

1 **SEC. ____ . AUTHORITY TO ENGAGE IN DEPARTMENT OF DEFENSE**

2 **COMMERCIAL ACTIVITIES AS SECURITY.**

3 (a) **AUTHORITY.**—Section 431 of title 10, United States Code, is amended—

4 (1) in subsection (a)—

5 (A) by striking “intelligence collection”; and

6 (B) in the last sentence, by striking “December 31, 2023” and inserting
7 “December 31, 2026”;

8 (2) in subsection (b)(1), by striking “coordinated” and inserting “pre-
9 coordinated”; and

10 (3) in subsection (c)—

11 (A) by striking “DEFINITIONS.—” and all that follows through “(1) The
12 term” and inserting “COMMERCIAL ACTIVITIES DEFINED.—In this subchapter, the
13 term”;

14 (B) by striking paragraph (2); and

15 (C) by redesignating subparagraphs (A) through (E) as paragraphs (1)
16 through (5), respectively, and conforming the margins accordingly.

17 (b) **RELATIONSHIP WITH OTHER FEDERAL LAWS.**—Section 433 of title 10, United States
18 Code, is amended—

19 (1) in subsection (b)(1), by striking “intelligence”; and

20 (2) in subsection (c)—

21 (A) in paragraph (1), by inserting “, expenditure,” after “The receipt”; and

22 (B) in paragraph (4), by inserting “, including pay, benefits, and
23 retirement” after “personnel”.

1 (c) LIMITATIONS.—Section 435 of title 10, United States Code, is amended—
2 (1) in subsection (b), by striking “intelligence” and inserting “authorized”; and
3 (2) in subsection (d)(1), by striking “intelligence”.

4 (d) CONFORMING AMENDMENTS.—Subchapter II of chapter 21 of title 10, United States
5 Code, is amended—
6 (1) in the table of sections, by striking the item relating to section 431 and
7 inserting the following new item:
“431. Authority to engage in commercial activities as security for authorized activities abroad.”; and
8 (2) in the heading of section 431, by striking “**intelligence collection activities**”
9 and inserting “**authorized activities abroad**”.

[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

See classified document for justification.

Budget Implications: There is no cost implication associated with this proposal. This proposed authority is an extension of currently authorized activities. The DoD components electing to use this authority will utilize funds already appropriated for those activities.

Changes to Existing Law: This proposal would make the following changes to subchapter II of chapter 21 of title 10, United States Code:

§431. Authority to engage in commercial activities as security for ~~intelligence collection~~ authorized activities abroad

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized ~~intelligence collection~~ activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, ~~2023~~2026.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—
(1) be pre-coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) ~~DEFINITIONS COMMERCIAL ACTIVITIES DEFINED.~~—In this subchapter, ~~the~~ ~~(1)~~ The term "commercial activities" means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

~~(A)~~ the acquisition, use, sale, storage and disposal of goods and services;

~~(B)~~ entering into employment contracts and leases and other agreements for real and personal property;

~~(C)~~ depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

~~(D)~~ acquiring licenses, registrations, permits, and insurance; and

~~(E)~~ establishing corporations, partnerships, and other legal entities.

~~(2) The term "intelligence collection activities" means the collection of foreign intelligence and counterintelligence information.~~

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§433. Relationship with other Federal laws

(a) IN GENERAL.—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized ~~intelligence~~ activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) FEDERAL LAWS AND REGULATIONS.—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

(1) The receipt, expenditure, and use of appropriated and nonappropriated funds.

(2) The acquisition or management of property or services.

(3) Information disclosure, retention, and management.

(4) The employment of personnel, including pay, benefits, and retirement.

(5) Payments for travel and housing.

(6) The establishment of legal entities or government instrumentalities.

(7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

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§435. Limitations

(a) **LAWFUL ACTIVITIES.**—Nothing in this subchapter authorizes the conduct of any intelligence activity that is not otherwise authorized by law or Executive order.

(b) **DOMESTIC ACTIVITIES.**—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support ~~intelligence~~ authorized activities abroad.

(c) **PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.**—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) **NOTICE TO UNITED STATES PERSONS.**—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the ~~intelligence~~ security purpose of that activity.

(2) In this subsection, the term "United States person" means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

1 **SEC. ____ . AUTHORITY FOR CERTAIN REIMBURSABLE INTERCHANGE OF**
2 **SUPPLIES AND SERVICES.**

3 Section 2571 of title 10, United States Code, is amended—

4 (1) in subsection (b)—

5 (A) by striking “If its head” and inserting “(1) If its head”;

6 (B) in paragraph (1), as designated by subparagraph (A) of this paragraph,
7 by inserting “with or” before “without reimbursement”; and

8 (C) by adding at the end the following new paragraph:

9 “(2) Reimbursement under this section may only be made for work or services
10 performed, or supplies furnished, to carry out section 333 or section 345 of this title.”; and

11 (2) by adding at the end the following new subsection:

12 “(e)(1) An order placed by a department or organization on a reimbursable basis pursuant
13 to subsection (b) is deemed to be an obligation in the same manner as an order placed under
14 section 6307 of title 41.

15 “(2) Amounts received as reimbursement shall be credited in accordance with section
16 2205 of this title to the appropriation of the supporting department or organization used in
17 incurring the obligation in the year or years that support is provided.”.

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

Section-by-Section Analysis

Section 2571 of title 10, United States Code, authorizes the Services to perform work on behalf of another Service without reimbursement or transfer of funds. This proposal modifies section 2571 to authorize DoD components to provide reimbursable services to other DoD organizations throughout the duration of an applicable cross fiscal year authority (CFYA) in support of security cooperation authorities. Many DoD organizations use the Economy Act (EA) (31 U.S.C. 1535) to acquire goods and services from other DoD components on a reimbursable basis. The EA requires the servicing component to de-obligate and return funds to the extent that

the servicing component has not incurred obligations, before the end of the period of availability of the appropriation, in providing goods or services; or in making an authorized contract with another person to provide the requested goods or services. Thus, even though many security cooperation authorities provide an exception to the bona fide needs rule so as to allow the obligation of funds during their period of availability for future expenses that would otherwise be properly chargeable to amounts available in future fiscal years (i.e., 10 U.S.C. 333 and 345), the use of the EA to acquire in-house DoD personnel support effectively limits such support to the period of availability of the funds obligated, thereby making the CFYA of no use. As a result, an EA order for DoD personnel training or other in-house defense services cannot legally extend beyond the period of availability of the amounts obligated.

This legislative proposal provides a new authority that allows DoD organizations to support security cooperation activities without using the Economy Act. DoD personnel will be able to provide training and other defense services throughout the duration of any CFYA period. This proposal would not expand or increase the scope of any existing security cooperation CFYA. This proposal enables the use of existing CFYA for DoD personnel support to security cooperation efforts.

Absent this legislative relief, DoD will have to plan and execute security cooperation programs that are narrower in scope and more segmented. Training by DoD personnel that is needed to make the program successful would have to be accomplished by a subsequent program and rely on funds available at a later time. Planning and execution will be significantly more efficient with the enactment of this proposal by allowing DoD to scope the entire program from the start.

Since most security cooperation efforts are executed with funds with a one or two-year period of availability, an inability to use CFYA for DoD personnel support will likely require DoD to primarily pursue less complex programs that can be fully executed within an appropriation's period of availability. Given the time needed to notify and place an order with the supporting DoD organization, only a limited portion of each year would be available for execution.

Legislative relief to allow use of CFYA for DoD personnel support is essential to DoD efforts to deepen interoperability, and develop a capable alliance to achieve U.S. defense objectives. Removing this limitation on the use of DoD personnel promotes the efficient execution of security cooperation programs to improve a foreign partner's defense modernization, ability to integrate with U.S. forces, and ability to support coalition operations.

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request.

RESOURCE REQUIREMENTS (\$ MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
International Security Cooperation Programs Account	\$1,056.0	\$1,077.2	\$1,098.7	\$1,120.7	\$1,143.1	Operation and Maintenance, Defense Wide	04	4GTD	Various
Total	\$1,056.0	\$1,077.2	\$1,098.7	\$1,120.7	\$1,143.1	N/A	N/A	N/A	N/A

Changes to Existing Law: This proposal would make the following changes to section 2571 of title 10, United States Code:

§ 2571. Interchange of supplies and services

(a) If either of the Secretaries concerned requests it and the other approves, supplies may be transferred, without compensation, from one armed force to another.

(b)(1) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, with or without reimbursement or transfer of funds.

(2) Reimbursement under this section may only be made for work or services performed, or supplies furnished, to carry out section 333 or section 345 of this title.

(c) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization.

(d) No agency or official of the executive branch of the Federal Government may establish any regulation, program, or policy or take any other action which precludes, directly or indirectly, the Secretaries concerned from exercising the authority provided in this section.

(e)(1) An order placed by a department or organization on a reimbursable basis pursuant to subsection (b) is deemed to be an obligation in the same manner as an order placed under section 6307 of title 41.

(2) Amounts received as reimbursement shall be credited in accordance with section 2205 of this title to the appropriation of the supporting department or organization used in incurring the obligation in the year or years that support is provided.

1 **TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND**
2 **MANAGEMENT**

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT
Subtitle D—United States Space Force

- Sec. 931. Modification of Personnel Limitations.
- Sec. 932. Vice Chief of Space Operations.
- Sec. 933. Space Staff.
- Sec. 934. National Space Intelligence Center.
- Sec. 935. Space Warfighting Analysis Center.
- Sec. 936. Enterprise Talent Management Office.
- Sec. 937. Senior Procurement Executive Authority.
- Sec. 938. Conditions Based Stand-Up of Service Acquisition Executive for Space Systems and Programs.
- Sec. 939. Technical and Conforming Amendments.

3 **Subtitle D—United States Space Force**

4 **SEC. 931. MODIFICATION OF PERSONNEL LIMITATIONS.**

5 (a) OFFICE OF THE SECRETARY OF THE AIR FORCE.—Section 9014(f) of title 10, United
6 States Code, is amended—

7 (1) in paragraph (1)—

8 (A) by striking “and on the Air Staff” and inserting “, on the Air Staff, and
9 on the Space Staff”; and

10 (B) by striking “2,750” and inserting “3,545”;

11 (2) in paragraph (2)—

12 (A) by striking “1,650 officers of the Air Force” and inserting “1,991
13 officers of the Air Force and Space Force”; and

14 (B) by striking “and on the Air Staff” and inserting “, on the Air Staff, and
15 on the Space Staff”; and

16 (3) in paragraph (3)—

1 (A) by striking “and on the Air Staff” and inserting “, on the Air Staff, and
2 on the Space Staff”; and

3 (B) by striking “60” and inserting “69”.

