

Section-by-Section Analysis

TITLE I—PROCUREMENT

Sections 101 through 105 would authorize appropriations for fiscal year 2023 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 2023.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2023 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 2023.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 would authorize appropriations for fiscal year 2023 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 2023.

Subtitle B—[Reserved]

Subtitle C—[Reserved]

Subtitle D—Other Matters

Section 331 would grant the Secretary of Defense the authority to name real property and facilities as appropriate to implement the plan submitted by the commission pursuant to section 370 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283). Section 370 requires the Secretary of Defense to implement the plan submitted by the commission established under that section and “*remove* all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederate States of America . . . or any person who served voluntarily with the Confederate States of America” (emphasis added). Because subsection (b) of section 370 states that the commission “relat[es] to *assigning, modifying, or removing* of names,” the plan submitted by the commission could include recommendations to name or rename real property under the jurisdiction of the Department (emphasis added). Section 370, however, directs the Secretary only to “remove” names; it does not direct the Secretary to “assign” or “modify” names. Thus, although section 370 contemplates that the commission may recommend that the Secretary assign or modify names of real property, it does not authorize the Secretary to implement those recommendations.

Absent special legislation, the Secretary's authority to implement any recommendations of the commission to name or rename buildings and facilities (including military installations) is unclear, and this lack of clarity impedes the Secretary's ability to meet the Secretary's obligation to implement the recommendations of the commission, should those recommendations include the naming or renaming of buildings or facilities. This proposal would ensure that the Secretary has the authority to name and rename buildings and facilities as needed to implement the commission's report. The authority granted by this proposal is limited to implementing the commission's plan and does not extend to naming or renaming real property outside of that context.

Resource Information: 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) 2023 President's Budget request.

Changes to Existing Law: None.

Section 332 authorize the Secretary of Defense to exclude advance billings for declared disasters or major emergencies from the advance billing \$1 billion limitation.

The current law includes a permanent cap of \$1 billion in total for all Working Capital Fund billings in any fiscal year across the Department of Defense (DOD). DLA supports other Federal agencies, particular the Federal Emergency Management Agency (FEMA), through interagency agreements that permit FEMA to place reimbursable orders with DLA for support in its disaster response missions. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121—5206, FEMA is responsible for coordinating Federal Government response to support State, local, tribal, and territorial efforts under the National Response Framework.

In past years, Congress has waived or modified the advance billing limitation to accommodate DoD's efforts in supporting Federal disaster relief efforts. This was most recently done in the CARES Act (Public Law 116–136). Section 13003 of title III of division B of that Act provided that: "Notwithstanding section 2208(1)(3) of title 10, United States Code, during fiscal year 2020, the total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense may exceed the amount otherwise specified in such section. In this section, the term 'advance billing' has the meaning given that term in section 2208(1)(4) of title 10, United States Code."

Previously, Public Law 115-72, enacted on October 26, 2017, Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017, modified the advance billing limitation. In that law, section 310 read "Notwithstanding section 2208(1)(3) of title 10, United States Code, during fiscal year 2018, the dollar limitation on advance billing of a customer of a working-capital fund in such section shall not apply with respect to the advance billing of the Federal Emergency Management Agency. In the preceding sentence, the term 'advance billing' has the meaning given the term in section 2208(1)(4) of title 10, United States Code."

Section (1)(3) of 10 U.S.C. 2208 was previously modified in Public Law 109-234, title I, section 1206, enacted June 15, 2006, in the Emergency Supplemental Appropriations Act for Defense,

the Global War on Terror and Hurricane Recovery, 2006. Section 1206 provided “Notwithstanding 10 U.S.C. 2208(l), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed \$1,200,000,000: *Provided*, That the amounts made available pursuant to this section are designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.”.

In 2005, Public Law 109-13, div. A, Title I, section 1005, enacted May 11, 2005, in the Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief Act, provided “ For fiscal year 2005, the limitation under paragraph (3) of section 2208(l) of title 10, United States Code, on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year shall be applied by substituting “\$1,500,000,000” for “\$1,000,000,000”.

