

# Section-by-Section Analysis

## TITLE I—PROCUREMENT

### Subtitle A—Authorization of Appropriations

**Sections 101 through 105** would authorize appropriations for fiscal year 2022 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2022.

### Subtitle B—Other Matters

**Section 111.** Analysis indicates that the deployment criteria within section 112 of the fiscal year (FY) 2019 National Defense Authorization Act (as modified by section 111 of the FY 2021 National Defense Authorization Act) concerning interim missile defense capability is not fully achievable with the Army’s current acquisition approach for indirect fire protection capability (as stated in the report to Congress, dated 25 February 2020). The Army will prioritize the use of FY 2021 funding toward achieving an enduring, integrated capability as quickly as possible.

This legislative proposal would enable the Army sufficient time to provide an enduring indirect fire protection capability (IFPC). The enduring solution will be fully integrated with the Integrated Air Missile Defense Battle Command System (IBCS) and the Sentinel radar. The Army plans to have one battery of the enduring IFPC Increment 2 solution in FY 2023, and two full batteries of enduring IFPC Increment 2 by FY 2025 (the FY 2023 deployment date for one battery is supported by a Secretary of the Army waiver of the September 30, 2020 deadline that was executed pursuant to subsection (b)(4) of section 112). However, it would not meet the “two additional batteries” deployment criteria outlined in FY 2019 NDAA. It is important to note that there are potential Israeli Interim IFPC (Iron Dome) interoperability and security implications at issue. Accordingly, further investments should go toward an enduring IFPC.

**Budget Implications:** This proposal relieves the Army of a requirement to procure a second set of Interim Cruise Missile Defense systems in order to meet the FY 2019 NDAA requirement in FY 2023. The FY 2021 President’s Budget request reflects the successful outcome of this legislative proposal. The budget request avoids an additional \$240 million investment in an interim capability with investments in the enduring capability that will meet the full range of user requirements.

**Changes to Existing Law:** This proposal would make the following changes to section 112 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232, 132 Stat. 1661).

#### **SEC. 112. DEPLOYMENT BY THE ARMY OF AN INTERIM CRUISE MISSILE DEFENSE CAPABILITY.**

(a) CERTIFICATION REQUIRED.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall certify to the congressional defense committees whether there is a need for the Army to deploy an interim missile defense capability.

(b) DEPLOYMENT.—

(1) IN GENERAL.—If the Secretary of Defense certifies that there is a need for the Army to deploy an interim missile defense capability under subsection (a), the Secretary of the Army shall deploy the capability as follows:

(A) Two batteries of the capability shall be deployed by not later than September 30, 2020.

(B) ~~[Repealed]. Two additional batteries of the capability shall be deployed by not later than September 30, 2023.~~

(2) ACHIEVEMENT OF DEPLOYMENT DEADLINES.—In order to meet the deadlines for deployment specified in paragraph (1) the Secretary of the Army may—

(A) deploy systems that require the least amount of development;

(B) procure non-developmental air and missile defense systems currently in production to ensure rapid delivery of capability;

(C) use existing systems, components, and capabilities already in the Joint Force inventory, including rockets and missiles as available;

(D) use operational information technology for communication, detection, and fire control that is certified to work with existing joint information technology systems to ensure interoperability;

(E) engage and collaborate with officials, organizations, and activities of the Department of Defense with responsibilities relating to science and technology, engineering, testing, and acquisition, including the Defense Innovation United Experimental, the Director of Operational Test and Evaluation, the Defense Digital Service, the Strategic Capabilities Office, and the Rapid Capabilities offices, to accelerate the development, testing, and deployment of existing systems;

(F) use institutional and operational basing to facilitate rapid training and fielding;

(G) ~~[Repealed]. consider a range of direct energy weapon systems to compete for the 2023 deployment specified in paragraph (1)(B); and~~

(H) carry out such other activities as the Secretary determines to be appropriate.

(3) AUTHORITIES.—In carrying out paragraphs (1) and (2), Secretary of the Army may use any authority of the Secretary relating to acquisition, technology transfer, and personnel management that the Secretary considers appropriate, including rapid acquisition and rapid prototyping authorities, to resource and procure an interim missile defense capability.

(4) ~~[Repealed]. WAIVER.—The Secretary of the Army may waive the deadlines specified in paragraph (1):~~

~~(A) For the deadline specified in paragraph (1)(A), if the Secretary determines that sufficient funds have not been appropriated to enable the Secretary to meet such deadline.~~

~~(B) For the deadline specified in paragraph (1)(B), if the Secretary submits to the congressional defense committees a certification that —~~

~~(i) allocating resources toward procurement of an integrated enduring capability would provide robust tiered and layered protection to the joint force; or~~

~~(ii) additional time is required to complete testing, training, and preparation for operational capability.~~

(c) IN GENERAL.—If the Secretary of the Army will deploy an interim missile defense capability pursuant to subsection (b), then, by not later than March 1, 2019, the Secretary, in consultation with the Chief of Staff of the Army, shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing that includes—

(1) recommendations identifying any interim missile defense capabilities to be deployed and a proposed rapid acquisition schedule for such capabilities;

(2) a plan to rapidly resource any identified shortfalls for any such capability selected for deployment; and

(3) a schedule and timeline for the fielding and deployment of any such capability.

(d) INTERIM MISSILE DEFENSE CAPABILITY DEFINED.—In this section, the term “interim missile defense capability” means a fixed site, cruise missile defense capability that may be deployed before the Indirect Fire Protection Capability of the Army becomes fully operational.

**Section 112** would allow the Secretary of the Army to enter into a multiyear contract for UH/HH-60M Black Hawk helicopters beginning in fiscal years (FY) 2022 with an anticipated end in FY 2026 (subject to available appropriations). The proposed multiyear procurement (MYP) (FY 2022-2026) will produce significant savings and facilitate industrial stability.

Current budget estimates and associated funding levels are insufficient to support anything other than the proposed multiyear procurement of UH-60M Black Hawk helicopters without significant reductions in quantity each year. Additionally, this proposal will result in stabilization of the workforce and reduce administrative burden for both the Government and contractor resulting in a greater efficiency in acquisition operations.

**Budget Implications:** The funding currently in the FY 2022 and the FY 2022-2026 Program Objective Memorandum (POM) supports the procurement of UH/HH-60M Black Hawks under a multi-year procurement strategy. The Advanced Procurement funding requirements and the Army Base procurement requirements for the MYP occur in the FY 2022-2026 POM. The aircraft will displace aging analog aircraft currently in the fleet.

This proposed MYP is anticipated to result in a cost avoidance of \$361.823 million or 15.4 percent when compared to using five (5) annual contracts. The increase in cost avoidance is primarily attributed to a reduction in labor and material costs and reduction in overhead rates, as well as favorable fee impacts that result from a stable long-term procurement. Also included in the cost avoidance is reduced government contracts and acquisition personnel (business management) necessary to support a MYP over five (5) annual contracts.

Contractor labor costs are projected to be lower due to enhanced workforce stability. This stability is based on assumed lower employee turnover, based on having a guaranteed minimum production base to forecast labor needs, and avoiding hiring spikes and sudden layoffs.

Overhead rates are projected to be lower and more stable under a MYP as a result of avoiding any production break. Annual procurements result in aircraft quantities fluctuating from year-to-year resulting in higher purchasing and receiving costs.

Materiel costs are projected to be lower using a MYP as compared to single year buys. The prospect of a long-term five-year buy will enable the prime contractor to secure long-term agreements (LTAs) with sub-vendors. The Department’s MYP estimate assumes the prime contractor will be much more aggressive in the pursuit of LTAs with major sub-vendors.

In addition, more favorable labor costs, materiel costs, and overhead rates are anticipated to have a synergistic impact on the overall cost of this MYP buy. Recognizing the reduced risk to the prime contractor’s business base, the anticipated fee is estimated to be lower. The business base impact from more stable planning can be captured by the government as well as the inflation benefits from a stable buy utilizing economical materiel orders.

Budget estimates and associated funding levels for UH/HH-60M for FY 2022 and beyond are predicated on MYP authorization. Without the cost avoidance associated with a MYP, current budget estimates and associated funding levels would be insufficient to support the planned procurement of UH/HH-60M helicopter airframes.

The FY 2022-2026 MYP estimates are based on a government Cost Benefit Analysis that was developed from detailed MY8 and MY9 data provided by Sikorsky Aircraft Corporation. Army calculations show that the total cost avoidance of 15.0 percent, equates to \$241.376 million (Base Year 2005 \$M) including reduced government contracts and acquisition personnel (business management) needed to support an MYP over five (5) annual contracts, which is estimated at \$361.823 million then-year dollars.

	<b>Annual Contracts</b>	<b>MY X Alternative</b>
Total Contract Price	\$2,716,991,000	\$2,355,168,000
\$ Cost Avoidance over Annual		\$361,823,000
% Cost Avoidance over Annual		15.4%

	<b>Resource Requirements (TY\$M)</b>									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	BLI/SAG	Program Element
Requirements are for Prime only. Does not represent total Budget Requirement.										

Army Base Procurement		\$425.682	\$399.130	\$451.503	455.772	466.772	Aircraft Procurement, Army	1	020	A05002
Army Advance Procurement	\$31.33	\$68.341	18.559	20.026	18.660	-	Aircraft Procurement, Army	1	020	A05002
Total	\$31.33	\$494.023	\$417.689	\$471.529	\$474.432	\$466.772				

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

**Section 113** would provide authority to use Air Force procurement funds to purchase Commercial-Off-The-Shelf (COTS) parts qualified for use in the Ground Based Strategic Deterrent’s Nuclear Command & Control cryptographic device (aka the KS-75) supporting the life of the KS-75 program. This proposal will provide authority for a single FY22 life-of-type buy (LOTB) request for the KS-75 cryptographic device in the amount of \$10M.

The Air Force is developing a common cryptographic device, and supporting equipment, used in multiple subsystems and/or networks throughout the GBSD weapons system to reduce risk and enable the future GBSD Concept of Operations. The Air Force has partnered with the National Nuclear Security Administration (NNSA) via Sandia National Laboratories (SNL) as the Technical Design Agent responsible for the design, development, test, qualification, and certification of the KS-75 cryptographic device. This partnership was endorsed by the National Security Agency (NSA) in order to meet GBSD’s critical path schedule.

The life-of-type procurement strategy is critical to affordably buy qualified COTS parts for use during the KS-75 development effort, KS-75 integration testing within the larger GBSD EMD program, and in the future full rate production effort. The Air Force plans to procure COTS parts to ensure lot integrity of critical components within the KS-75, eliminate costly re-design if parts become unavailable in the future, reduce security risk of counterfeit parts entering the design while also reducing future production risk and increasing performance and reliability. Examples of parts to be procured include: microprocessors, memories, connectors, communication devices, transistors, switches, LEDs, resistors, capacitors, isolators, and gaskets. The parts will be stored and provided to the GBSD Engineering & Manufacturing Development (EMD) contractor as Government Furnished Property (GFP) to support the future Full Rate Production requirements of the KS-75 cryptographic device.

Procurement of these parts in quantities to support production and spares is necessary to support qualification, test, and NSA certification of COTS parts operating in the nuclear command and control environment. The Government’s qualification and certification is limited to specific production lots due to variations in supplier processes and materials which can significantly change electronics performance. Parts available from the supplier in subsequent production lots or from other suppliers are required to undergo a delta or complete re-certification process (depending on severity of design change) to obtain NSA approval for use in Nuclear Command and Control weapon systems. If re-design is required, the parts require a new part number and separate supply chain management activities associated with a second KS-75 configuration.

**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.

Without this LOTB authority, the program likely will not be able to procure the same hardware for the common components and will need to redesign and re-certify those components to support Air Force requirements. In this situation, the program cost would increase by \$9.1M, which includes the KS-75 specific costs associated with additional re-design, integration, system and regression tests, updates to hardware & circuit boards, updates to test & certification test equipment. This figure only estimates the impact to the Northrop Grumman system/regression testing that would be required by using an updated/new KS-75 configuration within the NG design. This figure does not include the \$10M cost associated with a 2<sup>nd</sup> LOTB request and prevents NG from retiring full rate production risks early in order to support First Production Unit (FPU) on-schedule by the end of 2027.

The RDT&E resources reflected in the table below are requested within the FY 2022 President’s Budget Request. The KS-75 LOTB request will initiate FY22 Advance Procurement and Initial Spares requests for the GBSD Program.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
AF GBSD FY22PB Request (PE: 0605230F; BA04; Vol. II - 267)	2,624	3,580	3,535	3,007	3,117	RDT&E, Air Force	4	267	0605230F
AF GBSD FY22PB Request (3020)	26.0	57.0	631.0	738.0	5,579	Missile Procurement, Air Force	1	MGBSD0	0101233F
AF GBSD Spares/Repair Parts FY22 Request (BP26)	2.0					Missile Procurement,, Air Force	4	00098A	TBD
Total	2,652	3,637	4,166	3,745	8,696	--	--	--	--

**Changes to Existing Law:** This proposal makes no changes to existing law.

## TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

**Section 201** would authorize appropriations for fiscal year 2022 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2022.

## TITLE III—OPERATION AND MAINTENANCE

**Section 301** would authorize appropriations for fiscal year 2022 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2022.

## **TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS**

### **Subtitle A—Active Forces**

**Section 401** would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2022.

**Section 402** would authorize the Secretary of Defense to increase the maximum number of general officers (GO) in the Army, Air Force, Marine Corps, or Space Force, or flag officers (FO) in the Navy, in the ranks of O-7 and O-8, to meet emerging requirements while maintaining the current statutory limit on the number of general and flag officers. Each appointment may be made only in conjunction with an offsetting reduction in the equivalent grade in one of the other armed forces (other than the Coast Guard). This proposal would limit the number of reallocations to 15 GOs/FOs at any one time, and would require DOD to notify Congress 30 days in advance of the reallocations.

Section 501(a)(2) of the Fiscal Year (FY) 2017 National Defense Authorization Act (NDAA) requires a reduction of 111 general and flag officer authorizations in the Army, Navy, Air Force, and the Joint Pool. The FY 2017 NDAA directed 33 reductions for the Army, Navy, and Air Force, and 78 reductions for the Joint Pool. The FY 2017 NDAA did not reduce the Marine Corps' GO allocations, but increased the service's total number of GOs by one. In net, authorized strength of general and flag officers in DOD was reduced from the current authorized level of 963 to 852 by December 31, 2022.

At the time of the enactment of the FY 2017 NDAA, Space Force had not been established. Currently, the Space Force does not have any statutory limitations for general officers and section 952 of the FY 2020 NDAA states that no additional military billets are authorized when establishing the Space Force.

If this proposal is not authorized, it could hamper DOD's efforts to provide Space Force with the general officers needed to stand up the Space Force, while doing so in the midst of executing the mandated GO/FO reductions. In the long term, it could hamper the Secretary's ability to meet emerging GO/FO requirements (e.g., a potential, sudden need for additional GO/FO for a specific military service to meet the requirements of a new National Security Strategic Guidance).

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

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

**§ 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, 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.

\* \* \* \* \*

(k) TRANSFER OF AUTHORIZATIONS AMONG THE MILITARY SERVICES.—(1) The Secretary of Defense may increase the maximum number of brigadier generals or major generals in the Army, Air Force, Marine Corps, or Space Force, or rear admirals (lower half) or rear admirals in the Navy, allowed under subsection (a) and section 525 of this title and the President may appoint officers in the equivalent grades equal to the number increased by the Secretary of Defense if each appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each increase and appointment made under the authority of paragraph (1) in the Army, Navy, Air Force, Marine Corps, or Space Force, 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 increase and appointment is made, the Secretary of Defense shall specify the armed force in which the reduction required by this paragraph is to be made.

(3) The total number of general officers and flag officers increased under paragraph (1), combined with the total number of general officers and flag officers increased under section 526a(i)(1) of this title, may not exceed 15 at any one time.

(4) The Secretary may not increase the maximum number of general officers or flag officers under paragraph (1) until the date that is 30 days after the date on which Secretary provides notice of the increase to the Committees on Armed Services of the House of Representatives and the Senate.

(k1) CESSATION OF APPLICABILITY.—The provisions of this section shall not apply to the number of general officers and flag officers in the armed forces after December 31, 2022. For provisions applicable to the number of such officers after that date, see section 526a of this title.

**§ 526a. Authorized strength after December 31, 2022: 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, 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.

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(i) TRANSFER OF AUTHORIZATIONS AMONG THE MILITARY SERVICES.—(1) The Secretary of Defense may increase the maximum number of brigadier generals or major generals in the Army, Air Force, Marine Corps, or Space Force, or rear admirals (lower half) or rear admirals in the Navy, allowed under subsection (a) and section 525 of this title and the President may appoint officers in the equivalent grades equal to the number increased by the Secretary of Defense if each appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each increase and appointment made under the authority of paragraph (1) in the Army, Navy, Air Force, Marine Corps, or Space Force, 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 increase and appointment is made, the Secretary of Defense shall specify the armed force in which the reduction required by this paragraph is to be made.

(3) The total number of general officers and flag officers increased under paragraph (1), combined with the total number of general officers and flag officers increased under section 526(k)(1) of this title, may not exceed 15 at any one time.