4 (b) DISTRIBUTION OF COMMISSIONED OFFICERS ON ACTIVE DUTY IN GENERAL OFFICER
5 AND FLAG OFFICER GRADES.—Section 525 of such title is amended—

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

7 “(5) in the Space Force, if that appointment would result in more than—

8 “(A) 2 officers in the grade of general;

9 “(B) 7 officers in a grade above the grade of major general; or

10 “(C) 6 officers in the grade of major general.”;

11 (2) in subsection (c)—

12 (A) in paragraph (1)(A), by striking “and Marine Corps” and inserting
13 “Marine Corps, and Space Force”; and

14 (B) in paragraph (2), by striking “or Marine Corps” and inserting “Marine
15 Corps, or Space Force”; and

16 (3) in subsection (d), by striking “or Commandant of the Marine Corps” and
17 inserting “Commandant of the Marine Corps, or Chief of Space Operations”.

18 (c) AUTHORIZED STRENGTH: GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.—Section
19 526 of such title is amended—

20 (1) in subsection (a)—

21 (A) in the matter preceding paragraph (1), by striking “and Marine Corps”
22 and inserting “Marine Corps, and Space Force”; and

23 (B) by adding at the end the following new paragraph:

1 “(5) For the Space Force, 21.”; and

2 (2) in subsection (b)(2), by adding at the end the following new subparagraph:

3 “(E) For the Space Force, 6.”.

4 (d) AUTHORIZED STRENGTH AFTER DECEMBER 31, 2022: GENERAL OFFICERS AND FLAG
5 OFFICERS ON ACTIVE DUTY.—Section 526a of such title is amended—

6 (1) in subsection (a)—

7 (A) in the matter preceding paragraph (1), by striking “and Marine Corps”
8 and inserting “Marine Corps, and Space Force”; and

9 (B) by adding at the end the following new paragraph:

10 “(5) For the Space Force, 21.”; and

11 (2) in subsection (b)(2), by adding at the end the following new subparagraph:

12 “(E) For the Space Force, 6.”.

13 (e) LIMITATION ON NUMBER OF DOD SES POSITIONS.—Section 1109(a)(1) of the National
14 Defense Authorization Act for Fiscal Year 2017 (5 U.S.C. 3133 note; Public Law 114-328) is
15 amended by striking “1,260” and inserting “1,269”.

16 **SEC. 932. VICE CHIEF OF SPACE OPERATIONS.**

17 (a) IN GENERAL.—Chapter 908 of title 10, United States Code, is amended—

18 (1) by redesignating section 9083, section 9084 as added by section 921(a) of the
19 William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021
20 (Public Law 116-283), section 9084 as added by section 1601(a) of such Act, and section
21 9085 as sections 9084, 9085, 9086, and 9087, respectively; and

22 (2) by inserting after section 9082 the following new section:

23 **“§ 9083. Vice Chief of Space Operations**

1 “(a) APPOINTMENT.—There is a Vice Chief of Space Operations, appointed by the
2 President, by and with the advice and consent of the Senate, from the general officers of the
3 Space Force.

4 “(b) GRADE.—The Vice Chief of Space Operations, while so serving, has the grade of
5 general without vacating the permanent grade of the officer.

6 “(c) DUTIES.—The Vice Chief of Space Operations has such authorities and duties with
7 respect to the Space Force as the Chief of Space Operations, with the approval of the Secretary
8 of the Air Force, may delegate to or prescribe for the Vice Chief of Space Operations. Orders
9 issued by the Vice Chief of Space Operations in performing such duties have the same effect as
10 those issued by the Chief of Space Operations.

11 “(d) VACANCY IN OFFICE OF CHIEF OF SPACE OPERATIONS.—When there is a vacancy in
12 the office of Chief of Space Operations or during the absence or disability of the Chief of Space
13 Operations—

14 “(1) the Vice Chief of Space Operations shall perform the duties of the Chief of
15 Space Operations until a successor is appointed or the absence or disability ceases; or

16 “(2) if there is a vacancy in the office of the Vice Chief of Space Operations or
17 the Vice Chief of Space Operations is absent or disabled, unless the President directs
18 otherwise, the most senior officer of the Space Force in the Space Staff who is not absent
19 or disabled and who is not restricted in performance of duty shall perform the duties of
20 the Chief of Space Operations until a successor to the Chief of Space Operations or the
21 Vice Chief of Space Operations is appointed or until the absence or disability of the Chief
22 of Space Operations or Vice Chief of Space Operations ceases, whichever occurs first.”.

1 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such
2 chapter is amended by striking the items related to section 9083, both sections 9084, and section
3 9085 and inserting the following new items:

- “9083. Vice Chief of Space Operations.
- “9084. Space Staff: function; composition.
- “9085. Space Staff: general duties.
- “9086. Space Development Agency.
- “9087. Regular Space Force: composition.”.

4 (c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect
5 on the later of—

6 (1) the date of the enactment of this Act; and

7 (2) the effective date of the amendments made by subsections (a) and (b) of
8 section 921 of the William M. (Mac) Thornberry National Defense Authorization Act for
9 Fiscal Year 2021 (Public Law 116-283), as if enacted immediately after such
10 amendments.

11 **SEC. 933. SPACE STAFF.**

12 (a) OFFICE OF THE SECRETARY OF THE AIR FORCE.—Section 9014 of title 10, United
13 States Code, is amended by striking “Office of the Chief of Space Operations” each place it
14 appears and inserting “Space Staff”.

15 (b) CHIEF OF SPACE OPERATIONS.—Section 9082(d) of title 10, United States Code, is
16 amended by striking “Office of the Chief of Space Operations” each place it appears and
17 inserting “Space Staff”.

18 (c) SPACE STAFF: FUNCTION; COMPOSITION.—Section 9084 of such title, as redesignated
19 by section 932(a) of this Act, is amended—

20 (1) in the heading, by striking “Office of the Chief of Space Operations” and
21 inserting “Space Staff”;

1 (2) in subsection (a), by striking “an Office of the Chief of Space Operations” and
2 inserting “a Space Staff”; and

3 (3) in subsections (b) and (c), by striking “Office of the Chief of Space
4 Operations” each place it appears and inserting “Space Staff”.

5 (d) SPACE STAFF: GENERAL DUTIES.—Section 9085 of such title (as so redesignated), is
6 amended—

7 (1) in the heading, by striking “**Office of the Chief of Space Operations**” and
8 inserting “**Space Staff**”; and

9 (2) by striking “Office of the Chief of Space Operations” each place it appears
10 and inserting “Space Staff”.

11 (e) EFFECTIVE DATE.—The amendments made by subsections (c) and (d) shall take effect
12 on the later of—

13 (1) the date of the enactment of this Act; and

14 (2) the effective date of the amendments made by subsections (a) and (b) of
15 section 921 of the William M. (Mac) Thornberry National Defense Authorization Act for
16 Fiscal Year 2021 (Public Law 116-283), as if enacted immediately after such
17 amendments.

18 **SEC. 934. NATIONAL SPACE INTELLIGENCE CENTER.**

19 Notwithstanding any other provision of law, the Secretary of the Air Force may establish
20 a National Space Intelligence Center for the purpose of providing a deep understanding of
21 current and future threats to United States space operations to support space acquisition research
22 and development, science and technology programs, military operations, and policy decisions.

1 The National Space Intelligence Center shall operate as a field operating agency of the
2 Headquarters, United States Space Force.

3 **SEC. 935. SPACE WARFIGHTING ANALYSIS CENTER.**

4 Notwithstanding any other provision of law, the Secretary of the Air Force may establish
5 a Space Warfighting Analysis Center for the purpose of modeling, wargaming, and
6 experimentation to create operational concepts and force design guidance for Space Force
7 missions. The head of the Space Warfighting Analysis Center shall report to the Chief of Space
8 Operations.

9 **SEC. 936. ENTERPRISE TALENT MANAGEMENT OFFICE.**

10 Notwithstanding any other provision of law, the Secretary of the Air Force may establish
11 an Enterprise Talent Management Office for the purpose of providing personnel management
12 support for all members of the Space Force and civilian employees and contractors supporting
13 the Space Force. The Enterprise Talent Management Office shall operate as a field operating
14 agency of the Headquarters, United States Space Force.

15 **SEC. 937. SENIOR PROCUREMENT EXECUTIVE AUTHORITY.**

16 (a) AUTHORITY TO ASSIGN CERTAIN DUTIES AND AUTHORITIES OF SENIOR PROCUREMENT
17 EXECUTIVE PERTAINING TO SPACE.—Section 9014(c) of title 10, United States Code, is
18 amended—

19 (1) in paragraph (2), by striking “The Secretary of the Air Force shall” and
20 inserting “Subject to paragraph (6), the Secretary of the Air Force shall”; and

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

1 “(6) Notwithstanding section 1702 of title 41, the Secretary of the Air Force may assign
2 to the Assistant Secretary of the Air Force for Space Acquisition and Integration duties and
3 authorities of the senior procurement executive that pertain to space systems and programs.”.

4 (b) AMENDMENT TO ASSISTANT SECRETARY RESPONSIBILITIES.—Section
5 9016(b)(6)(B)(vi) of title 10, United States Code, is amended by inserting “and discharge any
6 senior procurement executive duties and authorities assigned by the Secretary of the Air Force
7 pursuant to section 9014(c)(6) of this title” after “Space Systems and Programs”.

8 **SEC. 938. CONDITIONS BASED STAND-UP OF SERVICE ACQUISITION**
9 **EXECUTIVE FOR SPACE SYSTEMS AND PROGRAMS.**

10 (a) TITLE 10 AMENDMENT.—Section 9016(b)(6)(B)(vi) of title 10, United States Code, is
11 amended by striking “Effective as of October 1, 2022, in” and inserting “In”.

12 (b) SECTION 957 AMENDMENTS.—Section 957 of the National Defense Authorization Act
13 for Fiscal Year 2020 (Public Law 116-92; 10 U.S.C. 9016 note) is amended—

14 (1) in subsection (a), by striking “Effective October 1, 2022, there” and inserting
15 “There”;

16 (2) in subsection (b)—

17 (A) by striking “(1) IN GENERAL.—Effective as of October 1, 2022, and
18 subject to paragraph (2), the” and inserting “The”; and

19 (B) by striking paragraph (2); and

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

21 “(d) IMPLEMENTATION DEADLINE.—Not later than October 1, 2022, the Secretary of the
22 Air Force shall take such actions as the Secretary considers appropriate to implement this
23 section, including the transfer of service acquisition executive responsibilities for space systems

1 and programs from the Assistant Secretary of the Air Force for Acquisition, Technology, and
2 Logistics to the Assistant Secretary of the Air Force for Space Acquisition and Integration.”.

3 **SEC. 939. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) APPOINTMENT OF CHAIRMAN; GRADE AND RANK.—Section 152(c) of title 10, United
5 States Code, is amended—

6 (1) by striking “general, in the case” and inserting “general or, in the case”; and

7 (2) by striking “or, in the case of an officer of the Space Force, the equivalent
8 grade,”.