Support to these relief efforts continue to increase and are outside normal operating requests and are not included in cyclic budget requirements. Working Capital Funds must maintain sufficient cash balances to execute their primary mission of warfighter support and set aside a reserve for price fluctuations in petroleum prices. The availability of cash depends on outcomes from the budget cycle (workload, costs, rate setting); supporting unforeseen world events that are not part of the budget directly impacts the agency’s ability to do so and the timing of disbursements to vendors and collections from customers. Therefore, DLA is requesting the law include permanent authority to advance bill for support to disaster relief efforts up to the amount of the orders received. Implementing this change will improve cash solvency while ensuring DLA’s primary mission of warfighter support is not adversely impacted and enable DLA to support disaster relief efforts.

Resource Information: The resources required are reflected in the table below and are included in the Fiscal Year (FY) 2023 President’s Budget. Note: After querying DoD Components, only the DLA DWCF is impacted by this proposal. There is a small impact to existing and budgeted labor to track the advance billings.

RESOURCE REQUIREMENTS (\$MILLIONS)								
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI / SAG
Labor	.03	.03	.03	.03	.03	Working Capital Fund, Defense-wide	08	ES08
Total	.03	.03	.03	.03	.03			

Changes to Existing Law: This proposal would amend section 2208 of title 10, United States Code, as follows:

§ 2208 Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to-

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of-

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

(2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-

capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if-

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working- capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than \$500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than \$250,000 for procurements at all other facilities:

(A) An unspecified minor military construction project under section 2805(c) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)-

(A) during a period of war or national emergency; or;

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed \$1,000,000,000. The dollar limitation in the preceding sentence on advance billing of a customer of a working-capital fund shall not apply to advance billing for relief efforts following a declaration of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(4) In this subsection:

(A) The term “advance billing”, with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term “customer” means a requisitioning component or agency.

(m) Capital Asset Subaccounts.-Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) Separate Accounting, Reporting, and Auditing of Funds and Activities.-The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) Charges for Goods and Services Provided Through the Fund.-(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) Procedures For Accumulation of Funds.-The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) Annual Reports and Budget.-The Secretary of Defense, with respect to each working- capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) Notification of Transfers.-(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) Limitation on Cessation or Suspension of Distribution of Funds for Certain Workload.-(1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized-

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if—
(A) the working-capital fund is insolvent; or
(B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of Defense from furlough due to absence of or inadequate funding.

(t) Market Fluctuation Account.—(1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to \$1,000,000,000, to remain available without fiscal year limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

(u) Use for Unspecified Minor Military Construction Projects to Revitalize and Recapitalize Defense Industrial Base Facilities.—(1) The Secretary of a military department may use a working capital fund of the department under this section to fund an unspecified minor military construction project under section 2805 of this title for the revitalization and recapitalization of a defense industrial base facility owned by the United States and under the jurisdiction of the Secretary.

(2)(A) Except as provided in subparagraph (B), section 2805 of this title shall apply with respect to a project funded using a working capital fund under the authority of this subsection in the same manner as such section applies to any unspecified minor military construction project under section 2805.

(B) For purposes of applying subparagraph (A), the dollar limitation specified in subsection (a)(2) of section 2805 of this title, subject to adjustment as provided in subsection (f) of such section, shall apply rather than the dollar limitation specified in subsection (c) of such section.

(3) In this subsection, the term “defense industrial base facility” means any Department of Defense depot, arsenal, shipyard, or plant located within the United States.

(4) The authority to use a working capital fund to fund a project under the authority of this subsection expires on September 30, 2023.

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 2023.

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 2023.

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 2023.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2023.