(4) The Secretary may not increase the maximum number of general officers or flag officers under paragraph (1) until the date that is 30 days after the date on which Secretary provides notice of the increase to the Committees on Armed Services of the House of Representatives and the Senate.

## **Subtitle B—Reserve Forces**

**Section 411** would prescribe the end strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense, and the Department of Homeland Security for the Coast Guard Reserve, in the President’s Budget for fiscal year 2022.

**Section 412** would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2022.

**Section 413** would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2022.

**Section 414** would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

## **Subtitle C—Authorization of Appropriations**

**Section 421** would authorize appropriations for fiscal year 2022 for military personnel.

## **TITLE V—MILITARY PERSONNEL POLICY**

**Section 501** would give the Army War College, the Army Command and General Staff College, the Army University, the Air University, the Naval War College, other accredited Department of the Navy degree-granting institutions, and the Marine Corps University the authority to hire administratively determined (AD) credentialed professional academic positions across all sectors of the university, regardless of the duration of the school term. The hiring authority would extend to civilian faculty positions to be filled by certified professionals whose primary duties involve teaching, lecturing, instructing, facilitating discussions in seminars, conducting scholarly research and writing, designing or developing curricula and learning support systems, governance of educational programs (such as dean, director, department chair or head, president, vice president, provost, or the equivalent), providing academic advice or consultation, or performing duties that are commonly understood to be duties appropriate for a member of the faculty of a fully accredited military education institution. Additionally, this proposal would add the Army University to section 7371 of title 10, United States Code.

Currently, section 7371 of title 10 authorizes the Secretary of the Army to hire AD faculty only at schools and colleges whose school terms are at least ten months in duration; these schools and colleges are the Army War College and the Army Command and Staff College. The proposed language would include the Army University. Similar to the Marine Corps University and the Air University, the Army University supports the United States Army Training and Doctrine Command schools and Centers of Excellence for training, education, and leader development as the functional representative for Army learning requirements, by integrating all of the Army's professional military education institutions into a single education structure modeled after many university systems across the country.

The same analysis applies to Air Force hiring under section 9371 of title 10, which authorizes the Secretary of the Air Force to hire AD faculty only at the Air War College, the Air Command and Staff College, and the School of Advanced Air and Space Studies. Currently, section 8748 of title 10 authorizes the Secretary of the Navy to hire AD faculty only at the Naval War College, the Marine Corps War College, the Marine Corps Command and Staff College, the School of Advanced Warfighting, and the Expeditionary Warfare School.

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

The AD faculty hiring process allows the Secretary concerned to fill faculty vacancies on renewable contracts. This allows the Secretary concerned to replace faculty and to search for

individuals with special talents and qualifications needed for the development of curricula and other academic functions in specific areas in a timely fashion. Hiring a typical Government Service (GS) civil servant assumes that the person will remain in the position for a long time, perhaps a career, and maintaining academic currency is difficult. Additionally, the constraints of the GS system preclude specifying degree and skill levels required in favor of general-purpose duty descriptions that are broadly applicable. Academia requires a different approach.

Unlike the GS personnel system, the AD authority is designed specifically to authorize the Secretary concerned to recruit and hire personnel with sufficient professional academic credentials, which are necessary to ensure success at educational institutions such as the Army War College, the Marine Corps War College, the Naval War College, and the Air War College. The rationale for authorizing Service Secretaries to hire AD faculty at these schools and colleges should also apply to extending the AD hiring authority at those previously mentioned military schools and colleges where AD hiring authority does not exist, such as enlisted professional military education programs, officer professional military education programs, officer accession programs, and civilian professional development programs—all such programs whose terms are less than 10 months in duration. Granting the Service Secretaries the authority to hire AD faculty at these institutions, which they urgently need, would allow them to recruit, develop, and retain personnel best suited to support Service educational and force development requirements.

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

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

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

This proposal similarly supports the Army Learning Model and the Army Concept for Training and Education to support sequential and progressive education along a Soldier's career and learning continuum. The intended outcome of this legislative change would also provide the

Army University the flexibility to hire the most appropriate academic personnel to meet the Army's force development education requirements.

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

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

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

The majority of the force development educational programs at the Air University, the Army University, and the Marine Corps University are denied the crucial opportunity to field a faculty with a blend of military experts and highly qualified, credentialed civilian academic professionals.

**Budget Implications:** This proposal has no significant budgetary impact. The affected resources are incidental in nature and amount and are included in the Fiscal Year 2022 President's Budget request.

**Changes to Existing Law:** This proposal would make the following changes to sections 7371, 8748, and 9371 of title 10, United States Code:

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

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

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

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

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

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**§ 8748. Naval War College and, Marine Corps University, and other Naval University System institutions: civilian faculty members**

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

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

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

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**§ 9371. Air University: Civilian Faculty Members**

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

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

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

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

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

**Section 502** would modify section 554 of the William M. (Mac) Thornberry Public Law National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–28), which establishes an additional Deputy Inspector General (DIG) within the Department of Defense Office of Inspector General (DoD OIG). Specifically, the proposal would amend subsection (a) of section 554, “Establishment of Additional Deputy Inspector General of the Department of Defense,” to remedy conflicts with the Inspector General Act of 1978 and impairment of Inspector General (IG) statutory independence, and to change the title of the new position to align with the titles used in the IG’s implementing statute.

Section 554(a) establishes within the DoD OIG an additional DIG to provide oversight of diversity and inclusion programs and efforts in the DoD, as well as supremacist, extremist, and criminal gang activity in the Armed Forces. Specifically, the provision requires that the Secretary of Defense (SECDEF) appoint a member of the Senior Executive Service (SES) of the DoD to report directly to and serve under the authority, direction, and control of the DoD IG.

The Inspector General Act of 1978 (5 U.S.C. App.) provides that it is the IG’s duty and responsibility to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the DoD. The IG Act further states that neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. However, section 554(a) places hiring responsibility with the SECDEF, infringing on the IG’s statutory authority and independence to hire personnel whom the IG deems necessary to carry out the DoD OIG’s mission. In addition, this provision inserts a unique, DoD-hired and SECDEF-appointed SES member of the Senior Executive Service (SES) into the DoD OIG’s existing organization; however, SES positions in the DoD OIG are established, administered, and filled by the IG, independent of the DoD. The provision also creates for the new SECDEF-appointed DIG and the independent IG the potential for conflicts with the OIG mission and the loss of IG independence by subjecting the new DIG position to the “authority, direction, and control” of the IG while concurrently requiring the new DIG to accept additional duties directly from the SECDEF. This proposal resolves the conflicts with the IG’s statutory authority and independence to hire personnel.

Section 554(a) also assigns a number of duties to the SECDEF-appointed DIG that either conflict with or duplicate IG Act statutory responsibilities already assigned to existing DoD OIG positions, such as the DIG for Audit and DIG for Investigations. The provision also creates recurring reporting requirements from the DIG (not the IG, as would be expected consistent with the requirements of the IG Act) to the IG, the SECDEF, congressional committees, and the public. Specifically, beginning in second quarter FY 2022, section 554(a) requires the DIG to submit semiannual reports to the SECDEF and the IG, summarizing the DIG’s activities. Section 554(a) also requires an annual report to the congressional defense committees presenting findings and recommendations regarding the effects of DoD policies, programs, systems, and processes regarding diversity and inclusion in the DoD; and programs, systems, and processes to prevent and respond to supremacist, extremist, and criminal gang activity by a member of the Armed Forces. Given that all of the DoD OIG’s oversight work is already summarized in the Semiannual Report to the Congress (SAR), which reports the oversight produced under the

direction of each DIG, this information would already be included in that reporting. A separate reporting requirement is redundant. This proposal revises the mechanisms by which the DoD OIG reports the activities of the proposed Assistant Inspector General to the Congress, as well as the substantive information required to be reported annually, to make the reporting requirements consistent with the DoD OIG's existing reporting requirements under Section 5 of the IG Act.

This proposal also makes changes throughout section 554(a) to the title of the new DIG position, from "Deputy" to "Assistant" Inspector General, which is the title used in section 3 of the Inspector General Act of 1978 to refer to subordinate IG officials appointed by the IG.

Finally, this proposal modifies subsection 554(a)(3) to ensure all the Inspectors General Department are included among the IGs with whom the new DoD IG is required to coordinate and receive cooperation.

**Budget Implications:** This proposal has no significant budgetary impact. Resources impacted by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2022 President's Budget request.

**Changes to Existing Law:** This proposal would amend section 554 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283) as follows:

**SEC. 554. INSPECTOR GENERAL OVERSIGHT OF DIVERSITY AND INCLUSION IN DEPARTMENT OF DEFENSE; SUPREMACIST, EXTREMIST, OR CRIMINAL GANG ACTIVITY IN THE ARMED FORCES.**

(a) Establishment of Additional ~~Deputy~~ Assistant Inspector General of the Department of Defense.—

(1) In general.--Not later than 90 days after the date of the enactment of this Act, the ~~Secretary of Defense~~ Inspector General of the Department of Defense shall appoint, in the Office of ~~the~~ Inspector General of the Department of Defense, an additional ~~Deputy~~ Assistant Inspector General who--

(A) shall be a member of the Senior Executive Service ~~of the Department~~; and

(B) shall ~~report directly to and serve~~ be under the authority, direction, and control of the Inspector General.

(2) Duties.--Subject to the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App.), the ~~Deputy~~ Assistant Inspector General shall have the following duties:

(A) ~~Conducting and supervising~~ Developing and carrying out a plan for the conduct of comprehensive oversight, including through the conduct and supervision of audits, investigations, and evaluations inspections, of policies, programs, systems, and processes of the Department--

(i) to determine the effect of such policies, programs, systems, and processes regarding personnel on diversity and inclusion in the Department; and

(ii) to prevent and respond to supremacist, extremist, and criminal gang activity of a member of the Armed Forces, ~~including the duties of the Inspector General under subsection (b).~~

(B) Additional duties prescribed by the ~~Secretary or~~ Inspector General.

(3) Coordination of efforts.--In carrying out the duties under paragraph (2), the ~~Deputy~~ Assistant Inspector General shall coordinate with, and receive the cooperation of the following:

- (A) The Inspector General of the Army.
- (B) The Inspector General of the Navy.
- (C) The Inspector General of the Air Force.
- (D) The other ~~Deputy~~ Inspectors General of the Department.

(4) Reports.--

(A) One-time report.--Not later than 180 days after the date of the enactment of this Act, the Inspector General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing, with respect to the ~~Deputy~~ Assistant Inspector General appointed under this subsection:

- (i) the duties and responsibilities to be assigned to such ~~Deputy~~ Assistant Inspector General;
- (ii) the organization, structure, staffing, and funding of the office established to support such ~~Deputy~~ Assistant Inspector General in the execution of such duties and responsibilities;
- (iii) challenges to the establishment of such ~~Deputy~~ Assistant Inspector General and such office, including any shortfalls in personnel and funding; and
- (iv) the date by which the Inspector General expects such ~~Deputy~~ Assistant Inspector General and the office will reach full operational capability.

(B) Semiannual reports.--Not later than 30 days after the end of the second and fourth quarters of each fiscal year beginning in fiscal year 2022, the ~~Deputy~~ Inspector General shall submit to the Secretary ~~and the Inspector General~~ a report including a summary of the activities of the ~~Deputy~~ Assistant Inspector General during the two fiscal quarters preceding the date of the report, for inclusion in the next semiannual report of the Inspector General under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).

(C) Annual reports.--The ~~Deputy~~ Inspector General shall submit, through the Secretary ~~and Inspector General~~, to the Committees on Armed Services of the Senate and the House of Representatives annual reports presenting findings and recommendations regarding--

- (i) the effects of policies, programs, systems, and processes of the Department, regarding personnel, on diversity and inclusion in the Department; and
- (ii) the effectiveness of such policies, programs, systems, and processes in preventing and responding to supremacist, extremist, and criminal gang activity of a member of the Armed Forces.

(D) Occasional reports.--The ~~Deputy~~ Inspector General shall, from time to time, submit to the Secretary ~~and the Inspector General~~ additional reports as the Secretary ~~or~~ Inspector General may ~~direct~~ determine.

(E) Online publication.--The ~~Deputy~~ Inspector General shall publish each report under this paragraph on a publicly accessible website ~~of the Department not later than 21 days after submitting such report to the Secretary, Inspector General, or the Committees on Armed Services of the Senate and the House of Representatives consistent with the requirements of the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App.).~~

(b) Establishment of Standard Policies, Processes, Tracking Mechanisms, and Reporting Requirements for Supremacist, Extremist, and Criminal Gang Activity in Certain Armed Forces.--

(1) In general.--The Secretary of Defense shall establish policies, processes, and mechanisms, standard across the covered Armed Forces, that ensure that--

(A) all allegations (and related information) that a member of a covered Armed Force has engaged in a prohibited activity, are referred to the Inspector General of the Department of Defense;

(B) the Inspector General can document and track the referral, for purposes of an investigation or inquiry of an allegation described in paragraph (1), to--

- (i) a military criminal investigative organization;
- (ii) an inspector general;
- (iii) a military police or security police organization;
- (iv) a military commander;
- (v) another organization or official of the Department; or
- (vi) a civilian law enforcement organization or official;

(C) the Inspector General can document and track the referral, to a military commander or other appropriate authority, of the final report of an investigation or inquiry described in subparagraph (B) for action;

(D) the Inspector General can document the determination of whether a member described in subparagraph (A) engaged in prohibited activity;

(E) the Inspector General can document whether a member of a covered Armed Force was subject to action (including judicial, disciplinary, adverse, or corrective administrative action) or no action, as the case may be, based on a determination described in subparagraph (D); and

(F) the Inspector General can provide, or track the referral to a civilian law enforcement agency of, any information described in this paragraph.

(2) Report.--Not later than December 1 of each year beginning after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the policies, processes, and mechanisms implemented under paragraph (1). Each report shall include, with respect to the fiscal year preceding the date of the report, the following:

(A) The total number of referrals received by the Inspector General under paragraph (1)(A);

(B) The total number of investigations and inquiries conducted pursuant to a referral described in paragraph (1)(B);

(C) The total number of members of a covered Armed Force who, on the basis of determinations described in paragraph (1)(D) that the members engaged in prohibited activity, were subject to action described in paragraph (1)(E), including--

- (i) court-martial,
- (ii) other criminal prosecution,
- (iii) non-judicial punishment under Article 15 of the Uniform Code of Military Justice;

or

(iv) administrative action, including involuntary discharge from the Armed Forces, a denial of reenlistment, or counseling.

(D) The total number of members of a covered Armed Force described in paragraph (1)(A) who were not subject to action described in paragraph (1)(E), notwithstanding determinations described in paragraph (1)(D) that such members engaged in prohibited activity.

(E) The total number of referrals described in paragraph (1)(F).

(3) Definitions.--In this subsection:

(A) The term “appropriate congressional committees” means--

(i) the Committee on the Judiciary and the Committee on Armed Services of the Senate; and

(ii) the Committee on the Judiciary and the Committee on Armed Services of the House of Representatives.

(B) The term “covered Armed Force” means an Armed Force under the jurisdiction of the Secretary of a military department.

(C) The term “prohibited activity” means an activity prohibited under Department of Defense Instruction 1325.06, titled “Handling Dissident and Protest Activities Among Members of the Armed Forces”, or any successor instruction.

## **TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS**

**Section 601** would amend titles 10 and 37 of the U.S. Code to make permanent existing travel and transportation authorities that will expire after December 31, 2021. Section 631 of the FY 2012 NDAA (P.L. 112-81) consolidated travel and transportation allowances with the intent for DOD to reform and update those policies using the new broader travel and transportation authorities. When Congress renumbered the existing authorities, Congress also provided a 10-year sunset date for these old authorities, which provided sufficient time for DOD to transition to the new, broader authorities. When reviewing the existing statute, DOD determined that several “old” authorities were not included in the new statute, and therefore the Department needs to amend existing authorities to ensure these allowances may continue to be paid.

The proposed legislation would amend section 12604 of title 10, United States Code (U.S.C.), to ensure that the Department of Defense can continue to provide lodging in kind to reserve component members performing training, who are not otherwise authorized travel and transportation allowances, before the expiration of subsection 474(i) of title 37, U.S.C. Currently, section 474(i) provides temporary authority for the Secretary concerned to reimburse housing service charges incurred while occupying transient government housing or provide lodging in kind. The authority will expire after December 31, 2021.

Concerning transportation allowances, this proposal would also amend section 451 of title 37, U.S.C., to include “pet quarantine expenses” in the definition of “relocation allowances,” which would ensure that the Department can continue to reimburse mandatory pet quarantine fees incident to a Permanent Change of Station (PCS) move. Currently, section 476 of title 37, U.S.C., provides the authority to reimburse these fees, but this authority will expire after December 31, 2021.