9 (b) JOINT REQUIREMENTS OVERSIGHT COUNCIL.—Section 181(c)(1)(F) is amended by
10 striking “in the grade equivalent to the grade of general in the Army, Air Force, or Marine Corps,
11 or admiral in the Navy” and inserting “in the grade of general”.

12 (c) ORIGINAL APPOINTMENTS OF COMMISSIONED OFFICERS.—Section 531(a) of such title
13 is amended—

14 (1) in paragraph (1), by striking “and Regular Marine Corps in the grades of
15 ensign, lieutenant (junior grade), and lieutenant in the Regular Navy, and in the
16 equivalent grades in the Regular Space Force” and inserting “Regular Marine Corps, and
17 Regular Space Force, and in the grades of ensign, lieutenant (junior grade), and lieutenant
18 in the Regular Navy”; and

19 (2) in paragraph (2), by striking “and Regular Marine Corps in the grades of
20 lieutenant commander, commander, and captain in the Regular Navy, and in the
21 equivalent grades in the Regular Space Force” and inserting “Regular Marine Corps, and
22 Regular Space Force, and in the grades of lieutenant commander, commander, and
23 captain in the Regular Navy”.

1 (d) SERVICE CREDIT UPON ORIGINAL APPOINTMENT AS A COMMISSIONED OFFICER.—

2 Section 533(b)(2) of such title is amended—

3 (1) by striking “, or equivalent grade in the Space Force”; and

4 (2) by striking “, or Marine Corps” and inserting “Marine Corps, or Space Force,
5 or”.

6 (e) POSITIONS OF IMPORTANCE AND RESPONSIBILITY.—Section 601(e) of such title is
7 amended—

8 (1) by striking “or Marine Corps” and inserting “Marine Corps, or Space Force,
9 or”; and

10 (2) by striking “or the commensurate grades in the Space Force,”.

11 (f) CONVENING OF SELECTION BOARDS.—Section 611(a) of such title is amended by
12 striking “or Marine Corps” and inserting “Marine Corps, or Space Force”.

13 (g) INFORMATION FURNISHED TO SELECTION BOARDS.—Section 615(a)(3) of such title is
14 amended—

15 (1) in subparagraph (B)(i), by striking “, in the case of the Navy, lieutenant, or in
16 the case of the Space Force, the equivalent grade” and inserting “or, in the case of the
17 Navy, lieutenant”; and

18 (2) in subparagraph (D), by striking “in the case of the Navy, rear admiral, or, in
19 the case of the Space Force, the equivalent grade” and inserting “or, in the case of the
20 Navy, rear admiral”.

21 (h) SPECIAL SELECTION REVIEW BOARDS.—Section 628a(a)(1) of such title is amended
22 by striking “, rear admiral in the Navy, or an equivalent grade in the Space Force” and inserting
23 “or rear admiral in the Navy”.

1 (i) RANK: COMMISSIONED OFFICERS OF THE ARMED FORCES.—Section 741(a) of such title
2 is amended in the table by striking “and Marine Corps” and inserting “Marine Corps, and Space
3 Force”.

4 (j) REGULAR COMMISSIONED OFFICERS.—Section 1370 of such title is amended—

5 (1) in subsection (a)(2), by striking “rear admiral in the Navy, or the equivalent
6 grade in the Space Force” each place it appears and inserting “or rear admiral in the
7 Navy”;

8 (2) in subsection (b)—

9 (A) in paragraph (1)—

10 (i) in the matter preceding subparagraph (A), by striking “or
11 Marine Corps, lieutenant in the Navy, or the equivalent grade in the Space
12 Force” and inserting “Marine Corps, or Space Force, or lieutenant in the
13 Navy”; and

14 (ii) in subparagraph (B), by striking “or Marine Corps, rear admiral
15 in the Navy, or an equivalent grade in the Space Force” and inserting
16 “Marine Corps, or Space Force, or rear admiral in the Navy”;

17 (B) in paragraph (4), by striking “or Marine Corps, captain in the Navy, or
18 the equivalent grade in the Space Force” and inserting “Marine Corps, or Space
19 Force, or captain in the Navy”;

20 (C) in paragraph (5)—

21 (i) in subparagraph (A), by striking “or Marine Corps, lieutenant
22 commander in the Navy, or the equivalent grade in the Space Force” and

1 inserting “Marine Corps, or Space Force, or lieutenant commander in the
2 Navy”;

3 (ii) in subparagraph (B), by striking “or Marine Corps, commander
4 or captain in the Navy, or an equivalent grade in the Space Force” and
5 inserting “Marine Corps, or Space Force, or commander or captain in the
6 Navy”; and

7 (iii) in subparagraph (C), by striking “or Marine Corps, rear
8 admiral (lower half) or rear admiral in the Navy” and inserting “Marine
9 Corps, or Space Corps, or rear admiral (lower half) or rear admiral in the
10 Navy”; and

11 (D) in paragraph (6), by striking “, or an equivalent grade in the Space
12 Force,”;

13 (3) in subsection (c)(1), by striking “or Marine Corps, vice admiral or admiral in
14 the Navy, or an equivalent grade in the Space Force” and inserting “Marine Corps, or
15 Space Force, or vice admiral or admiral in the Navy”;

16 (4) in subsection (d)—

17 (A) in paragraph (1), by striking “or Marine Corps, rear admiral in the
18 Navy, or an equivalent grade in the Space Force” and inserting “Marine Corps, or
19 Space Force, or rear admiral in the Navy”; and

20 (B) in paragraph (3), by striking “or Marine Corps, captain in the Navy, or
21 the equivalent grade in the Space Force” and inserting “Marine Corps, or Space
22 Force, or captain in the Navy”;

1 (5) in subsection (e)(2), by striking “or Marine Corps, vice admiral or admiral in
2 the Navy, or an equivalent grade in the Space Force” and inserting “Marine Corps, or
3 Space Force, or vice admiral or admiral in the Navy”;

4 (6) in subsection (f)—

5 (A) in paragraph (3)—

6 (i) in subparagraph (A), by striking “or Marine Corps, rear admiral
7 in the Navy, or the equivalent grade in the Space Force” and inserting
8 “Marine Corps, or Space Force, or rear admiral in the Navy”; and

9 (ii) in subparagraph (B), by striking “or Marine Corps, vice
10 admiral or admiral in the Navy, or an equivalent grade in the Space Force”
11 and inserting “Marine Corps, or Space Force, or vice admiral or admiral in
12 the Navy”; and

13 (B) in paragraph (6)—

14 (i) in subparagraph (A), by striking “or Marine Corps, rear admiral
15 in the Navy, or the equivalent grade in the Space Force” and inserting “,
16 Marine Corps, or Space Force, or rear admiral in the Navy”; and

17 (ii) in subparagraph (B), by striking “or Marine Corps, vice
18 admiral or admiral in the Navy, or an equivalent grade in the Space Force”
19 and inserting “Marine Corps, or Space Force, or vice admiral or admiral in
20 the Navy”; and

21 (7) in subsection (g), by striking “or Marine Corps, rear admiral in the Navy, or an
22 equivalent grade in the Space Force” and inserting “Marine Corps, or Space Force, or
23 rear admiral in the Navy”.

1 (k) OFFICERS ENTITLED TO RETIRED PAY FOR NON-REGULAR SERVICE.—Section 1370a of
2 such title is amended—

3 (1) in subsection (d)(1), by striking “or Marine Corps” each place it appears and
4 inserting “Marine Corps, or Space Force”; and

5 (2) in subsection (h), by striking “or Marine Corps” and inserting “Marine Corps,
6 or Space Force”.

7 (l) RETIRED BASE PAY.—Section 1406(i)(3)(B)(v) of such title is amended by striking
8 “The senior enlisted advisor of the Space Force” and inserting “Chief Master Sergeant of the
9 Space Force”.

10 (m) FINANCIAL ASSISTANCE PROGRAM FOR SPECIALLY SELECTED MEMBERS.—Section
11 2107 of such title is amended—

12 (1) in subsection (a)—

13 (A) by striking “, as a” and inserting “or as a”; and

14 (B) by striking “or Marine Corps, or as an officer in the equivalent grade
15 in the Space Force” and inserting “Marine Corps, or Space Force”; and

16 (2) in subsection (d), by striking “or an equivalent grade in the Space Force,”.

17 (n) CHIEF OF SPACE OPERATIONS.—Section 9082 of such title is amended—

18 (1) in subsection (a), by striking “, flag, or equivalent” each place it appears; and

19 (2) in subsection (b), by striking “grade in the Space Force equivalent to the grade
20 of general in the Army, Air Force, and Marine Corps, or admiral in the Navy” and
21 inserting “grade of general”.

22 (o) RETIRED GRADE OF COMMISSIONED OFFICERS.—Section 9341 of such title is
23 amended—

1 (1) in subsection (a)(2), by striking “or the Space Force”; and
2 (2) in subsection (b), by striking “or Reserve”.

3 (p) UNITED STATES AIR FORCE INSTITUTE OF TECHNOLOGY: ADMINISTRATION.—Section
4 9414b(a)(2)(B) of such title is amended by striking “or the equivalent grade in the Space Force”.

5 (q) AIR FORCE ACADEMY PERMANENT PROFESSORS; DIRECTOR OF ADMISSIONS.—Section
6 9436 of such title is amended—

7 (1) in subsection (a)—

8 (A) in the first sentence, by striking “in the Air Force or the equivalent
9 grade in the Space Force”;

10 (B) in the second sentence—

11 (i) by inserting “or Regular Space Force” after “Regular Air
12 Force”; and

13 (ii) by striking “and a permanent professor appointed from the
14 Regular Space Force has the grade equivalent to the grade of colonel in
15 the Regular Air Force”; and

16 (C) in the third sentence, by striking “in the Air Force or the equivalent
17 grade in the Space Force”; and

18 (2) in subsection (b)—

19 (A) in the first sentence, by striking “in the Air Force or the equivalent
20 grade in the Space Force” each place it appears; and

21 (B) in the second sentence—

22 (i) by inserting “or Regular Space Force” after “Regular Air
23 Force”; and

1 (ii) by striking “and a permanent professor appointed from the
2 Regular Space Force has the grade equivalent to the grade of colonel in
3 the Regular Air Force”.

4 (r) CADETS: DEGREE AND COMMISSION ON GRADUATION.—Section 9453(b) of such title
5 is amended by striking “in the equivalent grade in”.

6 (s) BASIC PAY RATES FOR ENLISTED MEMBERS.—Footnote 2 of the table titled
7 “ENLISTED MEMBERS” in section 601(c) of the John Warner National Defense Authorization
8 Act for Fiscal Year 2007 (Public Law 109-334; 37 U.S.C. 1009 note) is amended by striking “the
9 senior enlisted advisor of the Space Force” and inserting “Chief Master Sergeant of the Space
10 Force”.