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 2023 for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Section 501 would afford relief to general officers and flag officers appointed to the grade of general or admiral (O-10) and lieutenant general or vice admiral (O-9) to retain their appointed grade beyond the 60 days authorized by current law, for up to 90 days for officers redeploying after serving at least one year in a combat zone or overseas contingency operation.

This proposal allows general officers and flag officers who meet the above criteria to retain their rank while attending to critical personal matters that may have been deferred while deployed.

Pursuant to 10 U.S.C. 601(b)(5), general officers and flag officers in the grade of general or admiral and lieutenant general or vice admiral revert back to their permanent grade (usually major general or rear admiral (O-8)), 60 days from the date leaving a position. If enacted, this bill would extend the 60-day limitation to 90 days thereby allowing such officers to retain the grade of general or admiral (O-10) or lieutenant general or vice admiral (O-9) until their projected retirement dates. This relief would apply notwithstanding the limitation on the number of general officers imposed by sections 525 and 526 of title 10, United States Code.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request.

Changes to Existing Law: This proposal would amend section 601 of title 10, United States Code, as follows:

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

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

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position designated under subsection (a) or by law to carry that grade shall continue to hold that grade—

(1) while serving in that position;

(2) while under orders transferring him to another position designated under subsection (a) or by law to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days;

(4) at the discretion of the Secretary of Defense, while the officer is awaiting orders after being relieved from the position designated under subsection (a) or by law to carry one of those grades, but not for more than 60 days beginning on the day the officer is relieved from the position, unless, during such period, the officer is placed under orders to another position designated under subsection (a) or by law to carry one of those grades, in which case paragraph (2) will also apply to the officer; and

(5) while awaiting retirement, beginning on the day he is relieved from the position designated under subsection (a) or by law to carry one of those grades and ending on the day before his retirement, but—

(A) subject to subparagraph (B), not for more than 60 days; and

(B) with respect to an officer awaiting retirement following not less than one year of consecutive deployment outside of the United States to a combat zone (as defined in section 112(c) of the Internal Revenue Code of 1986) or in support of a contingency operation, not for more than 90 days.

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Section 502 would amend section 525 of title 10, United States Code, to increase the number of Navy flag officers authorized to serve in the grade above the grade of rear admiral from 33 to 34 and reduce the number of officers authorized to serve in the grade of rear admiral

from 50 to 49 to offset the increase. This increase will allow the Navy to upgrade the position of Deputy Commander, United States Pacific Fleet from rear admiral to vice admiral (VADM). An increase in grade is commensurate with the duties and responsibilities, emphasizes the Navy's commitment to the Indo-Pacific region and is consistent with the interim National Security Strategy.

The Indo-Pacific is the most consequential region for America's future, and remains the United States' priority theater. The region contains four of the five priority security challenges identified by the Department of Defense: China, Russia, North Korea, as well as violent extremist organizations. As China continues to increase the size of the People's Liberation Army and advance their own joint capabilities, the military balance in the Indo-Pacific is becoming more unfavorable for the United States, our five treaty allies in the region, and our strategic partners. The Indo-Pacific Region also experiences frequent, natural and manmade disasters, the negative impacts of climate change, rapid population growth, drug and human trafficking, and disease and pandemic. The Region accounts for 60% of the world's current domestic gross product, more than 2/3rds of present global economic growth and in less than a decade will host two-thirds of the world's population.

