patient animal is located, if such practice is within the scope of the authorized Federal duties of such veterinary professional.

"(b) A veterinary professional described in this subsection is a person who is—

"(1) certified as a veterinary professional by a certification recognized by the Secretary of Defense;

"(2) currently licensed by a State, the District of Columbia, or a territory or possession of the United States to practice veterinary care and services; and

"(3)(A) a member of the armed forces, a civilian employee of the Department of Defense, or otherwise credentialed and privileged at a Federal veterinary institution or location designated by the Secretary for purposes of this section and is performing authorized duties for the Department of Defense for the purposes described in subsection (c); or

"(B) a member of the National Guard who is performing authorized veterinary care or services for the Department of Defense in a duty status pursuant to section 502(f) of title 32 for the purposes described in subsection (c).

"(c) The purposes described in this subsection are veterinary practice related to—

"(1) a national emergency declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.);

"(2) a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5122));

"(3) a public health emergency, as determined by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d); or

"(4) an extraordinary emergency, as determined by the Secretary of Agriculture under section 10407 of the Animal Health Protection Act (7 U.S.C. 8306).

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by inserting after the item relating to section 1094a the following new item:

"1094b. Licensure requirement for veterinary professionals: emergencies and disasters.".

Section-by-Section Analysis

This proposal would amend chapter 55 of title 10, United States Code, to permit members of the armed forces and civilian employees of the Department of Defense who are licensed veterinary professionals, including National Guard personnel serving in a duty status under section 502(f) of title 32, U.S. Code, to provide veterinary care and services at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such veterinary professional or the patient (animal) is located, so long as the practice is within the scope of authorized Department of Defense duties and is exercised for the purpose of providing assistance in support of a response related to a national emergency, a major disaster, an emergency, a public health emergency, or an extraordinary emergency.

According to the World Health Organization, there are more than 200 zoonotic diseases (i.e., diseases that can be spread between animals and humans). Many recently emerging diseases (e.g., West Nile virus, severe acute respiratory syndrome (SARS), avian influenza, and monkey pox) began with animals before spreading to humans. However, even animal diseases that only affect animals still pose health and economic hazards to humans. In light of such hazards, it is critical that the U.S. Government have the ability to bring all of its capabilities to bear, including those of the Department of Defense, to respond to an outbreak rapidly anywhere in the United States.

For example, the Department of Defense and the U.S. Department of Agriculture signed an updated memorandum of agreement in February 2016 covering Department of Defense support to the U.S. Department of Agriculture's Animal and Plant Health Inspection Service in response to an unexpected natural or manmade event that does or could do harm to people, the environment, resources, animals, property, or institutions, and/or may have a negative economic impact, such as the occurrence of a foreign animal disease, transboundary animal disease, or natural disaster that threatens the viability of U.S. animal agriculture and thereby the food supply of the United States. Pursuant to this memorandum of agreement, the Department of Defense could be requested to provide support that includes: (a) epidemiology, surveillance, and tracing; (b) laboratory diagnostic capability; (c) training; (d) transportation, logistics, and installation support; (e) debris removal and disposal; (f) decontamination and disinfection; and (g) field operations.

This proposal would ensure that the Department of Defense is able to respond rapidly and decisively to a request for veterinary services assistance from lead Federal departments and agencies supporting a State's emergency management response.

Consistent with our nation's national response system, the Federal Government normally provides Federal assistance when requested to do so by the Governor of a State who has determined that a disaster or emergency has exceeded the State's response capabilities or capacities. Federal departments and agencies with lead responsibilities for providing this Federal assistance may determine that they require additional capabilities or capacities and, therefore, could request assistance from the Department of Defense. Therefore, from the Department of Defense's perspective, this proposal would not foster competition with commercial veterinary services in a State since the State is required to exceed its capabilities and capacities, including those commercially available to the State, before requesting Federal assistance.

In other words, a State request likely would be the reason that the Animal and Plant Health Inspection Service would request Department of Defense assistance. Given the modest number of Department of Defense civilian (16 licensed DoD civilians working in DoD veterinary treatment facilities) and military veterinary professionals (523 active-duty, licensed Veterinary Corps Officers) and the multiple jurisdictions in which support may be required, this proposal would maximize the ability of the Department to provide support throughout the United States and eliminate potentially deadly delays that could be incurred by having to seek licensure or licensure waivers from State governments.

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 no budget requirements or implications as this proposal is solely dealing with licensure outside the confines of an installation when directed by the Secretary of Defense to perform a reimbursable Defense Support of Civil Authorities mission within the United States.

Changes to Existing Law: This proposal would insert a new section in chapter 55 of title 10, United States Code, the full text of which is shown above in the legislative language.

SEC. ___. REVISION TO AUTHORITIES RELATING TO MAIL SERVICE FOR MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIANS OVERSEAS.

(a) ELIGIBILITY FOR FREE MAIL.—Subsection (a) of section 3401 of title 39, United States Code, is amended to read as follows:

"(a)(1) First Class letter mail correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by an eligible individual described in paragraph (2) and addressed to a place within the delivery limits of a United States post office, if—

"(A) such letter mail is mailed by the eligible individual at an Armed Forces post office established in an overseas area designated by the President, where the Armed Forces of the United States are deployed for a contingency operation as determined by the Secretary of Defense; or

"(B) the eligible individual is hospitalized as a result of disease or injury incurred as a result of service in an overseas area designated by the President under subparagraph (A).

"(2) An eligible individual referred to in paragraph (1) is—

"(A) a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10; or

"(B) a civilian employee of the Department of Defense or a military department who is providing support to military operations.".

(b) SURFACE SHIPMENT OF MAIL AUTHORIZED.—Such section is further amended—

(1) by striking subsection (c);

(2) by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively; and

(3) by amending subsection (b) to read as follows:

"(b) There shall be transported by either surface or air, consistent with the service purchased by the mailer, between Armed Forces post offices or from an Armed Forces post office to a point of entry into the United States, the following categories of mail matter which are mailed at any such Armed Forces post office:

"(1) Letter mail communications having the character of personal correspondence.

"(2) Any parcel exceeding one pound in weight but less than 70 pounds in weight and less than 130 linear inches (length plus girth).

"(3) Publications published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public.".

(c) CLERICAL AMENDMENT.—The heading for such section, and the item relating to such section in the table of sections at the beginning of chapter 34 of such title, are each amended by striking the last five words.

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

Section-by-Section Analysis

This proposal amends title 39, United States Code, section 3401 (39 USC 3401) to provide flexibility to the Department of Defense (DoD) in managing and implementing the "free mail" program and to authorize surface transportation as an option for mail returning to the U.S. from Military Post Offices (MPOs), potentially saving tens of millions of dollars in mail transportation costs.

Subsection (a) of the proposal modifies the "free mail" program under 39 USC 3401(a), which is intended as a mechanism for members of the Armed Forces to remain in touch with friends and loved ones using personal correspondence for a temporary period of time or as long as the member does not have access to stamps and envelopes, usually in what is currently defined as a contingency operation. Subsection (a) would make three changes to simplify the administration of the program and enable DoD to develop workable procedures to reduce the potential for abuse.

First, subsection (a) would replace the five circumstances when free mail may be available to U.S. Service members. Rather than having to characterize the nature of an operation to determine if a Service member is eligible for free mail, the proposal would narrow the question to whether or not it is a contingency operation in an area designated by the President. DoD would no longer have to determine, for purposes of the free mail program, whether U.S. forces were engaged in an action against an enemy of the U.S., engaged in military operations involving armed conflict with a hostile armed force, engaged in temporary military operations under arduous circumstances, serving with a friendly foreign force in an armed conflict in which the U.S. is not a belligerent, or temporarily deployed overseas for an operational contingency in arduous circumstances.

Since there is no language in 39 USC 3401 citing when the authorization for free mail should sunset, subsection (a) of the proposal would clarify which Service members have access to the free mail program—namely those deployed overseas in a contingency operation. This would dissuade the perception that the free mail program is an entitlement and align with the congressional intent of an interim measure to afford a means of communication. Furthermore, by significantly streamlining eligibility for the program, this one change would relieve field commanders, who are sometimes reluctant to turn off the privilege even when operations have stabilized and full access to mail service is established, from having to make that decision.

Second, subsection (a) would eliminate free mail benefits for foreign soldiers working alongside our troops. Current language allows international free mail, which is administratively challenging to manage within the modern worldwide postal community. Such international mail has to be returned to the United States Postal Service (USPS) in the United States to be transported back to the foreign country, increasing transportation costs to both the Army (as the sole bill payer for the free mail program) and USPS. Since the statute applies to mail entering the United States, benefits should align with this requirement and not to a third country. The international mail system exists to provide mail services between countries. If a foreign soldier mails a letter from a third country outside the military postal service, they would be required to purchase international postage for delivery—charges that are shared between the delivery and accepting postal services. DoD should not subsidize this postage and transportation cost while at the same time limiting the privilege for some of our wounded warriors.

Third, subsection (a) would extend the free mail program to all hospitalized Service members wounded in a designated area. Currently, the law limits the free mail privilege to Service members wounded in a designated area who are in hospitals under DoD control. This unintentionally excludes wounded Service members transferred to a civilian hospital for

specialty care. The proposed text would allow any hospitalized Service member wounded in a designated area to send free mail.

Subsection (b) of the proposal would allow mail coming back to the United States from an MPO to be transported by surface shipment and would reduce mail transportation costs. Currently, 39 USC 3401 allows mail being sent to MPOs to be sent via surface transportation consistent with the type of service purchased by the mailer, but the statute prohibits surface transportation when sending mail from an MPO back to the United States or to another MPO. The forced upgrade of sending all mail from MPOs via air transportation (only to have it then shipped via surface transport once it enters the United States) is costly to DoD and exceeds the service the mailer purchased for moving the item. There is a significant cost difference between surface and air modes of transportation, with the air mode costing over five times more. Allowing flexibility in modes of transportation consistent with the service purchased by the mailer would allow DoD to avoid the increased costs incurred as a result of upgrading transportation of these items to air mode.

The changes to the free mail program under subsection (a) of the proposal would clarify the law and eliminate the administrative challenges in managing the program. Additionally, these changes to the program would likely reduce free mail administrative costs as the time spent on managing the program would decrease and the conditions to implement would be better defined to eliminate any potential abuse of the privilege.

Subsection (b) of the proposal would result in Service members (outside of the free mail program) paying for the type of mail service they desired. A Service member (or authorized civilian) could choose to mail their items using air transport at higher postage rates (with revenue going only to USPS) rather than slower, less expensive surface transportation. Anecdotal information from the field suggests that mailers will choose the lower cost when mailing and incur the increased delivery time.

Budget Implications: The first part of the proposal would not cost DoD any money for the free mail portion and anecdotally should reduce administrative costs for managing this program. Eliminating any free mail privileges for foreign soldiers while concurrently expanding the privilege for wounded warriors in non-DoD hospitals will result in no costs. Current postage expenditures by the Army for free mail are $500,000 annually but has reached as high as $5.4 million annually during the height of the war in Southwest Asia. Essentially, free mail changes under subsection (a) is a revenue neutral proposal.

The second part of the proposal, related to modes of transportation, would avoid costs for DoD. Depending on the policies developed and consistent with the mailer's choice of transportation, DoD savings would vary. DoD moved over 16.5 million kilograms (kg) of mail from MPOs back to the U.S. in 2013 at a cost of $90.3 million. (For purposes of this proposal we use kilograms which 1 kg = 2.2 pounds (lbs.)). Military Postal Service Agency estimates that approximately one third of this mail (5.5M kg) could qualify for surface shipment based on the criteria in the proposal (parcels >1 lb.) and customer choice of cheaper postage and slower delivery time. The average cost for mail moving by air from MPOs back to the U.S. is $5.47 per kg. The average cost of surface shipment is less than $1 per kg and varies since the container

fills up due to the size of items before it reaches its weight limit from those same items. The movement of the estimated 5.5 million kg by air would cost approximately $30,085,000. Moving the estimated 5.5 million kg by surface container would cost less than $5.5 million, resulting in a cost avoidance of over $24.5 million. The three military departments share the costs for mail transportation, with Army having 74 percent of the cost, Navy having 18 percent, and Air Force having 8 percent. Based on the above example, when this could be implemented after becoming law, this would result in reducing Army costs from $22.4 million to $4.1 million, Navy costs from $5.4 million to $1.0 million, and Air Force costs from $2.4 million to approximately $.4 million. The cost avoidance for Army is $19.4 million, for Navy is $4.4 million, and for Air Force is over $1.9 million. These are conservative figures based on estimates of qualified mail and cost avoidance may be much greater depending on mailer choices. This does not affect personnel other than choice of paying for air transport or surface transport. The resources currently required are reflected in the tables below and are included within the Fiscal Year (FY) 2020 President's Budget.

RESOURCE REQUIREMENTS Surface transportation ($Millions)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	22.4	22.4	22.4	22.4	22.4	Operation and Maintenance, Army
Navy/ Marine Corps	5.4	5.4	5.4	5.4	5.4	Operation and Maintenance, Navy
Air Force	2.4	2.4	2.4	2.4	2.4	Operation and Maintenance, Air Force
Total*	30.2	30.2	30.2	30.2	30.2	

RESOURCE REQUIREMENTS Free Mail Only ($Millions)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	.5	.5	.5	.5	.5	Operation and Maintenance, Army
Total	.5	.5	.5	.5	.5	

* The Army is the Executive Agent for the Military Postal Service and free mail was given to the Army as part of this process. No other service pays for the free-mail.

PERSONNEL AFFECTED Free Mail (estimated recipients)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	30,000	30,000	30,000	30,000	30,000	Operation and Maintenance, Army
Navy	3,000	3,000	3,000	3,000	3,000	Operational and Maintenance, Army
Air Force	2,000	2,000	2,000	2,000	2,000	Operation and Maintenance, Army
Marine Corps	3,000	3,000	3,000	3,000	3,000	Operation and Maintenance, Army
Total	38,000	38,000	38,000	38,000	38,000	

Changes to Existing Law: This proposal would make the following changes to section 3401 of title 39, United States Code:

§3401. Mailing privileges of members of Armed Forces of the United States ~~and of friendly~~ foreign nations

~~(a) Letter mail or sound- or video-recorded communications having the character of personal correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by—~~

~~(1) an individual who is a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10, or a civilian, otherwise authorized to use postal services at Armed Forces installations, who holds a position or performs one or more functions in support of military operations, as designated by the military theater commander, and addressed to a place within the delivery limits of a United States post office, if—~~

~~(A) such letter mail or sound- or video-recorded communication is mailed by such individual at an Armed Forces post office established in an overseas area, as designated by the President, where the Armed Forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, engaged in temporary military operations under arduous circumstances, serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent, or temporarily deployed overseas for an operational contingency in arduous circumstances, as determined by the Secretary of Defense; or~~

~~(B) such individual is hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury incurred as a result of service in an overseas area designated by the President under clause (A) of this paragraph; or~~

~~(2) a member of an armed force of a friendly foreign nation at an Armed Forces post office and addressed to a place within the delivery limits of a United States post office, or a post office of the nation in whose armed forces the sender is a member, if—~~

~~(A) the member is accorded free mailing privileges by his own government;~~

~~(B) the foreign nation extends similar free mailing privileges to a member of the Armed Forces of the United States serving with, or in, a unit under the control of a command of that foreign nation;~~

~~(C) the member is serving with, or in, a unit under the operational control of a command of the Armed Forces of the United States;~~

~~(D) such letter mail or sound- or video-recorded communication is mailed by the member—~~

~~(i) at an Armed Forces post office established in an overseas area, as designated by the President, where the Armed Forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, or serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent; or~~

~~(ii) while hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury incurred~~

~~as a result of services in an overseas area designated by the President under clause (D)(i) of this paragraph; and~~

~~(E) the nation in whose armed forces the sender is a member has agreed to assume all international postal transportation charges incurred.~~

(a)(1) First Class letter mail correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by an eligible individual described in paragraph (2) and addressed to a place within the delivery limits of a United States post office, if—

(A) such letter mail is mailed by the eligible individual at an Armed Forces post office established in an overseas area designated by the President, where the Armed Forces of the United States are deployed for a contingency operation, as determined by the Secretary of Defense; or

(B) the eligible individual is hospitalized as a result of disease or injury incurred as a result of service in an overseas area designated by the President under subparagraph (A).