Additionally, the proposal would amend sections 451 and 452 to include travel to the United States by a dependent child to obtain formal secondary, undergraduate, graduate, or vocational education. This amendment would allow the Department to reimburse travel by a Service member’s eligible dependent from an outside the continental United States permanent duty station to (or, in the case of a member stationed in Alaska or Hawaii, within) the United States to attend secondary (9<sup>th</sup>-12<sup>th</sup> grade), undergraduate, graduate, or vocational education. Currently, sections 476 and 490 of title 37, U.S.C., provide the authority to pay these

transportation expenses. However, this authority will expire after December 31, 2021. Furthermore, the proposal would enable the Department to continue to transport the dependents of Service members incident to a ship being constructed, inactivated, or overhauled away from the Service member's home port. Currently, sections 476b and 476c of title 37, U.S.C., provide the authority to pay these transportation expenses. However, this authority will expire after December 31, 2021.

**Budget Implications:** The resources impacted are reflected in the tables below and are included within the FY 2022 President's Budget request.

<b>RESOURCE IMPACT (\$MILLIONS) – LODGING IN KIND</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI / SAG</b>	<b>Program Element (for all RDT&amp;E Programs)</b>
Army National Guard	\$20.8	\$21.8	\$22.6	\$23.5	\$24.5	Operation and Maintenance, Army National Guard	01	113	
Army Reserve	\$29.5	\$30.1	\$29.2	\$29.9	\$30.3	Operation and Maintenance, Army Reserve	01	113R18000	
Navy Reserve	\$16.5	\$16.9	\$17.2	\$17.5	\$17.9	Operation and Maintenance, Navy Reserve	01	1C6C	
Marine Corps Reserve	\$2.6	\$2.7	\$2.8	\$2.9	\$3.0	Operation and Maintenance, Marine Corps Reserve	04	4A4G	
Air Force Reserve	\$39.0	\$39.0	\$39.5	\$39.5	\$40.0	Operation and Maintenance, Air Force Reserve	01	011A	
Air National Guard	\$18.3	\$20.2	\$22.2	\$24.4	\$26.8	Operation and Maintenance, Air National Guard	01	011G	
<b>Total</b>	\$126.7	\$130.7	\$133.5	\$137.7	\$142.5				

**Cost Methodology:** This Resource Impact chart shows the amount of funding estimated to be paid by the Services each year for lodging in-kind to Reserve Component members performing training.

**PERSONNEL IMPACT – LODGING IN KIND**

	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/S AG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
Army National Guard	42,220	43,954	45,752	47,620	49,642	Operation and Maintenance, Army National Guard	01	113	
Army Reserve	74,000	74,000	74,000	74,000	74,000	Operation and Maintenance, Army Reserve	01	113R18000	
Navy Reserve	46,748	46,732	46,748	46,718	46,739	Operation and Maintenance, Navy Reserve	01	1C6C	
Marine Corps Reserve	2,641	2,641	2,641	2,641	2,641	Operation and Maintenance, Marine Corps Reserve	04	4A4G	
Air Force Reserve	57,200	57,200	57,200	57,200	57,200	Operation and Maintenance, Air Force Reserve	01	011A	
Air National Guard	12,000	12,000	12,000	12,000	12,000	Operation and Maintenance, Air National Guard	01	011G	
<b>Total</b>	234,809	236,527	238,341	240,179	242,222				

<b>RESOURCE IMPACT (\$MILLIONS) – MANDATORY PET QUARANTINE FEES</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI / SAG</b>	<b>Program Element (for all RDT&amp;E Programs)</b>
Army	\$2.7	\$2.7	\$2.7	\$2.7	\$2.7	Military Personnel, Army	05	140	
Navy	\$0.55	\$0.55	\$0.55	\$0.55	\$0.55	Military Personnel, Navy	05	53400	
Marine Corps	\$0.003	\$0.004	\$0.004	\$0.004	\$0.004	Military Personnel, Marine Corps	05	34000	
Air Force	0.113	0.116	0.118	0.121	0.124	Military Personnel, Air Force	05	140	
<b>Total</b>	\$3.336	\$3.370	\$3.372	\$3.375	\$3.378				

**Cost Methodology:** This Resource Impact chart shows the amount of funding estimated to be paid by the Services each year for mandatory pet quarantine fees.

<b>PERSONNEL IMPACT – MANDATORY PET QUARANTINE FEES</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/S AG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
Army	4,965	4,965	4,965	4,965	4,965	Military Personnel, Army	05	140	
Navy	1,000	1,000	1,000	1,000	1,000	Military Personnel, Navy	05	53400	
Marine Corps	7	7	7	7	7	Military Personnel, Marine Corps	05	34000	
Air Force	457	457	457	458	458	Military Personnel Appropriation, Air Force	05	140	
<b>Total</b>	<b>6,429</b>	<b>6,429</b>	<b>6,429</b>	<b>6,430</b>	<b>6,430</b>				

<b>RESOURCE IMPACT (\$MILLIONS) – STUDENT DEPENDENT TRANSPORTATION</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI / SAG</b>	<b>Program Element (for all RDT&amp;E Programs)</b>
Army	\$1.0	\$1.0	\$1.0	\$1.0	\$1.0	Military Personnel, Army	05	140/5DA	
Navy	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6	Operation and Maintenance, Navy	01	1A1A	
Marine Corps	\$0.07 3	\$0.074	\$0.075	\$0.076	\$0.077	Operation and Maintenance, Marine Corps	01	1A1A	
Air Force does not intend to use this authority.									
<b>Total</b>	<b>\$2.67 3</b>	<b>\$2.674</b>	<b>\$2.775</b>	<b>\$2.776</b>	<b>\$2.877</b>				

**Cost Methodology:** This Resource Impact chart shows the amount of funding estimated to be paid by the Services each year for student dependent transportation.

<b>PERSONNEL IMPACT – STUDENT DEPENDENT TRANSPORTATION</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/S AG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
Army	1,000	1,000	1,000	1,000	1,000	Military Personnel, Army	05	140/5 DA	

Navy	1,600	1,600	1,600	1,600	1,600	Operation and Maintenance, Navy	01	1A1A	
Marine Corps	46	53	60	67	74	Operation and Maintenance, Marine Corps	01	1A1A	
Air Force does not intend to use this authority.									
<b>Total</b>	2,646	2,653	2,660	2,667	2,674				

<b>RESOURCE IMPACT (\$MILLIONS) – DEPENDENT TRANSPORTATION INCIDENT TO SHIP WORK</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI / SAG</b>	<b>Program Element (for all RDT&amp;E Programs)</b>
Navy	\$10.2	\$10.4	\$10.6	\$10.8	\$11.0	Operation and Maintenance, Navy	01	11B4B	
Army does not intend to use this authority.									
Air Force does not intend to use this authority.									
USMC does not intend to use this authority									
<b>Total</b>	\$10.2	\$10.4	\$10.6	\$10.8	\$11.0				

**Cost Methodology:** This Resource Impact chart shows the amount of funding estimated to be paid by the Services each year for dependent transportation incident to ship construction, inactivation, and overhauling.

<b>PERSONNEL IMPACT – DEPENDENT TRANSPORTATION INCIDENT TO SHIP WORK</b>									
	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/S AG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
Navy	5,000	5,000	5,000	5,000	5,000	Operation and Maintenance, Navy	01	11B4 B	
Army does not intend to use this authority.									
Air Force does not intend to use this authority.									
USMC does not intend to use this authority.									
<b>Total</b>	5,000	5,000	5,000	5,000	5,000				

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

### TITLE 10, UNITED STATES CODE

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**§12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training**

(a) **AUTHORITY FOR BILLETING ON SAME BASIS AS ACTIVE DUTY MEMBERS TRAVELING UNDER ORDERS.**—The Secretary of Defense shall prescribe regulations authorizing a Reserve traveling to inactive-duty training at a location more than 50 miles from that Reserve’s residence to be eligible for billeting in Department of Defense facilities on the same basis and to the same extent as a member of the armed forces on active duty who is traveling under orders away from the member’s permanent duty station.

(b) **PROOF OF REASON FOR TRAVEL.**—The Secretary shall include in the regulations the means for confirming a Reserve’s eligibility for billeting under subsection (a).

(c) **LODGING IN KIND**—(1) In the case of a member of a reserve component performing active duty for training or inactive-duty training who is not otherwise entitled to travel and transportation allowances in connection with such duty, the Secretary concerned may reimburse the member for housing service charge expenses incurred by the member in occupying transient government housing during the performance of such duty. If transient government housing is unavailable or inadequate, the Secretary concerned may provide the member with lodging in kind.

(2) Any payment or other benefit under this subsection shall be provided in accordance with regulations prescribed by the Secretary concerned.

(3) The Secretary may pay service charge expenses under paragraph (1) and expenses of providing lodging in kind under such paragraph out of funds appropriated for operation and maintenance for the reserve component concerned. Use of a Government charge card is authorized for payment of these expenses.

(4) Decisions regarding the availability or adequacy of government housing at a military installation under paragraph (1) shall be made by the installation commander.

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## TITLE 37, UNITED STATES CODE

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### §451. Definitions

(a) **DEFINITIONS RELATING TO PERSONS.**—In this subchapter and subchapter II:

\*\*\*\*\*

(2) The term “authorized traveler” means a person who is authorized travel and transportation allowances when performing official travel ordered or authorized by the administering Secretary. Such term includes the following:

\*\*\*\*\*

(H) Any other person not covered by subparagraphs (A) through (G) who is determined by the administering Secretary pursuant to regulations prescribed under section 464 of this title as warranting the provision of travel benefits for purposes of the following:

\*\*\*\*\*

(vii) Transportation of a dependent child to the United States to obtain formal secondary, undergraduate, graduate, or vocational education, if the permanent duty assignment location of the member of the

uniformed services is outside the continental United States (other than in Alaska or Hawaii).

(viii) Transportation of a dependent child within the United States to obtain formal secondary, undergraduate, graduate, or vocational education, if the permanent duty assignment location of the member of the uniformed services is in Alaska or Hawaii and the school is located in a State outside of the permanent duty assignment location.

(ix) Transportation of a dependent to a location where a member of the uniformed services is on permanent duty aboard a ship that is overhauling, inactivating, or under construction.

(b) DEFINITIONS RELATING TO TRAVEL AND TRANSPORTATION ALLOWANCES.-In this subchapter and subchapter II:

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(8) The term “relocation allowances” means the costs associated with relocating a member of the uniformed services and the member's dependents between an old and new temporary or permanent duty assignment location or other authorized location. Such costs include pet quarantine expenses.

\*\*\*\*\*

(10)(A) The term ‘permanent duty assignment location’ means—

(i) the official station of a member of the uniformed services; or

(ii) the residence of a dependent of a member of the uniformed services.

(B) As used in subparagraph (A)(ii), the residence of a dependent who is a student not living with the member while at school is the permanent duty assignment location of the dependent student.

#### **§452. Allowable travel and transportation: general authorities**

(a) IN GENERAL.-Except as otherwise prohibited by law, a member of the uniformed services or other authorized traveler may be provided transportation-, lodging-, or meals-in-kind, or actual and necessary expenses of travel and transportation, for, or in connection with, official travel under circumstances as specified in regulations prescribed under section 464 of this title.

(b) SPECIFIC CIRCUMSTANCES.-The authority under subsection (a) includes travel under or in connection with, but not limited to, the following circumstances, to the extent specified in regulations prescribed under section 464 of this title:

\*\*\*\*\*

(18) Travel by a dependent child to the United States to obtain formal secondary, undergraduate, graduate, or vocational education, if the permanent duty assignment location of the member of the uniformed services is outside the continental United States (other than in Alaska or Hawaii).

(19) Travel by a dependent child within the United States to obtain formal secondary, undergraduate, graduate, or vocational education, if the permanent duty assignment location of the member of the uniformed services is in Alaska or Hawaii and the school is located in a State outside of the permanent duty assignment location.

(20) Subject to subsection (i), travel by a dependent to a location where a member of the uniformed services is on permanent duty aboard a ship that is overhauling, inactivating, or under construction.

\*\*\*\*\*

(i) DEPENDENT TRANSPORTATION INCIDENT TO SHIP CONSTRUCTION, INACTIVATION, AND OVERHAULING.—The authority under subsection (a) for travel in connection with circumstances described in subsection (b)(19) shall be subject to the following terms and conditions:

(1) The Service member must be permanently assigned to the ship for 31 or more consecutive days to be eligible for allowances, and the transportation allowances accrue on the 31st day and every 60 days thereafter.

(2) Transportation in kind, reimbursement for personally procured transportation, or a monetary allowance for mileage in place of the cost of transportation may be provided, in lieu of the member's entitlement to transportation, for the member's dependents from the location that was the home port of the ship before commencement of overhaul or inactivation to the port of overhaul or inactivation.

(3) The total reimbursement for transportation for the member's dependents may not exceed the cost of one Government-procured commercial round-trip travel.

\*\*\*\*\*

#### **§474. Authority to require the occupation of quarters on a rental basis while performing official travel**

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~~(i)(1) LODGING IN KIND.—In the case of a member of a reserve component performing active duty for training or inactive-duty training who is not otherwise entitled to travel and transportation allowances in connection with such duty, the Secretary concerned may reimburse the member for housing service charge expenses incurred by the member in occupying transient government housing during the performance of such duty. If transient government housing is unavailable or inadequate, the Secretary concerned may provide the member with lodging in kind.~~

~~(2) Any payment or other benefit under this subsection shall be provided in accordance with regulations prescribed by the Secretary concerned.~~

~~(3) The Secretary may pay service charge expenses under subsection (c) and expenses of providing lodging in kind under such paragraph out of funds appropriated for operation and maintenance for the reserve component concerned. Use of Government charge cards is authorized for payment of these expenses.~~

~~(4) Decisions regarding the availability or adequacy of government housing at a military installation under subsection (c) shall be made by the installation commander.~~

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**Section 602** would provide the Defense Commissary Agency (DeCA) with greater flexibility in addressing commissary store construction, renovation, repairs, and upgrades by allowing DeCA to deposit additional revenues into the surcharge account established pursuant to section 2484 of title 10, United States Code (section 2484), or, in the case of funds from foreign countries provided to the U.S. under burden-sharing agreements, directly obligate those funds.

The additional revenues that can be deposited into the surcharge account under this proposal are: (1) funds derived from improved management practices, including newly established business arrangements or processes with exchange stores, (2) revenue margin from variable pricing, (3) contracts with other agencies and instrumentalities, and (4) funds received as assistance for repair or reconstruction of a commissary store in connection with a disaster or emergency. The proposal would also allow DeCA to directly obligate funds provided by a host nation for a new commissary store in accordance with a country-to-country agreement.

Section 2483(c) allows DeCA to supplement its funding for operating costs with funds generated through improved management practices with exchange stores in accordance with sections 2481(c)(3) and 2487(c), as well as proceeds from variable pricing as authorized under section 2484(i). However, these funds cannot currently be used for expenses funded by the surcharge account, such as store sustainment expenses, construction, and environmental upgrades to commissary stores and distribution centers. This proposal would authorize these funds and proceeds to be used for either of these purposes.

The amendments to section 2484(h) made by this proposal provide a means for the funds of a host nation and a Service in burden-sharing and relocation accounts to be directly obligated by DeCA for the same expenses chargeable to the surcharge account, such as when a new commissary store is constructed based upon the request of the host nation. Currently, when a host nation requests the United States to relocate a commissary store, the host nation provides funds for the relocation; if the host nation contribution is insufficient to complete the relocation, the responsible Service is required to fund the difference. The host nation funds are deposited into DoD and/or U.S. Treasury accounts and made available for relocation activities pursuant to sections 2350j and 2350k. The responsible Service arranges contracts and obligates funds on behalf of DeCA to relocate the commissary facilities. This process requires DeCA to coordinate all activity through a military Service instead of working directly with vendors to relocate commissary facilities. The proposed amendments would allow DeCA to directly execute for section 2484(h) purposes host nation contributions and Services' funds from the DoD/U.S. Treasury accounts, which would allow the commissary system the flexibility to execute requirements more economically and efficiently through the use of existing contracts. Host nation funds would continue to be deposited into, and obligated from, DoD and U.S. Treasury accounts pursuant to sections 2350j and 2350k.

In a similar fashion, repairs to a commissary store required as the result of a disaster or emergency may be funded from the surcharge account. However, DeCA currently is not permitted to deposit Federal disaster or emergency relief funds received in connection with damage to a commissary store into the surcharge account. The amendment to section 2485(h) made by this proposal addresses this shortcoming by allowing a commissary store to benefit from disaster or emergency appropriations provided for repair or reconstruction of commissary stores.

This proposal also would allow DeCA to supplement the surcharge account with funding received from Federal departments, agencies, and instrumentalities under sections 2481(c)(3), 2485(b), and 2487(c), including other agencies of the Department of Defense. This would allow DeCA to utilize this funding for certain obligations it incurs that would normally be funded by

the surcharge account (e.g., funding received for system changes required to DeCA store systems to support acceptance of the Military Star Card and funding in support of system changes required for expanded patronage for disabled veterans provided under section 1065).

Finally, this proposal would provide DeCA the ability to determine where the profits from the variable pricing initiative best serve the patrons of commissary stores and the Department of Defense. Under this proposal, the Secretary of Defense would be able to evaluate whether the margin generated under the variable pricing model should be used to offset operating expenses for the Services or to address sustainment, environmental issues, construction, or maintenance needs of commissary stores.