Duties and Responsibilities: Deputy Commander, Chief of Staff, and principal advisor to the Commander U.S. Pacific Fleet (COMPACFLT). COMPACFLT is the operational commander and resource provider for the U.S. Pacific Fleet. As Theater Joint Forces Maritime Component Commander (T-JFMCC) to INDOPACOM, COMPACFLT leverages a 4-star command structure that provides strategic and operational integration, de-confliction, synchronization, and mitigation oversight in an AOR that spans half of the Earth's surface. He/she is responsible for the generation and execution of INDOPACOM OPLANS; generates strategic maritime and Navy air forces for STRATCOM; generates, executes, and communicates Navy global force management as directed by INDOPACOM and OPNAV; directs resource and readiness integration within COMPACFLT and Fleet-wide; leads development of new, innovative programs and concepts to improve Fleet operational readiness, effectiveness, and wholeness; manages cost and ensures resources and readiness integration meet INDOPACOM, NORTHCOM and STRATCOM OPLAN requirements. In addition, he/she leads efforts to optimize, support and, create Fleet policies and directions aligned with readiness consumers (Fleets, COCOMs) and suppliers (OPNAV, TYCOMs, SYSCOMs, Warfare Development Centers); oversees analyses and assessments of war fighting readiness and effects of capabilities including Special Access Programs (SAP) and Special Technical Operations (STO); guides planning and coordination of strategic and operational logistics; executes higher headquarter policies, initiatives, and objectives; oversees Planning, Programming, and Budget Execution (PPBE) processes; fosters an environment of equal opportunity within COMPACFLT; holds NJP and Special Court Martial Authority for COMPACFLT staff and appeal authority for COMPACFLT subordinate commands.

Justification: The scope and scale of responsibility of the U.S. Pacific Fleet in both day to day competition and crises requires the Deputy Commander to be the rank of VADM. The U.S. Pacific Fleet is the largest naval fleet in the world, responsible for the largest maritime AOR and comprised of 60% of the U.S. Naval Force. It is comprised of two numbered fleets (3-star commanders) and six subordinate type commanders (three 3-star commanders, two 2-star

commanders, and one 1-star commander). In addition, it is supported by cyber, space, and special operations commanders both day-to-day and in crisis. The expansive AOR and subsequent travel required of the Commander requires a deputy commander that can operate the fleet with the requisite authority to act for the commander in competition and crises both across the fleet and in coordination with the INDOPACOM Commander.

In day-to-day competition, the U.S. Pacific Fleet is currently viewed by INDOPACOM as the supported commander for operations and the execution of INDOPACOM priorities. To meet both these tasks and the title 10 naval responsibilities, a deputy commander must have the commensurate rank and authority to best operate with subordinate 3-star fleet and type commanders, other on-island service component 3-star deputy component commanders, the 3-star deputy counterpart at U.S. Fleet Forces Command, and the DCNO level at OPNAV.

More importantly, in crisis or conflict the current command and control structure of INDOPACOM requires the Pacific Fleet Commander to assume the duties of the Joint Task Force (JTF) Commander. This scope of responsibility shifts the T-JFMCC to the Deputy Commander of U.S. Pacific Fleet, and he/she is responsible for the naval operations outside of the JOA in the entire Pacific AOR, working directly with both numbered fleet commanders at the 3-star level and across 4-star joint service component commanders.

The day-to-day acting commander requirements, warfighting requirements as the T-JFMCC, and parity amongst other theater fleet commanders and deputies, parity with his or her counterpart at U.S. Fleet Forces, and effective coordination across the OPNAV staff to meet and execute Title X requirements require the Deputy Commander at U.S. Pacific Fleet to serve in the grade above the grade of rear admiral.

Resource Information: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal year (FY) 2023 President's Budget request.

PERSONNEL AFFECTED					
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Navy (O-9)	1	1	1	1	1
Navy (O-8)	(1)	(1)	(1)	(1)	(1)
Total	0	0	0	0	0

Changes to Existing Law: This proposal would make the following changes to section 525 of title 10, United States Code:

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

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

- (1) in the Army, if that appointment would result in more than-
 - (A) 8 officers in the grade of general;
 - (B) 46 officers in a grade above the grade of major general; or
 - (C) 90 officers in the grade of major general;
- (2) in the Air Force, if that appointment would result in more than-
 - (A) 9 officers in the grade of general;
 - (B) 44 officers in a grade above the grade of major general; or
 - (C) 73 officers in the grade of major general;
- (3) in the Navy, if that appointment would result in more than-
 - (A) 6 officers in the grade of admiral;
 - (B) ~~33~~ 34 officers in a grade above the grade of rear admiral; or
 - (C) ~~50~~ 49 officers in the grade of rear admiral;
- (4) in the Marine Corps, if that appointment would result in more than-
 - (A) 2 officers in the grade of general;
 - (B) 17 officers in a grade above the grade of major general; or
 - (C) 22 officers in the grade of major general.