11 (t) PAY OF SENIOR ENLISTED MEMBERS.—Section 210(c)(5) of title 37, United States
12 Code, is amended by striking “The senior enlisted advisor of the Space Force” and inserting
13 “The Chief Master Sergeant of the Space Force”.

14 (u) PERSONAL MONEY ALLOWANCE.—Section 414(b) of title 37, United States Code, is
15 amended by striking “the senior enlisted advisor of the Space Force” and inserting “the Chief
16 Master Sergeant of the Space Force”.

**[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

SEC. 931. MODIFICATION OF PERSONNEL LIMITATIONS.

Subsection (a) would add the “Space Staff” to the headquarters caps that currently apply to the Office of the Secretary of the Air Force and the Air Staff. The provision would request limited growth of 795 over the FYDP to account for the new headquarters staff to support establishment of the Space Force, which includes 600 personnel on the Space Staff and 195 personnel on the Secretariat and Air Staff.

Subsections (b)-(d) would establish limitations on the number of Space Force general officers overall and in specific grades, similar to limitations that currently exist for the other

military services. This section establishes a cap of 21 general officers in the Space Force and would designate a minimum of six Space Force general officers for joint duty assignments. Section 501(b)(1) of the National Defense Authorization Act for Fiscal Year 2021 requires the Secretary of Defense to submit a report to the House Armed Services Committee and Senate Armed Services Committee on the results of a study of the allocation among the armed forces of billets and positions for general and flag officers, including a final plan to meet the general officer caps provided in 10 U.S.C. § 526a after December 31, 2022. The language specifically requires a recommendation as to allocation of billets and positions for the Space Force, within the current limits of 10 U.S.C. § 526a. Therefore, the complete report will include decrements from the other armed forces to offset the 21 general officer Space Force requirement, within the current general and flag officer caps contained in 10 U.S.C. §§ 525, 526, and 526a, such that there is zero requested general officer growth across the Department of Defense.

Subsection (e) would increase by nine the number of Senior Executive Service (SES) positions authorized for the Department of Defense in order to account for new Space Force SES positions within the Department of the Air Force.

SEC. 932. VICE CHIEF OF SPACE OPERATIONS.

This section would codify the Vice Chief of Space Operations in title 10 as a 4-star officer appointed from the Space Force. The position would have statutory duties equivalent to the other Military Service Vice Chiefs.

SEC. 933. SPACE STAFF.

This section would make amendments to various provisions of law to change the term used to describe the staff that provides professional assistance to the Secretary of the Air Force, the Chief of Space Operations, and other personnel in the executive part of the Department of the Air Force from “Office of the Chief of Space Operations” to “Space Staff”.

SEC. 934. NATIONAL SPACE INTELLIGENCE CENTER.

This section would authorize the Secretary of the Air Force to establish a National Space Intelligence Center as a field operating agency of the Director for Operations, Cyber, and Intelligence, Headquarters, United States Space Force (SF/S2).

SEC. 935. SPACE WARFIGHTING ANALYSIS CENTER.

This section would authorize the Secretary of the Air Force to establish a Space Warfighting Analysis Center as a direct reporting unit of the Chief of Space Operations.

SEC. 936. ENTERPRISE TALENT MANAGEMENT OFFICE.

This section would authorize the Secretary of the Air Force to establish an Enterprise Talent Management Office as a field operating agency of the Chief Human Capital Office (SF/S1).

SEC. 937. SENIOR PROCUREMENT EXECUTIVE AUTHORITY.

Current law (41 U.S.C. § 1702) requires the head of each agency to designate a single senior procurement executive (SPE). Section 937 would provide an exception to this law, authorizing the Secretary of the Air Force to assign to the Assistant Secretary of the Air Force for Space Acquisition and Integration duties and authorities of the SPE which pertain to space systems and programs. This authority is necessary to enable the Assistant Secretary of the Air Force for Space Acquisition and Integration to exercise corollary authorities and responsibilities Congress has given the new Assistant Secretary, effective October 1, 2022 (or no later than October 1, 2022 if Section 804 of this proposal is enacted), when the Assistant Secretary becomes the Service Acquisition Executive of the DAF for Space Systems and Programs.

SEC. 938. CONDITIONS BASED STAND-UP OF SERVICE ACQUISITION EXECUTIVE FOR SPACE SYSTEMS AND PROGRAMS.

Section 938 would allow for conditions-based transfer of Service Acquisition Executive responsibilities for space systems and programs from the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics to the Assistant Secretary of the Air Force for Space Acquisition and Integration not later than October 1, 2022. Current law restricts the transfer of authority, requiring transfer *on* October 1, 2022.

SEC. 939. TECHNICAL AND CONFORMING AMENDMENTS.

This section would make technical and conforming amendments to various provisions of existing law to incorporate Space Force officer grade names, “Chief Master Sergeant of the Space Force” vice “senior enlisted advisor of the Space Force,” and add “Space Force” to a military personnel authority revision in the FY21 NDAA that inadvertently left out the Space Force.

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. Funds for the Space Warfighting Analysis Center are not currently programmed in the budget in FY23-FY26, but is expected to be: FY23- \$44.1M; FY24- \$44.9M; FY25- \$45.8M; and FY26- \$46.8M.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Space Warfighting Analysis Center	43.2	0	0	0	0	Operation and Maintenance, Space Force	01	012A	
National Space Intelligence Center	54.7	62.3	63.2	63.8	64.9	Operation and Maintenance, Space Force	01	013C/013F	

Enterprise Talent Management Office	5.3	8.0	10.4	11.8	12.3	Operation and Maintenance, Space Force	04	042A	
Total	108.5	70.3	73.6	75.6	77.2				

Changes to Existing Law: This proposal would make changes to existing law as follows:

TITLE 10, UNITED STATES CODE

§ 152. Chairman: appointment; grade and rank

(a) APPOINTMENT; TERM OF OFFICE.—(1) There is a Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. The Chairman serves at the pleasure of the President for a term of four years, beginning on October 1 of an odd-numbered year. The limitation does not apply in time of war.

* * * * *

(c) GRADE AND RANK.—The Chairman, while so serving, holds the grade of general, or in the case of the Navy, admiral, ~~or, in the case of an officer of the Space Force, the equivalent grade,~~ and outranks all other officers of the armed forces. However, he may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

* * * * *

§ 181. Joint Requirements Oversight Council

(a) IN GENERAL.—There is a Joint Requirements Oversight Council in the Department of Defense.

* * * * *

(c) COMPOSITION.—

(1) IN GENERAL.—The Joint Requirements Oversight Council is composed of the following:

(A) The Vice Chairman of the Joint Chiefs of Staff, who is the Chair of the Council and is the principal adviser to the Chairman of the Joint Chiefs of Staff for making recommendations about joint military capabilities or joint performance requirements.

(B) An Army officer in the grade of general.

(C) A Navy officer in the grade of admiral.

(D) An Air Force officer in the grade of general.

(E) A Marine Corps officer in the grade of general.

(F) A Space Force officer in the grade of general. ~~in the grade equivalent to the grade of general in the Army, Air Force, or Marine Corps, or admiral in the Navy.~~

(2) SELECTION OF MEMBERS.—Members of the Council under subparagraphs (B), (C), (D), and (E) of paragraph (1) shall be selected by the Chairman of the Joint Chiefs of Staff, after consultation with the Secretary of Defense, from officers in the grade of general or admiral, as the case may be, who are recommended for selection by the Secretary of the military department concerned.

(3) RECOMMENDATIONS.—In making any recommendation to the Chairman of the Joint Chiefs of Staff as described in paragraph (1)(A), the Vice Chairman of the Joint Chiefs of Staff shall provide the Chairman any dissenting view of members of the Council under paragraph (1) with respect to such recommendation.

* * * * *

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

(a) For purposes of the applicable limitation in section 526(a) of this title on general and flag officers on active duty, no appointment of an officer on the active duty list may be made as follows:

- (1) in the Army, if that appointment would result in more than—
 - (A) 7 officers in the grade of general;
 - (B) 46 officers in a grade above the grade of major general; or
 - (C) 90 officers in the grade of major general;
- (2) in the Air Force, if that appointment would result in more than—
 - (A) 9 officers in the grade of general;
 - (B) 44 officers in a grade above the grade of major general; or
 - (C) 73 officers in the grade of major general;
- (3) in the Navy, if that appointment would result in more than—
 - (A) 6 officers in the grade of admiral;
 - (B) 33 officers in a grade above the grade of rear admiral; or
 - (C) 50 officers in the grade of rear admiral;
- (4) in the Marine Corps, if that appointment would result in more than—
 - (A) 2 officers in the grade of general;
 - (B) 17 officers in a grade above the grade of major general; or
 - (C) 22 officers in the grade of major general.
- (5) in the Space Force, if that appointment would result in more than—
 - (A) 2 officers in the grade of general;
 - (B) 7 officers in a grade above the grade of major general; or
 - (C) 6 officers in the grade of major general.

* * * * *

(c)(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, ~~and Marine Corps~~ Marine Corps, and Space Force in the grades of lieutenant general and general in excess of the applicable numbers determined under this section if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under this section if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each appointment made under the authority of paragraph (1) in the Army, Air Force, ~~or Marine Corps~~ Marine Corps, or Space Force in the grade of lieutenant general or general or in the Navy in the grade of vice admiral or admiral, the number of appointments that may be made in the equivalent grade in one of the other armed forces (other than the Coast Guard) shall be reduced by one. When such an appointment is made, the President shall specify the armed force in which the reduction required by this paragraph is to be made.

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed 15.

(B) The number of officers that may be serving on active duty in the grades of general and admiral by reason of appointments made under the authority of paragraph (1) may not exceed 5.

(4) Upon the termination of the appointment of an officer in the grade of lieutenant general or vice admiral or general or admiral that was made in connection with an increase under paragraph (1) in the number of officers that may be serving on active duty in that armed force in that grade, the reduction made under paragraph (2) in the number of appointments permitted in such grade in another armed force by reason of that increase shall no longer be in effect.

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

* * * * *

§ 526. Authorized strength: general and flag officers on active duty

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

- (1) For the Army, 231.
- (2) For the Navy, 162.
- (3) For the Air Force, 198.
- (4) For the Marine Corps, 62.
- (5) For the Space Force, 21.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Secretary of Defense may designate up to 310 general officer and flag officer positions that are joint duty assignments

for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a). The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.

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

- (A) For the Army, 85.
- (B) For the Navy, 61.
- (C) For the Air Force, 73.
- (D) For the Marine Corps, 21.
- (E) For the Space Force, 6.