(2) An eligible individual referred to in paragraph (1) is—

(A) a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10; or

(B) a civilian employee of the Department of Defense or a military department who is providing support to military operations.

~~(b) There shall be transported by air, between Armed Forces post offices which are located outside the 48 contiguous States of the United States or between any such Armed Forces post office and the point of embarkation or debarkation within the United States, the territories and possessions of the United States in the Pacific area, the Commonwealth of Puerto Rico, or the Virgin Islands, on a space available basis, on certificated United States air carriers or, for carriage of mail in foreign air transportation, other air carriers, air taxi operators or foreign air carriers as permitted by section 5402 of this title, or on military aircraft, the following categories of mail matter:~~

~~(1)(A) letter mail or sound- or video-recorded communications having the character of personal correspondence;~~

~~(B) parcels not exceeding 15 pounds in weight and 60 inches in length and girth combined; and~~

~~(C) publications entitled to a periodical publication rate published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public,~~

~~which are mailed at or addressed to any such Armed Forces post office;~~

~~(2) parcels not exceeding 70 pounds in weight and the maximum size allowed by the Postal Service for fourth class parcel post (known as "Standard Mail (B)"), which are mailed at any such Armed Forces post office; and~~

~~(3) parcels exceeding 15 pounds but not exceeding 70 pounds in weight and not exceeding the maximum size allowed by the Postal Service for fourth class parcel post (known as "Standard Mail (B)"), including surface-type official mail, which are mailed at or addressed to any such Armed Forces post office where adequate surface transportation is not available.~~

(b) There shall be transported by either surface or air, consistent with the service purchased by the mailer, between Armed Forces post offices or from an Armed Forces post office to a point of entry into the United States, the following categories of mail matter which are mailed at any such Armed Forces post office:

(1) Letter mail communications having the character of personal correspondence.

(2) Any parcel exceeding one pound in weight but less than 70 pounds in weight and less than 130 linear inches (length plus girth).

(3) Publications published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public.

~~(c) Any parcel, other than a parcel mailed at a rate of postage requiring priority of handling and delivery, not exceeding 30 pounds in weight and 60 inches in length and girth combined, which is mailed at or addressed to any Armed Forces post office established under section 406(a) of this title, shall be transported by air as deferred on certificated United States air carriers or, for carriage of mail in foreign air transportation, other air carriers, air taxi operators or foreign air carriers as permitted by section 5402 of this title, or on military aircraft, upon payment of a fee for such air transportation in addition to the rate of postage otherwise applicable to such a parcel not transported by air.~~

(~~d~~c) The Department of Defense shall transfer to the Postal Service as postal revenues, out of any appropriations or funds available to the Department of Defense, as a necessary expense of the appropriations or funds and of the activities concerned, the equivalent amount of postage due, as determined by the Postal Service, for matter sent in the mails under authority of subsection (a) of this section.

(~~e~~d) The Department of Defense shall transfer to the Postal Service as postal revenues, out of any appropriations or funds available to the Department of Defense, as a necessary expense of the appropriations or funds and of the activities concerned, sums equal to the expenses incurred by the Postal Service, as determined by the Postal Service, in providing transportation for mail mailed at or addressed to Armed Forces post offices established under section 406 of this title, but reimbursement under this subsection shall not include the expense of transportation (1) for which the Postal Service collects a special charge to the extent the special charge covers the additional expense of transportation or (2) that is provided by the Postal Service at the same postage rate or charge for mail which is neither mailed at nor addressed to an Armed Forces post office.

(~~f~~e) This section shall be administered under such conditions, and under such regulations, as the Postal Service and the Secretary of Defense jointly may prescribe.

(~~g~~f) In this section:

(1) The term “military aircraft” means an aircraft owned, operated, or chartered by the Department of Defense.

(2) The term “United States air carrier” has the meaning given the term “air carrier” in section 40102 of title 49.

SEC. ___. CLARIFICATION OF THE AUTHORITY OF MILITARY COMMISSIONS ESTABLISHED UNDER CHAPTER 47A TO PUNISH CONTEMPT.

(a) CLARIFICATION.—

(1) IN GENERAL.—Subchapter IV of chapter 47A of title 10, United States Code, is amended by adding at the end the following new section:

"§949o–1. Contempt

"(a) AUTHORITY TO PUNISH.—(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) may punish for contempt any person who—

"(A) uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

"(B) disturbs the proceeding by any riot or disorder; or

"(C) willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

"(2) A judicial officer referred to in paragraph (1) is any of the following:

"(A) Any judge of the United States Court of Military Commission Review.

"(B) Any military judge detailed to a military commission or any other proceeding under this chapter.

"(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of $1,000, or both.

"(c) REVIEW.—(1) A punishment under this section—

"(A) is not reviewable by the convening authority of a military commission under this chapter;

"(B) if imposed by a military judge, shall constitute a judgment, subject to review in the first instance only by the United States Court of Military Commission Review and then only by the United States Court of Appeals for the District of Columbia Circuit; and

"(C) if imposed by a judge of the United States Court of Military Commission Review, shall constitute a judgment of the court subject to review only by the United States Court of Appeals for the District of Columbia Circuit.

"(2) In reviewing a punishment for contempt imposed under this section, the reviewing court shall affirm such punishment unless the court finds that imposing such punishment was an abuse of the discretion of the judicial officer who imposed such punishment.

"(3) A petition for review of punishment for contempt imposed under this section shall be filed not later than 60 days after the date on which the authenticated record upon which the contempt punishment is based and any contempt proceedings conducted by the judicial officer are served on the person punished for contempt.

"(d) PUNISHMENT NOT CONVICTION.—Punishment for contempt is not a conviction or sentence within the meaning of section 949m of this title. The imposition of punishment for contempt is not governed by other provisions of this chapter applicable to military commissions, except that the Secretary of Defense may prescribe procedures for contempt proceedings and punishments, pursuant to the authority provided in section 949a of this title."

(2) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"949o–1. Contempt.".

(b) CONFORMING AMENDMENT.—Section 950t of title 10, United States Code, is amended—

(1) by striking paragraph (31); and

(2) by redesignating paragraph (32) as paragraph (31).

(c) RULE OF CONSTRUCTION.—The amendments made by subsections (a) and (b) shall not be construed to affect the lawfulness of any punishment for contempt adjudged prior to the effective date of such amendments.

(d) APPLICABILITY.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply with respect to conduct by a person that occurs on or after such date.

Section-by-Section Analysis

General information: This proposal would amend chapter 47A of title 10, United States Code, to clarify the authority of military judges presiding over military commissions to unilaterally punish contempt, to enforce judicial orders, and to punish violations of those orders as contempt. The proposal would also bring the contempt authority and review process of chapter 47A into accord with the Uniform Code of Military Justice (UCMJ) (chapter 47 of title 10).

The Military Commissions Act of 2009 (MCA) amended to title 10 to provide "military commissions" with authority to punish contempt (10 U.S.C. 950t(31)). At the time the MCA was enacted, the authority was nearly identical to the authority for courts-martial under the UCMJ.

In 2011, Congress revised the authority of military judges presiding over courts-martial to punish contempt by providing them with the authority to punish any person who willfully disobeys their lawful writs, processes, orders, rules, decrees, or commands (Section 542 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011; Public Law 111–383; 124 Stat. 4137 (NDAA for FY2011)). When Congress provided this revised authority for courts-martial, Congress retained pre-existing language that made this amendment specifically inapplicable to military commissions established under chapter 47A of title 10 (10 U.S.C. 848(c)).

Additionally, section 542 of the NDAA for FY2011 codified in 10 U.S.C. 848 earlier provisions of the Manual for Courts-Martial that provided military judges with authority to unilaterally punish certain contempts. *See, e.g.*, Manual for Courts-Martial ¶ 118.b (rev. ed. 1969) ("When the military judge is trying the case alone, he will determine whether a person shall be held in contempt, and, if he so determines, he will proceed to determine an appropriate punishment . . . ."). Finally, the NDAA for FY2011 also codified a 1998 change to the Rules for Courts-Martial (R.C.M.), which gave the military judge the authority to punish contempt "in all cases," regardless of whether the contempt occurred in the presence of the members. *See*

Manual for Courts-Martial, R.C.M. 809(c) (1998) ("The military judge shall in all cases determine whether to punish for contempt and, if so, what the punishment shall be.").

Since 2011, 10 U.S.C. 848 has been further amended. *See* National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328, § 5230, 130 Stat. 2000, 2913 (2016) (NDAA for FY2017); National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91, § 1081(c)(1)(F), 131 Stat. 1283, 1598). These amendments have yet to take effect, but they will become effective January 1, 2019, unless an earlier date is designated by the President. *See* section 5542(a) of the NDAA for FY2017. This proposal mirrors the prospective amendments to 10 U.S.C. 848, except where noted in the detailed analysis below.

Purpose: Because of the subsequent amendments to 10 U.S.C. 848, there is now a gap between the authority of military judges presiding over courts-martial to punish contempt and the authority of military judges presiding over military commissions established under chapter 47A to punish contempt. This gap has led to challenges to the authority of military commission judges to punish violations of their orders. For example, on October 31, 2017, the Chief Defense Counsel of the Military Commissions Defense Organization refused to obey the lawful orders of a military commission judge and was held in contempt. Three other defense counsel in the case also repeatedly refused to appear as ordered by the military judge. Faced with the apparent inability to make counsel appear at the proceedings, the military judge abated the proceedings indefinitely on February 16, 2018.

The Chief Defense Counsel subsequently challenged his punishment for contempt in the United States District Court for the District of Columbia. On June 18, 2018, the district court granted the Chief Defense Counsel the relief he requested and vacated the military judge's punishment. *See Baker v. Spath*, No. 17-cv-2311, 2018 U.S. Dist. LEXIS 101622, at *2 (D.D.C. June 18, 2018) (Lamberth, J.) (ECF No. 25). The district court determined that the term "military commission" as used in 10 U.S.C. 950t(31) does not refer to the military judge presiding over a military commission. *Id.* at *32–40. Based on this determination, the district court concluded that the military judge lacked the authority to unilaterally hold a person in contempt. *Id.* at *40. The district court further held that Rule for Military Commissions 809, which purports to authorize the military judge to punish contempt on his own authority was "directly contrary to the requirements of Chapter 47A and is unlawful." *Id.* at *38–40 & 40 n.4. As a result of the district court's decision, there is serious doubt as to whether a military judge presiding over a military commission can punish contempt that occurs during proceedings held outside the presence of military commission panel members because, by the district court's logic, a military commission does not exist (for purposes of this section of the MCA) if no members are present. If no intervening amendatory statute is passed, the doubtful ability of military commission judges to punish contempt and enforce their orders will likely result in the eventual abatement or dismissal of the remaining military commission cases.

This proposed amendment to the MCA would bring the contempt authority and review process of chapter 47A into accord with the UCMJ and clarify the authority of military commission judges.

Detailed analysis: The MCA includes contempt in section 950(t) of title 10 as a "crime triable by military commission." This is a departure from the UCMJ, which includes contempt in subchapter VII (Trial Procedure) and not subchapter X (Punitive Articles). This disparity has proven problematic in military commissions. As noted above, on June 18, 2018, the United States District Court for the District of Columbia determined that "Section 950t of Chapter 47A clearly contemplates that contempt will be tried and punished by a military commission." *See Baker v. Spath*, No. 17-cv-2311, 2018 U.S. Dist. LEXIS 101622, at *32 (D.D.C. June 18, 2018) (Lamberth, J.) (ECF No. 25). The district court based this ruling, in part, on the fact that "[t]he section is entitled 'Crimes triable by military commission.'" *Id.* (citing 10 U.S.C. § 950t). Based on this interpretation, the district court further determined that "one can only be convicted by a military commission of contempt by concurrence of two-thirds of the primary members (except as provided in section 949i(b), which concerns plea bargains and is of no relevance to this case)." *Id.* at *36. This interpretation is contrary to court-martial procedure, which long ago provided military judges presiding over courts-martial with the authority to unilaterally punish persons for contempt when members are absent, and, in 1998, provided such military judges alone with this authority. *See* Manual for Courts-Martial ¶ 118.b (rev. ed. 1969); *see also* Manual for Courts-Martial, R.C.M. 809(c) (1998). By adding the proposed new section 949o-1, military commissions practice will align with the UCMJ and affirm the authority of military judges to punish contempt on their own authority.

Subsection (a)—Authority To Punish. Subsection (a)(1) of proposed section 949o-1 is identical to 10 U.S.C. 848 after the amendments from the NDAA for FY2017 take effect (10 U.S.C. 848 as amended).

Subsection (a)(2) of proposed section 949o-1 is not be substantively different from 10 U.S.C. 848 as amended. The proposed differences are conforming in nature. The conforming changes are in recognition of the fact that the United States Court of Military Commission Review is the intermediate appellate court for military commissions and military commissions are presided over by the military judges detailed to them. The proposed amendment removes references to the statutory rules of procedure governing the United States Court of Military Commission Review (10 U.S.C. 950f), which do not contemplate review of punishments for contempt. Finally, military commission procedures do not contemplate the use of military magistrates, and courts of inquiry are not governed by chapter 47A of title 10. Therefore, the paragraphs of 10 U.S.C. 848 as amended that reference military magistrates and courts of inquiry are not included in the proposed new section.

Subsection (b)—Punishment. Subsection (b) of proposed section 949o-1 is identical to 10 U.S.C. 848 as amended.

Subsection (c)—Review. Subsection (c) of proposed section 949o-1 is not substantively different from 10 U.S.C. 848 as amended. The proposed changes are conforming in nature. The conforming changes are in recognition of the fact that the United States Court of Military Commission Review is the intermediate appellate court for military commissions and the United States Court of Appeals for the District of Columbia Circuit is designated as the review authority for their final judgments. The proposed amendment removes references to the statutory rules of procedure governing (1) the United States Court of Military Commission Review (10 U.S.C.

950f) and (2) review by the United States Court of Appeals for the District of Columbia Circuit (10 U.S.C. 950g), which do not contemplate review of punishments for contempt. Finally, courts of inquiry are not governed by chapter 47A of title 10. Therefore, the paragraph of 10 U.S.C. 848 that references courts of inquiry is not included in the proposed new section.

Subsection (d)—Punishment Not Conviction. Subsection (d) of proposed section 949o-1 is substantively different from 10 U.S.C. 848 as amended. The proposed section includes language that would make clear that punishment for contempt is not a trial by military commission subject to the same procedural requirements as military commissions convened to try alien unprivileged enemy belligerents for violations of the law of war and other offenses triable by military commission. This change is necessary in light of a ruling of the United States District Court for the District of Columbia. *See Baker v. Spath*, No. 17-cv-2311, 2018 U.S. Dist. LEXIS 101622, at *32–40 (D.D.C. June 18, 2018) (Lamberth, J.) (ECF No. 25). As discussed above, the district court determined that "one can only be convicted by a military commission of contempt by concurrence of two-thirds of the primary members (except as provided in § 949i(b), which concerns plea bargains and is of no relevance to this case)." *Id.* at *36. The proposed new section would bring the military commission practice into conformance with longstanding court-martial procedure, which has treated punishment for contempt differently than court-martial convictions.

Rule of Construction. This proposal includes a rule of construction to prevent the enumeration of authorities in subsection (a) of proposed section 949o-1 from being construed to impair or otherwise affect the lawfulness of any punishment for contempt adjudged prior to the effective date of the amendment. Failure to include such language could undermine the validity of any punishments that have been or may yet be issued under the current rule.

Striking paragraph 31 of section 950t of title 10. Enactment of the proposed new section would eliminate the necessity of paragraph (31) of section 950t by clearly giving military commission judges the authority to unilaterally punish contempt and removing it from the list of criminal offenses. As noted above, this would bring the MCA into conformity with the UCMJ, which includes contempt in subchapter VII (Trial Procedure) and not subchapter X (Punitive Articles). Therefore the proposal also amends section 950t of title 10 by striking paragraph (31).

Budget Implications: None.