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Subtitle B—[Reserved]

Subtitle C—[Reserved]

Subtitle D—[Reserved]

Subtitle E—Military Justice

Sections 541 and 542 would provide for the following: **Section 541. Appellate military judges.** Since the inception of the Uniform Code of Military Justice (UCMJ), Article 66(a) has authorized civilians to serve as members of the Boards of Review, and later as appellate military judges of the Courts of Military Review, later renamed Courts of Criminal Appeals. The Coast Guard Court of Criminal Appeals has military and civilian appellate military judges assigned to that court. For several years after its creation, the Navy Court of Military Review similarly had both military and civilian appellate military judges.

Appellate military judges are “inferior officers” within the meaning of the Appointments Clause of Article II of the United States Constitution. *Edmond v. United States*, 520 U.S. 651, 666 (1997). As inferior officers, they may be appointed in only one of two ways. The default method is appointment by the President with the advice and consent of the Senate. Alternatively, Congress may, by law, vest appointment “in the President alone, in the Courts of Law, or in the Heads of Departments.” U.S. Const., art. II, § 2, cl. 2. The Department of Justice Office of Legal Counsel has interpreted “Heads of Departments” to include the Secretary of Defense and

the Secretary of Homeland Security, but not the Secretaries of the Army, Navy, or Air Force, who are subordinate to the Secretary of Defense.

Appellate military judges who are commissioned military officers do not require a separate appointment as their appointment by the President and confirmation by the Senate as a commissioned military officer satisfies the Appointments Clause. *Weiss v. United States*, 510 U.S. 163, 170 (1994).

The Court of Appeals for the Armed Forces has held that the authority of Heads of Departments to appoint civilian judges of the Courts of Criminal Appeals requires general or specific authorizing legislation. *United States v. Janssen*, 73 M.J. 221, 225 (C.A.A.F. 2014). The Secretary of Transportation was statutorily vested general authority in 49 U.S.C. § 323(a) to “appoint . . . officers and employees of the Department of Transportation,” which empowered the Secretary to appoint civilian Coast Guard Court of Criminal Appeals judges when the Coast Guard was a part of that Department. *Edmond*, 520 U.S. at 656. The Secretary of Homeland Security currently has specific statutory authority in 14 U.S.C. § 507 to appoint Coast Guard Court of Criminal Appeals judges.

This section would amend Article 66(a), UCMJ, to provide express authorization for the Secretary of Defense to appoint civilian appellate military judges who a Judge Advocate General may then assign to the Army Court of Criminal Appeals, Navy-Marine Corps Court of Criminal Appeals, or Air Force Court of Criminal Appeals.

This section would also establish authority for appellate military judges to be detailed to a case before a different Court of Criminal Appeals. Such authority would be useful if some or all of an armed force’s appellate judges were subject to a potential conflict of interest in a given case.

Section 542. Appellate review of courts-martial. This section would allow any Service member or civilian convicted by a general or special court-martial to obtain judicial review of that conviction.

The military justice system’s current appellate structure presents a convoluted variety of potential avenues of appeal. That system is needlessly inefficient. Crucially, despite those multiple avenues, some Service members and civilians convicted by general and special courts-martial have no guaranteed access to judicial review of that conviction. They appear to be the only individuals subject to a criminal conviction by an American court who do not have a right to appellate review by a higher court. That inequity should be corrected.