* * * * *

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

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

- (1) For the Army, 220.
- (2) For the Navy, 151.
- (3) For the Air Force, 187.
- (4) For the Marine Corps, 62.
- (5) For the Space Force, 21.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—

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

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

- (A) For the Army, 75.
- (B) For the Navy, 53.
- (C) For the Air Force, 68.
- (D) For the Marine Corps, 17.
- (E) For the Space Force, 6.

* * * * *

§ 531. Original appointments of commissioned officers

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

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

* * * * *

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

* * * * *

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit as follows:

(i) For special training or experience in a particular officer field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned.

(ii) During fiscal years 2021 through 2025, for advanced education in an officer field so designated, if such education is directly related to the operational needs of the armed force concerned

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) The amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of colonel in the Army, Air Force, Marine Corps, or Space Force ~~or Marine Corps~~, captain in the Navy, ~~or an equivalent grade in the Space Force~~.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

* * * * *

§ 601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

* * * * *

(e) Prior to making a recommendation to the Secretary of Defense for the nomination of an officer for appointment to a position of importance and responsibility under this section, which appointment would result in the initial appointment of the officer concerned in the grade of lieutenant general or general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, vice

admiral or admiral in the Navy, ~~or the commensurate grades in the Space Force,~~ the Secretary concerned shall consider all officers determined to be among the best qualified for such position.

* * * * *

§ 611. Convening of selection boards

(a) Whenever the needs of the service require, the Secretary of the military department concerned shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, Marine Corps, or Space Force ~~or Marine Corps~~ and from lieutenant (junior grade) through rear admiral (lower half) in the Navy. The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

* * * * *

§ 615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3)(A) In the case of an eligible officer considered for promotion to a grade specified in subparagraph (B), any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) A grade specified in this subparagraph is as follows:

(i) In the case of a regular officer, a grade above captain or, in the case of the Navy, lieutenant, ~~in the case of the Navy, lieutenant, or in the case of the Space Force, the equivalent grade.~~

(ii) In the case of a reserve officer, a grade above lieutenant colonel or, in the case of the Navy, commander.

(C) The standards and procedures referred to in subparagraph (A) shall require the furnishing to the selection board, and to each individual member of the board, the information described in that subparagraph with regard to an officer in a grade specified in subparagraph (B) at each stage or phase of the selection board, concurrent with the screening, rating, assessment, evaluation, discussion, or other consideration by the board or member of the official military personnel file of the officer, or of the officer.

(D) With respect to the consideration of an officer for promotion to a grade at or below major general, or, in the case of the Navy, rear admiral ~~in the case of the Navy, rear admiral, or, in the case of the Space Force, the equivalent grade~~, the requirements in subparagraphs (A) and (C) may be met through the convening and actions of a special selection review board with respect to the officer under section 628a of this title.

* * * * *

§ 628a. Special selection review boards

(a) IN GENERAL.—(1) If the Secretary of the military department concerned determines that a person recommended by a promotion board for promotion to a grade at or below the grade of major general, or rear admiral in the Navy ~~rear admiral in the Navy, or an equivalent grade in the Space Force~~ is the subject of credible information of an adverse nature, including any substantiated adverse finding or conclusion described in section 615(a)(3)(A) of this title, that was not furnished to the promotion board during its consideration of the person for promotion as otherwise required by such section, the Secretary shall convene a special selection review board under this section to review the person and recommend whether the recommendation for promotion of the person should be sustained.

(2) If a person and the recommendation for promotion of the person is subject to review under this section by a special selection review board convened under this section, the name of the person—

(A) shall not be disseminated or publicly released on the list of officers recommended for promotion by the promotion board recommending the promotion of the person; and

(B) shall not be forwarded to the Secretary of Defense, the President, or the Senate, as applicable, or included on a promotion list under section 624(a) of this title.

* * * * *

§ 741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

<i>Army, Air Force, and Marine Corps <u>Marine Corps, and Space Force</u></i>	<i>Navy and Coast Guard</i>
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

* * * * *

§ 1370. Regular commissioned officers

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

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

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

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

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

* * * * *

(b) RETIREMENT OF OFFICERS RETIRING VOLUNTARILY.—

(1) SERVICE-IN-GRADE REQUIREMENT.—In order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the

Army, Air Force, ~~or~~ Marine Corps, or Space Force, or lieutenant in the Navy ~~or the equivalent grade in the Space Force~~, a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force must have served on active duty in that grade for a period of not less than three years, except that—

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

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

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

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

(4) LIMITATION ON REDUCTION OR WAIVER OF REQUIREMENT FOR OFFICERS UNDER INVESTIGATION OR PENDING MISCONDUCT.—In the case of an officer to be retired in a grade above the grade of colonel in the Army, Air Force, Marine Corps, or Space Force, or captain in the Navy or Marine Corps, ~~captain in the Navy, or the equivalent grade in the Space Force~~, the service-in-grade requirement in paragraph (1) may not be reduced pursuant to that paragraph, or waived pursuant to paragraph (3), while the officer is under investigation for alleged misconduct or while there is pending the disposition of an adverse personnel action against the officer.

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

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

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

(C) in the case of officers to be retired in the grade of brigadier general or major general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or rear admiral (lower half) or rear admiral in the Navy ~~or an equivalent grade in the~~

~~Space Force~~, the number equal to 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade.

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

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

(c) OFFICERS IN O-9 AND O-10 GRADES.—

(1) IN GENERAL.—An officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is serving or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, or vice admiral or admiral in the Navy, ~~or an equivalent grade in the Space Force~~ under section 601 of this title may be retired in such grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and the Committees on Armed Services of the Senate and the House of Representatives that the officer served on active duty satisfactorily in such grade.

* * * * *

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

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

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

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

* * * * *

(3) REDUCTION OR WAIVER OF SERVICE-IN-GRADE REQUIREMENT PROHIBITED FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In conditionally determining the retirement grade of an officer under paragraph (1)(A) or (2)(A) of this subsection to be a grade above the grade of colonel in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or captain in the Navy, ~~or the equivalent grade in the Space Force~~, the service-in-grade requirement in subsection (b)(1) may not be reduced pursuant to subsection (b)(1) or waived pursuant to subsection (b)(3).

(4) PROHIBITION ON DELEGATION.—The authority of the Secretary of a military department under paragraph (1) may not be delegated. The authority of the Secretary of Defense under paragraph (2) may not be delegated.

(e) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR ADVERSE ACTION.—

(1) NO CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired will not be changed, the conditional retirement grade of the officer shall, subject to paragraph (3), be the final retired grade of the officer.

(2) CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired should be changed, the changed retirement grade shall be the final retired grade of the officer under this section, except that if the final retirement grade provided for an officer pursuant to this paragraph is the grade of lieutenant general or general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or vice admiral or admiral in the Navy, ~~or an equivalent grade in the Space Force~~, the requirements in subsection (c) shall apply in connection with the retirement of the officer in such final retirement grade.

* * * * *

(f) FINALITY OF RETIRED GRADE DETERMINATIONS.—

(1) IN GENERAL.—Except for a conditional determination authorized by subsection (d), a determination of the retired grade of an officer pursuant to this section is administratively final on the day the officer is retired, and may not be reopened, except as provided in paragraph (2).

(2) REOPENING.—A final determination of the retired grade of an officer may be reopened as follows:

(A) If the retirement or retired grade of the officer was procured by fraud.

(B) If substantial evidence comes to light after the retirement that could have led to determination of a different retired grade under this section if known by competent authority at the time of retirement.

(C) If a mistake of law or calculation was made in the determination of the retired grade.

(D) If the applicable Secretary determines, pursuant to regulations prescribed by the Secretary of Defense, that good cause exists to reopen the determination of retired grade.

(3) APPLICABLE SECRETARY.—For purposes of this subsection, the applicable Secretary for purposes of a determination or action specified in this subsection is—

(A) the Secretary of the military department concerned, in the case of an officer retired in a grade at or below the grade of major general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, or rear admiral in the Navy, ~~or the equivalent grade in the Space Force~~; or

(B) the Secretary of Defense, in the case of an officer retired in a grade of lieutenant general or general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, or vice admiral or admiral in the Navy, ~~or an equivalent grade in the Space Force~~.

* * * * *

(6) MANNER OF MAKING OF CHANGE.—If the retired grade of an officer is proposed to be changed through the reopening of the final determination of an officer's retired grade under this subsection, the change in grade shall be made—

(A) in the case of an officer whose retired grade is to be changed to a grade at or below the grade of major general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, or rear admiral in the Navy, ~~or the equivalent grade in the Space Force~~, in accordance with subsections (a) and (b)—

(i) by the Secretary of Defense (who may delegate such authority only as authorized by clause (ii)); or

(ii) if authorized by the Secretary of Defense, by the Secretary of the military department concerned (who may not further delegate such authority);

(B) in the case of an officer whose retired grade is to be changed to the grade of lieutenant general or general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, or vice admiral or admiral in the Navy, ~~or an equivalent grade in the Space Force~~, by the President, by and with the advice and consent of the Senate.

* * * * *

(g) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term 'highest permanent grade' means a grade at or below the grade of major general in the Army, Air Force, ~~or Marine Corps~~, or Space Force, or rear admiral in the Navy, ~~or an equivalent grade in the Space Force~~.

* * * * *

§ 1370a. Officers entitled to retired pay for non-regular service

(a) RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—Unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall,

upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section.

* * * * *

(d) OFFICERS IN O-9 AND O-10 GRADES.—

(1) IN GENERAL.—A person covered by this section in the Army, Navy, Air Force, ~~or~~ Marine Corps, or Space Force who is serving or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or vice admiral or admiral in the Navy under section 601 of this title may be retired in such grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and the Committees on Armed Services of the Senate and the House of Representatives that the officer served satisfactorily in such grade.

* * * * *

(h) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term “highest permanent grade” means a grade at or below the grade of major general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force or Marine Corps or rear admiral in the Navy.

* * * * *

§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

* * * * *

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, CHIEF OF THE NATIONAL GUARD BUREAU, COMMANDERS OF COMBATANT COMMANDS, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, as Chief of the National Guard Bureau, as a commander of a unified or specified combatant command (as defined in section 161(c) of this title), or as the senior enlisted

member of an armed force or the senior enlisted advisor to the Chairman of the Joint Chiefs of Staff or the Chief of the National Guard Bureau, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) EXCEPTION FOR MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY.—Paragraph (1) does not apply in the case of a member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 1998—

(A) in the case of an enlisted member, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process; or

(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.

(3) DEFINITIONS.—In this subsection:

(A) The term “Chief of Service” means any of the following:

- (i) Chief of Staff of the Army.
- (ii) Chief of Naval Operations.
- (iii) Chief of Staff of the Air Force.
- (iv) Commandant of the Marine Corps.
- (v) Chief of Space Operations.
- (vi) Commandant of the Coast Guard.