**Budget Implications:** The table below reflects resource requirements as identified in the legislative proposal. This proposal will not impact DeCA’s appropriated funding and will not impact the required other income offset to meet the Commissary Operations budget. As displayed in the table, additional other income will offset the potential increase in Surcharge program requirements. The additional funding into the Surcharge Fund will allow DeCA to support increased requirements related to establishing a viable eCommerce presence across the enterprise, as well as accelerating the restoration and modernization of DeCA facilities to enable DeCA to better compete with private grocery chains. The resources reflected in the table below are funded within the fiscal year (FY) 2022 President’s Budget.

\$M	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity
DeCA APPN	1,168.1	1,175.4	1,192.8	1,216.6	1,239.7	97X4930.4	WCF - Commissary Operations
Other Income	118.7	128.9	135.7	135.7	135.7	97X4930.4	WCF - Commissary Operations
Surcharge Trust Fund	235.5	231.1	233.6	236.0	236.4	97X8164	Surcharge Collections
Other Income	35.0	36.5	37.8	38.4	40.0	97X4930.4	WCF - Resale
Revised Surcharge Trust Fund	270.5	267.6	271.4	274.4	276.4	97X8164	Surcharge Collections

**Changes to Existing Law:** This proposal would make the following changes to sections 2484 of title 10, United States Code:

**§ 2484 - Commissary stores: merchandise that may be sold, uniform surcharges, and pricing**

\* \* \* \* \*

(h) Use of Surcharge for Construction, Repair, Improvement, and Maintenance.—

(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term “physical infrastructure” includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(B) In subparagraph (A), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (d) in connection with sales of commissary merchandise through initiatives described in subparagraph (B) to offset the cost of such initiatives.

(B) Subparagraph (A) applies with respect to initiatives utilizing temporary and mobile equipment, intended to provide members of reserve components, retired members, and other persons eligible for commissary benefits, but without reasonable access to commissary stores, improved access to commissary merchandise.

(4) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1), (2), or (3), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

(5) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

(A) Sale of recyclable materials.

(B) Sale of excess and surplus property.

(C) License fees.

(D) Royalties.

(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(F) Contributions for any purpose set forth in paragraph (1) in connection with a host nation country-to-country agreement.

(G) Amounts appropriated for repair or reconstruction of a commissary store in response to a disaster or emergency.

(6) In addition to the revenues specified in paragraph (5) deposited into the account used for commissary store surcharge collections, amounts may be transferred to such account from the following sources and used for the purposes set forth in paragraphs (1), (2), and (3):

(A) Balances in nonappropriated and appropriated fund accounts of the Department of Defense, including Defense Working Capital Fund accounts, derived from improved management practices implemented pursuant to sections 2481(c)(3), 2485(b), and 2487(c) of this title.

(B) Balances in Defense Working Capital Fund commissary operations accounts derived from the variable pricing program implemented pursuant to subsection (i).

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## TITLE VII—HEALTH CARE PROVISIONS

**Section 701** would repeal the requirement for the Secretary of Defense, acting through the Director of the Defense Health Agency (DHA), to establish a subordinate organization comprised of the Army Medical Research and Materiel Command (MRMC) and other medical research organizations and activities to be called the Defense Health Agency Research and Development.<sup>1</sup>

This proposal is necessary to ensure that the Secretaries of the Military Departments are capable of continued performance of those functions that are in direct support of Operating Forces to execute the U.S. National Security and Defense Strategies. These responsibilities include control over Military Department-specific medical research, product development, and acquisition, and medical logistics programs involved with battlefield casualty care as well as maintenance of a medically ready force as directed in section 7013 of title 10, United States Code, and section 712 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232). It is essential to military readiness that these programs are synchronized and integrated with other warfighting functions to ensure that proper combat casualty care and military medical readiness supports the Army's lethality in a timely and efficient manner. If this proposal is not adopted, the Department incurs substantial risk

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<sup>1</sup> This proposal does not affect the law's direction to establish a subordinate organization to be called the Defense Health Agency Public Health or continuing with the designation for creating the Center of Excellence for Joint Biomedical Research, Development, and Acquisition Management. The proposal does seek administrative clarification to the law's reference to "Army Public Health Command" to be corrected to "Army Public Health Center" and provides the Secretary discretion as to what elements of such commands should be transferred or retained.

associated with the medical fielding, equipping, and development of knowledge based solutions for the warfighter.

The Military Health System (MHS) is currently undergoing a historic transformation as the DHA assumes authority, direction, and control for MTFs around the globe. Current statutory requirements mandate the transfers of Army organizations responsible for medical research and development<sup>2</sup>, as well as operational medical logistics to DHA.<sup>3</sup> This proposal ensures the Army will remain in control of essential medical research and materiel functions that support readiness, combat casualty care, and lethality in combat environments across multiple domains with full life-cycle infrastructure (research labs, product development/program management, acquisition, and contracting). It is important to note that these functions are not focused primarily on care at MTFs. Most capabilities employed in MTFs are developed by the civilian medicine industry; whereas, capabilities developed by Army's Medical Research and Development Command (MRDC) in research, development, and acquisition, are inherently oriented toward operational medicine for warfighters. Medical programs must also be synchronized and integrated with other warfighting functions to ensure proper combat casualty care, military medical readiness, and lethality. The clearest examples of this synchronization include medical variants of air-and-ground vehicles, as well as casualty support capabilities for other non-medical vehicles in austere environments. Moving medical research, development, and acquisition will decrease system synchronization and integration away from system developers, thereby complicating research, development, and acquisition within the Military Departments and eliminating other essential Service specific capabilities.

If this proposal is not adopted, the currently envisioned DHA research and development organizational structure would add additional, unnecessary layers of review. As reported in numerous U.S. Government Accountability Office (GAO) reports (e.g., GAO-17-499) and contrary to previous Department of Defense reform initiatives, these layers will produce greater inefficiencies in medical research and development and impede modernization efforts. Producing the systems and knowledge necessary to care for Service members will be hampered by these additional layers.

Additionally, system acquisition of related non-medical warfighting capabilities will also be hampered. Medical research, development, and acquisition responsibilities are co-located within Medical Research and Development Command, which effectively supports both Joint and Military Service activities. Moving it from Army management to agency management will specifically produce inefficiencies for the Army that are contrary to best practices described by the GAO and others. As conditions during war may change rapidly, medical research and development is essential to respond quickly and effectively to support warfighter capabilities and survivability. If MRDC's medical research and development assets are not left with the Army,

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<sup>2</sup> In 2018 through 2019, the Army realigned medical research, development, and acquisition functions of MRMC to Army Futures Command's Medical Research and Development Command (MRDC) to fully integrate into future force development and consolidated the operational medical logistics functions to the Army Materiel Command under the Army Medical Logistics Command (AMLC).

<sup>3</sup> The FY 19 NDAA also directs the transfer of the Army Public Health Command to DHA and establishment of "a subordinate organization, to be called the DHA-PH," by September 30, 2022. It also references the "Army Public Health Command," which no longer exists. In FY15, Army Public Health Command dissolved creating the Army Public Health Center (APHC).

the Army's ability to fulfill its responsibilities under title 10, United States Code, and integrate medical capabilities with warfighting systems for Service members will be materially degraded.

In conclusion, the historic MHS transformation is vital for standardizing care across the MTFs and creating efficiencies. However, the respective Services should retain capabilities for military-relevant and field-based military medical knowledge and systems. The current pandemic has reinforced central tenets of the Service's responsibilities under title 10, United States Code, and the need for the Secretaries of the military departments to control Military Service-specific medical research, product development, acquisition programs involved with battlefield casualty care, Soldier readiness, and force readiness. Ensuring that these programs are responsive to and integrated with warfighting functions is essential to optimize combat casualty care, military medical readiness, and lethality and ensure a coordinated response to emerging threats in a timely and efficient manner.

**Budget Implications:** This proposal has no budget implications. The elimination of the requirement to transfer of Medical Research and Materiel Command to the Defense Health Agency will maintain these capabilities within the Army under currently authorized funding and personnel requirements.

**Changes to Existing Law:** This proposal would make the following changes to section 1073c title 10, United States Code:

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

(a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES.—(1) In accordance with paragraph (5), by not later than September 30, 2021, the Director of the Defense Health Agency shall be responsible for the administration of each military medical treatment facility, including with respect to—

- (A) provision and delivery of health care within each such facility;
- (B) management of privileging, scope of practice, and quality of health care provided within each such facility;
- (C) budgetary matters;
- (D) information technology;
- (E) health care administration and management;
- (F) supply and equipment;
- (G) administrative policy and procedure;
- (H) military medical construction; and
- (I) any other matters the Secretary of Defense determines appropriate.

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

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

between the Defense Health Agency and military medical treatment facilities;

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

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

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

(F) to determine, in coordination with each Secretary of a military department, manning, including joint manning, assigned to military medical treatment facilities and intermediary organizations;

(G) to select, after considering nominations from the Secretaries of the military departments, commanders or directors of military medical treatment facilities;

(H) to address personnel staffing shortages at military medical treatment facilities; and

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

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

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

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

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

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

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

(b) DHA ASSISTANT DIRECTOR.—(1) There is in the Defense Health Agency an Assistant Director for Health Care Administration. The Assistant Director shall—

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

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

(2) The Assistant Director shall be appointed from among individuals who have the education and experience to perform the responsibilities of the position.

- (3) The Assistant Director shall be responsible for the following:
  - (A) Establishing priorities for health care administration and management.
  - (B) Establishing policies, procedures, and direction for the provision of direct care at military medical treatment facilities.
  - (C) Establishing priorities for budgeting matters with respect to the provision of direct care at military medical treatment facilities.
  - (D) Establishing policies, procedures, and direction for clinic management and operations at military medical treatment facilities.
  - (E) Establishing priorities for information technology at and between the military medical treatment facilities.

(c) DHA DEPUTY ASSISTANT DIRECTORS.—(1)(A) There is in the Defense Health Agency a Deputy Assistant Director for Information Operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(A1)~~ led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Public Health); and

~~(B2)~~ comprised of elements of the Army Public Health Center Command, the Navy–Marine Corps Public Health Command, Air Force public health programs, and any other related defense health activities that the Secretary considers appropriate, including overseas laboratories focused on preventive medicine, environmental health, and similar matters.

(f) **TREATMENT OF DEPARTMENT OF DEFENSE FOR PURPOSES OF PERSONNEL ASSIGNMENT.**—In implementing this section—

(1) the Department of Defense shall be considered a single agency for purposes of civilian personnel assignment under title 5; and

(2) the Secretary of Defense may reassign any employee of a component of the Department of Defense or a military department in a position in the civil service (as defined in section 2101 of title 5) to any other component of the Department of Defense or military department.

(g) **MEDICAL RESEARCH ORGANIZATIONS AND ACTIVITIES.**—The Secretary of Defense, acting through the Secretaries of the military departments, shall ensure that each military department maintains department specific medical research organizations and activities.

(gh) DEFINITIONS.—In this section:

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

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

(3) The term “military medical treatment facility” means—

(A) any fixed facility of the Department of Defense that is outside of a deployed environment and used primarily for health care; and

(B) any other location used for purposes of providing health care services as designated by the Secretary of Defense.

## **TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS**

**Section 801** would authorize acquisition of certain materials for the National Defense Stockpile (NDS) under the Strategic and Critical Materials Stock Piling Act (Act).

### **DISPOSAL**

Subsection (a) of this proposal would authorize the National Defense Stockpile Manager to dispose of materials that have been determined, based upon the analysis required by the Act, to be excess to Stockpile requirements.

### **ACQUISITION**

Subsection (b) of this proposal would provide authority under section 5(a)(1) of the Act (50 U.S.C. 98d(a)(1)) to acquire strategic and critical materials for the Stockpile.

The materials for which acquisition authority is requested have been identified as necessary to meet the military, industrial, and essential civilian needs of the United States through a rigorous analytical requirements determination processes and are identified in the 2017 and 2019 Biennial Report to the Congress on Stockpile Requirements (Report). The Report is prepared pursuant to the Act, which applies a rigorous analytical process to identify strategic and critical materials required to sustain the United States during various military conflict scenarios developed by the Under Secretary of Defense for Policy. A discussion of the materials follows.

Neodymium oxide, Praseodymium oxide and Neodymium Iron Boron (NdFeB) magnet block. The United States does not possess the industrial capability to manufacture a type of rare earth permanent magnets (REPM) known as neodymium-iron-boron (NdFeB) magnets. Stockpiling REPMs and related raw materials is a cost-effective, relatively quick albeit short-term stopgap solution to the U.S.’s foreign reliance on REPMs. Numerous weapon systems rely upon NdFeB magnets to function, and a disrupted foreign supply would similarly disrupt the manufacture of these systems. Select critical

NdFeB magnet applications include Joint Direct Attack Munition (JDAM) kits, multiple radar systems, and a next-generation submarine propulsion system.

DLA Strategic Materials recommends implementing a stockpiling strategy for NdFeB magnets consisting of separate Nd oxide and Pr oxide in order to provide operational flexibility to manufacturers of NdFeB magnets should there be a requirement for a particular magnet specification. Stockpiling large quantities of NdFeB magnet block or NdFeB alloy has several limitations, most notably technological obsolescence and shelf life. Furthermore, there are currently about 80 different grades of NdFeB magnets making a grade determination highly uncertain, a problem compounded by the existence of several business proprietary blends of NdFeB magnet materials in defense platforms.

While there are noted limitations with storing multiple grades of magnetic block, DLA Strategic Materials is aware of a specific grade of NdFeB magnet block that meets military specifications. Having some of the material in the block form will shorten the manufacturing time. DLA Strategic Materials recommends acquisition of magnet block, along with the Nd oxide and Pr oxide, as part of an overall risk mitigation strategy.

Titanium. Titanium can be alloyed with iron, aluminum, vanadium, and molybdenum, and others to produce strong, lightweight alloys for aerospace, military, industrial processes, automotive, agriculture, and medical products. The two most useful properties of titanium are corrosion resistance and strength-to-density ratio, the highest of any metallic element. These properties along with its relatively high melting point (more than 1,650 °C or 3,000 °F) makes titanium ideal for rotating fan blades in jet engines.

TNT or Substitute Materials. TNT is also known as 2,4,6-trinitrotoluene and is a viable substitute with proper waivers for almost all defense platforms that hexahydro-1,3,5-trinitro-1,3,5 triazine, cyclonite (RDX) and octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine, octogen (HMX) go into.

**Budgetary Implications:** The National Defense Stockpile Transaction Fund (T-Fund) has a projected Fiscal Year 2020 ending unobligated balance of \$208 million. Budgeted costs of the Stockpile average \$79.3 million per annum for fiscal years 2022-2026. This budget includes the \$50 million of funding required in order to execute the proposed acquisitions. In lieu of an appropriation, previously approved disposal authorities and the proposed \$50 million of disposal authorities will generate revenue and serve as the financing sources to fund these acquisitions, provided the revenues generated from these disposals are retained in the T-Fund. The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget Request.

Budget Table									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	BA	BLI/S AG	Total	Appropriation

<b>FY 2020 Budget (\$Millions)</b>	<b>\$96.09</b>	<b>\$88.30</b>	<b>\$63.87</b>	<b>\$75.16</b>	<b>\$73.21</b>	<b>4</b>	<b>UNDD</b>	<b>\$396.63</b>	National Defense Stockpile Transaction Fund
<b>Proposed Acquisitions (\$Millions)</b>									
<b>Material</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>			<b>Total</b>	<b>Appropriation</b>
Nd-Pr Oxide and NdFeB magnet blocks	\$6.00	\$6.00	\$6.00	\$6.00	\$6.00			<b>\$30.00</b>	National Defense Stockpile Transaction Fund
TNT or Substitute Materials	\$2.50	\$2.50	\$2.50	\$2.50	\$0.00			<b>\$10.00</b>	National Defense Stockpile Transaction Fund
Titanium	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00			<b>\$10.00</b>	National Defense Stockpile Transaction Fund
<b>Acquisition Sub-Total</b>	<b>\$10.50</b>	<b>\$10.50</b>	<b>\$10.50</b>	<b>\$10.50</b>	<b>\$8.00</b>			<b>\$50.00</b>	National Defense Stockpile Transaction Fund
<b>Proposed Disposals (\$Millions)</b>									
<b>Material</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>			<b>Total</b>	<b>Appropriation</b>
Tungsten O&C	\$10	\$10	\$10	\$10	\$10			<b>\$50</b>	National Defense Stockpile Transaction Fund
<b>Revenue Sub-Total</b>	<b>\$10</b>	<b>\$10</b>	<b>\$10</b>	<b>\$10</b>	<b>\$10</b>			<b>\$50</b>	National Defense Stockpile Transaction Fund

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

**Section 802.** The Defense Production Act (DPA) provides the President with the authority to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense. In an effort to broaden the impact of the DPA, parts of the U.S. Code must be updated to reflect the current national security priorities and advance an agile program. This proposal aligns with SECDEF's third line of effort: business reform. By removing key barriers the DPA Title III program currently faces, the industrial base will be better positioned to provide the Armed Services with critical technology, resulting in increased industrial base readiness and lethality. In addressing the statutory hurdles that limit the DPA, the program will be able to achieve its full potential and create a greater impact.