Changes to Existing Law: This proposal would add a new section to chapter 47A of title 10, United States Code, the full text of which is shown in the legislative language above. This proposal would also amend section 950t of title 10 as follows:

§950t. Crimes triable by military commission

The following offenses shall be triable by military commission under this chapter at any time without limitation:

(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

* * * * *

~~(31) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.~~

(~~32~~31) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.

SEC. ___. MILITARY HEALTH SYSTEM FRAUD AND ABUSE PREVENTION PROGRAM.

(a) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1073d the following new section:

"§1073e. Health care fraud and abuse prevention

"(a) AUTHORITY.—(1) The Secretary of Defense is authorized to conduct a program to prevent and remedy fraud and abuse in health care programs of the Department of Defense, including all programs carried out under this chapter.

"(2) At the discretion of the Secretary, the program may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency.

"(b) CIVIL MONETARY PENALTIES.—(1) The authorities granted to the Secretary of Defense and the Inspector General of the Department of Defense under section 1128A(m) of the Social Security Act (42 U.S.C. 1320a-7a(m)) shall be available to the Secretary and the Inspector General in carrying out the program authorized by subsection (a).

"(2) Except to the extent inconsistent with this section, the provisions of such section 1128A apply to civil monetary penalties under this subsection.

"(c) TREATMENT OF AMOUNTS COLLECTED.—(1) Amounts collected under subsection (b) shall be credited to appropriations currently available at the time of collection for expenses of the affected Department of Defense health care program.

"(2) Any such amounts may be used to support the administration of the program authorized by subsection (a), including support for interagency agreements entered into under subsection (d).

"(3) The authority provided under this subsection shall be in addition to the authority provided under section 1079a of this title.

"(d) INTERAGENCY AGREEMENTS.—The Secretary of Defense is authorized to enter into agreements with the Secretary of Health and Human Services, the Attorney General, and heads of other Federal agencies for the effective and efficient implementation of the program authorized by subsection (a).

"(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed as limiting any authority of the Inspector General of the Department of Defense under any other provision of law.

"(f) DEFINITIONS.—In this section:

"(1) The term 'fraud and abuse' means any conduct for which a civil monetary penalty may be assessed under subsection (b).

"(2) The term 'Defense Health Agency' means the organizational entity established by the Secretary of Defense under section 191 of this title for the administration of programs under this chapter.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1073d the following new item:

"1073e. Health care fraud and abuse prevention.".

Section-by-Section Analysis

This proposal would insert a new section 1073e in title 10, United States Code (U.S.C.), to specifically authorize an enhanced Department of Defense health care fraud and abuse prevention program and provide means for its effective and efficient operation. This is in recognition that TRICARE has been victimized by health care fraud and abuse. Subsection (a) of the new section specifically authorizes the program and provides that it may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency. Subsection (b) of the new section allows the program to include existing legal authority under the Social Security Act for the heads of Federal agencies and the Inspectors

General of those agencies that operate Federal health care programs to assess civil monetary penalties in a manner comparable to the longstanding and successful program of the Department of Health and Human Services (HHS) to combat fraud and abuse against Medicare and Medicaid. Subsection (c) of the new section provides that civil monetary penalty amounts collected will be credited to the appropriation available for the Department of Defense health care program affected for the fiscal year in which the amount is collected. This extends the current rule under 10 U.S.C. 1079a that refunds and other amounts collected under CHAMPUS/TRICARE are credited to the Defense Health Program appropriation and available for use under that program. Any penalty amounts collected may be used to support the operation of the fraud and abuse prevention program. Under the HHS program and the existing Social Security Act provisions, civil monetary penalty amounts are credited to the Federal Hospital Insurance Trust Fund or applicable Medicaid account and may be used to support health care fraud and abuse prevention. Subsection (d) of the new section authorizes interagency agreements with the Department of Health and Human Services, the Department of Justice, and other agencies for the effective and efficient implementation of the fraud and abuse prevention program. Subsections (e) and (f) of the new section make clear that the section does not limit existing authorities of the DoD Inspector General and provide applicable definitions.

Budgetary Implications: This section would reduce Defense Health Program requirements by $74 million from FY 2020 – FY 2024. The resources saved are reflected in the table below and are included within the FY 2020 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Defense Health	(8)	(16)	(16)	(17)	(18)	Operation and Maintenance, Defense Health Program

Changes to Existing Law: This proposal would add a new section to chapter 55 of title 10, United States Code, as set forth above.

SEC. ___. MODIFICATION OF ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

Section 2872a(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(13) Street sweeping.

"(14) Tree trimming and removal.".

[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

Department of Defense (DoD) installations provide privatized housing owners certain utilities and services on a reimbursable basis per section 2872a of title 10, United States Code. This proposal would amend section 2872a(b) to add street sweeping and tree trimming and removal to the list of reimbursable services that may be furnished under that section.

The change is consistent with analogous authorities to credit certain reimbursements to current operating accounts. For example, reimbursements for DoD-provided medical care to civilians are credited to current accounts under the authority of section 1079b of title 10.

Budget Implications: There is a budget increase associated with this proposal, as installations will fund the covered services up front. However, the installations will be reimbursed for any expenses incurred in providing the services. The estimates in the table below are based on the estimated use of the authority provided under the proposal, adjusted to account for potentially limited use of the authority by those installations with a low density of trees. 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**
Air Force	0.0	.414	.426	.439	.452	Operation and Maintenance, Air Force
Army	Army does not intend to use this authority, which would have been funded in Operation and Maintenance, Army.					
Navy	Navy does not intend to use this authority, which would have been funded in Operation and Maintenance, Navy.					
Marine Corps	Marine Corps does not intend to use this authority, which would have been funded in Operation and Maintenance, Marine Corps.					
Total	0.0	.414	.426	.439	.452	--

Changes to Existing Law: This proposal would make the following changes to section 2872a of title 10, United States Code:

§2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) COVERED UTILITIES AND SERVICES.—The utilities and services that may be furnished under subsection (a) are the following:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural gas.
(7) Pest control.
(8) Snow and ice removal.
(9) Mechanical refrigeration.
(10) Telecommunications service.
(11) Firefighting and fire protection services.
(12) Police protection services.
(13) Street sweeping.
(14) Tree trimming and removal.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—

(A) in the case of a cost paid using funds appropriated or otherwise made available before October 1, 2014 be credited to the appropriation or working capital account from which the cost of furnishing utilities or services concerned was paid; or

(B) in the case of a cost paid using funds appropriated or otherwise made available on or after October 1, 2014 be credited to the appropriation or working capital account currently available for the purpose of furnishing utilities or services under section (a).

(3) Amounts credited under paragraph (2) to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

SEC. ___. NATIVE AMERICAN INDIAN LANDS ENVIRONMENTAL MITIGATION PROGRAM.

(a) IN GENERAL.—Chapter 160 of title 10, United States Code, is amended by adding at the end the following new section:

"**§2712. Native American lands environmental mitigation program**

"(a) ESTABLISHMENT.—The Secretary of Defense may establish and carry out a program to mitigate the environmental effects of Department of Defense actions on Indian lands and culturally connected locations.

"(b) PROGRAM ACTIVITIES.—The activities that may be carried out under the program established under subsection (a) are the following:

"(1) Identification, investigation, and documentation of suspected environmental effects attributable to past Department of Defense actions.

"(2) Development of mitigation options for such environmental effects, including development of cost-to-complete estimates and a system for prioritizing mitigation actions.

"(3) Direct mitigation actions that the Secretary determines are necessary and appropriate to mitigate the adverse environmental effects of past Department of Defense actions.

"(4) Demolition and removal of unsafe buildings and structures used by, under the jurisdiction of, or formerly used by or under the jurisdiction of the Department of Defense.

"(5) Training, technical assistance, and administrative support to facilitate the meaningful participation of Indian tribes in mitigation actions under the program.

"(6) Development and execution of a policy governing consultation with Indian tribes that have been or may be affected by Department of Defense actions, including training Department of Defense personnel to ensure compliance with the policy.

"(c) COOPERATIVE AGREEMENTS.—(1) In carrying out the program established under subsection (a), the Secretary of Defense may enter into a cooperative agreement with an Indian tribe or an instrumentality of tribal government.

"(2) Notwithstanding chapter 63 of title 31, a cooperative agreement under this section may be used to acquire property or services for the direct benefit of the United States Government.

"(3) Any cooperative agreement under this section for the procurement of severable services may begin in one fiscal year and end in another fiscal year provided the total period of performance does not exceed two calendar years.

"(d) DEFINITIONS.—In this section:

"(1) The term 'Indian land' includes—

"(A) any land located within the boundaries and a part of an Indian reservation, pueblo, or rancheria;

"(B) any land that has been allotted to an individual Indian but has not been conveyed to such Indian with full power of alienation;

"(C) Alaska Native village and regional corporation lands; and

"(D) lands and waters upon which any federally recognized Indian tribe has rights reserved by treaty, act of Congress, or action by the President.

"(2) The term 'Indian tribe' has the meaning given such term in section 2701(d)(4)(A) of this title.

"(3) The term 'culturally connected location' means a location or place that has demonstrable significance to Indians or Alaska Natives based on its association with the traditional beliefs, customs, and practices of a living community, including locations or places where religious, ceremonial, subsistence, medicinal, economic, or other lifeways practices have historically taken place.".

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2711 the following new item:

"2712. Native American lands environmental mitigation program.".

Section-by-Section Analysis

This proposal would provide permanent authority for the Department of Defense (DoD) to engage in a program to mitigate the environmental effects of defense activities on Indian lands and culturally connected locations.

Beginning with Fiscal Year (FY) 1993, the Congress has annually directed the Department to spend a specified amount (since FY 2009, not less than $12M) to be used only to mitigate environmental effects on Indian lands resulting from DoD activities. For fiscal years 1993 through 1995, these funds were administered on DoD's behalf by the Administration for Native Americans within the Department of Health and Human Services. Since FY 1996, DoD has administered the program directly, known as the Native American Lands Environmental Mitigation Program (NALEMP). Historically, these funds have not been part of DoD's budget request; instead, DoD was directed to spend not less than $12M each year and the Department had to redirect funds. As a result, the program has been governed solely by DoD's interpretation of the annual Appropriations Act language. This language has not changed materially since FY 1996; during the 20-plus years NALEMP has been in existence, DoD has sought to administer the program consistently and in accordance with Congress's intent. Now that DoD has begun to budget for NALEMP as directed by OMB, it is appropriate that it be authorized in permanent legislation. In addition, this legislative proposal would confirm and establish in law the principles that have governed the program since 1996.

Because it is primarily an environmental program, it will be included in chapter 160 of title 10, which contains DoD's environmental restoration authorities.

Subsection (a) authorizes the Secretary of Defense to engage in a program to mitigate the environmental effects of defense actions on Indian lands and culturally connected locations.

Subsection (b) lists the activities that are eligible for the program.

Subsection (c) authorizes the use of cooperative agreements and provides rules on their

use.

Subsection (d) provides definitions of “Indian lands,” “Indian tribe,” and “culturally connected locations.”

Each year since FY 1993, Congress has directed that a certain amount of funds appropriated to DoD under the heading “Operation and Maintenance, Defense-Wide” be available only for the mitigation of environmental effects on Indian lands resulting from DoD activities. The specified annual funding amount was initially $8M, but has been $12M since FY 2009. As a result, DoD has “sized” NALEMP to execute a $12M annual program to address the known sites most in need of mitigation. Even if this legislation is not enacted, we would expect to continue to receive this annual appropriation.

Budget Implications: The annual expenditures for the NALEMP program are shown in the table below. This proposal is funded in the President’s Fiscal Year 2020 Budget Request.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Total	$12.0	$12.0	$12.0	$12.0	$12.0	Operation and Maintenance, Defense-wide

Changes to Existing Law: This proposal would insert a new section at the end of chapter 160 of title 10, United States Code, the full text of which is shown above in the legislative language.

SEC. ___. NATO SPECIAL OPERATIONS HEADQUARTERS.

Section 1244 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2541), as most recently amended by section 1280 of the National Defense Authorization Act of Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1080), is further amended—

(1) in subsection (a), by striking "each of the fiscal years 2013 through 2020" and inserting "each of the fiscal years 2013 through 2025";

(2) by striking section (c); and

(3) 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 would extend the current funding authorization and authorities in support of the NATO Special Operations Headquarters (NSHQ) to enable it to continue to carry out its mission through fiscal year 2025.

The proposal would ensure that the NSHQ continues to execute its mission as "the primary point of development, coordination, and direction for all NATO Special Operations-related activities, in order to optimize development and employment of Special Operations Forces and provide an operational command capability when directed by SACEUR."

The amendment to strike subsection (c) of the National Defense Authorization Act for Fiscal Year 2010 is a conforming amendment. The requirement contained in that subsection has been fulfilled.

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

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army	$32.20	$32.30	$32.40	$33.10	$33.70	Operation and Maintenance, Army
Total	$32.20	$32.30	$32.40	$33.10	$33.70	Operation and Maintenance, Army

PERSONNEL AFFECTED						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**

Army	42	42	42	42	42	Operation and Maintenance, Army
Total	42	42	42	42	42	Operation and Maintenance, Army

Changes to Existing Law: This proposal would make the following changes to section 1280 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 111-84; 123 Stat. 2541):

SEC. 1280. NATO SPECIAL OPERATIONS HEADQUATERS.

(a) AUTHORIZATION.—Of the amounts authorized to be appropriated for ~~each of the fiscal years 2013 through 2020~~ each of the fiscal years 2013 through 2025 pursuant to section 301 for operation and maintenance for the Army, to be derived from amounts made available for support of North Atlantic Treaty Organization (hereinafter in this section referred to as ''NATO'') operations, the Secretary of Defense is authorized to use up to $50,000,000 for the purposes set forth in subsection (b).

(b) PURPOSES.—The Secretary shall provide funds for the NATO Special Operations Headquarters (hereinafter in this section referred to as the ''NSHQ'') to—

(1) improve coordination and cooperation between the special operations forces of NATO nations;

(2) facilitate joint operations by the special operations forces of NATO nations;

(3) support special operations forces peculiar command, control, and communications capabilities;

(4) promote special operations forces intelligence and informational requirements within the NATO structure; and

(5) promote interoperability through the development of common equipment standards, tactics, techniques, and procedures, and through execution of a multinational education and training program.

~~(c) CERTIFICATION.—Not less than 180 days after the date of enactment of this Act, the Secretary shall certify to the Committees on Armed Services of the Senate and House of Representatives that the Secretary of Defense has assigned executive agent responsibility for the NSCC to an appropriate organization within the Department of Defense, and detail the steps being undertaken by the Department of Defense to strengthen the role of the NSCC in fostering special operations capabilities within NATO.~~

~~(d)~~ (c) ANNUAL REPORT.—Not later than March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report regarding support for the NSHQ. Each report shall include the following:

(1) The total amount of funding provided by the United States and other NATO nations to the NSHQ for operating costs of the NSHQ.

(2) A description of the activities carried out with such funding, including—

(A) the amount of funding allocated for each such activity;

(B) the extent to which other NATO nations participate in each such activity;

(C) the extent to which each such activity is designed to meet the purposes set forth in paragraphs (1) through (5) of subsection (b); and

(D) an assessment of the extent to which each such activity will promote the mission of the NSHQ.

(3) Other contributions, financial or in kind, provided by the United States and other NATO nations in support of the NSHQ.

(4) Any other matters that the Secretary of Defense considers appropriate.

SEC. ____. CLARIFICATION OF OFFICE OF SPECIAL NEEDS POLICY FOR INDIVIDUALIZED SERVICES PLANS.

Section 1781c(d)(4) of title 10, United States Code, is amended by striking subparagraph (F) and inserting the following new subparagraph:

"(F) Procedures for the development of an individualized services plan for those military family members with special needs who have requested support and have a completed family needs assessment.".