Currently, a Service member or civilian convicted by a general or special court-martial who receives a sentence that includes neither a punitive discharge nor confinement for more than six months may file an appeal with the applicable Judge Advocate General. After that appeal is resolved, the individual may file an application for discretionary review by a Court of Criminal Appeals. If that request is granted, the Court of Criminal Appeals then reviews the case, but without the power to review the factual sufficiency of the evidence or the appropriateness of the sentence. Further review is available on a discretionary basis by the Court of Appeals for the Armed Forces and, potentially, the United States Supreme Court. Under that system, there are

three unnecessary steps that precede a potential review by a Court of Criminal Appeals: (1) a review of the case by an attorney pursuant to Article 65(d)(2) of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. § 865(d)(2)); (2) an appeal under Article 69, UCMJ (10 U.S.C. § 869) that must be resolved by the Office of the Judge Advocate General; and (3) a request for discretionary review by the Court of Criminal Appeals under Article 69(d)(1)(B), UCMJ (10 U.S.C. § 869(d)(1)(B)). A system in which any accused convicted by a general or special court-martial may file an appeal directly with the Court of Criminal Appeals would be far more efficient.

Additionally, under the current system, there is no guarantee that a Court of Criminal Appeals will grant a request for discretionary review. A denial of such a request would leave the Service member or civilian with a federal conviction without any right to appeal that conviction to a higher court. Such a denial also cuts off the potential for further review by the Court of Appeals for the Armed Forces and the United States Supreme Court. Service members and civilians convicted by courts-martial should not be uniquely disadvantaged by being the only individuals convicted by an American court who never receive the right to judicial appellate review.

When the UCMJ was originally enacted, court-martial convictions that did not result in extended confinement or a punitive discharge were both common and considered of little long-term significance. That is no longer the case. A host of negative consequences now arise upon a general or special court-martial conviction, which is considered to be a federal criminal conviction. Collateral consequences of such convictions alone – regardless of the resulting sentence – often include loss of voting rights and, for many general court-martial convictions and some special court-martial convictions, lifetime bans on the right to possess firearms or ammunition. Depending on the particular offense resulting in the conviction, sex offender registration and associated deprivations of liberty, such as restrictions on place of residence, may result. General and special court-martial convictions that do not result in a punitive discharge as part of the court-martial sentence are often used as a basis to administratively discharge the Service member. A general or special court-martial conviction may also significantly impede post-discharge employment opportunities. Our Service members, as well as civilians who fall under court-martial jurisdiction, should receive the same right to challenge convictions resulting in such significant consequences that their civilian counterparts prosecuted in federal civilian and state courts have. While the number of affected cases would be small, the principle is important.

This legislation would also eliminate summary court-martial cases' eligibility for discretionary review by the Courts of Criminal Appeals, as well as the authority of a Judge Advocate General to refer a summary court-martial case to a Court of Criminal Appeals. The possibility under current law that a summary court-martial could be reviewed by a Court of Criminal Appeals allows the military appellate courts to issue extraordinary writs in summary court-martial proceedings, which would represent an unwarranted judicial intrusion into a non-criminal disciplinary forum. Unlike convictions by general and special courts-martial, a finding of guilty by a summary court-martial is not a criminal conviction. Article 20(b), UCMJ (10 U.S.C. § 820(b)). This legislation would eliminate the possibility of a summary court-martial case being reviewed by a Court of Criminal Appeals, thereby eliminating the military appellate judiciary's jurisdiction to issue extraordinary relief in summary court-martial proceedings.

This legislation would also correct an inconsistency between Article 69(c)(1)(A) and Article 69(c)(2), UCMJ (10 U.S.C. §§ 869(c)(1)(A), 869(c)(2)) concerning the scope or review in general and special court-martial cases reviewed by a Judge Advocate General under Article 69. Article 69 currently provides multiple grounds on which a Judge Advocate General may set aside general and special court-martial convictions or the sentences in cases reviewed under Article 65(d), including “error prejudicial to the substantial rights of the accused” and “the appropriateness of the sentence,” while also inconsistently providing that the review of such cases “is limited to the issue of whether the waiver, withdrawal, or failure to file an appeal was invalid as a matter of law.” This legislation cures that inconsistency by limiting a Judge Advocate General’s scope of review of general and special court-martial cases to the latter while limiting the authorized remedy to sending the case to the Court of Criminal Appeals.