**§4533(a)(5)** The Presidential Determination (PD) designates an industrial base shortfall as a requiring mitigation pursuant to the DPA. In 2014, language was inserted into this section making the PD "nondelegable." This change added additional layers of coordination and other signatures to the project approval process. For almost two decades before the language was changed, PDs were signed by the Under Secretary of Defense for Acquisition, Technology, & Logistics. By making the PDs nondelegable, the process and the time to get new projects approved lengthened significantly. Today's process requires not only a signature from the Under Secretary of Defense for Acquisition & Sustainment, but the signature of either the Secretary of Defense or the Deputy Secretary of Defense, before the package gets sent to the Executive Office of the President, where it is reviewed and coordinated again and presented to the President for a final signature. By removing the term "nondelegable" and allowing the Secretary of Defense to sign the DPA Title III PDs, the project execution timelines will decrease and Presidential priorities can be carried out by the Secretary of Defense through the delegation of DPA Title III authorities.

**§4533(a)(6)(C)** This limitation prevents the DPA Title III program from using funds set aside to bridge critical shortfalls until Congress reauthorizes the funds for the specific remedy. This section is unnecessarily limiting, especially since §4533(a)(6)(B) already requires Congressional notification and a 30-day review period before addressing industrial resource shortfalls that exceed \$50,000,000. This provision renders large infrastructure projects ideally addressed by DPA Title III nearly impossible to execute in a timely manner (i.e. steel, aluminum, or microelectronics projects). By removing this section, the DPA Title III program would be able to more rapidly address the shortfalls that the President determines are essential to the national defense.

**§4561** This statute originally stated, "there are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this chapter by the President and such agencies as he may designate or create." In 2014, this was changed to say, "There is authorized to be appropriated \$133,000,000 for fiscal year 2015 and each fiscal year thereafter for the carrying out of the provisions and purposes of this chapter by the President and such agencies as he may designate or create." This new limitation caps the funding available to DPA Title III, severely limiting the ability of the program to rapidly respond to changing industrial base priorities. By reverting the statute to its original language, the

program will regain its budgetary flexibility and be better positioned to make strategic long term investments as well as being equipped to stimulate the defense industrial base during times of war or national emergency.

**Budget Implications:** The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. This proposal has budgetary impact because these statutory changes will impact the ability of the DPA Title III program to rapidly execute the below appropriations.

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)
Defense Production Act	340.927	333.813	281.808	238.796	238.796	Defense Production Act Purchases	01	Title III	0902199D8Z
Total	340.927	333.813	281.808	238.796	238.796				

**Changes to Existing Law:** This proposal would amend sections 303 and 711 of the Defense Production Act (shown as sections 4533 and 4561 of title 50, United States Code, respectively) as follows:

**§4533. Other presidential action authorized**

**(a) In general**

**(1) In general**

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision—

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and

(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies—

(i) from Government sponsored research and development to commercial applications; and

(ii) from commercial research and development to national defense applications.

**(2) Treatment of certain agricultural commodities**

A purchase for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

**(3) Terms of sales**

No commodity purchased under this subsection shall be sold at less than—

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of—

(i) the current domestic market price for such commodity; or

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 1427 of title 7.

#### **(4) Delivery dates**

No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

#### **(5) Presidential determinations**

Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President, ~~or the Secretary of Defense if so delegated on a nondelegable basis~~, determines, with appropriate explanatory material and in writing, that—

(A) the industrial resource, material, or critical technology item is essential to the national defense;

(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

#### **(6) Notification to Congress of shortfall**

##### **(A) In general**

Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

##### **(B) Aggregate amounts**

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

##### **~~(C) Limitation~~**

~~If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.~~

#### **(7) Waivers authorized**

The requirements of paragraphs (1) through (6) may be waived—

(A) during a period of national emergency declared by the Congress or the President; or

(B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

**(b) Exemption for certain limitations**

Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law (other than section 1341 of title 31), for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date on which such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if no such established ceiling prices exist, currently prevailing market prices) or anticipated loss on resale shall not be made, unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

**(c) Presidential findings**

**(1) In general**

The President may take the actions described in paragraph (2), if the President finds that—

(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this subchapter; or

(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

**(2) Subsidy payments authorized**

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such highcost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

**(d) Incidental authority**

The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

**(e) Installation of equipment in industrial facilities**

**(1) Installation authorized**

If the President determines that such action will aid the national defense, the President is authorized—

(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

(B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 4531 of this title, 4532 of this title, or this section; and

(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

**(2) Indemnification**

The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree—

(A) to waive any claim against the United States under section 9607 or 9613 of title 42; and

(B) to indemnify the United States against any claim described in paragraph (1) made by a third party that arises out of the presence or use of equipment owned by the Federal Government.

**(f) Excess metals, minerals, and materials**

**(1) In general**

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this chapter, shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

**(2) Transfers at no charge**

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), except that costs incident to such transfer, other than acquisition costs, shall be paid or reimbursed from such funds.

**(g) Substitutes**

When, in the judgement of the President, it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

\* \* \* \* \*

**§4561. Authorization of appropriations; availability of funds**

~~There is authorized to be appropriated \$133,000,000 for fiscal year 2015 and each fiscal year thereafter~~ are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this chapter by the President and such agencies as he may designate or create. In addition to the appropriations authorized by the previous sentence, there is authorized to be appropriated \$117,000,000 for each of fiscal years 2020 through 2024 to carry out subchapter II.

\* \* \* \* \*

**Section 803** would extend section 851 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020 (Public Law 116-92), adding an additional two years to allow for continued evaluation of this capability-and increasing the dollar amount available for the program. Extension of the authority in FY2022 and FY2023 will allow USSOCOM to further evaluate the benefits, to include accelerated technology development of this proposal. This would provide relative data to determine greater benefit to the Department of Defense.

Subsection (a) of section 851 limits USSOCOM to utilizing only \$2,000,000 or 5.0% of the funds required to be expended by the United States Special Operations Command under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for a pilot program and terminates the pilot program at the end of FY2021. This funding restriction and time period limits the number of awards which can be made, impacting our ability to effectively evaluate benefits and value of the pilot program. Without the extension and change in authority, USSOCOM’s ability to accelerate and enhance non-traditional Small Business advanced technology development will be severely hampered.

Because section 851 is set to expire at the end of FY2021, an extension must be in place in the FY2022 NDAA legislation or there will be a gap in the authority.

**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 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)
SOCOM	2.0	2.0	0.0	0.0	0.0	Research, Development Test and Evaluation (RDT&E), Defense-Wide	07	1160279BB/SBIRXXXX XXX.SEG and SBIRXSTT RXX.SEG	1160279BB
Total	2.0	2.0	0.0	0.0	0.0				

**Changes to Existing Law:** This proposal would amend section 851 of the National Defense Authorization Act for FY 2020 (Public Law 116-92; 133 Stat. 1510; 10 U.S.C. 2283 note) as follows:

**SEC. 851. PILOT PROGRAM FOR DEVELOPMENT OF TECHNOLOGY ENHANCED CAPABILITIES WITH PARTNERSHIP INTERMEDIARIES.**

(a) ESTABLISHMENT.— The Secretary of Defense may authorize the Commander of United States Special Operations Command to use the greater of \$2,000,000 or 5 percent of the funds required to be expended by the United States Special Operations Command up to \$20,000,000 of the funds available to be expended by the United States Special Operations

Command for the purpose of making awards under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f) (1)) for a pilot program to increase participation by small business concerns in the development of technology-enhanced capabilities for special operations forces.

(b) USE OF PARTNERSHIP INTERMEDIARY.—

(1) AUTHORIZATION.— The Commander of the United States Special Operations Command may modify an existing agreement with a partnership intermediary to assist the Commander in carrying out the pilot program under this section, including with respect to the award of contracts and agreements to small business concerns.

(2) USE OF FUNDS.— None of the funds referred to in subsection (a) shall be used to pay a partnership intermediary for any administrative costs associated with the pilot program.

(c) REPORT.— Not later than October 1, 2020, and October 1, 2021, the Commander of the United States Special Operations Command, in coordination with the Under Secretary of Defense for Research and Engineering, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Small Business of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report describing any agreement with a partnership intermediary entered into pursuant to this section. The report shall include, for each such agreement, the amount of funds obligated, an identification of the recipient of such funds, and a description of the use of such funds.

(d) TERMINATION.—The authority to carry out a pilot program under this section shall terminate on September 30, ~~2021~~ 2023.

(e) DEFINITIONS.—In this section:

(1) PARTNERSHIP INTERMEDIARY.—The term “partnership intermediary” has the meaning given the term in section 23(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3715(c)).

(2) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given the term under section 3 of the Small Business Act (15 U.S.C. 632).

(3) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term “Small Business Innovation Research Program” has the meaning given the term in section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)).

(4) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The term “Small Business Technology Transfer Program” has the meaning given the term in section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)).

(5) TECHNOLOGY-ENHANCED CAPABILITY.— The term “technology-enhanced capability” means a product, concept, or process that improves the ability of a member of the Armed Forces to achieve an assigned mission.

**TITLE IX—[RESERVED]**

## TITLE X—GENERAL PROVISIONS

**Section 1001** would extend authority for the Department of Defense (DoD) to receive information from law enforcement investigations for inclusion in the centralized database on problematic sexual behavior in children and youth (PSB-CY) and fulfill DoD’s statutory requirements as outlined in section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA).

The current statute requires DoD to establish and maintain a centralized database on incidents of PSB-CY reported to the Family Advocacy Program. The statute specifies categories of information that must be captured on such incidents, including data on investigations. However, per Department of Justice (DoJ) opinion, the privacy provisions of the Federal Juvenile Delinquency Act (JDA) (18 U.S.C. 5038) prohibit law enforcement from contributing such data. The JDA privacy provisions are intended to protect the identity of juveniles involved in the justice process and, as such, are in effect upon the start of any investigative activity involving an alleged juvenile offense. The JDA provides that information on investigations may be disclosed only to those entities defined by exception in the statute. The requirement to include investigative information on incidents of PSB-CY in the centralized database is, therefore, in direct conflict with the privacy protections applied to juvenile record information in the JDA.

This proposal would resolve the conflict between these statutory requirements by authorizing DoD, under section 5038 of title 18, United States Code, to receive information on incidents of PSB-CY from law enforcement organizations. Subsequent DoD policy will clarify that information collected from juvenile delinquency proceedings under this proposal would be limited to data necessary to meet the requirements of section 1089(b)(7) of the FY 2019 NDAA.

**Budget 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. Adoption of this proposal would allow the Department to comply with existing requirements.

**Changes to Existing Law:** This proposal would amend section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 1781 note; 132 Stat. 1996) as follows:

\* \* \* \* \*

### **SEC. 1089. POLICY ON RESPONSE TO JUVENILE-ON-JUVENILE PROBLEMATIC SEXUAL BEHAVIOR COMMITTED ON MILITARY INSTALLATIONS.**

(a) **POLICY REQUIRED.**—The Secretary of Defense shall establish a policy, applicable across the military installations of the Department of Defense (including installations outside the United States), on the response of the Department to allegations of juvenile-on-juvenile problematic sexual behavior on military installations. The policy shall be designed to ensure a consistent, standardized response to such allegations across the Department.

(b) **ELEMENTS.**—The policy required by this section shall provide for the following:

(1) Any report or other allegation of juvenile-on-juvenile problematic sexual behavior on a military installation that is received by the installation commander, a law enforcement organization, a Family Advocacy Program, a child development center, a military treatment facility, or a Department school operating on the installation or otherwise under Department administration for the installation shall be reviewed by the Family Advocacy Program of the installation.

(2) Personnel of Family Advocacy Programs conducting reviews shall have appropriate training and experience in working with juveniles.

(3) Family Advocacy Programs conducting reviews shall conduct a multi-faceted, multi-disciplinary review and recommend treatment, counseling, or other appropriate interventions for complainants and respondents.

(4) Each review shall be conducted—

(A) with full involvement of appropriate authorities and entities, including parents or legal guardians of the juveniles involved (if practicable); and

(B) to the extent practicable, in a manner that protects the sensitive nature of the incident concerned, using language appropriate to the treatment of juveniles in written policies and communication with families.

(5) The requirement for investigation of a report or other allegation shall not be deemed to terminate or alter any otherwise applicable requirement to report or forward the report or allegation to appropriate Federal, State, or local authorities as possible criminal activity.

(6) There shall be established and maintained a centralized database of information on each incident of problematic sexual behavior that is reviewed by a Family Advocacy Program under the policy established under this section, with—

(A) the information in such database kept strictly confidential; and

(B) because the information involves alleged conduct by juveniles, additional special precautions taken to ensure the information is available only to persons who require access to the information.

(7) There shall be entered into the database, for each substantiated or unsubstantiated incident of problematic sexual behavior, appropriate information on the incident, including—

(A) a description of the allegation;

(B) whether or not the review is completed;

(C) whether or not the incident was subject to an investigation by a law enforcement organization or entity, and the status and results of such investigation; and

(D) whether or not action was taken in response to the incident, and the nature of the action, if any, so taken.

(c) PROVISION OF CERTAIN INFORMATION.—(1) The provision of information from a juvenile delinquency proceeding, including any associated law enforcement investigation, for purposes of compliance with the policy required under this section, shall be treated as a release of records authorized under section 5038 of title 18, United States Code.

(2) In this subsection, the term “juvenile delinquency” has the meaning given that term in section 5031 of title 18, United States Code.

**Section 1002** would amend section 130e of title 10, United States Code (U.S.C.), to authorize the Department of Defense to withhold sensitive, but unclassified, military tactics, techniques, or procedures; rules for the use of force; and military rules of engagement, from

release to the public under section 552 of title 5, U.S.C. (known as the Freedom of Information Act (FOIA)), if public disclosure could reasonably be expected to provide an operational military advantage to an adversary.

The decision of the Supreme Court in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), significantly narrowed the long-standing administrative understanding of the scope of Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)). Before that decision, the Department was authorized to withhold sensitive information on critical infrastructure and military tactics, techniques, and procedures from release under FOIA pursuant to Exemption 2. Section 130e of title 10, U.S.C., was established in the National Defense Authorization Act for Fiscal Year 2012 to reinstate protection from disclosure of critical infrastructure security information. This proposal similarly would amend section 130e to add protections for military tactics, techniques, and procedures (TTPs); rules for the use of force; and rules of engagement that, if publicly disclosed, could reasonably be expected to provide an operational or tactical military advantage to an adversary such that the adversary could potentially use the information to circumvent or negatively impact military operations or actions in whole or in part. Military TTPs, rules for the use of force; and rules of engagement are analogous to law enforcement techniques and procedures, which Congress has afforded protection under FOIA Exemption 7(E).

The effectiveness of U.S. military operations is dependent upon adversaries, or potential adversaries, not obtaining advance knowledge of sensitive TTPs, rules for the use of force; or rules of engagement that will be employed in such tactical operations. If an adversary or potential adversary obtains knowledge of this sensitive information, the adversary would gain invaluable knowledge on how our forces operate in given tactical military situations. This knowledge could then, in turn, enable the adversary to counter the TTPs, rules for use of force, or rules of engagement by identifying and exploiting any weaknesses. From this, the defense of the homeland, success of the operation, and the lives of U.S. military forces would be seriously jeopardized. Furthermore, the probability of successful cyber operations would be limited with the public release of cyber-related TTPs. This proposal would add a layer of mission assurance to unclassified cyber operations and enhance the Department of Defense's ability to project cyber effects while protecting national security resources.

This proposal additionally would make minor amendments in section 130e to: (1) clarify the citation for the purposes of the OPEN FOIA Act of 2009; (2) remove references to reflect the merger of the Director of Administration and Management with the Deputy Chief Management Officer of the Department of Defense; and (3) remove the prohibition on further delegation.

It is important to note that the terms tactics, techniques, and procedures, as used in the context of this proposal, will not be applied in an overly broad manner to withhold from public disclosure information related to the handling of disciplinary matters, investigations, acquisitions, intelligence oversight, oversight of contractors, allegations of sexual harassment or sexual assault, allegations of prisoner and detainee maltreatment, installation management activities, etc. However, depending on the nature of the information, other provisions of law may require that such information not be released publicly in whole or in part. Additionally, the 'public interest' balancing requirement in subsection (a)(2) ensures that the proposed FOIA exemption is not used for the sole purpose of concealing illegality, negligence, ineptitude, or

information that could embarrass the Department of Defense. Courts are well accustomed to assessing the public interest in exposing agency misconduct and have consistently held that the public interest favors disclosure “when a government official's actions constitute a violation of public trust.” *Cochran v. United States*, 770 F.2d 949, 956 (11th Cir. 1985); see also *NARA v. Favish*, 541 U.S. 157, 175 (2004).

**Budget 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. Exemptions for the release of certain information under FOIA would generate minimal savings to the Administration by avoiding the preparation of select materials for release.