[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 clarify that individualized services plans need only be provided to military families with special needs who have requested support, rather than to all families. This issue was identified in a May 2018 United States Government Accountability Office (GAO) study, GAO 18-348, "*DoD Should Improve Its Oversight of the Exceptional Family Member Program*." As written, the current statute requires each military family member with special needs to have a plan developed. Services Plans are developed by family support personnel/case managers in collaboration with the family following the completion of a family needs assessment and are not necessary for every military family. The purpose of the Services Plan is to identify, document, and track the goals and objectives established by the family and outline and prioritize non-clinical services. The requirement to provide and monitor individualized plans for all families is burdensome and unnecessary and would require significant additional funding to execute as written. If this proposal is not accepted, the Department of Defense projects that it will require an additional $4.29M to meet the current standard outlined in section 1781c(d) of title 10, United States Code (U.S.C); as such, this proposal will lead to cost avoidance should it be accepted. Moreover, as the proposal would align the requirements of section 1781c with the appropriate and effective standard to which the Department is currently executing, it would require no additional funding.

Budget Implications: The Department projects that if this proposal is not accepted, meeting the existing standard outlined in 10 U.S.C. 1781c(d) would require an additional $4.29M of resources requested within the Fiscal Year (FY) 2020 President's Budget. These amounts are not currently budgeted specifically for this purpose, but are instead programmed to support the priorities of the National Defense Strategy implementation within the appropriations listed in the table below. If this proposal is not enacted, these funds would have to be redirected away from their current requirements and priorities in order to cover the costs of meeting the existing statute. This is reflected as a negative in the table to reflect the cost avoidance of implementing vs not implementing the proposal.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Army Exceptional Family Member Program (EFMP)	-2.77	-2.83	-2.88	-2.94	-3.00	Operation and Maintenance, Army
Navy EFMP	-0.40	-0.41	-0.41	-0.42	-0.43	Operation and Maintenance, Navy
Marine Corps EFMP	-0.21	-0.22	-0.22	-0.23	-0.23	Operation and Maintenance, Marine Corps
Air Force EFMP	-0.91	-0.93	-0.95	-0.97	-0.99	Operation and Maintenance, Air Force
Total	-4.29	-4.39	-4.46	-4.56	-4.65	--

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

*** * * * ***

§1781c. Office of Special Needs

(a) Establishment.-There is in the Office of Military Family Readiness Policy the Office of Special Needs (in this section referred to as the "Office").

(b) Purpose.-The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

(c) Responsibilities.-The Office shall have the responsibilities as follows:

(1) To develop and implement a comprehensive policy on support for military families with special needs as required by subsection (d).

(2) To establish and oversee the programs required by subsection (e).

(3) To identify gaps in services available through the Department of Defense for military families with special needs.

(4) To develop plans to address gaps identified under paragraph (3) through appropriate mechanisms, such as enhancing resources and training and ensuring the provision of special assistance to military families with special needs and military parents of individuals with special needs (including through the provision of training and seminars to members of the armed forces).

(5) To monitor the programs of the military departments for the assignment of members of the armed forces who are members of military families with special needs, and the programs for the support of such military families, and to advise the Secretary of Defense on the adequacy of such programs in conjunction with the preparation of future-years defense programs and other budgeting and planning activities of the Department of Defense.

(6) To monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs.

(7) To conduct periodic reviews of best practices in the United States in the provision of medical and educational services for children with special needs.

(8) To carry out such other matters with respect to the programs and activities of the Department of Defense regarding military families with special needs as the Under Secretary of Defense for Personnel and Readiness shall specify.

(d) Policy.-(1) The Office shall develop, and update from time to time, a uniform policy for the Department of Defense regarding military families with special needs. The policy shall apply with respect to members of the armed forces without regard to their location, whether within or outside the continental United States.

(2) The policy developed under this subsection shall include elements regarding the following:

(A) The assignment of members of the armed forces who are members of military families with special needs.

(B) Support for military families with special needs.

(3) In addressing the assignment of members of the armed forces under paragraph (2)(A), the policy developed under this subsection shall, in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty, provide for such members each of the following:

(A) Assignment to locations where care and support for family members with special needs are available.

(B) Stabilization of assignment for a minimum of 4 years.

(4) In addressing support for military families under paragraph (2)(B), the policy developed under this subsection shall provide the following:

(A) Procedures to identify members of the armed forces who are members of military families with special needs.

(B) Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.

(C) Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military department for the support of military families with special needs.

(D) Procedures to ensure the coordination of Department of Defense health care programs and support programs for military families with special needs, and the coordination of such programs with other

Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.

(E) Requirements for resources (including staffing) to ensure the availability through the Department of Defense of appropriate numbers of case managers to provide individualized support for military families with special needs.

~~(F) Requirements regarding the development and continuous updating of an individualized services plan (medical and educational) for each military family with special needs.~~

(F) Procedures for the development of an individualized services plan for those military family members with special needs who have requested support and have a completed family needs assessment.

(G) Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

(e) Programs.-(1) The Office shall establish, maintain, and oversee a program to provide information and referral services on special needs matters to military families with special needs on a continuous basis regardless of the location of the member's assignment. The program shall provide for timely access by members of such military families to individual case managers and counselors on matters relating to special needs.

(2) The Office shall establish, maintain, and oversee a program of outreach on special needs matters for military families with special needs. The program shall-

(A) assist military families in identifying whether or not they have a member with special needs; and

(B) provide military families with special needs with information on the services, support, and assistance available through the Department of Defense regarding such members with special needs, including information on enrollment in programs of the military departments for such services, support, and assistance.

(3)(A) The Office shall provide support to the Secretary of each military department in the establishment and sustainment by such Secretary of a program for the support of military families with special needs under the jurisdiction of such Secretary. Each program shall be consistent with the policy developed by the Office under subsection (d).

(B) Each program under this paragraph shall provide for appropriate numbers of case managers for the development and oversight of individualized services plans for educational and medical support for military families with special needs.

(C) Services under a program under this paragraph may be provided by contract or other arrangements with non-Department of Defense entities qualified to provide such services.

(f) Resources.-The Secretary of Defense shall assign to the Office such resources, including personnel, as the Secretary considers necessary for the discharge of the responsibilities of the Office, including a sufficient number of members of the armed forces to ensure appropriate representation by the military departments in the personnel of the Office.

(g) Reports.-(1) Not later than April 30 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the activities of the Office.

(2) Each report under this subsection shall include the following:

(A) A description of any gaps in services available through the Department of Defense for military families with special needs that were identified under subsection (c)(3).

(B) A description of the actions being taken, or planned, to address such gaps, including any plans developed under subsection (c)(4).

(C) Such recommendations for legislative action as the Secretary considers appropriate to provide for the continuous improvement of support and services for military families with special needs.

SEC. ___. OFFICERS AUTHORIZED TO COMMAND ARMY DENTAL UNITS.

Section 7081(d) of title 10, United States Code, is amended by striking "Dental Corps Officer" and inserting "Army Medical Department Officer".

Section-by-Section Analysis

This proposal would amend section 7081(d) of title 10, United States Code, to remove the requirement of having a Dental Corps Officer command dental units.

The amendment would provide greater flexibility in shaping future command leadership opportunities and management of Army Medical Department (AMEDD) talent. Specific knowledge, skills, abilities, and other attributes required for each AMEDD command category are addressed within the eligibility criteria of the published Military Personnel Message (MILPER) and within the Board Memorandum of Instruction.

This proposal would not be mandatory, but would provide the Secretary of the Army greater flexibility in managing talent within the AMEDD.

Budget Implications: This proposal has insignificant budget impact. All 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 title 10, United States Code:

*** * * * * ***

§7081. Dental Corps: Chief, functions

(a) The Chief of the Dental Corps shall be an officer of that corps appointed as prescribed in section 3039 of this title.

(b) Under such regulations as the Secretary of the Army may prescribe, all dental functions of the Army shall be under the direction of the Chief of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

(c) The Chief of the Dental Corps shall—

(1) establish professional standards and policies for dental practice;

(2) initiate and recommend action pertaining to organization requirements and utilization of the Dental Corps and dental auxiliary strength, appointments, advancement, training assignments, and transfer of dental personnel; and

(3) serve as the adviser to the Office of the Surgeon General on all matters relating directly to dentistry.

(d) Under such regulations as the Secretary of the Army may prescribe, dental and dental auxiliary personnel throughout the Army shall be organized into units commanded by a

designated ~~Dental Corps Officer~~ Army Medical Department Officer. Such officer will be directly responsible to the commander of installations, organizations, and activities for all professional and technical matters and such administrative matters as may be prescribed by regulation.

*** * * * ***

SEC. ___. AUTHORITY TO PLAN, DESIGN, AND CONSTRUCT, OR LEASE, SHARED MEDICAL FACILITIES WITH DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1104 the following new section:

"§1104a. Shared medical facilities with Department of Veterans Affairs

"(a) AGREEMENTS.—The Secretary of Defense may enter into agreements with the Secretary of Veterans Affairs for the planning, design, and construction, or the leasing, of facilities to be operated as shared medical facilities.

"(b) TRANSFER OF FUNDS BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense may transfer to the Secretary of Veterans Affairs amounts as follows:

"(A) Amounts, not in excess of the amount authorized by law for an unspecified minor military construction project, for the construction of a shared medical facility if—

"(i) the amount of the share of the Department of Defense for the estimated cost of the project does not exceed the amount authorized under section 2805(a)(2) of this title; and

"(ii) the other requirements of such section have been met with respect to funds identified for transfer.

"(B) Amounts appropriated for the Defense Health Program for the purpose of the planning, design, and construction, or the leasing of space, for a shared medical facility.

"(2) The authority to transfer funds under this section is in addition to any other authority to transfer funds available to the Secretary of Defense.

"(3) Section 2215 of this title does not apply to a transfer of funds under this subsection.

"(c) TRANSFER OF FUNDS TO SECRETARY OF DEFENSE.—(1) Any amount transferred under title 38 to the Secretary of Defense by the Secretary of Veterans Affairs for necessary expenses for the planning, design, and construction of a shared medical facility, where the amount of the share of the Department of Defense for the cost of such project does not exceed the amount specified in section 2805(a)(2) of this title, may be credited to accounts of the Department of Defense available for the construction of a shared medical facility.

"(2) Amounts transferred under title 38 to the Secretary of Defense by the Secretary of Veterans Affairs for the purpose of the planning and design, or the leasing of space, for a shared medical facility may be credited to accounts of the Department of Defense available for such purposes, and may be used for such purposes.

"(3) Using accounts credited with transfers from the Secretary of Veterans Affairs under paragraph (1), the Secretary of Defense may carry out unspecified minor military construction projects, if the share of the Department of Defense for the cost of such project does not exceed the amount specified in section 2805(a)(2) of this title.

"(d) MERGER OF AMOUNTS TRANSFERRED.—Any amount transferred to the Secretary of Veterans Affairs pursuant to subsection (b), and any amount transferred to the Secretary of Defense as described in subsection (c), shall be merged with, and be available for the same purposes and the same time period as, the appropriation or fund to which transferred.

"(e) SHARED MEDICAL FACILITY DEFINED.—In this section, the term 'shared medical facility' means a building or buildings, or a campus, intended to be used by both the Department of Defense and the Department of Veterans Affairs for the provision of health-care services, whether under the jurisdiction of the Secretary of Defense or the Secretary of Veterans Affairs, and whether or not located on a military installation or on real property under the jurisdiction of

the Secretary of Veterans Affairs. Such term includes any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, abutting sidewalks, and accommodations for attending personnel.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1104 the following new item:

"1104a. Shared medical facilities with Department of Veterans Affairs.".

Section-by-Section Analysis

This proposal would extend the collaborative relationship between the Department of Defense (DoD) and Department of Veterans Affairs (VA) beyond the sharing of existing health care resources and permit proactive, joint planning and capital investment in shared medical facilities with the goal of improving access to and the continuity, quality, and cost effectiveness of the direct health care provided to the Departments' respective beneficiaries. Joint construction and leasing of shared medical facilities to meet the combined requirements of both Departments fall outside of the existing statutory authorities of section 1104 of title 10, United States Code (U.S.C.), and section 8111 of title 38, U.S.C., for DoD-VA resource sharing of existing health care resources. This legislation would permit the Departments to optimize expenditures to enable collaboration where the Secretaries determine it is in the best interest of the Departments to do so. There is a corresponding legislative proposal by VA, which includes the addition of a new section in title 38, U.S.C., to facilitate and permit this joint effort.

Subsection (a) of this proposal would create a new section in chapter 55 of title 10, U.S.C., to allow the Department of Defense to enter into agreements with the Department of Veterans Affairs for the planning, designing, constructing, or leasing of shared medical facilities with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Departments to their respective beneficiaries.

Subsection (a) also would provide authority to the Departments to both transfer and accept funds appropriated for planning and design, minor construction projects, and leasing of shared medical facilities. Specifically, both Departments desire authority to use minor construction dollars within their respective thresholds to fund worthy collaborative projects, without having the aggregation of these funds convert a minor project into a major one. This legislative proposal would provide authority to both Departments to transfer and accept funds appropriated for minor projects. Each Department's contribution for minor construction is limited to its respective dollar threshold and contributions from the other Department are not counted towards the receiving Department's minor construction threshold. The result is that a minor construction project may be carried out using funds combined by both Departments, to an approved cost not to exceed $13 million, as long as neither Department exceeds their respective minor construction authority.

While the Economy Act clearly includes purchasing and contracting, including services for renting and leasing, within the authorized support services, the Departments do not currently have sufficient statutory authority under the Economy Act, or elsewhere, to permit the transfer and receipt of funds between Departments to lease a shared medical facility (one than exceeds the needs of either Department individually but would meet the combined requirements). Consequently, this legislative proposal also would permit the Departments to transfer funds in furtherance of a combined/joint lease for shared medical facilities.

As a result of joint facility planning and shared services supported by the like legislation, DoD and VA beneficiaries will have more and easier access to healthcare facilities. In addition, DoD may realize a savings in facility lifecycle costs through future DoD/VA co-locations and joint facility operations. Over the years, DoD built large hospitals and clinics at installations where missions and healthcare delivery practices have changed. These changes have resulted in potential available capacity. That capacity may be used by the VA. When VA and DoD identify specific opportunities to co-locate or jointly operate facilities, the burden of facility operating costs can then shift from DoD only to DoD/VA sharing.

Facility operating cost sharing is significant. In the lifecycle of a healthcare facility, the two major cost components are the initial construction costs and the long-term operating/upkeep costs. Through a 50 or more year facility life, the initial construction cost is about 10% of the lifecycle cost and the operating/upkeep costs are 90%. For example, a facility that costs $100M to construct will require approximately $900M for operating/upkeep over its lifecycle.

Currently the Construction Planning Committee has presented 9 facilities to the JEC as possible candidates for joint planning study.

Budget Implications: The resources impacted 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**
Defense Health Program	0.0	0.0	8.2	12.9	14.0	Defense Health Program, Operation and Maintenance

Changes to Existing Law: This proposal would add a new section 1104a to chapter 55 of title 10, United States Code, shown in full in the legislative text above.

SEC. __. PREPARATION OF BUDGET REQUESTS FOR OPERATION OF PROFESSIONAL MILITARY EDUCATION SCHOOLS.

Section 2162(b)(2) of title 10, United States Code, is amended in the first sentence by striking "as a separate budget request" and inserting "as part of the budget request for the Joint Staff".

[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 reduce the requirement to generate separate budget exhibits for National Defense University (NDU). Requirements are now incorporated into the Chairman of the Joint Chiefs of Staff (CJCS) submission. All Presidents Budget exhibits required for professional military education schools will continue to be provided.

On 22 October 2015, effective with Fiscal Year 2017, the Secretary of Defense delegated his authority for direct management control and responsibility over the programming and execution of the resources for NDU and all components thereof to the CJCS. As part of the Fiscal Year 2018 President's Budget Request delivered to the Congress in May 2017, NDU's budget justification materials were included as a separate sub-activity group of the Joint Staff's submission.

Budget Implications: This proposal has no significant budgetary impact. Incidental 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 section 2162 of title 10, United States Code:

§2162. Preparation of budget requests for operation of professional military education schools

* * * * *

(b) PREPARATION OF BUDGET REQUESTS.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) As executive agent for funding professional development education at the National Defense University, including the Joint Forces Staff College, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall prepare the annual budget for professional development education operations at the National Defense University and set forth that request ~~as a separate budget request~~ as part of the budget request for the Joint Staff in the materials submitted to Congress in support of the budget request for the Department of Defense.

Nothing in the preceding sentence affects policies in effect on December 28, 2001, with respect to budgeting for the funding of logistical and base operations support for components of the National Defense University through the military departments.