This legislation would also eliminate the requirement in Article 65(d)(3) (10 U.S.C. § 865(d)(3)) for a legal review in a case in which the accused waives appellate review, withdraws from appellate review, or fails to file an appeal within the applicable timeframe.

Resource Information: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2023 President’s Budget request.

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

Title 10, United States Code

§861. Art. 61. Waiver of right to appeal; withdrawal of appeal

(a) **WAIVER OF RIGHT TO APPEAL.**—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appellate review in each case subject to such review under section 866 of this title (article 66). Such a waiver shall be—

- (1) signed by the accused and by defense counsel; and
- (2) attached to the record of trial.

(b) **WITHDRAWAL OF APPEAL.**—In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) **DEATH PENALTY CASE EXCEPTION.**—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

(d) **WAIVER OR WITHDRAWAL AS BAR.**—Except as provided by section 869(c)(2) of this title (article 69(c)(2)), a ~~A~~ waiver or withdrawal under this section bars review under section 866 of this title (article 66).

§865. Art. 65. Transmittal and review of records

(a) TRANSMITTAL OF RECORDS.—

(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

* * * * *

~~(d) REVIEW BY JUDGE ADVOCATE GENERAL.—~~

~~(1) BY WHOM.—A review conducted under this subsection may be conducted by an attorney within the Office of the Judge Advocate General or another attorney designated under regulations prescribed by the Secretary concerned.~~

~~(2) REVIEW OF CASES NOT ELIGIBLE FOR DIRECT APPEAL.—~~

~~(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial that is not eligible for direct appeal under paragraph (1) or (3) of section 866(b) of this title (article 66(b)).~~

~~(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision providing each of the following:~~

~~(i) A conclusion as to whether the court had jurisdiction over the accused and the offense.~~

~~(ii) A conclusion as to whether the charge and specification stated an offense.~~

~~(iii) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.~~

~~(iv) A response to each allegation of error made in writing by the accused.~~

~~(3) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN, OR NOT FILED.—~~

~~(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial if—~~

~~(i) the accused waives the right to appeal or withdraws appeal under section 861 of this title (article 61); or~~

~~(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph (A), (B), or (C) of section 866(b)(1) of this title (article 66(b)(1)).~~

~~(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing conclusions on the matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B).~~

(e) REMEDY.—

(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be

forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

~~(2) REHEARING.— In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).~~

~~(3) REMEDY WITHOUT REHEARING.—~~

~~(A) DISMISSAL WHEN NO REHEARING ORDERED.— If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.~~

~~(B) DISMISSAL WHEN REHEARING IMPRACTICABLE.—~~

~~(i) Subject to clause (ii), if the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.~~

~~(ii) CASES REFERRED BY SPECIAL TRIAL COUNSEL.— If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.~~

§ 866. Art. 66. Courts of Criminal Appeals

(a) COURTS OF CRIMINAL APPEALS.—

(1) IN GENERAL.—Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (h). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules.

(2) APPELLATE MILITARY JUDGES.—

(A) CERTIFICATION.—Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge.

(B) APPOINTMENT OF CIVILIAN APPELLATE MILITARY JUDGES.— The Secretary of Defense may appoint civilians as appellate military judges and make such civilians available for certification by the Judge Advocate General of the Army, Navy, or Air Force for assignment to the Court of Criminal Appeals established by the Judge Advocate General concerned.

(2C) ADDITIONAL QUALIFICATIONS.—In addition to any other qualifications specified in ~~paragraph (1)~~ subparagraph (A), any commissioned officer or civilian assigned as an appellate military judge to a Court of Criminal Appeals shall have not fewer than 12 years of experience in the practice of law before such assignment.