**Changes to Existing Law:** The proposal would make the following changes to section 130e of title 10, United States Code:

**~~§130e. Treatment under Freedom of Information Act of critical infrastructure security information~~ Nondisclosure of certain sensitive military information**

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense ~~critical infrastructure security~~ information from disclosure ~~pursuant to section 552(b)(3) of title 5~~, upon a written determination that—

(1) the information is—

(A) Department of Defense critical infrastructure security information;

(B) covered military tactic, technique, or procedure information; or

(C) covered rule of engagement or rule for the use of force information;

and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) DESIGNATION OF DEPARTMENT OF DEFENSE ~~CRITICAL INFRASTRUCTURE SECURITY INFORMATION~~.—In addition to any other authority or requirement regarding protection from dissemination of information, the Secretary may designate information as being ~~Department of Defense critical infrastructure security~~ information identified in subsection (a)(1), including during the course of creating such information, to ensure that such information is not disseminated without authorization. Information so designated is subject to the determination process under subsection (a) to determine whether to exempt such information from disclosure described in such subsection.

(c) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—(1) Department of Defense ~~critical infrastructure security~~ information covered by a written determination under subsection (a) or designated under subsection (b) that is provided to a State or local government shall remain under the control of the Department of Defense.

(2)(A) A State or local law authorizing or requiring a State or local government to disclose Department of Defense ~~critical infrastructure security~~ information that is covered by a written determination under subsection (a) shall not apply to such information.

(B) If a person requests pursuant to a State or local law that a State or local government disclose information that is designated as ~~Department of Defense critical infrastructure security information exempt from disclosure~~ under subsection (b), the State or local government shall provide the Secretary an opportunity to carry out the determination process under subsection (a) to determine whether to exempt such information from disclosure pursuant to subparagraph (A).

~~(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.~~

~~(e-d) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, through the Office of the Director of Administration and Management in accordance with guidelines prescribed by the Secretary.~~

(e) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—This section shall be treated as a statute that specifically exempts certain matters from disclosure under section 552 of title 5, as described in subsection (b)(3) of that section.

(f) DEFINITIONS.—In this section, ~~the term:~~

(1) ADVERSARY.—The term “adversary” means a party acknowledged as potentially hostile to a friendly party and against which the use of force may be envisaged.

(2) COVERED MILITARY TACTIC, TECHNIQUE, OR PROCEDURE INFORMATION.—The term ‘covered military tactic, technique, or procedure information’ means information that would reveal or consists of a military tactic, technique, or procedure that identifies a method for using equipment or personnel to accomplish a specific mission under a particular set of operational or exercise conditions (including offensive, defensive, force protection, cyberspace, stability, civil support, freedom of navigation, operations security, counter intelligence, and intelligence collection operations), the public disclosure of which could reasonably be expected to provide a military advantage to an adversary.

(3) COVERED RULE OF ENGAGEMENT OR RULE FOR THE USE OF FORCE INFORMATION.—The term ‘covered rule of engagement or rule for the use of force information’ means information that would reveal or consist of a rule of engagement or rule for the use of force, the public disclosure of which could reasonably be expected to provide a military advantage to an adversary.

(4) DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—The term “Department of Defense critical infrastructure security information” means sensitive but unclassified information that, if disclosed, would reveal capabilities or vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including—

(A) information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected equipment and systems owned or operated by or on behalf of the Department of Defense;

(B) including vulnerability assessments prepared by or on behalf of the Department of Defense;

(C) explosives safety information, (including storage and handling information); and

(D) other site-specific information on or relating to installation security.

(5) MILITARY TACTIC, TECHNIQUE, OR PROCEDURE.—The term ‘military tactic, technique, or procedure’ means—

(A) the employment and ordered arrangement of military forces in relation to each other;

(B) a non-prescriptive way or method used to perform a mission, function, or task that is—

(i) related to or incidental to a combat mission or contingency operation; or

(ii) directly related to preparing for, going to, or returning from a combat mission or contingency operation; or

(C) detailed steps that prescribe how to perform a specific task that is—

(i) related to, or incidental to, a combat mission, force protection operation, or contingency operation; or

(ii) directly related to preparing for, going to, or returning from a combat mission, force protection operation, or contingency operation.

(6) RULE FOR THE USE OF FORCE.—The term “rule for the use of force” means a directive issued to guide United States forces on the use of force during various operations.

(7) RULE OF ENGAGEMENT.—The term “rule of engagement” means a directive issued by a competent military authority that delineates the circumstances and limitations under which the armed forces will initiate or continue combat engagement with other forces encountered.

## TITLE XI—CIVILIAN PERSONNEL MATTERS

**Section 1101.** This proposal has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAAAs, most recently section 1105 of the FY 2021 NDAA. The provision is currently in effect through calendar year 2021. The authority under that section is similar to that previously provided in the NDAAAs since FY 2006.

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

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee

only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2022, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

**Budget Implications:** The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. The Department of Defense estimates this proposal would cost approximately \$2.653 million for FY 2022. This proposal would be funded from the Component and Defense Agency operation and maintenance fund accounts. The limitation relief is for those people who are deployed in support of Overseas Contingency Operations. The funding is requested in the military departments’ Operation and Maintenance budgets by cost breakdown structure category. The number of personnel affected in FY 2021 is estimated to be approximately 2,630. The number of affected personnel Defense-wide in FY 2022 is estimated to be the same. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below.

RESOURCE 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)
Army	\$1.958					Operation and Maintenance, Army	Multiple	Multiple	
Navy	\$0.158					Operation and Maintenance, Navy	Multiple	Multiple	
USMC	\$0.079					Operation and Maintenance, USMC	Multiple	Multiple	
Air Force	\$0.186					Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	\$0.143					Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
DCMA	\$0.067					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DISA	\$0.024					Operation and Maintenance, Defense-wide	Multiple	Multiple	

DCAA	\$0.007					Operation and Maintenance, Defense-wide	Multiple	Multiple	
OSD	\$0.019					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DFAS	\$0.006					Defense Working Capital Funds, Defense-wide,	Multiple	Multiple	
WHS	\$0.003					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Joint Staff	\$0.003					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Total	\$2.653								

**Cost Methodology:** The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2018, the additional cost for overtime in excess of the annual premium pay limitation was approximately \$2.65 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2022, but the above scenario illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

PERSONNEL IMPACT (END STRENGTH)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	1,947					Operation and Maintenance, Army	Multiple	Multiple	
Navy	158					Operation and Maintenance, Navy	Multiple	Multiple	
USMC	77					Operation and Maintenance, USMC	Multiple	Multiple	
Air Force	184					Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	142					Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
DCMA	66					Operation and Maintenance, Defense-wide	Multiple	Multiple	

DISA	23					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DCAA	6					Operation and Maintenance, Defense-wide	Multiple	Multiple	
OSD	18					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DFAS	5					Defense Working Capital Funds, Defense-wide,	Multiple	Multiple	
WHS	2					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Joint Staff	2					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Total	2,630								

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

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

(a) **WAIVER AUTHORITY.**—During calendar years 2009 ~~through 2021~~ through 2022, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

- (1) a military operation, including a contingency operation; or
- (2) an operation in response to a national emergency declared by the President.

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

(c) **ADDITIONAL PAY NOT CONSIDERED BASIC PAY.**—To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to

be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

(d) REGULATIONS.—The Director of the Office of Personnel Management may issue regulations to ensure appropriate consistency among heads of executive agencies in the exercise of authority granted by this section.

**Section 1102** would extend through Fiscal Year (FY) 2023 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

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

**Budget Implications:** The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below. The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (i.e., death gratuity equal to EX-II (\$197,300 in 2020)); and payment of commercial roundtrip travel for Rest and Recuperation (R&R) breaks (up to three per year for employees deployed for 12 consecutive months and home leave). Specifically, the total cost for the death gratuity is calculated based on the assumption that there is one civilian death per Component during the two-year period. Payment of commercial roundtrip travel for R&R is based on the estimated number of currently deployed civilians who will remain deployed for 12 consecutive months, and thus are entitled to up to three R&R breaks and home leave. Estimates of the number of employees are: Army – 503; Navy – 333; Air Force – 55; Defense Agencies – 109. The average cost for each roundtrip travel for R&R is \$18,000.

RESOURCE IMPACT (\$MILLIONS)					
Program	FY 2022	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	\$27.36	Operation and Maintenance, Army	Multiple	Multiple	
Navy	\$18.18	Operation and Maintenance, Navy	Multiple	Multiple	

Air Force	\$3.17	Operation and Maintenance, Air Force	Multiple	Multiple	
Defense-Wide Agencies	\$6.00	Operation and Maintenance, Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
Total	\$54.71				

PERSONNEL IMPACT (END STRENGTH)					
Program	FY 2022	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	503	Operation and Maintenance, Army	Multiple	Multiple	
Navy	333	Operation and Maintenance, Navy	Multiple	Multiple	
Air Force	55	Operation and Maintenance, Air Force	Multiple	Multiple	
Defense-Wide Agencies	109	Operation and Maintenance, Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
Total	1,000				

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

SEC. 1603. (a) IN GENERAL.—(1) During fiscal years 2006 (including the period beginning on October 1, 2005, and ending on June 15, 2006), 2007, and 2008 the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Iraq or Afghanistan.

(2) During fiscal years 2009 through ~~2022~~ 2023, the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

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

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

## TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

**Section 1201** would extend through December 31, 2022, the current authority to use funds made available for the Department of Defense for operation and maintenance, Defense-wide activities: (1) to reimburse any key cooperating nation (other than Pakistan) for certain support provided by that nation to U.S. military operations in Afghanistan, Iraq, or Syria; and (2) to provide certain assistance to any key cooperating nation supporting U.S. military operations in Afghanistan, Iraq, or Syria, subject to the conditions and limitations in the statute.

**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. The \$160 million amount reflected in the legislative language accounts for remaining two-year FY 2021 funding.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Coalition Support Funds (CSF)	\$60					Operations and Maintenance, Defense-Wide	04	4GTD, DSCA	
Total	\$60								

**Changes to Existing Law:** This proposal would make the following changes to section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393):

### SEC. 1233. REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) AUTHORITY.—From funds made available for the Department of Defense for the period beginning on ~~October 1, 2020~~ October 1, 2021, and ending on ~~December 31, 2021~~ December 31, 2022, for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation (other than Pakistan) for—

- (1) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and
- (2) logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in paragraph (1).

(b) OTHER SUPPORT.—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military operations in Afghanistan, Iraq, or Syria through the following:

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a non-reimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

(2) SUPPORT.—Support authorized by subsection (b) may be provided in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, considers appropriate.

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.— The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during the period beginning on ~~October 1, 2020~~ October 1, 2021, and ending on ~~December 31, 2021~~ December 31, 2022, may not exceed ~~\$180,000,000~~ \$160,000,000.

(2) PROHIBITION ON CONTRACTUAL OBLIGATIONS TO MAKE PAYMENTS.—The Secretary of Defense may not enter into any contractual obligation to make a reimbursement under the authority in subsection (a).

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b).

(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.

(f) QUARTERLY REPORTS.—The Secretary of Defense shall submit to the appropriate congressional committees on a quarterly basis a report on any reimbursements made under the authority in subsection (a), and any support provided under the authority in subsection (b), during such quarter.

(g) DEFINITION.—In this section, the term “appropriate congressional committees” means—

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

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

**Section 1202** would continue certain established provisions applicable to the Afghanistan Security Forces Fund (ASFF). This proposal would also amend section 1513(b) of the National Defense Authorization Act for Fiscal Year 2008 to provide expressly that the ASFF may be used to pay for the costs of Department of Defense personnel who advise the Ministry of Defense and the Ministry of the Interior and to provide program and security assistance management support. It would also amend Section 1513(b) to allow for the procurement of CH-47 helicopters from Department of the Army stock for transfer to the Afghan Special Mission Wing at a price that would enable one-for-one replacement by the Army.

ASFF funding is necessary to attain U.S. national security objectives in Afghanistan and to provide the United States’ contribution to an international effort to meet the funding requirements of the Afghan forces. At the NATO Summit in Brussels in July 2018, participating donor nations agreed to extend assistance for financial sustainment of the Afghan forces - about \$1 billion per year - through 2024, and the Afghan Government continues to increase the amount of funding it provides consistent with its commitment at the 2012 NATO Summit in Chicago. The ASFF appropriation supports the U.S. strategy in Afghanistan to work with Allies and partners to enable well-trained, well-equipped, and sustainable Afghan security forces to provide security in Afghanistan and support efforts to achieve a negotiated settlement to the war through intra-Afghan negotiations. It also enables all Afghan security forces to continue efforts to defeat the remnants of al-Qa’ida, the Islamic State of Iraq and Syria, and other terrorist organizations in order to ensure that Afghanistan does not again become a safe-haven for terrorist groups to plan and execute attacks against U.S. interests. Effective Afghan forces minimize the need to reintroduce U.S. and Coalition forces to conduct counterinsurgency operations. We will continue to execute ASFF through Financial and Activity Plans with oversight by the Afghanistan Resources Oversight Council and robust in-country oversight of ASFF to ensure the Department of Defense maintains control and oversight over these funds. In addition, DoD will continue to build the institutional viability of the Afghan Ministries of Defense (MoD) and Interior (MoI).

This funding supports operations by and sustainment of Afghan National Defense and Security Forces at an authorized level of 352,000 MoD and MoI forces to enhance the security and stability of Afghanistan by protecting the population, fostering the rule of law, preventing the establishment of terrorist safe-havens, and developing a reliable long-term counterterrorism partnership with the United States.

**Budget Implications:** The resources reflected in the table below are funded within the FY 2022 President's Budget request.

RESOURCE IMPACT (\$MILLIONS)
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Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
ASFF (ANA)	\$1,110					Afghanistan Security Forces Fund	BA 6	Multiple	
ASFF (ANP)	\$517					Afghanistan Security Forces Fund	BA 7	Multiple	
ASFF (AAF)	\$758					Afghanistan Security Forces Fund	BA 8	Multiple	
ASFF (ASSF)	\$942					Afghanistan Security Forces Fund	BA 9	Multiple	
<b>Total</b>	<b>\$3,327</b>								

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

**SEC. 1513. AFGHANISTAN SECURITY FORCES FUND.**

\* \* \* \* \*

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds authorized to be appropriated by subsection (a) shall be available to the Secretary of Defense to provide assistance to the security forces of the Ministry of Defense and the Ministry of the Interior of the Government of the Islamic Republic of Afghanistan, including costs of Department of Defense personnel who advise those Ministries.

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

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

**Section 1203** would extend the authority for the Secretary of Defense (DoD), with the concurrence of the Secretary of State, to support the Government of Afghanistan-led reconciliation activities in Afghanistan through December 31, 2022.

As the Government of Afghanistan continues efforts to pursue reconciliation in a way that supports the intent of both the U.S.-Afghanistan Joint Declaration and the U.S.-Taliban Agreement, an extension of this authority would continue to provide DoD with the

unique ability to help facilitate local reconciliation efforts in Afghanistan through the provision of security and logistic support, supplies, and services.

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

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)
Support for Afghan Reconciliation	15	15				Operations & Maintenance, Army	BA: 01 (from FY22)	BLI: 135 (from FY22)	
Total	15	15							

**Changes to Existing Law:** This proposal would make the following changes to section 1218 of the National Defense Authorization Act for Fiscal Year 2020:

SEC. 1218. SUPPORT FOR RECONCILIATION ACTIVITIES LED BY THE GOVERNMENT OF AFGHANISTAN.

(a) AUTHORITY TO PROVIDE COVERED SUPPORT.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Defense may, with the concurrence of the Secretary of State, provide covered support for reconciliation activities to one or more designated persons or entities or Federal agencies.

(2) LIMITATION ON USE OF FUNDS.—Amounts authorized to be appropriated or otherwise made available for the Department of Defense by this Act may not be obligated or expended to provide covered support until the date on which the Secretary of Defense submits to the appropriate committees of Congress the report required by subsection (b).

\* \* \* \* \*

(k) SUNSET.—The authority to carry out this section shall terminate on ~~December 31, 2024~~ December 31, 2022.

\* \* \* \* \*

**Section 1204** would extend the authority to provide assistance to vetted Syrian groups and individuals. Extension of this authority will continue to serve as the principal means for continuing counterterrorism operations “by, with, and through” local Syrian partners and achieving the enduring defeat of the Islamic State of Iraq and Syria (ISIS) in Syria. The authority extension reflects the operational environment and the continuing need to enable vetted Syrian partner forces to ensure the defeat of ISIS and prevent its re-emergence. The proposal also replaces a requirement to notify Congress before the expenditure of each 25-percent increment of funds with a requirement to include an accounting of such funds in the quarterly progress reports,

and removes the \$4 million limitation on per-project construction costs. It is in-line with the National Defense Strategy and the need to protect the United States, U.S. allies and partners, and U.S. interests, and to achieve the lasting defeat of ISIS.