(3) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the operation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

*** * * * ***

SEC. ___. PRIVACY ACT EXCLUSION FOR COURTS-MARTIAL TO ALLOW FOR PUBLIC ACCESS TO DOCKETS, FILINGS, AND COURT RECORDS.

(a) IN GENERAL.—Section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), is amended—

(1) by striking "The Secretary of Defense" and inserting "(a) The Secretary of Defense, in consultation with the Secretary of Homeland Security,";

(2) in subsection (a) (as designated by paragraph (1) of this section) in the matter preceding paragraph (1), by inserting "(including with respect to the Coast Guard)" after "military justice system";

(3) in paragraph (4) of subsection (a) (as so designated), by inserting "public" before "access to docket information"; and

(4) by adding at the end the following new subsections:

"(b) Section 552a of title 5 shall not apply to records of trial produced or distributed within the military justice system or docket information, filings, and records made publicly accessible in accordance with the uniform standards and criteria for conduct established by the Secretary under subsection (a).

"(c) Nothing in this section shall be construed to provide public access to docket information, filings, or records that are classified, subject to a judicial protective order, or ordered sealed.".

(b) EXISTING STANDARDS AND CRITERIA.—The Secretary of Homeland Security shall apply to the Coast Guard the standards and criteria for conduct established by the Secretary of Defense under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), in effect on the date of the enactment of this Act until such time as the

Secretary of Defense, in consultation with the Secretary of Homeland Security, prescribes revised standards and criteria for conduct under such section that implement the amendments made by subsection (a) of this section.

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

Section-by-Section Analysis

This proposal would amend section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice) to exclude designated court-martial records from the requirements of section 552a of title 5, United States Code (commonly known as the "Privacy Act"). This will ensure that the Military Services—when making dockets, filings, and court records available to the public in the same or similar manner as other Federal and State courts—will not be subject to potential liability under the Privacy Act for an unauthorized disclosure. Although courts-martial are expressly excepted from the definition of "agency" in section 551 of title 5, because the Military Services may maintain court-martial records about individuals in Privacy Act systems of records, the Military Services apply the requirements of the Privacy Act in disclosing such records. These efforts include a thorough review and, where appropriate, application of redactions to privacy-related information before disclosing court-martial records. Excluding such records from the requirements of the Privacy Act will allow the Services to make dockets, filings, and records more readily available to the public without incurring Privacy Act liability for inadvertent failures to redact privacy-protected information. The Military Services will prescribe procedures, taking into account procedures used in the Article III court system, concerning redaction of privacy-related information before records are disclosed to the public.

The proposal would codify a specific Privacy Act exclusion for data, docket information, filings, and records created throughout the judicial proceedings. This proposal also codifies limitations on court-martial documents that cannot be made available to the public, including documents that are sealed, classified, or under a protective order.

This proposal would also clarify the applicability of the uniform standards and criteria with respect to the Coast Guard. The Secretary of Defense would consult with the Secretary of Homeland Security in developing the standards and criteria and the final prescribed standards and criteria would apply to the Coast Guard. As an interim measure until new standards and criteria can be issued to reflect the revisions in the proposed amendment to section 940a (article 140a), the Secretary of Homeland Security would apply to the Coast Guard the standards and criteria that have been prescribed by the Secretary of Defense for the Army, Navy, Air Force, and Marines.

Budget Implications: This proposal has no significant budget impact. Incidental 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 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice):

§940a. Art. 140a. Case management; data collection and accessibility

(a) The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system (including with respect to the Coast Guard), including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

(1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).

(2) Case processing and management.

(3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.

(4) Facilitation of public access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.

(b) Section 552a of title 5 shall not apply to records of trial produced or distributed within the military justice system or docket information, filings, and records made publicly accessible in accordance with the uniform standards and criteria for conduct established by the Secretary under subsection (a).

(c) Nothing in this section shall be construed to provide public access to docket information, filings, or records that are classified, subject to a judicial protective order, or ordered sealed.

SEC. ___. EXTENSION OF AUTHORITY FOR REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) EXTENSION.—Subsection (a) of section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393), as most recently amended by section 1225 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is further amended in the matter preceding paragraph (1) by striking "October 1, 2018, and ending on December 31, 2019" and inserting "October 1, 2019, and ending on December 31, 2020".

(b) LIMITATION ON AMOUNTS AVAILABLE.—Subsection (d)(1) of such section is amended by striking "October 1, 2018, and ending on December 31, 2019, may not exceed $350,000,000" and inserting "October 1, 2019, and ending on December 31, 2020, may not exceed $450,000,000".

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

Section-by-Section Analysis

This proposal would extend through December 2020 current authority for the use of Operation and Maintenance, Defense-wide (O&M, D-W) appropriations under the Coalition Support Fund (CSF) authority. The existing requirements and limitations with respect to such authority are continued unchanged.

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**
Coalition Support Funds	$450					Operation and Maintenance, Defense-wide, OCO
Total	$450					--

Changes to Existing Law: This proposal would make the following changes to section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393):

SEC. 1233. REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) AUTHORITY.—From funds made available for the Department of Defense for the period beginning on ~~October 1, 2018, and ending on December 31, 2019~~ October 1, 2019, and ending on December 31, 2020, for overseas contingency operations for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse—

(1) any key cooperating nation (other than Pakistan) for—

(A) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and

(B) logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in subparagraph (A); and

(2) Pakistan for certain activities meant to enhance the security situation in the Afghanistan-Pakistan border region pursuant to section 1226 of the National Defense Authorization Act for Fiscal Year 2016 (22 U.S.C. 2151 note), as amended by the John S. McCain National Defense Authorization Act for Fiscal Year 2019.

(b) OTHER SUPPORT.—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military operations in Afghanistan, Iraq, or Syria through the following:

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a non-reimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

(2) SUPPORT.—Support authorized by subsection (b) may be provided in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, considers appropriate.

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.— The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during the period beginning on ~~October 1, 2018, and ending on December 31, 2019~~ October 1, 2019, and ending on December 31, 2020, may not exceed ~~$350,000,000~~ $450,000,000.

(2) PROHIBITION ON CONTRACTUAL OBLIGATIONS TO MAKE PAYMENTS.—The Secretary of Defense may not enter into any contractual obligation to make a reimbursement under the authority in subsection (a).

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b).

(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.

(f) QUARTERLY REPORTS.—The Secretary of Defense shall submit to the appropriate congressional committees on a quarterly basis a report on any reimbursements made under the authority in subsection (a), and any support provided under the authority in subsection (b), during such quarter.

(g) DEFINITION.—In this section, the term ‘‘appropriate congressional committees’’ means—

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

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

SEC. ___. REMOVING BARRIERS TO, AND EXTENSION OF, THE DEFENSE PRODUCTION ACT.

(a) LOANS TO PRIVATE BUSINESS ENTERPRISES.—Section 302 of the Defense Production Act (50 U.S.C. 4532) is amended—

(1) in subsection (c)(1)—

(A) in the matter preceding subparagraph (A), by striking "or guaranteed";

(B) in subparagraph (A), by striking "guarantees" and inserting "loans"; and

(C) in subparagraph (B), by striking "that may be guaranteed" and inserting "disbursed"; and

(2) in subsection (d)(2)(B), by striking ", on a nondelegable basis,".

(b) PRESIDENTIAL ACTIONS.—Section 303(a) of the Defense Production Act (50 U.S.C. 4533(a)) is amended—

(1) in paragraph (5), in the matter preceding subparagraph (A), by striking "on a nondelegable basis" and inserting "or the Secretary of Defense if so delegated"; and

(2) in paragraph (6), by striking subparagraph (C).

(c) AUTHORIZATION OF APPROPRIATIONS—Section 711 of the Defense Production Act (50 U.S.C. 4561) is amended by striking "is authorized to be appropriated $133,000,000 for fiscal year 2015 and each fiscal year thereafter" and inserting "are hereby authorized to be appropriated such sums as may be necessary and appropriate".

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

Section-by-Section Analysis

The Defense Production Act provides the President with the authority to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense. In an effort to broaden the impact of the DPA, the relevant parts of the U.S. Code must be updated to reflect the current national security priorities and advance an agile program.

§4532 (c)(1)(A) and (B) The President may make provisions for loans to private business enterprises for industrial resources essential to national defense. The National Defense Resources Preparedness (Executive Order 13603) states "loan and loan guarantee authority is delegated to the Heads of Agencies involved in procurement for national defense." By removing the term "guarantees" from statute and replacing with the term "loans" and removing "guaranteed" and replacing with the term of "disbursed" allows the Defense Production Act Title III program to make disbursement of funds that will require repayment with or without interest to private enterprises.

§4533(a)(5) The Presidential Determination (PD) designates an industrial base shortfall as a requiring mitigation pursuant to the DPA. In 2014, language was inserted into this section making the PD "nondelegable." This change added additional layers of coordination and other signatures to the project approval process. For almost two decades before the language was changed, PDs were signed by the Under Secretary of Defense for Acquisition, Technology, & Logistics. By making the PDs nondelegable, the process and the time to get new projects approved lengthened significantly. Today's process requires not only a signature from the Under Secretary of Defense for Acquisition & Sustainment, but the signature of either the Secretary of Defense or the Deputy Secretary of Defense, before the package gets sent to the Executive Office of the President, where it is reviewed and coordinated again and presented to the President for a final signature. By removing the term "nondelegable" and allowing the Secretary of Defense to sign the DPA Title III Presidential Determinations, the project execution timelines will decrease and Presidential priorities can be carried out by the Secretary of Defense through the delegation of DPA Title III authorities.

§4533(a)(6)(C) This limitation prevents the DPA Title III program from using funds set aside to bridge critical shortfalls until Congress reauthorizes the funds for the specific remedy. This section is unnecessarily limiting, especially since §4533(a)(6)(*B*) already requires Congressional notification and a 30-day review period before addressing industrial resource shortfalls that exceed $50,000,000. This provision renders large infrastructure projects ideally addressed by DPA Title III nearly impossible to execute in a timely manner (i.e. steel, aluminum, or microelectronics projects). By removing this section, the DPA Title III program would be able to more rapidly address the shortfalls that the President determines are essential to the national defense.

§4561 This statute originally stated, "there are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this chapter by the President and such agencies as he may designate or create." In 2014, this was changed to say, "There is authorized to be appropriated $133,000,000 for fiscal year 2015 and each fiscal year thereafter for the carrying out of the provisions and purposes of this chapter by the President and such agencies as he may designate or create." This new limitation caps the funding available to DPA Title III, severely limiting the ability of the program to rapidly respond

to changing industrial base priorities. By reverting the statute to its original language, the program will regain its budgetary flexibility and be better positioned to make strategic long term investments as well as being equipped to stimulate the defense industrial base during times of war or national emergency.

Budget Implications: This proposal has no significant budgetary impact because these statutory changes will not impact the resource requirements of the DPA Title III program.

Changes to Existing Law: This proposal would amend sections 302, 303, and 711 of the Defense Production Act, as shown below in the corresponding sections of title 50, United States Code (4532, 4533, and 4561): :

§4532. Loans to private business enterprises

(a) Loan authority

To reduce current or projected shortfalls of industrial resources, critical technology items, or materials essential for the national defense, the President may make provision for loans to private business enterprises (including nonprofit research corporations and providers of critical infrastructure) for the creation, maintenance, expansion, protection, or restoration of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals.

(b) Conditions of loans

Loans may be made under this section on such terms and conditions as the President deems necessary, except that—

(1) financial assistance may be extended only to the extent that it is not otherwise available from private sources on reasonable terms; and

(2) during periods of national emergency declared by the Congress or the President, no such loan may be made unless the President determines that—

(A) the loan is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;

(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

(D) the prospective earning power of the loan applicant and the character and value of the security pledged

provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan, as determined by the President; and

(E) the loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(c) Limitations on loans

Loans under this section may be—

(1) made ~~or guaranteed~~ under the authority of this section only to the extent that an appropriations Act—

(A) provides, in advance, budget authority for the cost of such ~~guarantees~~ loans, as defined in section 661a of title 2;

and

(B) establishes a limitation on the total loan principal ~~that may be guaranteed~~ disbursed; and

(2) made without regard to the limitations of existing law, other than section 1341 of title 31.

(d) Aggregate loan amounts

(1) In general

If the making of any loan under this section to correct a shortfall would cause the aggregate outstanding amount of all obligations of the Federal Government under this subchapter relating to such shortfall to exceed $50,000,000, such loan may be made only—

(A) if the President has notified the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, in writing, of the proposed loan; and

(B) after the 30-day period following the date on which notice under subparagraph (A) is provided.

(2) Waivers authorized

The requirements of paragraph (1) may be waived—

(A) during a period of national emergency declared by the Congress or the President; and

(B) upon a determination by the President, ~~on a nondelegable basis,~~ that a specific loan is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

§4533. Other presidential action authorized

(a) In general

(1) In general

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision—

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and

(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies—

(i) from Government sponsored research and development to commercial applications; and

(ii) from commercial research and development to national defense applications.

(2) Treatment of certain agricultural commodities

A purchase for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

(3) Terms of sales

No commodity purchased under this subsection shall be sold at less than—

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of—

(i) the current domestic market price for such commodity; or

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 1427 of title 7.

(4) Delivery dates

No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

(5) Presidential determinations

Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President, or the Secretary of Defense if so delegated ~~**on a nondelegable basis**~~, determines, with appropriate explanatory material and in writing, that—

(A) the industrial resource, material, or critical technology item is essential to the national defense;

(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

(6) Notification to Congress of shortfall

(A) In general

Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

(B) Aggregate amounts

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed $50,000,000, the action or actions may be taken only after the 30day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

~~**(C) Limitation**~~

~~**If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed $50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.**~~

(7) Waivers authorized

The requirements of paragraphs (1) through (6) may be waived—

(A) during a period of national emergency declared by the Congress or the President; or

(B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

(b) Exemption for certain limitations

Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law (other than section 1341 of title 31), for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date on which such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if no such established ceiling prices exist, currently prevailing market prices) or anticipated loss on resale shall not be made, unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) Presidential findings

(1) In general

The President may take the actions described in paragraph (2), if the President finds that—

(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from highcost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this subchapter; or

(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

(2) Subsidy payments authorized

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such highcost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) Incidental authority

The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) Installation of equipment in industrial facilities

(1) Installation authorized

If the President determines that such action will aid the national defense, the President is authorized—

(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

(B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 4531 of this title, 4532 of this title, or this section; and

(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

(2) Indemnification

The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree—

(A) to waive any claim against the United States under section 9607 or 9613 of title 42; and

(B) to indemnify the United States against any claim described in paragraph (1) made by a third party that arises out of the presence or use of equipment owned by the Federal Government.

(f) Excess metals, minerals, and materials

(1) In general

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this chapter, shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

(2) Transfers at no charge

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), except that costs incident to such transfer, other than acquisition costs, shall be paid or reimbursed from such funds.

(g) Substitutes

When, in the judgement of the President, it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

§4561. Authorization of appropriations; availability of funds

There ~~**is authorized to be appropriated $133,000,000 for fiscal year 2015 and each fiscal year thereafter**~~ are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this chapter by the President and such agencies as he may designate or create.

SEC. ___. REPEAL OF STATUTORY REQUIREMENT FOR COMMANDER OF THE DEFENSE LOGISTICS AGENCY TO BE NOTIFIED THREE YEARS PRIOR TO IMPLEMENTING CHANGES TO ANY UNIFORM OR UNIFORM COMPONENT.

Section 356 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1636) is amended—

(1) by striking subsection (a);

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

(3) in subsections (a) and (b), as so redesignated, by striking "Commander" each place it appears and inserting "Director".

[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 repeal subsection (a) of section 356 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA), which requires three-year advance notice to the Defense Logistics Agency (DLA) before implementing a change to any uniform or uniform component.

The proposal leaves in place a requirement providing for 12-month advance notice to a contractor when one of the uniformed services plans to make a change to a uniform component that is provided by that contractor. The proposal allows for waiver of this requirement if the notification would "adversely affect operational safety, force protection, or the national security interests of the United States."

Finally, the proposal would correct the title of the head of DLA from "Commander" to "Director."