(B) The term “senior enlisted member” means any of the following:

- (i) Sergeant Major of the Army.
- (ii) Master Chief Petty Officer of the Navy.
- (iii) Chief Master Sergeant of the Air Force.
- (iv) Sergeant Major of the Marine Corps.
- (v) ~~The senior enlisted advisor of the Space Force.~~ Chief Master Sergeant of the Space Force.
- (vi) Master Chief Petty Officer of the Coast Guard.

* * * * *

§ 2107. Financial assistance program for specially selected members

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible member of the program who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy, ~~or~~ as a second lieutenant in the Army, Air Force, ~~or~~ Marine Corps, or Space Force ~~or as an officer in the equivalent grade in the Space Force~~, as the case may be.

* * * * *

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the

appropriate armed force in the grade of second lieutenant, ensign, ~~or an equivalent grade in the Space Force~~, even though he is under 21 years of age.

* * * * *

§ 9014. Office of the Secretary of the Air Force

(a) There is in the Department of the Air Force an Office of the Secretary of the Air Force. The function of the Office is to assist the Secretary of the Air Force in carrying out his responsibilities.

* * * * *

(c)(1) The Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary, the Air Staff, and the Space Staff ~~Office of the Chief of Space Operations~~ for the following functions:

- (A) Acquisition.
- (B) Auditing.
- (C) Comptroller (including financial management).
- (D) Information management.
- (E) Inspector General.
- (F) Legislative affairs.
- (G) Public affairs.

(2) ~~Subject to paragraph (6), the~~ The Secretary of the Air Force shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Air Staff or the Space Staff ~~Office of the Chief of Space Operations~~ to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff of the Air Force and the Air Staff, and to the Chief of Space Operations and the Space Staff ~~Office of the Chief of Space Operations~~, and shall ensure that each such office or entity provides the Chief of Staff and Chief of Space Operations such staff support as the Chief concerned considers necessary to perform the Chief's duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Air Force of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Air Force (including the Air Staff and the Space Staff ~~Office of the Chief of Space Operations~~) from providing advice or assistance to the Chief of Staff and the Chief of Space Operations or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Air Force.

(5) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(6) Notwithstanding section 1702 of title 41, the Secretary of the Air Force may assign to the Assistant Secretary of the Air Force for Space Acquisition and Integration duties and authorities of the senior procurement executive that pertain to space systems and programs.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary, the Air Staff, and the Space Staff Office ~~of the Chief of Space Operations~~ for the function of research and development.

(2) The Secretary of the Air Force may assign to the Air Staff and the Space Staff Office ~~of the Chief of Space Operations~~ responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Air Force and the Air Staff, to the Chief of Space Operations and the Space Staff Office ~~of the Chief of Space Operations~~, and shall ensure that each such office or entity provides the Chief of Staff and Chief of Space Operations such staff support as the Chief concerned considers necessary to perform the Chief's duties and responsibilities

(e) The Secretary of the Air Force shall ensure that the Office of the Secretary of the Air Force, the Air Staff, and the Space Staff Office ~~of the Chief of Space Operations~~ do not duplicate specific functions for which the Secretary has assigned responsibility to any of the others.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force, ~~and on the Air Staff, and on the Space Staff~~ may not exceed 3,545 ~~2,750~~.

(2) Not more than 1,991 ~~1,650~~ officers of the Air Force ~~and the Space Force~~ on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force, ~~and on the Air Staff, and on the Space Staff~~.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force, ~~and on the Air Staff, and on the Space Staff~~ may not exceed 69 ~~60~~.

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

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

* * * * *

§ 9016. Assistant Secretaries of the Air Force

(a) There are five Assistant Secretaries of the Air Force. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Air Force.

(3)(A) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Financial Management.

(B) The Assistant Secretary shall be appointed from among persons who have significant budget, financial management, or audit experience in complex organizations.

(C) The principal responsibility of the Assistant Secretary shall be the exercise of the comptroller functions of the Department of the Air Force, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Air Force and shall advise the Secretary of the Air Force on financial management.

(4)(A) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics. The principal duty of the Assistant Secretary shall be the overall supervision of acquisition, technology, and logistics matters of the Department of the Air Force.

(B) The Assistant Secretary shall have a Principal Military Deputy, who shall be an officer of the Air Force on active duty. The Principal Military Deputy shall be appointed from among officers who have significant experience in the areas of acquisition and program management. The position of Principal Military Deputy shall be designated as a critical acquisition position under section 1731 of this title. In the event of a vacancy in the position of Assistant Secretary of the Air Force for Acquisition, the Principal Military Deputy may serve as Acting Assistant Secretary for a period of not more than one year.

(5)(A) One of the Assistant Secretaries shall be the Assistant Secretary for Energy, Installations, and Environment.

(B) The principal duty of the Assistant Secretary for Energy, Installations, and Environment shall be the overall supervision of energy, installation, and environment matters for the Department of the Air Force.

(6)(A) One of the Assistant Secretaries is the Assistant Secretary of the Air Force for Space Acquisition and Integration.

(B) Subject to the authority, direction, and control of the Secretary of the Air Force, the Assistant Secretary shall do as follows:

(i) Be responsible for all architecture and integration of the Air Force for space systems and programs, including in support of the Chief of Space Operations under section 9082 of this title.

(ii) Act as the chair of the Space Force Acquisition Council under section 9021 of this title.

(iii) Advise the service acquisition executive of the Air Force with responsibility for space systems and programs (including for all major defense acquisition programs under chapter 144 of this title for space) on the acquisition of such systems and programs by the Air Force.

(iv) Oversee and direct each of the following:

(I) The Space Rapid Capabilities Office under section 2273a of this title.

(II) The Space and Missile Systems Center.

(III) The Space Development Agency with respect to acquisition decisions.

(v) Advise and synchronize acquisition projects for all space systems and programs of the Air Force, including projects for space systems and programs responsibility for which is transferred to the Assistant Secretary pursuant to section 956(b)(3) of the United States Space Force Act.

(vi) ~~Effective as of October 1, 2022, in~~ In accordance with section 957 of that Act, serve as the Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs and discharge any senior procurement executive duties and authorities assigned by the Secretary of the Air Force pursuant to section 9014(c)(6) of this title.

* * * * *

§ 9082. Chief of Space Operations

(a) APPOINTMENT.—(1) There is a Chief of Space Operations, appointed by the President, by and with the advice and consent of the Senate, from the ~~general, flag, or equivalent~~ officers of the Space Force. The Chief serves at the pleasure of the President.

(2) The Chief shall be appointed for a term of four years. In time of war or during a national emergency declared by Congress, the Chief may be reappointed for a term of not more than four years.

(3) The President may appoint an officer as Chief of Space Operations only if—
(A) the officer has had significant experience in joint duty assignments; and
(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(d) of this title) as a ~~general, flag, or equivalent~~ officer of the Space Force.

(4) The President may waive paragraph (3) in the case of an officer if the President determines such action is necessary in the national interest.

(b) GRADE.—The Chief, while so serving, has the grade of general ~~grade in the Space Force equivalent to the grade of general in the Army, Air Force, and Marine Corps, or admiral in the Navy~~ without vacating the permanent grade of the officer.

(c) RELATIONSHIP TO THE SECRETARY OF THE AIR FORCE.—Except as otherwise prescribed by law and subject to section 9013(f) of this title, the Chief performs the duties of such position under the authority, direction, and control of the Secretary of the Air Force and is directly responsible to the Secretary.

(d) DUTIES.—Subject to the authority, direction, and control of the Secretary of the Air Force, the Chief shall—

- (1) preside over the Space Staff Office ~~of the Chief of Space Operations~~;
- (2) transmit the plans and recommendations of the Space Staff Office ~~of the Chief of Space Operations~~ to the Secretary and advise the Secretary with regard to such plans and recommendations;
- (3) after approval of the plans or recommendations of the Space Staff Office ~~of the Chief of Space Operations~~ by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Space Force as the Secretary determines;

(5) perform duties prescribed for the Chief of Space Operations by sections 171 and 2547 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to the Chief by the President, the Secretary of Defense, or the Secretary of the Air Force.

* * * * *

§ ~~9084~~ ~~9083~~. Space Staff Office of the Chief of Space Operations: function; composition

(a) FUNCTION.—There is in the executive part of the Department of the Air Force a Space Staff ~~an Office of the Chief of Space Operations~~ to assist the Secretary of the Air Force in carrying out the responsibilities of the Secretary.

(b) COMPOSITION.—The Space Staff Office of the Chief of Space Operations is composed of the following:

(1) The Chief of Space Operations.

(2) Other members of the Space Force and Air Force assigned or detailed to the Space Staff Office of the Chief of Space Operations.

(3) Civilian employees in the Department of the Air Force assigned or detailed to the Space Staff Office of the Chief of Space Operations.

(c) ORGANIZATION.—Except as otherwise specifically prescribed by law, the Space Staff Office of the Chief of Space Operations shall be organized in such manner, and the members of the Space Staff Office of the Chief of Space Operations shall perform such duties and have such titles, as the Secretary of the Air Force may prescribe.

* * * * *

§ ~~9085~~ ~~9084~~. Space Staff Office of the Chief of Space Operations: general duties

(a) PROFESSIONAL ASSISTANCE.—The Space Staff Office of the Chief of Space Operations shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Air Force and to the Chief of Space Operations.

(b) AUTHORITIES.—Under the authority, direction, and control of the Secretary of the Air Force, the Space Staff Office of the Chief of Space Operations shall—

(1) subject to subsections (c) and (d) of section 9014 of this title, prepare for such employment of the Space Force, and for such recruiting, organizing, supplying, equipping (including research and development), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Space Force, as will assist in the execution of any power, duty, or function of the Secretary of the Air Force or the Chief of Space Operations;

- (2) investigate and report upon the efficiency of the Space Force and its preparation to support military operations by commanders of the combatant commands;
- (3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;
- (4) as directed by the Secretary of the Air Force or the Chief of Space Operations, coordinate the action of organizations of the Space Force; and
- (5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary of the Air Force.

* * * * *

§ 9341. General rule

(a)(1) The retired grade of a regular commissioned officer of the Air Force or the Space Force who retires other than for physical disability is determined under section 1370 of this title.

(2) The retired grade of a reserve commissioned officer of the Air Force ~~or the Space Force~~ who retires other than for physical disability is determined under section 1370a of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force or a Regular ~~or Reserve~~ of the Space Force not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that the member holds on the date of the member's retirement.

* * * * *

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

(a) DIRECTOR AND CHANCELLOR.—

(1) SELECTION.—The Director and Chancellor of the United States Air Force Institute of Technology shall be selected by the Secretary of the Air Force.