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

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Syria CTEF	\$177					CTEF	04	4GTD0 000	1002200 T
Total	\$177								

**Changes to Existing Law:** This proposal would make the following changes to section 1209 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291):

SEC. 1209. AUTHORITY TO PROVIDE ASSISTANCE TO VETTED SYRIAN GROUPS AND INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, supplies, stipends, construction and repair of training and associated facilities or other facilities necessary to meet urgent military operational requirements of a temporary nature and sustainment to appropriately vetted Syrian groups and individuals through ~~December 31, 2021~~ December 31, 2023, for the following purposes:

- (1) Defending the Syrian people from attacks by the Islamic State of Iraq and Syria.
- (2) Securing territory formerly controlled by the Islamic State of Iraq and Syria.
- (3) Protecting the United States and its partners and allies from the threats posed by the Islamic State of Iraq and Syria, al Qaeda, and associated forces in Syria.
- (4) Providing appropriate support to vetted Syrian groups and individuals to conduct temporary and humane detention and repatriation of Islamic State of Iraq and Syria foreign terrorist fighters in accordance with all laws and obligations related to the conduct of such operations, including, as applicable—
  - (A) the law of armed conflict;
  - (B) internationally recognized human rights;
  - (C) the principle of non-refoulement;
  - (D) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and
  - (E) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

~~(b) NOTICE BEFORE PROVISION OF ASSISTANCE.—~~

~~(1) IN GENERAL.— In accordance with the requirements under paragraph (2), the Secretary of Defense shall notify the congressional defense committees in writing of the use of the relevant authority to provide assistance and include the following:~~

~~(A) The requirements and process used to determine appropriately vetted recipients.~~

~~(B) The mechanisms and procedures that will be used to monitor and report to the appropriate congressional committees and leadership of the House of Representatives and Senate on unauthorized end use of provided training and equipment or other violations of relevant law by appropriately vetted recipients.~~

~~(C) The amount, type, and purpose of assistance to be funded and the recipient of the assistance.~~

~~(D) The goals and objectives of the assistance.~~

~~(E) The number and role of United States Armed Forces personnel involved.~~

~~(F) Any other relevant details.~~

~~(2) TIMING OF REQUIRED NOTICE.— A notice described in paragraph (1) shall be required—~~

~~(A) not later than 15 days before the expenditure of each 25-percent increment of the amount made available in fiscal year 2019, fiscal year 2020, or fiscal year 2021 to carry out the authorization in this section; or~~

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

~~(c) FORM.— The notifications required under subsection (b) shall be submitted in unclassified form but may include a classified annex.~~

~~(db) QUARTERLY PROGRESS REPORTS.—~~

~~(1) IN GENERAL.— Beginning on January 15, 2020, and every 90 days thereafter, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees and leadership of the House of Representatives and the Senate a progress report.~~

~~(2) MATTERS TO BE INCLUDED.— Each progress report under paragraph (1) shall include, based on the most recent quarterly information, the following:~~

~~(A) A description of the appropriately vetted recipients receiving assistance under subsection (a), including a description of their geographical locations, demographic profiles, political affiliations, and current capabilities.~~

~~(B) A description of training, equipment, supplies, stipends, and other support provided to appropriately vetted recipients under subsection (a) and a statement of the amount of funds expended for such purposes during the period covered by the report.~~

~~(C) Any misuse or loss of provided training and equipment and how such misuse or loss is being mitigated.~~

~~(D) An assessment of the recruitment, throughput, and retention rates of appropriately vetted recipients.~~

(E) An assessment of the operational effectiveness of appropriately vetted recipients in meeting the purposes specified in subsection (a).

(F) A description of the current and planned posture of United States forces and the planned level of engagement by such forces with appropriately vetted recipients, including the oversight of equipment provided under this section and the activities conducted by such appropriately vetted recipients.

(G) A detailed explanation of the relationship between appropriately vetted recipients and civilian governance authorities, including a description of efforts to ensure appropriately vetted recipients are subject to the control of competent civilian authorities.

(H) A description of United States Government stabilization objectives and activities carried out in areas formerly controlled by the Islamic State of Iraq and Syria, including significant projects and funding associated with such projects.

(I) A description of coalition contributions to the purposes specified in subsection (a) and other related stabilization activities.

(J) With respect to Islamic State of Iraq and Syria foreign terrorist fighters—

(i) an estimate of the number of such individuals being detained by appropriately vetted Syrian groups and individuals;

(ii) an estimate of the number of such individuals that have been repatriated and the countries to which such individuals have been repatriated; and

(iii) a description of United States Government support provided to facilitate the repatriation of such individuals.

(~~K~~) An assessment of the extent to which appropriately vetted Syrian groups and individuals have enabled progress toward establishing inclusive, representative, accountable, and civilian-led governance and security structures in territories liberated from the Islamic State of Iraq and Syria.

(L) An accounting of the funds expended to provide assistance under subsection (a).

(~~c~~) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) The term “appropriately vetted” means, with respect to elements of the Syrian opposition and other Syrian groups and individuals, at a minimum—

(A) assessments of such elements, groups, and individuals for associations with terrorist groups, Shia militias aligned with or supporting the Government of Syria, and groups associated with the Government of Iran. Such groups include the Islamic State of Iraq and Syria, Jabhat al Nusrah, Ahrar al Sham, other al-Qaeda related groups, and Hezbollah; and

(B) a commitment from such elements, groups, and individuals to promoting the respect for human rights and the rule of law.

(2) The term “appropriate congressional committees” means—

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

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

(~~fd~~) RESTRICTION ON SCOPE OF ASSISTANCE IN THE FORM OF WEAPONS.—

(1) IN GENERAL.—The Secretary may only provide assistance in the form of weapons pursuant to the authority under subsection (a) if such weapons are small arms or light weapons.

(2) WAIVER.—The Secretary may waive the restriction under paragraph (1) upon certification to the appropriate congressional committees that such provision of law would (but for the waiver) impede national security objectives of the United States by prohibiting, restricting, delaying, or otherwise limiting the provision of assistance.

(~~ge~~) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept and retain contributions, including assistance in-kind, from foreign governments to provide assistance as authorized by this section, at the end of the 15-day period beginning on the date the Secretary notifies the congressional defense committees of the amount, source, and intended purpose of such contributions. Any funds so accepted by the Secretary shall be credited to appropriations for the appropriate accounts.

(~~hf~~) CONSTRUCTION OF AUTHORIZATION.—Nothing in this section shall be construed to constitute a specific statutory authorization for the introduction of United States Armed Forces into hostilities or into situations wherein hostilities are clearly indicated by the circumstances.

(~~ig~~) WAR POWERS RESOLUTION MATTERS.—Nothing in this section supersedes or alters the continuing obligations of the President to report to Congress pursuant to section 4 of the War Powers Resolution (50 U.S.C. 1543) regarding the use of United States Armed Forces abroad.

(~~jh~~) WAIVER AUTHORITY.—For purposes of the provision of assistance pursuant to subsection (a), the President may waive any provision of law if the President determines that such provision of law would (but for the waiver) impede national security objectives of the United States by prohibiting, restricting, delaying, or otherwise limiting the provision of such assistance. Such waiver shall not take effect until 30 days after the date on which the President notifies the appropriate congressional committees of such determination and the provision of law to be waived.

(~~ki~~) ASSISTANCE TO THIRD COUNTRIES IN PROVISION OF ASSISTANCE.— The Secretary may provide assistance to third countries for purposes of the provision of assistance authorized under this section.

(~~lj~~) LIMITATION ON COST OF CONSTRUCTION AND REPAIR PROJECTS.—

(1) IN GENERAL.—The cost of construction and repair projects carried out under this section in any fiscal year may not exceed \$20,000,000 in the aggregate. ~~may not exceed, in any fiscal year—~~

(A) \$4,000,000 per project; or

(B) \$20,000,000 in the aggregate.

(2) FOREIGN CONTRIBUTIONS.—The limitation under paragraph (1) shall not apply to the expenditure of foreign contributions in excess of the ~~per project or aggregate~~ limitation set forth in that paragraph.

(mk) APPROVAL AND NOTICE BEFORE CERTAIN CONSTRUCTION AND REPAIR PROJECTS.—

(1) APPROVAL.—A construction or repair project costing more than \$1,000,000 may not be carried out under this section unless approved in advance by the Commander of the United States Central Command.

(2) NOTICE.—When a decision is made to carry out a construction or repair project to which paragraph (1) applies, the Commander of the United States Central Command shall notify in writing the appropriate committees of Congress of that decision, including the justification for the project and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code.

**Section 1205** would extend the authority to provide assistance to military and other security forces of or associated with the Government of Iraq (GoI), including Kurdish and tribal security forces or other local security forces, with a national mission to counter the Islamic State of Iraq and Syria (ISIS) and associated groups. Extension of this authority will serve as the principal means for countering ISIS and associated terrorist groups and for returning security and stability to the region while protecting the United States and U.S. interests. This proposal also adjusts cost-sharing requirements; ensures that the limitation on aggregate costs of construction, repair, and renovation does not apply to the expenditure of foreign contributions in excess of that limit; and eliminates the consideration of efforts by the GoI to enact legislation establishing the Iraqi National Guard from the factors included in the required assessment in subsection (1), as establishing such a National Guard is no longer an element of GoI or U.S. Government policy. The authority extension reflects the operational environment and the need to enable appropriately vetted elements eligible for support under current law to ensure the defeat of ISIS and prevent its re-emergence. The proposal is in line with the National Defense Strategy and the need to protect the United States and ensure the lasting defeat of ISIS.

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

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Iraq CTEF	\$345					CTEF	04	4GTD000	1002200 T
Total	\$345								

**Changes to Existing Law:** This proposal would make the following changes to section 1236 of the National Defense Authorization Act for Fiscal Year 2015:

SEC. 1236. AUTHORITY TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE OF IRAQ AND SYRIA.

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, logistics support, supplies, and services, stipends, infrastructure repair and renovation, small-scale construction of temporary facilities necessary to meet urgent operational or force protection requirements with a cost less than \$4,000,000, and sustainment, to military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces or other local security forces, with a national security mission, and facilitate Coalition efforts to build capacity in our partner forces to counter and defeat any re-emergence of ISIS, through ~~December 31, 2021~~ December 31, 2023, for the following purposes:

- (1) Defending Iraq, its people, allies, and partner nations from the threat posed by the Islamic State of Iraq and Syria (ISIS) and groups supporting ISIS.
- (2) Securing the territory of Iraq.

\* \* \* \* \*

(g) FUNDING.—Of the amounts authorized to be appropriated for the Department of Defense for ~~Overseas Contingency Operations for fiscal year 2021~~ fiscal year 2022, there are authorized to be appropriated ~~\$322,500,000~~ \$345,000,000 to carry out this section.

\* \* \* \* \*

(k) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—Of the funds authorized to be appropriated under this subsection, not more than ~~60 percent~~ 75 percent of such funds may be obligated or expended until not later than 15 days after the date on which the Secretary of Defense certifies to the appropriate congressional committees and leadership of the House of Representatives and the Senate that an amount equal to not less than ~~40 percent~~ 30 percent of the amount authorized to be appropriated to carry out this section has been contributed by other countries and entities for the purposes described in subsection (a), which may include contributions of in-kind support for forces described in subsection (a), as determined from October 1, 2014, of which not less than ~~50 percent~~ 25 percent of such amount contributed by other countries and entities has been contributed by the Government of Iraq.

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply if the Secretary of Defense determines, in writing, that the national security objectives of the United States will be compromised by the application of the limitation to any such assistance, and notifies the appropriate congressional committees not less than 15 days in advance of the exemption taking effect, including a justification for the Secretary's determination and a description of the assistance to be exempted from the application of such limitation.

(l) ASSESSMENT AND AUTHORITY TO ASSIST DIRECTLY CERTAIN COVERED GROUPS.—

(1) ASSESSMENT.—

(A) IN GENERAL.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, and annually thereafter, the Secretary of Defense and the Secretary of State shall jointly submit to the appropriate congressional committees an assessment of the extent to which the Government of Iraq is increasing political inclusiveness, addressing the grievances of ethnic and sectarian minorities, and enhancing minority integration in the political and military structures in Iraq.

(B) FACTORS TO BE CONSIDERED IN MAKING ASSESSMENT.—In making the assessment described in subparagraph (A), the Secretary of Defense and the Secretary of State shall consider the following factors:

(i) The extent to which the Government of Iraq is taking steps to reduce support among the Iraqi people for the Islamic State of Iraq and Syria (ISIS) and improve stability in Iraq.

~~(ii) The progress of efforts to enact legislation establishing the Iraqi National Guard, particularly in predominantly Sunni regions.~~

~~(iii)~~ (iii) The extent to which the Government of Iraq is expanding the representation of minorities in adequate numbers in government security organizations and providing for the training and equipping of such forces.

~~(iv)~~ (iv) Whether the Government of Iraq is ending support for Shia militias under the command and control of, or associated with, the Government of Iran, and stopping abuses of elements of the Iraqi population by such militias.

~~(v)~~ (v) Whether the Government of Iraq is ensuring that supplies, equipment, and weaponry supplied by the United States are appropriately distributed to security forces with a national security mission in Iraq, including the Kurdish Peshmerga, Sunni tribal security forces and local security forces with a national security mission, ~~and, once established, the Iraqi Sunni National Guard.~~

~~(vi)~~ (vi) Whether the Government of Iraq is addressing grievances regarding the arrest and detention without trial of ethnic and sectarian minorities or is taking steps to prosecute such individuals that are detained in a fair, transparent, and prompt manner.

~~(vii)~~ (vii) Such other factors as the Secretaries consider appropriate.

(C) UPDATE.—The Secretary of Defense and the Secretary of State shall submit to the appropriate congressional committees an update of the assessment required under subparagraph (A) not later than 180 days after the date on which the assessment is submitted to the appropriate congressional committees under subparagraph (A).

(D) SUBMISSION.—The assessment required under subparagraph (A) and the update of the assessment authorized under subparagraph (C) may be submitted as part of the quarterly report required under subsection (d).

(2) ASSISTANCE DIRECTLY TO CERTAIN COVERED GROUPS.—

(A) IN GENERAL.—If the President, taking into account the results of the assessment required under paragraph (1)(A) or the update required under paragraph (1)(C), determines and notifies the appropriate congressional committees that the Government of Iraq has failed to take substantial action to

increase political inclusiveness, address the grievances of ethnic and sectarian minorities, and enhance minority integration in the political and military structures in Iraq, the Secretary of Defense, in coordination with the Secretary of State, is authorized to provide, in coordination to the extent practicable with the Government of Iraq, assistance under the authority of subsection (a) directly to the groups described in subparagraph (D) for the purpose of supporting international coalition efforts against ISIS.

(B) ADMINISTRATIVE PROVISIONS.—In carrying out subparagraph (A), the Secretary of Defense may—

- (i) re-allocate the amount of assistance authorized under subsection (a) to increase the share of such assistance provided to the groups described in subparagraph (D); and
- (ii) exercise the waiver authority provided in subsection (j)(1)(C) with respect to providing assistance to the groups described in subparagraph (D).

(C) COST-SHARING REQUIREMENT INAPPLICABLE.—The cost-sharing requirement of subsection (k) shall not apply with respect to funds that are obligated or expended under this subsection for assistance provided directly to the groups described in subparagraph (D).

(D) COVERED GROUPS.—The groups described in this subparagraph are—

- (i) the Kurdish Peshmerga; and
- (ii) Sunni tribal security forces, or other local security forces, with a national security mission.

(m) LIMITATION ON AGGREGATE COST OF CONSTRUCTION, REPAIR, AND RENOVATION PROJECTS.—

(1) IN GENERAL.—The aggregate amount of construction, repair, and renovation projects carried out under this section in any fiscal year may not exceed \$30,000,000.

(2) FOREIGN CONTRIBUTIONS.—The limitation under paragraph (1) shall not apply to the expenditure of foreign contributions in excess of the limitation set forth in that paragraph.

**Section 1206** would extend through fiscal year 2022 the authorization for the Department of Defense (DoD) to provide funds to support the operations and activities of the Office of Security Cooperation in Iraq (OSCI) and security assistance teams in Iraq, including life support, and transportation and personal security.

This proposal is an extension of an existing authority and reflects the importance of a responsible transition from a DoD focus on the international coalition-assisted effort to defeat the Islamic State in Iraq and Syria (ISIS) to focus on establishing a normalized and nationally integrated Iraqi security force capable of conducting counterterrorism, border security, and critical infrastructure protection. Continuing this authority demonstrates and continues our reliable partnership with unique Iraqi security organizations and forces performing a national

security mission. These authorities are intended to transition U.S. security assistance and cooperation responsibly as ISIS is defeated.

In the National Defense Authorization Act for Fiscal Year 2021, Congress reduced the maximum amount of funds available for OSCI from \$30,000,000 to \$25,000,000 due to low execution rates. The low execution rates were due the inability to conduct some functions during the COVID-19 global pandemic. With the anticipated return to full OSC-I operations in fiscal year 2022, DoD is requesting \$30,000,000 for fiscal year 2022.

**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 IMPACT (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
Office of Security Cooperation – Iraq	\$30.0					3400 (O&M, USAF)	01	015F	
Total	\$30.0								

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

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

(a) AUTHORITY.—The Secretary of Defense may support United States Government security cooperation activities in Iraq by providing funds for the operations and activities of the Office of Security Cooperation in Iraq.

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

(c) LIMITATION ON AMOUNT.—The total amount of funds provided under the authority in subsection (a) in fiscal year ~~2021~~ 2022 may not exceed ~~\$25,000,000~~ \$30,000,000.