It is essential for subsection (a) of section 356 of the FY19 NDAA to be repealed in FY 2020. DLA's Supply Request Package (SRP) requirement provides that "the introduction of new clothing and textile items into the Department of Defense (DoD) supply system shall be planned and coordinated with the Troop Support Clothing and Textiles to ensure optimal economic use of all existing stocks of affected items." The FY19 NDAA language relating to the three-year

notification to DLA of uniform changes is not necessary, as the military departments comply with DLA requirements for notification.

The requirement for the military departments to notify DLA three years in advance of any uniform change delays Service members in receiving improved uniforms. The military departments continually evaluate new technologies in uniform fabric and design. The requirements of subsection (a) of section 356 of the FY19 NDAA impede the ability of the military departments to rapidly provide improved uniforms to Service members.

Budget Implications: There are no budgetary implications.

Changes to Existing Law: This proposal would make the following changes to section 356 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1636):

SEC. 356. NOTIFICATION REQUIREMENTS RELATING TO CHANGES TO UNIFORM OF MEMBERS OF THE UNIFORMED SERVICES.

~~(a) DLA NOTIFICATION.—The Secretary of a military department shall notify the Commander of the Defense Logistics Agency of any plan to implement a change to any uniform or uniform component of a member of the uniformed services. Such notification shall be made not less than three years prior to the implementation of such change.~~

~~(b)~~(a) CONTRACTOR NOTIFICATION~~.—~~The ~~Commander~~Director of the Defense Logistics Agency shall notify a contractor when one of the uniformed services plans to make a change to a uniform component that is provided by that contractor. Such a notification shall be made not less than 12 months prior to any announcement of a public solicitation for the manufacture of the new uniform component.

(~~c~~b) WAIVER.—If the Secretary of a military department or the ~~Commander~~ Director of the Defense Logistics Agency determines that the notification requirement under subsection (a) would adversely affect operational safety, force protection, or the national security interests of the United States, the Secretary or the ~~Commander~~Director may waive such requirement.

SEC. __. REPEAL OF REPORT ON END-OF-QUARTER STRENGTH LEVELS.

Section 115(e) of title 10, United States Code, is amended by striking paragraph (3).

[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 repeal paragraph (3) of section 115(e) of title 10, United States Code, to remove the requirement for the Secretary of Defense to notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives whenever the Secretary establishes an end-of-quarter (EOQ) strength level pursuant to section 115(e)(2)(A) or modifies a strength level pursuant to section 115(e)(2)(B). In recent years, the DoD has proposed reductions to mandatory reports to realize resource savings. Reports to Congress similar to this EOQ strength level report have been eliminated. This proposal would allow a reduction of man hours and resource costs by eliminating the Congressional reporting requirement. The Office of the Secretary of Defense would continue to ensure the Services remain in compliance with their authorized strength levels and within the statutory variances for active-duty and Selected Reserve strengths. Cost savings can be realized by eliminating the significant time and resource investment of coordinating and producing a Congressional level report.

The quarterly report to Congress outlines the first, second and third EOQ personnel strengths prescribed by the Secretary for the four Active and six Selected Reserve components and, in accordance with the section 115(f) of title 10, allocates the Secretary's three percent variance for each prescribed EOQ strength level.

Since FY 2006, this statutorily-required report has been submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each year. In the 12 previous reports submitted to Congress, there have been no follow-up inquiries from Congress pertaining to the report's EOQ personnel strength variances nor has any Active or Selected Reserve component ended a quarter outside the three percent variance for that quarter.

In light of the Secretary of Defense's 2009 initiative to reduce the number of reports generated within the Department, coupled with the Services' universal compliance with statutorily authorized EOQ strength levels and variance strength, the Department believes this statutory report to be unnecessary and can be eliminated with no impact to either the Department or the Congress.

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. By repealing this paragraph and removing the requirement for the Secretary of Defense to notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives whenever the Secretary establishes an end-of-quarter strength level pursuant

to section 115(e)(2)(A) or modifies a strength level pursuant to section 115(e)(2)(B), the Department will save between $8,000 and $10,000 annually according to a cost estimate from Cost Assessment and Program Evaluation (CAPE) .

Changes to Existing Law: This proposal would strike section 115(e)(3) of title 10, United States Code.

TITLE 10, UNITED STATES CODE

§ 115. Personnel strengths: requirement for annual authorization

(a) Active-duty and Selected Reserve end strengths to be authorized by law. Congress shall authorize personnel strength levels for each fiscal year for each of the following:

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

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

(b) Certain reserves on active duty to be authorized by law.

(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to--

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

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

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

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

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

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

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

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

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

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

Selected Reserve of the Ready Reserve.

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

(4) As part of the budget justification materials submitted by the Secretary of Defense to Congress in support of the end strength authorizations required under subparagraphs (A) and (B) of subsection (a)(1) for fiscal year 2009 and each fiscal year thereafter, the Secretary shall provide the following:

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

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

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

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

(c) Limitation on appropriations for military personnel. No funds may be appropriated for any fiscal year to or for--

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

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

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

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

(e) End-of-quarter strength levels.

(1) The Secretary of Defense shall prescribe and include in the budget justification documents

submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

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

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

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

(f) Authority for Secretary of Defense variances for active-duty and Selected Reserve strengths. Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may--

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

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

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

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

(g) Authority for service Secretary variances for active-duty and Selected Reserve end strengths.

(1) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may--

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

Navy, for any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength; and

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

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

(h) Adjustment when Coast Guard is operating as a service in the Navy. The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

(i) Certain personnel excluded from counting for active-duty end strengths. In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

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

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

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

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

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

(6) Members of the militia called into Federal service under chapter 15 of this title.

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

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

(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b)).

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

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

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

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

SEC. ___. REVISION OF AUTHORITY FOR SOLE SOURCE CONTRACTS WITH DESIGNATED PROVIDERS.

Subtitle C of title VII of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2586 et seq.) is amended—

(1) in section 721—

(A) by amending paragraph (7) to read as follows:

"(7) The term 'health care services' means the health care services referred to in section 723(a)."; and

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

"(10) The term 'TRICARE Select program' means the program required by section 1075 of title 10, United States Code.";

(2) in section 723, by amending subsections (a) and (b) to read as follows:

"(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees a uniform benefit that—

"(1) covers the services covered under the programs authorized by sections 1074g, 1075, and 1086(d) of title 10, United States Code, and parts A and B of the Medicare program; and

"(2) does not exceed the accompanying enrollment fee and cost-sharing requirements, except that the benefit may include a special rule for amounts without referrals comparable to that under section 1075a(c) of title 10, United States Code.

"(b) TIME FOR IMPLEMENTATION OF BENEFIT.—A designated provider shall offer the health benefit option described in subsection (a) to enrollees beginning on January 1, 2020.";

(3) in section 724, by striking subsection (g); and

(4) in section 726(b), by striking "TRICARE program" and inserting "TRICARE Select program".

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

Section-by-Section Analysis

In July 2014, the Government Accountability Office (GAO) issued a report (GAO-14-684) concerning the U.S. Family Health Plan (USFHP). The report recommended: "Congress should terminate DoD's authority to contract with the USFHP designated providers in a manner consistent with a reasonable transition of affected USFHP enrollees into TRICARE's regional managed care program or other health care programs as appropriate." The report further advised: "Eliminating this statutorily required program would not only eliminate unnecessary costs and inefficiencies, but would also free up departmental resources that could be better used to manage other aspects of the TRICARE program." The Department of Defense has no disagreement with GAO in this regard. The USFHP is a Congressionally-mandated, sole source contract – a rare exception to the general congressional and DoD policy favoring competition in contracting. In the event that Congress is not inclined to adopt the GAO's recommendation, this proposal offers another alternative.

If Congress is not inclined to follow the GAO recommendation, this section offers a more modest alternative that still achieves some of the objectives of the GAO recommendation. This alternative would not disturb the mandate that DoD award a sole source contract to the six "designated providers," but would revise the specified terms of the contracts. Currently, the statute commands that DoD pay for the USFHP to offer the TRICARE Prime benefit. This proposal would align the USFHP with the TRICARE Select benefit, as established by section 701 of the National Defense Authorization Act for Fiscal Year 2017. There is a significant difference in government costs between the two health plans, according to a 2016 Congressional Budget Office report: "CBO estimates that under current law, a typical retiree household enrolled in TRICARE Prime as a 'family' in 2018, and for whom TRICARE is the primary payer of health benefits, will cost DoD about $17,400, and a typical family that uses Standard/Extra will cost DoD about $12,700."[1] It is well-established DoD policy that TRICARE Prime is offered in areas surrounding military medical treatment facilities (MTFs) for the purpose of supporting, through the operation of patient referral procedures, the most effective operation of those facilities, and that beneficiaries who reside in other areas be served by TRICARE Standard or TRICARE Extra (which was replaced by TRICARE Select January 1, 2018). The USFHP statute is decidedly out of step with this policy because it requires TRICARE Prime in six specified communities that either have no MTF or which have an MTF that receives no significant patient referrals from the sole source designated provider contractor. Consistent with the GAO's recommendation, this will eliminate unnecessary costs and inefficiencies.

[1] Congressional Budget Office Cost Estimate, S. 2943, National Defense Authorization Act for Fiscal Year 2017, June 10, 2016, page 17.

Budget Implications: The resources saved are reflected in the table below and are included within the FY 2019 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
DHP	($102)	($106.5)	($120.9)	($129.6)	($134.6)	Defense Health Program (DHP)

Changes to Existing Law: This proposal would make the following changes to subtitle C of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201):

Subtitle C—Uniformed Services Treatment Facilities

SEC. 721. DEFINITIONS.

In this subtitle:

(1) The term "administering Secretaries" means the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Health and Human Services.

(2) The term "agreement" means the agreement required under section 722(b) between the Secretary of Defense and a designated provider.

(3) The term "capitation payment" means an actuarially sound payment for a defined set of health care services that is established on a per enrollee per month basis.

(4) The term "covered beneficiary" means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

(5) The term "designated provider" means a public or nonprofit private entity that was a transferee of a Public Health Service hospital or other station under section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 42 U.S.C. 248b) and that, before the date of the enactment of this Act, was deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code. The term includes any legal successor in interest of the transferee.

(6) The term "enrollee" means a covered beneficiary who enrolls with a designated provider.

(7) ~~The term 'health care services' means the health care services provided under the health plan known as the 'TRICARE PRIME' option under the TRICARE program.~~ The term "health care services" means the health care services referred to in section 723(a).

(8) The term "Secretary" means the Secretary of Defense.

(9) The term "TRICARE program" means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

(10) The term "TRICARE Select program" means the program required by section 1075 of title 10, United States Code.

SEC. 722. INCLUSION OF DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM.

* * * * *

SEC. 723. PROVISION OF UNIFORM BENEFIT BY DESIGNATED PROVIDERS.

~~(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees the health benefit option prescribed and implemented by the Secretary under section 731 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 1073 note), including the accompanying cost-sharing requirements.~~

~~(b) TIME FOR IMPLEMENTATION OF BENEFIT.—A designated provider shall offer the health benefit option described in subsection (a) to enrollees upon the later of the following:~~
~~(1) The date on which health care services within the health care delivery system of the uniformed services are rendered through the TRICARE program in the region in which the designated provider operates.~~
~~(2) October 1, 1997.~~

(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees a uniform benefit that—
(1) covers the services covered under the programs authorized by sections 1074g, 1075, and 1086(d) of title 10, United States Code, and parts A and B of the Medicare program; and
(2) does not exceed the accompanying enrollment fee and cost-sharing requirements, except that the benefit may include a special rule for amounts without referrals comparable to that under section 1075a(c) of title 10, United States Code.

(b) TIME FOR IMPLEMENTATION OF BENEFIT. A designated provider shall offer the health benefit option described in subsection (a) to enrollees beginning on January 1, 2018.

(c) ADJUSTMENTS.—The Secretary may establish a later date under subsection (b)(2) or prescribe reduced cost-sharing requirements for enrollees.

SEC. 724. ENROLLMENT OF COVERED BENEFICIARIES.

(a) FISCAL YEAR 1997 LIMITATION.—
(1) During fiscal year 1997, the number of covered beneficiaries who are enrolled in managed care plans offered by designated providers may not exceed the number of such enrollees as of October 1, 1995.
(2) The Secretary may waive the limitation under paragraph (1) if the Secretary determines that additional enrollment authority for a designated provider is required to accommodate covered beneficiaries who are dependents of members of the uniformed services entitled to health care under section 1074(a) of title 10, United States Code.

(b) PERMANENT LIMITATION.—For each fiscal year beginning after September 30, 1997, the number of enrollees in managed care plans offered by designated providers may not exceed 110 percent of the number of such enrollees as of the first day of the immediately preceding fiscal year. The Secretary may waive this limitation as provided in subsection (a)(2).

(c) RETENTION OF CURRENT ENROLLEES.—An enrollee in the managed care plan of a designated provider as of September 30, 1997, or such earlier date as the designated provider and the Secretary may agree upon, shall continue receiving services from the designated provider pursuant to the agreement entered into under section 722 unless the enrollee disenrolls from the designated provider. Except as provided in subsection (e), the administering Secretaries may not disenroll such an enrollee unless the disenrollment is agreed to by the Secretary and the designated provider.

(d) ADDITIONAL ENROLLMENT AUTHORITY.—

(1) Subject to paragraph (2), other covered beneficiaries may also receive health care services from a designated provider.

(2)(A) The designated provider may market such services to, and enroll, covered beneficiaries who--

(i) do not have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services;

(ii) subject to the limitation in subparagraph (B), have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services; or

(iii) are enrolled in the direct care system under the TRICARE program, regardless of whether the covered beneficiaries were users of the health care delivery system of the uniformed services in prior years.

(B) For each fiscal year beginning after September 30, 2003, the number of covered beneficiaries newly enrolled by designated providers pursuant to clause (ii) of subparagraph (A) during such fiscal year may not exceed 10 percent of the total number of the covered beneficiaries who are newly enrolled under such subparagraph during such fiscal year.

(3) For purposes of this subsection, a covered beneficiary who has other primary health insurance coverage includes any covered beneficiary who has primary health insurance coverage--

(A) on the date of enrollment with a designated provider pursuant to paragraph (2)(A)(i); or

(B) on such date of enrollment and during the period after such date while the beneficiary is enrolled with the designated provider.

(e) SPECIAL RULE FOR MEDICARE-ELIGIBLE BENEFICIARIES.—(1) Except as provided in paragraph (2), if a covered beneficiary who desires to enroll in the managed care program of a designated provider is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), the covered beneficiary shall elect whether to receive health care services as an enrollee or under part A of title XVIII of the Social Security Act [42 USCS §§ 1395c et seq.]. The Secretary may disenroll an enrollee who subsequently violates the election made under this subsection and receives benefits under part A of title XVIII of the Social Security Act.

(2) After September 30, 2012, a covered beneficiary (other than a beneficiary under section 1079 of title 10, United States Code) who is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act due to age may not enroll in the managed care program of a designated provider unless the beneficiary was enrolled in that program on September 30, 2012.

(f) INFORMATION REGARDING ELIGIBLE COVERED BENEFICIARIES.—The Secretary shall provide, in a timely manner, a designated provider with an accurate list of covered beneficiaries within the marketing area of the designated provider to whom the designated provider may offer enrollment.

~~(g) OPEN ENROLLMENT DEMONSTRATION PROGRAM.~~

~~(1) The Secretary of Defense shall conduct a demonstration program under which covered beneficiaries shall be permitted to enroll at any time in a managed care plan offered by a designated provider consistent with the enrollment requirements for the TRICARE Prime option under the TRICARE program, but without regard to the limitation in subsection (b). The demonstration program under this subsection shall cover designated providers, selected by the Secretary of Defense, and the service areas of the designated providers.~~

~~(2) The demonstration program carried out under this section shall commence on October 1, 1999, and end on September 30, 2001.~~

~~(3) Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program carried out under this subsection. The report shall include, at a minimum, an evaluation of the benefits of the open enrollment opportunity to covered beneficiaries and a recommendation on whether to authorize open enrollments in the managed care plans of designated providers permanently.~~

SEC. 725. APPLICATION OF CHAMPUS PAYMENT RULES.

* * * * *

SEC. 726. PAYMENTS FOR SERVICES.