(2) ELIGIBILITY.—The Director and Chancellor shall be one of the following:

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

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

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

* * * * *

§ 9436. Permanent professors; director of admissions

(a) A permanent professor of the Academy who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel ~~in the Air Force or the equivalent grade in the Space Force~~. However, a permanent professor appointed from the Regular Air Force or Regular Space Force has the grade of colonel ~~and a permanent professor appointed from the Regular Space Force has the grade equivalent to the grade of colonel in the Regular Air Force~~ after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel ~~in the Air Force or the equivalent grade in the Space Force~~.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel ~~in the Air Force or the equivalent grade in the Space Force~~, and, after he has served six years as director of admissions, has the regular grade of colonel ~~in the Air Force or the equivalent grade in the Space Force~~. However, a person appointed from the Regular Air Force or Regular Space Force has the regular grade of colonel ~~and a person appointed from the Regular Space Force has the grade equivalent to the grade of colonel in the Regular Air Force~~ after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

* * * * *

§ 9453. Cadets: degree and commission on graduation

(a) The Superintendent of the Academy may, under such conditions as the Secretary of the Air Force may prescribe, confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Air Force ~~or in the equivalent grade in the Regular Space Force~~ under section 531 of this title.

* * * * *

**JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR
2007
(PUBLIC LAW 109-364)**

SEC. 601. FISCAL YEAR 2007 INCREASE IN MILITARY BASIC PAY AND REFORM OF BASIC PAY RATES

(a) Waiver of Section 1009 Adjustment.—The adjustment to become effective during fiscal year 2007 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) January 1, 2007, Increase in Basic Pay.—Effective on January 1, 2007, the rates of monthly basic pay for members of the uniformed services are increased by 2.2 percent.

(c) Reform of Basic Pay Rates.—Effective on April 1, 2007, the rates of monthly basic pay for members of the uniformed services within each pay grade (and with years of service computed under section 205 of title 37, United States Code) are as follows:

* * * * *

ENLISTED MEMBERS¹

* * * * *

¹ Notwithstanding the pay rates specified in this table, the actual basic pay for enlisted members may not exceed the rate of pay for level V of the Executive Schedule.

² Subject to the preceding footnote, the rate of basic pay for an enlisted member in this grade while serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, ~~the senior enlisted advisory of the Space Force~~ Chief Master Sergeant of the Space Force, Master Chief Petty Officer of the Coast Guard, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff is \$6,642.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

³ In the case of members in pay grade E-1 who have served less than 4 months on active duty, the rate of basic pay is \$1,203.90.

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017
(PUBLIC LAW 114-328)**

SEC. 1109. LIMITATION ON NUMBER OF DOD SES POSITIONS.

(a) LIMITATION ON NUMBER OF DOD SES POSITIONS.—

(1) IN GENERAL.—Not later than December 31, 2022, the total number of Senior Executive Service positions authorized under section 3133 of title 5, United States Code, for the Department of Defense may not exceed ~~4,260~~ 1,269.

* * * * *

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020
(PUBLIC LAW 116-92)**

SEC. 957. SERVICE ACQUISITION EXECUTIVE OF THE DEPARTMENT OF THE AIR FORCE FOR SPACE SYSTEMS AND PROGRAMS.

(a) IN GENERAL.—~~Effective October 1, 2022, there~~ There shall be within the Department of the Air Force a Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs.

(b) SERVICE.—(1) IN GENERAL.—~~Effective as of October 1, 2022, and subject to paragraph (2), the~~ The individual serving as Assistant Secretary of the Air Force for Space Acquisition and Integration under paragraph of section 9016(b) of title 10, United States Code (as added by section 1832(b) of this Act), shall also serve as the Service Acquisition Executive for Space Systems and Programs.

~~(2) INCUMBENT.—The individual serving as Assistant Secretary of the Air Force for Space Acquisition and Integration as of October 1, 2022, may also serve as the Service Acquisition Executive for Space Systems and Programs pursuant to paragraph (1) only if appointed as the Service Acquisition Executive for Space Systems and Programs by the President, by and with the advice and consent of the Senate, pursuant to a nomination submitted to the Senate on or after that date.~~

(c) AUTHORITIES AND RESPONSIBILITIES.—

(1) IN GENERAL.—The Service Acquisition Executive for Space Systems and Programs shall have within the Department of the Air Force all the authorities and responsibilities of a service acquisition executive under section 1704 of title 10, United States Code, and other applicable law, for the Department of the Air Force with respect to space systems and programs.

(2) SEPARATE SAE WITHIN THE AIR FORCE.—The Service Acquisition Executive for Space Systems and Programs shall be in addition to the service acquisition executive in the Department of the Air Force for all acquisition matters of the Department of the Air Force other than with respect to space systems and programs.

(3) GUIDANCE ON RELATIONSHIP AMONG SAES.—Not later than October 1, 2022, and from time to time thereafter, the Secretary of the Air Force shall issue guidance for the Department of the Air Force on the authorities and responsibilities of the Service Acquisition Executive for Space Systems and Programs and the authorities and responsibilities of the service acquisition executive of the Department for all acquisition matters of the Department other than with respect to space systems and programs.

(4) COMMERCIAL SATELLITE COMMUNICATIONS SERVICES.—

(A) AUTHORITY.—Beginning on the date specified in subparagraph (B), the Service Acquisition Executive for Space Systems and Programs shall be responsible for the procurement of commercial satellite communications services for the Department of Defense.

(B) DATE SPECIFIED.—The date specified in this subparagraph is the date that is 120 days after the date on which the Service Acquisition Executive for Space Systems and Programs submits to the congressional defense committees a plan for delegating the authority under subparagraph (A) to a subordinate acquisition command within the Space Force.

(C) RESPONSIBILITY DURING INTERIM PERIOD.—During the period preceding the date specified in subparagraph (B), the Chief of Space Operations shall be responsible for the procurement of commercial satellite communications services for the Department of Defense.

(d) IMPLEMENTATION DEADLINE.—Not later than October 1, 2022, the Secretary of the Air Force shall take such actions as the Secretary considers appropriate to implement this section, including the transfer of service acquisition executive responsibilities for space systems and programs from the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics to the Assistant Secretary of the Air Force for Space Acquisition and Integration.

TITLE 37, UNITED STATES CODE

§ 210. Pay of senior enlisted members during terminal leave and while hospitalized

(a) A noncommissioned officer of an armed force who, immediately following the completion of service as the senior enlisted member of that armed force or the senior enlisted advisor to the Chairman of the Joint Chiefs of Staff or the Chief of the National Guard Bureau, is placed on terminal leave pending retirement shall be entitled, for not more than 60 days while in such status, to the rate of basic pay authorized for the senior enlisted member of that armed force.

* * * * *

(c) In this section, the term “senior enlisted member” means the following:

- (1) The Sergeant Major of the Army.
- (2) The Master Chief Petty Officer of the Navy.
- (3) The Chief Master Sergeant of the Air Force.
- (4) The Sergeant Major of the Marine Corps.
- (5) ~~The senior enlisted advisor of the Space Force.~~ The Chief Master Sergeant of the Space Force.
- (6) The Master Chief Petty Officer of the Coast Guard.

* * * * *

§ 414. Personal money allowance

(a) ALLOWANCE FOR OFFICERS SERVING IN CERTAIN RANKS OR POSITIONS.—In addition to other pay or allowances authorized by this title, an officer who is entitled to basic pay is entitled to a personal money allowance of—

- (1) \$500 a year, while serving in the grade of lieutenant general or vice admiral, or in an equivalent grade or rank;
- (2) \$1,200 a year, in place of any other personal money allowance authorized by this section while serving as Surgeon General of the Public Health Service;

(3) \$2,200 a year, in addition to the personal money allowance authorized by clause (1), while serving as a senior member of the Military Staff Committee of the United Nations;

(4) \$2,200 a year, while serving in the grade of general or admiral, or in an equivalent grade or rank; or

(5) \$4,000 a year, in place of any other personal money allowance authorized by this section, while serving as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, or Chief of the National Guard Bureau.

(b) ALLOWANCE FOR SENIOR ENLISTED MEMBERS.—In addition to other pay or allowances authorized by this title, a noncommissioned officer is entitled to a personal money allowance of \$2,000 a year while serving as the Sergeant Major of the Army, the Master Chief Petty Officer of the Navy, the Chief Master Sergeant of the Air Force, the Sergeant Major of the Marine Corps, ~~the senior enlisted advisor of the Space Force~~ the Chief Master Sergeant of the Space Force, the Master Chief Petty Officer of the Coast Guard, the Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or the Senior Enlisted Advisor to the Chief of the National Guard Bureau.

1 **SEC. ____ . AUTHORITY OF SECRETARY OF DEFENSE TO WAIVE**
2 **REQUIREMENTS DURING NATIONAL EMERGENCIES FOR**
3 **PURPOSES OF PROVISION OF HEALTH CARE.**

4 (a) **IN GENERAL.**—Chapter 55 of title 10, United States Code, is amended by inserting
5 after section 1073d the following new section:

6 **“§1073e. Authority to waive requirements during national emergencies**

7 “(a) **PURPOSE.**—The purpose of this section is to enable the Secretary of Defense to
8 ensure to the maximum extent feasible, in an emergency area during an emergency period—

9 “(1) that sufficient authorized health care items and services are available to meet
10 the needs of covered beneficiaries in such area eligible for the programs under this
11 chapter; and

12 “(2) that private sector health care providers authorized under the TRICARE
13 program that furnish such authorized items and services in good faith may be reimbursed
14 for such items and services absent any determination of fraud or abuse.

15 “(b) **AUTHORITY.**—

16 “(1) **IN GENERAL.**—To the extent necessary to accomplish the purpose specified in
17 subsection (a), the Secretary, subject to the provisions of this section, may, for a period of
18 no more than 60 days, waive or modify the application of the requirements of this chapter
19 or any regulation prescribed thereunder with respect to health care items and services
20 furnished by a health care provider (or class of health care provider) in an emergency
21 area (or portion of such area) during an emergency period (or portion of such period),
22 including by deferring the termination of status of a covered beneficiary. This authority
23 may not be delegated further than the Deputy Secretary of Defense.

1 “(2) RENEWAL.—The Secretary may renew a waiver or modification under
2 paragraph (1) for subsequent periods of no more than 60 days each during the duration of
3 the applicable emergency declaration. The total duration of the waiver or modification
4 may not exceed 365 days.

5 “(c) IMPLEMENTATION.—The Secretary may implement any temporary waiver or
6 modification made pursuant to this section by program instruction or otherwise. The Secretary
7 shall publish a notice in the Federal Register of any such waiver or modification.

8 “(d) RETROACTIVE APPLICATION.—A waiver or modification made pursuant to this
9 section with respect to an emergency period may, at the discretion of the Secretary, be made
10 retroactive to the beginning of the emergency period or any subsequent date in such period
11 specified by the Secretary.