(d) SOURCE OF FUNDS.—Funds for purposes of subsection (a) for fiscal year ~~2021~~ 2022 shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

\* \* \* \* \*

## TITLE XIII—[RESERVED]

## TITLE XIV—OTHER AUTHORIZATIONS

### Subtitle A—Military Programs

**Section 1401** would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2022.

**Section 1402** would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2022.

**Section 1403** would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2022.

**Section 1404** would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2022.

**Section 1405** would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2022.

### Subtitle B—Other Matters

**Section 1411**, within the funds authorized for operation and maintenance under section 1405, would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

**Section 1412** would authorize appropriations for fiscal year 2022 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2022.

## TITLE XV—[RESERVED]

## TITLE XVI—STRATEGIC PROGRAMS, CYBER, AND INTELLIGENCE MATTERS

**Section 1601** This proposal seeks a legislative change to provide Army Counterintelligence civilian special agents with the same statutory authorities to serve warrants and arrest criminal suspects as the Air Force's Office of Special Investigations (OSI) and the

Naval Criminal Investigative Service (NCIS) when conducting counterintelligence (CI) investigations.

CI investigations focus on violations of criminal law that pose significant threats to the national security of the United States, such as espionage, sabotage, assassination, international terrorism, and other national security crimes. The Department of Defense (DoD) Military Department Counterintelligence Organizations (MDCOs) include: Army CI (ACI), Air Force's Office of Special Investigations (OSI), and the Naval Criminal Investigative Service (NCIS).

In accordance with an agreement between the Department of Justice and the DoD, the MDCOs are the only DoD units authorized to conduct CI investigations. The MDCOs work with the Federal Bureau of Investigation (FBI) to conduct CI investigations in accordance with a memorandum of agreement between the Attorney General and the Secretary of Defense and a memorandum of understanding between the FBI and DoD. OSI and NCIS have specific statutory authority to execute warrants and make arrests in sections 8750 and 9377 of title 10, United States Code (U.S.C.). This proposal will specifically authorize civilian special agents of the Army Counterintelligence Command to execute warrants and make arrests when conducting CI investigations and will provide them the same authorities exercised by AFOSI and NCIS, when conducting CI investigations.

Army Counterintelligence Command plays a critical role in the mitigation of the Foreign Intelligence Entities (FIE) threats by conducting CI investigations that may result in criminal prosecutions. The number of espionage investigations conducted by the Army has risen rapidly as foreign adversaries aggressively target the Army to erode our competitive overmatch. ACI must aggressively protect critical United States, DoD, and Army critical infrastructure, technologies, current and future warfighting systems, networks, and supply chains from FIE.

The authority to serve warrants and arrest individuals suspected of committing crimes that may cause damage to the national security of the United States are important authorities for Army CI civilian special agents to utilize in their efforts to conduct CI investigations. Without legislative change, the Army will lack the same statutory authorities as the other MDCOs that conduct these types of criminal investigations in concert with the FBI, which may negatively affect the Army's ability to mitigate FIE threats.

**Budget 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.

**Changes to Existing Law:** This proposal would make the following changes to Section 7377 of title 10, United States Code:

**§7377. Civilian special agents of the Criminal Investigation Command and Army Counterintelligence Command: authority to execute warrants and make arrests**

(a) Authority.-The Secretary of the Army may authorize any Department of the Army civilian employee described in subsection (b) to have the same authority to execute and serve

warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) Agents To Have Authority—Subsection (a) applies to any employee of the Department of the Army—

(1) who is a special agent of the Army Criminal Investigation Command (or a successor to that command) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Army; or

(2) who is a special agent of the Army Counterintelligence Command (or a successor to that command) whose duties include conducting, supervising, or coordinating counterintelligence investigations involving potential or alleged violations punishable under chapter 37, 113B, or 115 of title 18 and similar offenses punishable under this title.

(c) Guidelines for Exercise of Authority –The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Army and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Army, the Secretary of Defense, or the Attorney General.

**Section 1602** is being submitted to facilitate time for the new administration to review Missile Defense capabilities and equities.

Section 1676(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (P.L. 115-91; 10 U.S.C. 2431 note), enacted on December 12, 2017, as most recently amended by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283), requires the Secretary of Defense to transfer the acquisition authority and the total obligational authority for certain missile defense programs from the Missile Defense Agency (MDA) to a military department no later than the date on which the budget of the President for FY 2023 will be submitted under 31 U.S.C. 1105 (early February 2022). This proposal extends that date by another year, to the date that the FY 2024 budget is submitted to Congress (February 2023).

Section 1676(b) also requires the Secretary of Defense to submit a report on the plans of the Department of Defense (DoD) for the transition of the referenced missile defense programs from MDA to a military department. The submission deadline for the report to the congressional defense committees was not later than one year after the enactment of the NDAA for FY 2018. The report was transmitted to Congress on 3 June 2020. The report concluded with the Secretary's request for support of the MDA's FY21 proposal to repeal section 1676(b).

Section 1676(b) applies to MDA programs that, as of the date the President's budget is submitted for FY 2023, have received Milestone C or equivalent approval. While most discussions within the Department and with the Congressional defense committees have been focused on the Terminal High Altitude (THAAD) program, application of the requirement was not limited to a particular Ballistic Missile Defense System (BMDS) program.

**Budget Implications:** This legislative proposal will have no budget implications.

**Changes to Existing Law:** This proposal would amend section 1676 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2431 note) as follows:

**Public Law 115–91:**

SEC. 1676. ADMINISTRATION OF MISSILE DEFENSE AND DEFEAT PROGRAMS.

(a) MAJOR FORCE PROGRAM.—[added section 239a to title 10, United States Code]

(b) TRANSITION OF BALLISTIC MISSILE DEFENSE PROGRAMS TO MILITARY DEPARTMENTS.—

(1) REQUIREMENT.—Not later than the date on which the budget of the President for fiscal year ~~2023~~ 2024 is submitted under section 1105 of title 31, United States Code, the Secretary of Defense shall transfer the acquisition authority and the total obligational authority for each missile defense program described in paragraph (2) from the Missile Defense Agency to a military department.

(2) MISSILE DEFENSE PROGRAM DESCRIBED.—A missile defense program described in this paragraph is a missile defense program of the Missile Defense Agency that, as of the date specified in paragraph (1), has received Milestone C approval (as defined in section 2366 of title 10, United States Code) or equivalent approval.

(3) REPORT.—

(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the plans of the Department of Defense for the transition of missile defense programs from the Missile Defense Agency to the military departments pursuant to paragraph (1).

(B) SCOPE.—The report under subparagraph (A) shall cover the period covered by the future-years defense program that is submitted under section 221 of title 10, United States Code, in the year in which such report is submitted.

(C) MATTERS INCLUDED.—The report under subparagraph

(A) shall include the following:

(i) An identification of—

(I) the missile defense programs planned to be transitioned from the Missile Defense Agency to the military departments; and

(II) the missile defense programs, if any, not planned for transition to the military departments.

(ii) The schedule for transition of each missile defense program planned to be transitioned to a military department, and an explanation of such schedule.

(iii) A description of—

(I) the status of the plans of the Missile Defense Agency and the military departments for the transition of missile defense programs from that agency to the military departments; and

(II) the status of any agreement between the Missile Defense Agency and one or more of the military departments on the transition of any such program from that agency to the military

departments, including any agreement on the operational test criteria that must be achieved before such transition.

(iv) An identification of the element of the Department of Defense (whether the Missile Defense Agency, a military department, or both) that will be responsible for funding each missile defense program to be transitioned to a military department, and at what date.

(v) A description of the type of funds that will be used (whether funds for research, development, test, and evaluation, procurement, military construction, or operation and maintenance) for each missile defense program to be transitioned to a military department.

(vi) An explanation of the number of systems planned for procurement for each missile defense program to be transitioned to a military department, and the schedule for procurement of each such system.

(vii) A description of how the Missile Defense Agency will continue the responsibility for the research and development of improvements to missile defense programs.

(c) ROLE OF MISSILE DEFENSE AGENCY.—

(1) IN GENERAL.— [added section 205 to title 10, United States Code]

\* \* \* \* \*

## **DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS**

**TITLE XXI—[RESERVED]**

**TITLE XXII—[RESERVED]**

**TITLE XXIII—[RESERVED]**

**TITLE XXIV—[RESERVED]**

**TITLE XXV—[RESERVED]**

**TITLE XXVI—[RESERVED]**

**TITLE XXVII—[RESERVED]**

## **TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS**

**Section 2801.** The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) provided a temporary authority that exempts certain excess Department of Defense (DoD) properties from the screening requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 *et seq.*). Excess, unutilized, or underutilized non-mobile DoD property is exempted from this screening upon a determination that the property is not feasible to

relocate; the property is located in an area to which the general public is denied access in the interest of national security; and, the exemption would facilitate the efficient disposal of excess property or would result in more efficient real property management. This exemption expires on September 30, 2021.

This exemption streamlines disposal of excess, unutilized, or underutilized non-mobile properties not suitable for reuse by homeless providers because of their location or because they are not feasible to relocate. From 1987 until Congress passed the temporary exemption in 2019, all such DON properties underwent McKinney-Vento Act screening; none were determined suitable for reuse by homeless providers. The 2019 exemption reduced fiscal and manpower costs and increased efficiency in disposal of these properties. Congress requires annual reports from DoD on use of the exemption. The Department of the Navy (DON) submitted a report for FY 2020 to DoD evidencing DON's responsible use of the exemption for only those properties meeting its narrow requirements. The DON anticipates submitting a similar report to DoD for FY 2021.

This proposal removes the sunset provision from the exemption authority while retaining all other requirements, including congressional reporting requirements.

**Budget Implications:** This proposal is non-budgetary. There is no cost associated with striking the sunset provision.

**Changes to Existing Law:** This proposal would make the following change to section 2822 of the NDAA for FY 2019 (42 U.S.C. 11411 note):

**SEC. 2822. EXEMPTION OF DEPARTMENT OF DEFENSE OFF-SITE USE  
AND OFF-SITE REMOVAL ONLY NON-MOBILE PROPERTIES  
FROM CERTAIN EXCESS PROPERTY DISPOSAL REQUIREMENTS.**

(a) IN GENERAL.—Excess or unutilized or underutilized non-mobile property of the Department of Defense that is situated on non-excess land shall be exempt from the requirements of title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.) upon a determination by the head of the department, agency, or other element of the Department having jurisdiction of the property that—

- (1) the property is not feasible to relocate;
- (2) the property is located in an area to which the general public is denied access in the interest of national security; and
- (3) the exemption would facilitate the efficient disposal of excess property or result in more efficient real property management.

(b) CONSULTATION.—Before making an initial determination under the authority in subsection (a), and periodically thereafter, the head of a department, agency, or other element of the Department shall consult with the Executive Director of the United States Interagency Council on Homelessness on types of non-mobile properties that may be feasible for relocation and suitable to assist the homeless.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—If any head of a department, agency, or other element of the Department makes a determination under subsection (a) during a fiscal year, not later than 90 days after the end of that fiscal year, the Secretary of Defense shall submit to the appropriate committees of Congress a report listing all the buildings, facilities, and other properties for which a determination was made under that subsection during that fiscal year.

(2) FORM.—Any report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Armed Services, the Committee on Financial Services, and the Committee on Oversight and Government Reform of the House of Representatives.

~~(d) SUNSET. The authority under subsection (a) shall expire on September 30, 2021.~~

**Section 2802.** Section 2663(c) of title 10, United States Code (U.S.C.), specifically authorizes any acquisition of low-cost interests in land to address life, health, or safety related deficiencies that does not exceed \$1,500,000 (\$750,000 for other purposes) using operation and maintenance or construction funds. The primary objective of this proposal is to increase the threshold for land acquisitions to take into account the significant increase in land costs since the threshold was last increased in 2003. Farmland prices alone have increased by more than 300 percent nationwide, while the land acquisition threshold has remained static (see <https://extension2.missouri.edu/g404>, and <https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value/>). These restrictive thresholds have not been changed since codification in 2003 and severely constrain modern land acquisitions by the Services despite significant increases in land values since the cost threshold in 10 U.S.C. 2663(c) was last adjusted nearly two decades ago. For example, in order to acquire avigation easement interests at Fort Campbell, Kentucky with a total cost of only \$3.2 million, it was necessary for the Army to program, budget, and obtain line item authorization for a major military construction project in the Fiscal Year (FY) 2020 National Defense Authorization Act (NDAA).

In 2017, Congress eliminated previous cost threshold distinctions in 10 U.S.C. 2805 between Unspecified Minor Military Construction (UMMC) projects to address life, health, and safety deficiencies, and those for other purposes. This proposal would similarly eliminate that distinction in 10 U.S.C. 2663(c). Applying a 300% increase to the previous \$1,500,000 cost limitation would result in a revised cost threshold of \$4,500,000. The proposal makes the threshold \$6,000,000 to accommodate future land cost growth, particularly in other than rural areas. Enactment of this proposal will result in clear, unambiguous authority for the Services to execute low-cost land acquisitions commensurate with rising land costs. It will enable low-cost military land acquisitions of less than \$6 million to be executed promptly because such acquisitions will not require programming and budgeting as individual annual line item authorized and appropriated military construction projects.

This proposal does not affect the requirement, at 10 U.S.C. 2662, for the Secretary concerned to provide notice to the Armed Services Committees prior to acquiring fee title to any real property if the estimated price is greater than \$750,000.

**Budget Implications:** This proposal has no budgetary impact. There are no specific Army land acquisitions currently programmed that this proposal would affect.

**Changes to Existing Law:** This proposal would make the following changes to section 2663 of title 10, United States Code:

**§2663. Land acquisition authorities**

(a) Acquisition of Land by Condemnation for Certain Military Purposes.-(1) Subject to subsection (f), the Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for-

(A) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(B) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(C) the development and transmission of power for the operation of plants under subparagraph (B).

(2) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under paragraph (1), take and use the land to the extent of the interest sought to be acquired.

(b) Acquisition by Purchase in Lieu of Condemnation.-The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(c) Acquisition of Low-Cost Interests in Land.-(1) The Secretary of a military department may acquire any interest in land that-

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than ~~\$750,000~~\$6,000,000, exclusive of administrative costs and the amounts of any deficiency judgments.

~~(2) The Secretary of a military department may acquire any interest in land that-~~

~~(A) the Secretary determines is needed solely to correct a deficiency that is life threatening, health threatening, or safety threatening; and~~

~~(B) does not cost more than \$1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.~~

~~(2)(3)~~ This subsection does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than \$750,000, in the case of an acquisition

~~under paragraph (1), or \$1,500,000, in the case of an acquisition under paragraph (2) unless the total cost is not more than \$6,000,000.~~

~~(3)(4)~~ Source of Funds.— Appropriations available to the Department of Defense for operations and maintenance or construction may be used for the acquisition of land or interests in land under this subsection.

(d) Acquisition of Interests in Land When Need Is Urgent.—(1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that—

(A) the acquisition is needed in the interest of national defense;

(B) the acquisition is required to maintain the operational integrity of a military installation; and

(C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(2) Not later than 10 days after the date on which the Secretary of a military department determines to acquire an interest in land under the authority of this subsection, the Secretary shall submit, in an electronic medium pursuant to section 480 of this title, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a notice containing a description of the property and interest to be acquired and the reasons for the acquisition.

(3) Appropriations available for military construction may be used for the purposes of this subsection.

(e) Survey Authority; Acquisition Methods.—Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(f) Advance Notice of Use of Condemnation.—(1) Before commencing any legal proceeding to acquire any interest in land under subsection (a), including acquisition for temporary use, by condemnation, eminent domain, or seizure, the Secretary of the military department concerned shall—

(A) pursue, to the maximum extent practicable, all other available options for the acquisition or use of the land, such as the purchase of an easement or the execution of a land exchange; and

(B) submit to the congressional defense committees a report containing—

(i) a description of the land to be acquired;

(ii) a certification that negotiations with the owner or owners of the land occurred, and that the Secretary tendered consideration in an amount equal to the fair market value of the land, as determined by the Secretary; and

(iii) an explanation of the other approaches considered for acquiring use of the land, the reasons for the acquisition of the land, and the reasons why alternative acquisition strategies are inadequate.

(2) The Secretary concerned may have proceedings brought in the name of the United States to acquire the land after the end of the 21-day period beginning on the date on which the report is received by the committees in an electronic medium pursuant to section 480 of this title.

(g) Exception to Advance Notice Requirement.-If the Secretary of a military department determines that the use of condemnation, eminent domain, or seizure to acquire an interest in land is required under subsection (a) to satisfy a requirement vital to national security, and that any delay would be detrimental to national security or the protection of health, safety, or the environment, the Secretary may have proceedings brought in the name of the United States to acquire the land in advance of submitting the report required by subsection (f)(1)(B). However, the Secretary shall submit the report not later than seven days after commencement of the legal proceedings with respect to the land.

(h) Land Acquisition Options in Advance of Military Construction Projects.- (1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if the Secretary considers it suitable and likely to be needed for a military project of the military department under the jurisdiction of the Secretary.

(2) As consideration for an option acquired under paragraph (1), the Secretary may pay, from funds available to the military department under the jurisdiction of the Secretary for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.