(a) FORM OF PAYMENT.—Unless otherwise agreed to by the Secretary and a designated provider, the form of payment for health care services provided by a designated provider shall be on a full risk capitation payment basis. The capitation payments shall be negotiated and agreed upon by the Secretary and the designated provider. In addition to such other factors as the parties may agree to apply, the capitation payments shall be based on the utilization experience of enrollees and competitive market rates for equivalent health care services for a comparable population to such enrollees in the area in which the designated provider is located.

(b) LIMITATION ON TOTAL PAYMENTS.—Total capitation payments for health care services to a designated provider shall not exceed an amount equal to the cost that would have been incurred by the Government if the enrollees had received such health care services through a military treatment facility, the ~~TRICARE program~~ TRICARE Select program, or the Medicare program, as the case may be. In establishing the ceiling rate for enrollees with the designated providers who are also eligible for the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense shall take into account the health status of the enrollees.

(c) ESTABLISHMENT OF PAYMENT RATES ON ANNUAL BASIS.—The Secretary and a designated provider shall establish capitation payments on an annual basis, subject to periodic review for

actuarial soundness and to adjustment for any adverse or favorable selection reasonably anticipated to result from the design of the program under this subtitle.

(d) ALTERNATIVE BASIS FOR CALCULATING PAYMENTS.—After September 30, 1999, the Secretary and a designated provider may mutually agree upon a new basis for calculating capitation payments.

SEC. ___. TARIFFS ON AIRCRAFT TRAVELING THROUGH CHANNEL ROUTES.

Section 2652 of title 10, United States Code, is amended by striking the period at the end and inserting the following: ", except that such prohibition shall not apply if costs are incurred by United States Transportation Command in supporting the passengers and cargo of that military service transported in such aircraft, or in support of the aircraft itself.".

[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 2652 of title 10, United States Code (U.S.C.), which currently prohibits the United States Transportation Command (USTRANSCOM) from charging a military service for the transportation of channel traffic on an aircraft of that military service, by limiting application of the prohibition to situations in which USTRANSCOM provides no support to passengers and cargo of that military service transported on such aircraft, or in support of the aircraft itself.

Section 2652 prohibits charging a military service for the transportation of passengers and cargo flying on a channel route (recurring, scheduled airlift over a designated route such as Dover Air Force Base, Delaware, to Ramstein Air Base, Germany), when the aircraft flying that channel route belongs to the same military service. Thus, if 30% of the cargo on a channel route flown by a U.S. Air Force C-17 belongs to the Air Force, the Air Force may not be charged for the transportation of that cargo. Implemented as written, section 2652 effectively eliminates the Transportation Working Capital Fund (TWCF) construct used to finance the common-user channel airlift system that has provided cost-effective and efficient airlift services to the Department for nearly 60 years.

The channel airlift system, operated by the Air Mobility Command (AMC) component of USTRANSCOM, provides scheduled, recurring channel airlift services for DoD and authorized non-DoD customers. Passengers and cargo from multiple DoD and non-DoD customers are aggregated at aerial ports and manifested to fly on the next available scheduled mission. In the case of cargo, it is processed, palletized, and stored at the aerial port until this occurs. USTRANSCOM also provides In-Transit Visibility (ITV) for passengers and cargo while in the channel system. Customers pay for transportation (which includes the aerial port services and ITV provided as well as the actual airlift) at tariffs established by USTRANSCOM that are designed to recoup most of the cost of operating the system. A channel mission may carry passengers and/or cargo from dozens of DoD customers. DoD units budget, and are appropriated funds, to pay for transportation. Thus, if U.S. Army traffic comprises 70% of the passengers and cargo transported, Army units will pay roughly 70% of the cost of operating the channel system.

In FY 2017, the channel system generated $1.054B in revenue. Roughly 44% of this was attributable to missions flown by U.S. Air Force aircraft, with most of the remainder flown by chartered commercial aircraft. Of the revenues generated, approximately $190.6M was received from the Army; $283.3M from the Air Force; $165.8M from the Navy and Marine Corps; and $414.6M from other sources (DoD agencies, other U.S. Government agencies, etc.). If, as section 2652 of title 10, U.S.C., requires, the Air Force cannot be charged for transportation of channel traffic on its own aircraft, revenues would have been decreased by $125M. Since the law requires the TWCF to recoup its costs from customers, the TWCF would be forced to raise the tariffs for non-Air Force customers in order to cover the loss of Air Force revenues—in effect forcing non-Air Force customers to subsidize the Air Force's transportation costs. In addition, since DoD units are appropriated funds to pay for transportation, obtaining such transportation at no cost if the aircraft is of the same Service as the DoD unit potentially constitutes an improper augmentation of funds problem for the DoD unit involved.

Finally, it must be noted that it is DoD policy to take advantage of any spare capacity on DoD aircraft transiting an aerial port to carry channel traffic. Thus, if a U.S. Marine Corps aircraft is transiting Dover AFB en route to Ramstein AB, Germany, and has excess capacity, it may be asked to carry a few pallets of cargo waiting at Dover for airlift to Ramstein. In such a case, the customers are still charged the same price as if the cargo were flown on a scheduled channel mission. However, the U.S. Marine Corps is not paid by the TWCF to carry the cargo since the mission to Ramstein AB will be flown whether it carries channel cargo or not. This policy has the advantages of using the capacity available more efficiently and moving the cargo forward more quickly than might otherwise be the case. To the extent revenues are generated for the TWCF, such revenues serve to reduce the operating deficit of the entire channel system and accrue to the benefit of all customers by keeping rates lower. (Channel tariffs are typically below cost because they are bench-marked to commercial rates. To the extent there is an operating deficit, the Air Force absorbs the cost.) However, if a Marine Corps shipment is on one of the pallets transported in the example provided above, section 2652 of title 10, U.S.C., requires that the Marine Corps not be charged to move that shipment. If the cargo has been processed, prepared, and tracked in the channel system, the cost of providing these services will not be recouped. Similarly, the cost of any support provided to the aircraft at the aerial port, such as cargo loading and unloading, will not be recovered.

This amendment would limit application of section 2652 to situations in which the neither the passengers or cargo transported, or the aircraft itself, receive support from USTRANSCOM. This will enable USTRANSCOM to charge a tariff to recoup its costs when support is provided to the passengers or cargo of a military service that are transported on that service's aircraft, as well as the cost of support provided to the aircraft itself.

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**
Army	-$1.50	-$1.50	-$1.50	-$1.50	-$1.50	Operation and Maintenance, Army
Air Force	$4.00	$4.00	$4.00	$4.00	$4.00	Air Force Airlift Readiness Account

Navy	-$2.10	-$2.10	-$2.10	-$2.10	-$2.10	Operation and Maintenance, Navy
Marine Corps	-$0.40	-$0.40	-$0.40	-$0.40	-$0.40	Operation and Maintenance, Marine Corps
Total	$0.00	$0.00	$0.00	$0.00	$0.00	--

Changes to Existing Law: This proposal would make the following changes to section 2652 of title 10, U.S.C:

§ 2652. Prohibition on charge of certain tariffs on aircraft traveling through channel routes.

The United States Transportation Command may not charge a tariff by reason of the use by a military service of an aircraft of that military service on a route designated by the United States Transportation Command as a channel route, except that such prohibition shall not apply if costs are incurred by United States Transportation Command in supporting the passengers and cargo of that military service transported in such aircraft, or in support of the aircraft itself.

SEC. ___. TECHNICAL AND GRAMMATICAL CORRECTIONS AND REPEAL OF OBSOLETE PROVISIONS RELATING TO ENERGY.

(a) TECHNICAL CORRECTIONS.—Title 10, United States Code, is amended—

(1) in section 2913(c), by striking "government" and inserting "government or"; and

(2) in section 2926(d)(1), in the second sentence, by striking "and Defense" and inserting "and the Defense".

(b) GRAMMATICAL CORRECTIONS.—Such title is further amended—

(1) in section 2922a(d), by striking "resilience are prioritized and included" and inserting "energy resilience are included as critical factors"; and

(2) in section 2925(a)(3), by striking "impacting energy" and all that follows and inserting "degrading energy resilience at military installations (excluding planned outages for maintenance reasons), whether caused by on- or off-installation disruptions, including the total number of outages and their locations, the duration of each outage, the financial effect of each outage, whether or not the mission was affected, the downtimes (in minutes or hours) the mission can afford based on mission requirements and risk tolerances, the responsible authority managing the utility, and measures taken to mitigate the outage by the responsible authority.".

(c) CLARIFICATION OF APPLICABILITY OF CONFLICTING AMENDMENTS MADE BY THE 2018 DEFENSE AUTHORIZATION ACT.—Section 2911(e) of such title is amended—

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

"(1) Opportunities to reduce the current rate of consumption of energy, the future demand for energy, and the requirement for the use of energy.

"(2) Opportunities to enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that affect mission assurance on military installations."; and

(2) by amending paragraph (13) to read as follows:

"(13) Opportunities to leverage financing provided by a non-Department entity to address installation energy needs.".

(d) UPDATED SECTION HEADING.—Section 2926 of such title is amended in the heading, by striking "**activities**".

(e) REPEAL OF OBSOLETE PROVISIONS.—Sections 2922b and 2922d of such title are repealed.

(f) TABLE OF SECTIONS AMENDMENTS.—The table of sections—

(1) at the beginning of subchapter II of chapter 173 of such title is amended by striking the items relating to sections 2922b and 2922d; and

(2) at the beginning of subchapter III of chapter 173 of such title is amended by striking the item relating to section 2926 and inserting the following new item:

"2926. Operational energy.".

[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 in the nature of code maintenance, ensuring that Title 10 is accurate and up-to-date. The proposal corrects technical errors in two provisions, makes grammatical corrections in two other provisions, corrects an issue with two slightly inconsistent amendments to the same provisions in the FY 2017 NDAA, updates a section heading, repeals two obsolete and unused provisions, and updates two tables of sections. Having clear and accurate language and up-to-date provisions in title 10 is of value in executing the Department's energy program.

Budget Implications: This proposal has no budgetary effect. There are neither savings nor costs and any administrative effort was expended under the Fiscal Year 2018 budget.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Total	$0	$0	$0	$0	$0	N/A	N/A	N/A

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

§2911. Energy policy of the Department of Defense

* * * * *

(e) SPECIAL CONSIDERATIONS.—For the purpose of developing and implementing the energy performance goals and energy performance master plan, the Secretary of Defense shall consider at a minimum the following:

~~(1) Opportunities to reduce the current rate of consumption of energy, the future demand for energy, and the requirement[s] for the use of energy.~~

(1) Opportunities to reduce the current rate of consumption of energy, the future demand for energy, and the requirement for the use of energy.

~~(2) Opportunities to enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that impact [affect] mission assurance on military installations.~~

(2) Opportunities to enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that affect mission assurance on military installations.

* * * * *

~~(13) Opportunities to leverage third-party financing [financing provided by a non-Department entity] to address installation energy needs.~~

(13) Opportunities to leverage financing provided by a non-Department entity to address installation energy needs.

* * * * *

§ 2913. Energy savings contracts and activities

* * * * *

(c) ACCEPTANCE OF FINANCIAL INCENTIVE, GOODS, OR SERVICES.—The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from state or local government or a gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

* * * * *

§2922a. Contracts for energy or fuel for military installations

* * * * *

(d) The Secretary concerned shall ensure energy security and energy resilience are ~~prioritized and~~ included as critical factors in the provision and operation of energy production facilities under this section.

* * * * *

~~**§ 2922b. Procurement of energy systems using renewable forms of energy**~~

~~(a) In procuring energy systems the Secretary of a military department shall procure systems that use solar energy or other renewable forms of energy whenever the Secretary determines that such procurement is possible, suited to supplying the energy needs of the military department under the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title, and supported by the special considerations specified in subsection (e) of such section.~~

~~(b) The Secretary of Defense shall from time to time study uses for solar energy and other renewable forms of energy to determine what uses of such forms of energy may be reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2915 of this title.~~

* * * * *

~~**§ 2922d. Procurement of fuel derived from coal, oil shale, and tar sands**~~

~~(a) USE OF FUEL TO MEET DEPARTMENT OF DEFENSE NEEDS.—The Secretary of Defense shall develop a strategy to use fuel produced, in whole or in part, from coal, oil shale, and tar sands (referred to in this section as a "covered fuel") that are extracted by either mining or in-situ methods and refined or otherwise processed in the United States in order to assist in meeting the fuel requirements of the Department of Defense when the Secretary determines that it is in the national interest.~~

~~(b) AUTHORITY TO PROCURE.—The Secretary of Defense may enter into one or more contracts or other agreements (that meet the requirements of this section) to procure a covered fuel to meet one or more fuel requirements of the Department of Defense.~~

~~(c) CLEAN FUEL REQUIREMENTS.—A covered fuel may be procured under subsection (b) only if the covered fuel meets such standards for clean fuel produced from domestic sources as the Secretary of Defense shall establish for purposes of this section in consultation with the Department of Energy.~~

~~(d) MULTIYEAR CONTRACT AUTHORITY.—Subject to applicable provisions of law, any contract or other agreement for the procurement of covered fuel under subsection (b) may be for one or more years at the election of the Secretary of Defense.~~

~~(e) FUEL SOURCE ANALYSIS.—In order to facilitate the procurement by the Department of Defense of covered fuel under subsection (b), the Secretary of Defense may carry out a comprehensive assessment of current and potential locations in the United States for the supply of covered fuel to the Department.~~

* * * * *

§2925. Annual Department of Defense energy management reports

* * * * *

(3) Details of all utility outages ~~impacting~~ degrading energy resilience at military installations (excluding planned outages for maintenance reasons), whether caused by on- or off-installation disruptions, including the total number ~~and location~~ of outages and their locations, the duration of ~~the~~ each outage, the financial impact of ~~the~~ each outage, whether or not the mission was ~~impacted~~ affected, the downtimes (in minutes or hours) the~~se~~ mission~~s~~ can afford based on ~~their~~ mission requirements and risk tolerances, the responsible authority managing the utility, and measures taken to mitigate the outage by the responsible authority.

* * * * *

§2926. Operational energy ~~activities~~

* * * * *

(b) OPERATIONAL ENERGY STRATEGY.—

(1) The Assistant Secretary of Defense for Energy, Installations, and Environment shall be responsible for the establishment and maintenance of a department-wide transformational strategy for operational energy. The strategy shall establish near-term, mid-term, and long-term goals, performance metrics to measure progress in meeting the goals, and a plan for implementation of the strategy within the military departments, the Office of the Secretary of Defense, and the Defense Agencies.

SEC. __. EXPANDED TRANSFER AND ADOPTION OF MILITARY ANIMALS.

Section 2583 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) in the subsection heading, by inserting "TRANSFER OR" before "ADOPTION"; and

(B) by striking "adoption" each place it appears and inserting "transfer or adoption";

(2) in subsection (b)—

(A) in the subsection heading, by inserting "TRANSFER OR" before "ADOPTION";

(B) in the first sentence, by striking "adoption" and inserting "transfer or adoption"; and

(C) in the second sentence, striking "adoptability" and inserting transferability or adoptability";

(3) in subsection (c)(1)—

(A) in the matter preceding subparagraph (A), by inserting "transfer or" before "adoption";

(B) in subparagraphs (A) and (B), by inserting "adoption" before "by";

(C) in subparagraph (B), by inserting "or organizations" after "persons"; and

(D) in subparagraph (C), by striking "by" and inserting "transfer to";

(4) in subsection (e)—

(A) in the subsection heading, by inserting "OR ADOPTED" after "TRANSFERRED";

(B) in paragraphs (1) and (2), by striking "transferred" each place it appears and inserting "transferred or adopted"; and

(C) in paragraph (2), by striking "transfer" each place it appears and inserting "transfer or adoption";

(5) in subsection (f)—

(A) in the subsection heading, by striking "TRANSFER OF RETIRED" and inserting "TRANSPORTATION OF RETIRING"; and

(B) in paragraph (1), by striking "transfer" and inserting "transport";

(6) in subsection (g)(3), by striking "adoption of military working dogs" and all that follows through the period at the end and inserting "transfer of military working dogs to law enforcement agencies before the end of the dogs' useful working lives."; and

(7) in subsection (h)(2), by striking "A horse" and inserting "An equid (horse, mule, or donkey)".