12 “(e) SATISFACTION OF PRECONDITIONS FOR STATUS AS COVERED BENEFICIARY.—A
13 deferral under subsection (b) of termination of status of a covered beneficiary may be contingent
14 upon retroactive satisfaction by such beneficiary of premium or enrollment fee payments or other
15 preconditions for such status.

16 “(f) CERTIFICATION.—

17 “(1) IN GENERAL.—Not later than the date that is two days before exercising a
18 waiver or modification under subsection (b)(1) or renewing a waiver or modification
19 under subsection (b)(2), the Secretary shall submit to the Committees on Armed Services
20 of the Senate and House of Representatives a certification and advanced written notice
21 regarding the authority to be exercised.

22 “(2) MATTERS INCLUDED.—Certification and advanced written notice required
23 under paragraph (1) shall include—

1 “(A) a description of—
2 “(i) the specific provisions of the law that will be waived or
3 modified;
4 “(ii) the health care providers to whom the waiver or modification
5 will apply;
6 “(iii) the geographic area in which the waiver or modification will
7 apply;
8 “(iv) the period of time for which the waiver or modification will
9 be in effect; and
10 “(v) an estimate of the cost or savings resulting from the waiver of
11 modification, as is reasonably available; and
12 “(B) a certification that the waiver or modification is necessary to carry
13 out the purpose specified in subsection (a).

14 “(g) TERMINATION OF WAIVER.—A waiver or modification of requirements pursuant to
15 this section terminates upon the termination of the applicable emergency declaration, by
16 publication of a notice in the Federal Register by the Secretary terminating the waiver, or upon
17 expiration of the waiver or modification without renewal.

18 “(h) DEFINITIONS.—In this section:

19 “(1) EMERGENCY AREA.—The term ‘emergency area’ means a geographical area
20 covered by an emergency declaration.

21 “(2) EMERGENCY DECLARATION.—The term ‘emergency declaration’ means—

1 “(A) an emergency or disaster declared by the President pursuant to the
2 National Emergencies Act (50 U.S.C. 1601 et seq.) or the Robert T. Stafford
3 Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

4 “(B) a public health emergency declared pursuant to section 319 of the
5 Public Health Service Act (42 U.S.C. 247d); or

6 “(C) an international public health emergency having an impact on
7 members of the uniformed services (as defined in section 101(a)(5) of this title),
8 as described in this section, or their dependent family members, as determined by
9 the Secretary.

10 “(3) EMERGENCY PERIOD.—The term ‘emergency period’ means the period
11 covered by an emergency declaration.”.

12 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such
13 title is amended by inserting after the item relating to section 1073d the following new item:

“1073e. Authority to waive requirements during national emergencies.”.

Section-by-Section Analysis

This proposal authorizes the Secretary of Defense to temporarily waive provisions of statutes and regulations related to the administration of health care items and services in order to meet the needs of Department of Defense (DOD) covered beneficiaries during a national emergency. Current law does not provide the Secretary of Defense with waiver authority under a national emergency or public health emergency as it relates to health care. As a result, in emergency situations such as the national emergency for the coronavirus disease 2019 (COVID-19) outbreak, the DOD is unable to quickly respond to the changing needs of its beneficiaries and the providers who oversee their care. This is contrasted with care provided by the Centers for Medicare and Medicaid Services, because the Health and Human Services (HHS) Secretary has emergency waiver authority under section 1135 of the Social Security Act (42 U.S.C. 1320b-5). This proposal largely mirrors the HHS 1135 waiver authority.

The first provision of the proposed new emergency waiver authority section, section 1073e(a), delineates the purpose. It provides that such authority is to be used to ensure adequate access to health care services and items by covered beneficiaries during a national emergency, and that providers who furnish such services and supplies in good faith are adequately reimbursed. The DOD’s ability to do so is critical, as rapidly evolving health care dynamics

during a national emergency may force providers to decide whether to deny care to beneficiaries or risk not being adequately reimbursed if they do provide such care. For example, in the early weeks of COVID-19, telehealth services were emphasized to slow the spread of the virus by reducing contact between patients and providers, and between patients and other patients in medical facilities. Due to DOD's regulatory prohibition of audio-only telehealth services, beneficiaries without access to a video portal (either due to lack of high-speed internet or a computer or cell phone capable of such interaction) were unable to participate in telehealth and either did not receive care or risked interacting with COVID-19 infected individuals by receiving in-person care. Alternatively, providers may have opted to provide care to such beneficiaries via audio-only means even though they could not be reimbursed for doing so, in order to reduce the risk to their patients and themselves. While the DOD was eventually able to temporarily remove the restriction on audio-only telehealth via a temporary interim final rule (IFR), this process was slower than the waiver process would have permitted in this legislative proposal.

Within the first provision, DOD has conditioned coverage of items and services on the absence of fraud and abuse. DOD has a robust fraud prevention program with numerous methods at its disposal for tracking claims by providers and spending to ensure appropriate use of any waivers, including post-payment review by DOD or its contractors. Additionally, policy controls may be implemented for future spending during an emergency if potential areas of concern are identified. For example, consistent with Medicare, TRICARE has implemented a requirement that hospital claims seeking a 20 percent increased reimbursement rate for COVID-19 patients also include a positive COVID-19 test for the patient associated with the claim. Waivers would be monitored and controls would be added or modified as needed, with DOD initiating recovery of any reimbursements for services determined to be fraudulent.

The second provision of the new proposed section, section 1073e(b), delineates the authority of the Secretary. It provides that the Secretary may waive any portion of the law under chapter 55 of title 10, United States Code, or the regulation that implements the law, to include deferring the termination status of a covered beneficiary. This provision also requires waivers to be up to 60 days in length, but permits the waivers to be renewed for follow-on periods of up to 60 days. There are no specific limitations on which portions of the statute or regulation the Secretary can waive; however, such waivers are only permitted to the extent necessary to meet the purpose described in the previous paragraph. While such authority may appear broad, it is difficult to know which statutory or regulatory provisions would become an impediment to good health care delivery in an emergency. During the COVID-19 outbreak, DOD's temporary IFRs touched on a broad number of provisions: modifying the skilled nursing facility benefit, removing the restriction on audio-only telehealth services, removing a restriction on paying for treatment investigational new drugs (such as convalescent plasma), authorizing beneficiary participation in National Institute of Allergy and Infectious Disease clinical trials, exempting temporary hospitals from certain acute care hospital requirements, modifying portions of the reimbursement systems for hospitals, and removing copayments for telehealth services. These changes touched regulations under sections 199.4, 199.6, 199.14, and 199.17 of title 32, Code of Federal Regulations. Further, due to DOD's lack of authority to waive statutory or regulatory provisions during a national emergency and the broad variety of provisions that required changes, these changes required three separate IFRs, which required a large amount of DOD resources. The next national emergency may be caused by a natural disaster such as a hurricane

rather than a pandemic infectious disease, bringing with it entirely different beneficiary needs and health care system challenges. The authority proposed here is tempered by the requirement that any waivers be related to the purpose in the previous paragraph, as well as accountability to Congress, described later in this analysis.

The third provision, section 1073e(c), clarifies that the Secretary may implement this section by program instruction; i.e., that regulatory changes are not required for waivers to become effective. Given that the purpose of this proposal is to ensure prompt response during a national emergency, requiring implementation by regulation would negate DOD's ability to quickly respond under this authority.

The fourth provision, section 1073e(d), permits retroactive implementation of waiver authority to the date of the start of the national emergency. Retroactive authority is essential to ensure DOD can meet the purpose of this proposal, particularly that adequate reimbursement is made to providers operating in good faith. Using the previously discussed example of audio-only telehealth services, while DOD was able to temporarily waive this restriction in the regulation using a temporary IFR for the COVID-19 outbreak, DOD lacked the authority to make this change retroactive. This means that providers who furnished services to TRICARE beneficiaries over the phone in good faith during the early weeks of the outbreak could not be reimbursed for having done so, despite DOD's eventual temporary removal of the audio-only restriction. The ability to retroactively implement waivers is critical to ensure that care is adequately reimbursed, particularly care provided in the early period of a national emergency when many patients and providers, despite their best efforts, are unable to comply with statutory and regulatory requirements due to exigent circumstances.

The fifth provision, section 1073e(e), states that the Secretary may condition the deferral of a beneficiaries' termination status under section 1073e(b) (the second provision of this proposal) on the completion of necessary preconditions, such as the retroactive payment of any premiums or enrollment fees. The Secretary's ability to defer a beneficiary's termination status is important given the transient nature of some of TRICARE's beneficiaries, particularly National Guard members and Reserve Service members. Such deferral of termination could ensure continuity of care for such beneficiaries; this provision clarifies that such deferrals do not eliminate a beneficiary's obligations under the program. While it may make sense to continue providing health care to a beneficiary who might otherwise lose it during a national emergency, it would be illogical to not require payment of premiums and fees, which would have been due had the beneficiary not been at risk of termination. In other words, the Defense Health Agency (DHA) should continue requiring payment of premiums and fees, which would have been due had the beneficiary not been at risk of termination.

The sixth provision, section 1073e(f), requires the Secretary of Defense to certify to the House Armed Services Committee and the Senate Armed Services Committee two days prior to the use of waivers under this proposal that such waivers are required to meet the purpose of this proposal, as laid out in the second provision; that is, the Secretary must certify that the waiver is necessary to ensure adequate health care services and supplies to covered TRICARE beneficiaries. The Secretary must also certify the need to renew any waivers under this authority.

beyond their original 60-day expiration. This certification ensures appropriate Congressional oversight for DOD use of this waiver authority.

The seventh provision, section 1073e(g), requires waivers authorized under this proposal to be terminated at the expiration of the applicable national emergency. If the DOD were to desire to continue any actions taken during the national emergency, it would be required to pursue standard legislative or regulatory remedies.

The eighth provision, section 1073e(h), defines the terms “emergency period”, “emergency declaration”, and “emergency area” to ensure clarity on the scope of the Secretary’s authority and where and when it could apply. Emergencies in the United States, including United States territories, would only include those declared by the President or under the Department of Health and Human Services. Because the DOD has personnel all over the world receiving health care, emergency declarations also include those declared by the Secretary overseas when such emergencies impact active duty service members or their dependent family members.

Taken together, the provisions of this proposal will ensure that the Secretary has the necessary authority to quickly respond to national emergencies in order to ensure adequate health care for covered beneficiaries. This authority is tempered by narrow definitions of emergency declarations, periods, and areas; a purpose requiring the use of waiver be directly related to the national emergency; and the requirement that the Secretary certify to Congress that the use of such waivers meets the intention of this proposal.

Budgetary Implications:

This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2022 President’s Budget request. The proposal would permit the Secretary to use waiver authority during a national emergency; however, no such change would automatically occur upon approval of this proposal. Costs associated with the use of waiver authority would depend upon the provisions of the regulations and statutes being waived.

Changes to Existing Law: This proposal would add a new section to title 10, United States Code, shown in full in the legislative text above.