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

Section-by-Section Analysis

This proposal would extend transfer and adoption to Department of Defense (DoD)-owned mules and donkeys, provide consistency for use of the word "transfer" throughout this section of law, align the language in subsection (f) of section 2583 of title 10, United States Code (section 2583), with the amendment made by section 352 of the Fiscal Year 2019 National Defense Authorization Act (FY19 NDAA), clarify the intended purpose of section 2583(f), and apply the same conditions to both adoption and transfer for military animals (i.e., animal availability, authorized animal recipients and their priority, and animal suitability for transfer and adoption) without changing the law in terms of charge to recipients, limitations on liability, or veterinary expenses.

The DoD utilizes military working mules and donkeys, the largest population of which resides at the Marine Mountain Warfare Training Center in Bridgeport, California; these animals merit the same considerations and opportunities as DoD-owned horses. As currently written, the law authorizes transfer and adoption for DoD-owned horses and military working dogs, omitting DoD-owned mules and donkeys. In addition, the current law authorizes only individuals to adopt military animals, which excludes legitimate organizations, including those such as therapeutic riding programs or educational programs. The other recommended changes are for consistency and clarification purposes.

Section 2583(h) defines a military animal as a military working dog or "a horse" owned by the DoD. In addition to horses, the DoD currently has many military mules and donkeys in service. This definition of military animal excludes mules and donkeys from transfer or adoption. The inclusive terminology is "an equid (horse, mule, donkey)" owned by the DoD. Equids are defined as any of the various hoofed mammals of the family Equidae, which includes horses, mules, and donkeys. Replacing this terminology affords all DoD-owned equids the opportunity to be transferred or adopted at the end of their useful working lives or when they become excess to the needs of their military unit.

The proposed addition of the word "transfer" throughout section 2583 lends consistency of purpose for the intent of the section, which has both adoption and transfer in its title. This addition applies the same requirements, authorizations, and conditions that are used for military animal adoptions to military animal transfers. The use of the term "transfer" is more appropriate than "adoption" when discussing a military animal's change of ownership to a law enforcement agency, given that the animal would be transferred with the intention of continuing to provide useful work for that agency. Using the term "transfer" instead of "adoption" in conjunction with law enforcement agencies would also align the purpose and intent of transferring a military animal to a law enforcement agency with currently published definitions in the DoD lexicon and procedures outlined in DoD Manuals published by the Defense Logistics Agency, specifically DoD Manuals 4160.21, volumes 3 and 4, published October, 2015. The terms "transfer" and "adoption" are not synonymous in the DoD lexicon, policy, or procedural documents; therefore, both terms need to be included throughout section 2583.

The addition of the word "organizations" to section 2583(c)(1)(B) allows the adoption of military animals by entities such as therapeutic riding programs, many of which benefit military veterans, or other non-profit entities such as educational programs. This expands the roster of potential adopters for military animals, which will result in optimal placements for these animals.

The addition of the word "adoption" to subsections (d) and (e) of section 2583 provides required parity for adoption standards and considerations for those applied to "transfer" situations as described in the law. For instance, the United States Government should have limitations on liability for adopted animals, and not only for animals that are transferred. These standards apply equally to both dispositions of military animals.

The word "transfer" as applied to transportation of military working dogs in subsection (f) of section 2583, is confusing. The intent of the subsection is to allow for the geographic relocation via transportation of military working dogs prior to transfer or adoption. The use of

the word "transfer" in the subsection does not align with how the word is used previously in section 2583, it does not align with section 2583(f)(3) (as added by section 352 of the FY19 NDAA), and it does not align with the current DoD definition of the word as applied to DoD property disposal policy and guidance. Also, military working dogs that are already retired are the property of a non-DoD entity through the transfer or adoption processes described earlier in section 2583; therefore, the word "retired" should be replaced with "retiring" in the heading for section 2583(f). Replacing the terms as suggested will lend clarity and intent to section 2583(f) regarding the relocation via transportation of military working dogs pending transfer or adoption, and it will preclude the DoD from funding transportation for working dogs that are already retired.

Budgetary Implications: This proposal has no budget implications.

Changes to Existing Law: This section would make the following changes to section 2583 of title 10, United States Code:

§2583. Military animals: transfer and adoption

(a) Availability for Transfer or Adoption. – The Secretary of the military department concerned shall make a military animal of such military department available for ~~adoption~~ transfer or adoption by a person or entity referred to in subsection (c), unless the animal has been determined to be unsuitable for ~~adoption~~ transfer or adoption under subsection (b), under circumstances as follows:

(1) At the end of the animal's useful life~~.~~;

(2) Before the end of the animal's useful life, if such Secretary, in such Secretary's discretion, determines that unusual or extraordinary circumstances, including circumstances under which the handler of a military working dog is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action, justify making the animal available for adoption before that time~~.~~; or

(3) When the animal is otherwise excess to the needs of such military department.

(b) Suitability for Transfer or Adoption. – The decision whether a particular military animal is suitable or unsuitable for ~~adoption~~transfer or adoption under this section shall be made by the commander of the last unit to which the animal is assigned before being declared excess. The unit commander shall consider the recommendations of the unit's veterinarian in making the decision regarding the ~~adoptability~~ transferability or adoptability of the animal.

(c) Authorized Recipients. –

(1) A military animal shall be made available for transfer or adoption under this section, in order of recommended priority –

(A) adoption by former handlers of the animal;

(B) adoption by other persons or organizations capable of humanely caring for the animal; and

(C) ~~by~~ transfer to law enforcement agencies.

(2) If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military

working dog is wounded in action, the dog shall be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.

(d) Consideration. – The transfer or adoption of a military animal under this section may be without charge to the recipient.

(e) Limitations on Liability for Transferred or Adopted Animals. – (1) Notwithstanding any other provision of the law, the United States shall not be subject to any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that result from, or is in any manner predicated upon, the act or omission of a former military animal ~~transferred~~transferred or adopted under this section, including any training provided to the animal while a military animal.

(2) Notwithstanding any other provision of the law, the United States shall not be liable for any veterinary expense associated with a military animal ~~transferred~~transferred or adopted under this section for a condition of the military animal before ~~transfer~~transfer or adoption under this section, whether or not such condition is known at the time of ~~transfer~~transfer or adoption under this section.

(f) ~~Transfer of Retired~~Transportation of Retiring Military Working Dogs.— (1) If the Secretary of the military department concerned determines that a military working dog should be retired the Secretary shall ~~transfer~~ transport the dog –

(A) to the 341st Training Squadron; or

(B) to another location within the United States for adoption under this section.

(2) Paragraph (1) shall not apply if at the time of retirement—

(A) the dog is located outside the United States and a United States citizen or service member living abroad adopts the dog; or

(B) the dog is located within the United States and suitable adoption is available where the dog is located.

(3) (A) In the case of a military working dog located outside the continental United States at the time of retirement that is suitable for adoption at that time, the Secretary of the military department concerned shall undertake transportation of the dog to the continental United States (including transportation by contract at United States expense) for adoption under the section unless-

(i) the dog is adopted as described in paragraph (2)(A); or

(ii) transportation of the dog to the continental United States would not be in the best interests of the dog for medical reasons.

(B) Nothing in the paragraph shall be construed to alter the preference for adoption of retired military working dogs for former handlers as set forth in subsection (g).

(g) Preference in Adoption of Retired Military Working Dogs for Former Handlers.-(1) In providing for the adoption under this section of a retired military working dog described in paragraph (1) or (3) of subsection (a), the Secretary of the military department concerned shall

accord a preference to the former handler of the dog unless the Secretary determines that adoption of the dog by the former handler would not be in the best interests of the dog.
(2) In the case of a dog covered by paragraph (1) with more than one former handler seeking adoption of the dog at the time of adoption, the Secretary shall provide for the adoption of the dog by such former handler whose adoption of the dog will best serve the interests of the dog and such former handlers. The Secretary shall make any determination required by this paragraph with respect to a dog following consultation with the kennel master of the unit at which the dog was last located before adoption under this section.

(3) Nothing in this subsection shall be construed as altering, revising, or overriding any policy of a military department for the ~~adoption of military working dogs by law enforcement agencies before the end of the dogs' useful lives~~transfer of military working dogs to law enforcement agencies before the end of the dogs' useful working lives.

(h) Military Animal Defined. – In this section, the term "military animal" means the following:

(1) A military working dog.

(2) ~~A horse~~ An equid (horse, mule, or donkey) owned by the Department of Defense.

SEC. ___. TREATMENT OF COMMISSARY USER FEES.

Section 2483(c) of title 10, United States Code, is amended by inserting "fees on services provided," after "handling fees for tobacco products,".

Section-by-Section Analysis

The Defense of Defense (DoD) commissary system is funded almost in its entirety with appropriations to deliver the commissary benefit to primary patrons, including active duty, Guard and reserve, retirees, 100 percent service-connected disabled veterans, Medal of Honor recipients, and their family members. As such, the Department currently must use additional appropriations to provide commissary access to secondary patrons. This proposal would allow the Secretary of Defense to retain fees collected on services provided by the Defense Commissary Agency to offset commissary operating costs. Currently, there is no mechanism for the Secretary to retain fees collected for services provided to offset the operating costs required to provide those services.

This proposal would resolve the long-standing problem of collecting reimbursement for the commissary operating costs from secondary patron groups. DoD policy requires DoD contractors overseas to reimburse the commissary system for the proportional costs of operating the system; however, current law prevents any funds collected from being used to offset commissary system costs, so the Department has not imposed a fee to collect this reimbursement. The authority to retain these fees would have a material impact on reducing commissary appropriations. Based on commissary identification card scanning data, there are approximately 2,700 households shopping in commissaries overseas in these categories. These customers purchase approximately $6.1 million annually and would generate approximately $300,000 annually in user fees to offset appropriations based on a five percent fee. Even with a five percent user fee, DoD contractors overseas would still enjoy an average savings of 38 percent.

The Department will notify Congress whenever it imposes a new fee for commissary services provided.

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

RESOURCE REQUIREMENTS ($MILLIONS)						
	FY 2020	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**Appropriation From**
Defense Commissary Agency (DeCA)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	Working Capital Fund – Commissary Operations
Total	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	

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

§2483. Commissary stores: use of appropriated funds to cover operating expenses

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system shall be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds shall be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:

(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

(2) Utilities.

(3) Communications.

(4) Operating supplies and services.

(5) Second destination transportation costs within or outside the United States.

(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

(c) SUPPLEMENTAL FUNDS FOR COMMISSARY OPERATIONS.—Amounts appropriated to cover the expenses of operating the Defense Commissary Agency and the defense commissary system may be supplemented with additional funds from manufacturers' coupon redemption fees, handling fees for tobacco products, <u>fees on services provided,</u> and other amounts received as reimbursement for other support activities provided by commissary activities. Such appropriated amounts may also be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title and the variable pricing program implemented pursuant to section 2484(i) of this title.

SEC. ___. UPDATE OF AUTHORITIES RELATING TO NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS.

(a) DUTIES AND POWERS OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT.—Section 133b(b) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

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

"(4) establishing policies for, and providing oversight, guidance, and coordination for, nuclear command and control systems;"; and

(3) in paragraph (6), as so redesignated, by inserting after "overseeing the modernization of nuclear forces" the following: ", including the nuclear command, control, and communications system,".

(b) CHIEF INFORMATION OFFICER.—Section 142(b)(1) of such title of title is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

Section-by-Section Analysis

This proposal would update authorities relating to nuclear command, control, and communications (NC3). Section 133b of title 10, United States Code assigns authorities to the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)). The section does not include the authority to prescribe policy or to provide oversight, guidance, and coordination for NC3 systems. That authority is assigned in Section 142 of title 10, United States Code to the Department of Defense Chief Information Office (DoD CIO).

This proposal would add a new paragraph to section 133b, subsection (b) and insert clarifying language in subsection (b)(6), along with making some technical conforming amendments.

This proposal would remove similar language from section 142, subsection (b)(1)(G) along with making some technical conforming amendments.

Budget Implications: This proposal has no budgetary effect.

Changes to Existing Law: This proposal would amend sections 133b and 142 of title 10, United States Code, as follows:

§ 133b. Under Secretary of Defense for Acquisition and Sustainment

(a) Under Secretary of Defense.-There is an Under Secretary of Defense for Acquisition and Sustainment, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive system development, engineering, production, or management background and experience with managing complex programs. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Duties and Powers.-Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall perform such duties and exercise such powers as the Secretary may prescribe, including-

(1) serving as the chief acquisition and sustainment officer of the Department of Defense with the mission of delivering and sustaining timely, cost-effective capabilities for the armed forces (and the Department);

(2) establishing policies on, and supervising, all elements of the Department relating to acquisition (including system design, development, and production, and procurement of goods and services) and sustainment (including logistics, maintenance, and materiel readiness);

(3) establishing policies for access to, and maintenance of, the defense industrial base and materials critical to national security, and policies on contract administration;

(4) establishing policies for, and providing oversight, guidance, and coordination for, nuclear command and control systems;

~~(4)~~ (5) serving as-

(A) the principal advisor to the Secretary on acquisition and sustainment in the Department;

(B) the senior procurement executive for the Department for the purposes of section 1702(c) of title 41; and

(C) the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive;

~~(5)~~ (6) overseeing the modernization of nuclear forces, to include the nuclear command, control, and communications system, and the development of capabilities to counter weapons of mass destruction, and serving as the chairman of the Nuclear Weapons Council and the co-chairman of the Council on Oversight of the National Leadership Command, Control, and Communications System;

~~(6)~~ (7) the authority to direct the Secretaries of the military departments and the heads of all other elements of the Department with regard to matters for which the Under Secretary has responsibility, except that the Under Secretary shall exercise advisory

authority over service acquisition programs for which the service acquisition executive is the milestone decision authority; and

~~(7)~~ (8) to the extent directed by the Secretary, exercising overall supervision of all personnel (civilian and military) in the Office of the Secretary of Defense with regard to matters for which the Under Secretary has responsibility, unless otherwise provided by law.

(c) Precedence in Department of Defense.-

(1) Precedence in matters of responsibility.-With regard to all matters for which the Under Secretary has responsibility by the direction of the Secretary of Defense or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary of Defense, the Chief Management Officer of the Department of Defense, and the Under Secretary of Defense for Research and Engineering.

(2) Precedence in other matters.-With regard to all matters other than the matters for which the Under Secretary has responsibility by the direction of the Secretary or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary, the Chief Management Officer, the Under Secretary of Defense for Research and Engineering, and the Secretaries of the military departments.

§ 142. Chief Information Officer

(a) There is a Chief Information Officer of the Department of Defense.

(b)(1) The Chief Information Officer of the Department of Defense-

(A) is the Chief Information Officer of the Department of Defense for the purposes of sections 3506(a)(2) and 3544(a)(3) of title 44;

(B) has the responsibilities and duties specified in section 11315 of title 40;

(C) has the responsibilities specified for the Chief Information Officer in sections 2222, 2223(a), and 2224 of this title;

(D) exercises authority, direction, and control over the Information Assurance Directorate of the National Security Agency;

(E) exercises authority, direction, and control over the Defense Information Systems Agency, or any successor organization;

(F) has the responsibilities for policy, oversight, guidance, and coordination for all Department of Defense matters related to electromagnetic spectrum, including coordination with other Federal and industry agencies, coordination for classified programs, and in coordination with the Under Secretary for Personnel and Readiness, policies related to spectrum management workforce;

~~(G) has the responsibilities for policy, oversight, guidance, and coordination for nuclear command and control systems~~;

(~~H~~G) has the responsibilities for policy, oversight, and guidance for matters related to precision navigation and timing; and

(~~I~~H) has the responsibilities for policy, oversight, and guidance for the architecture and programs related to the networking and cyber defense architecture of the Department.

(2) The Chief Information Officer shall perform such additional duties and exercise such powers as the Secretary of Defense may prescribe.

(c) The Chief Information Officer takes precedence in the Department of Defense with the officials serving in positions specified in section 131(b)(4) of this title. The officials serving in

positions specified in section 131(b)(4) and the Chief Information Officer of the Department of Defense take precedence among themselves in the order prescribed by the Secretary of Defense.