(3) CHIEF JUDGE.—The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(4) MINIMUM ASSIGNMENT PERIODS.—In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(5) DETAILING APPELLATE MILITARY JUDGES TO A DIFFERENT COURT OF CRIMINAL APPEALS.—An appellate military judge may be detailed to sit in a panel or the court as a whole for a case that is assigned to a different Court of Criminal Appeals in accordance with rules prescribed under subsection (h), if permitted by the Judge Advocate General who has certified the appellate military judge.

(b) REVIEW.—

~~(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction over a timely appeal from the judgment of a court-martial, entered into the record under section 860c of this title (article 60c), as follows:~~

~~(A) On appeal by the accused in a case in which the sentence extends to confinement for more than six months and the case is not subject to automatic review under paragraph (3).~~

~~(B) On appeal by the accused in a case in which the Government previously filed an appeal under section 862 of this title (article 62).~~

~~(C) On appeal by the accused in a case that the Judge Advocate General has sent to the Court of Criminal Appeals for review of the sentence under section 856(d) of this title (article 56(d)).~~

~~(D) In a case in which the accused filed an application for review with the Court under section 869(d)(1)(B) of this title (article 69(d)(1)(B)) and the application has been granted by the Court.~~

(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction over a timely appeal from the judgment of a court-martial, entered into the record under section 860c(a) of this title (article 60c(a)), that includes a finding of guilty.

(2) REVIEW OF CERTAIN SENTENCES.—A Court of Criminal Appeals shall have jurisdiction over all cases that the Judge Advocate General orders sent to the Court for review under section 856(d) of this title (article 56(d)).

(3) AUTOMATIC REVIEW.—A Court of Criminal Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under section 860c of this title (article 60c) includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more.

(c) TIMELINESS.—An appeal under subsection (b)(1) is timely if it is filed as follows:

~~(1) In the case of an appeal by the accused under subsection (b)(1)(A) or (b)(1)(B), if filed before the later of—~~

~~(A) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); or~~

~~(B) the date set by the Court of Criminal Appeals by rule or order.~~

~~(2) In the case of an appeal by the accused under subsection (b)(1)(C), if filed before the later of—~~

~~(A) the end of the 90-day period beginning on the date the accused is notified that the application for review has been granted by letter placed in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record; or~~

~~(B) the date set by the Court of Criminal Appeals by rule or order.~~

(c) TIMELINESS.—An appeal under subsection (b)(1) is timely if it is filed before the later of—

(1) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); and

(2) the date set by the Court of Criminal Appeals by rule or order.

* * * * *

§869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused or receipt of the record pursuant to section 864(c)(3) of this title (article 64(c)(3)) and subject to subsections (b), (c), and (d), the Judge Advocate General may modify or set aside, in whole or in part, the findings and sentence in a court-martial that is not summary court-martial or order a general or special court-martial reviewed under section 866 of this title (article 66).

~~(b) TIMING.—To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than one year after the date of completion of review under section 864 or 865 of this title (article 64 or 65), as the case may be. The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.~~

(b) TIMING.—(1) To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than—

(A) for a summary court-martial, one year after the date of completion of review under section 864 of this title (article 64); or

(B) for a general or special court-martial, one year after the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)), unless the accused submitted a waiver or withdrawal of appellate review under section 861 of this title (article 61) before being provided notice of appellate rights, in which case the application must be submitted to the

Judge Advocate General not later than one year after the entry of judgment under section 860c of this title (article 60c).

(2) The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.

(c) SCOPE.—(1)(A) In a case reviewed under section 864 ~~or 865(b)~~ of this title (article 64 ~~or 65(b)~~), the Judge Advocate General may set aside the findings or sentence, in whole or in part, on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(C) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(D)(i) Subject to clause (ii), if the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impracticable, the convening authority shall dismiss the charges.

(ii) If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.

(2) In a case reviewed under section 865(b) of this title (article 65(b)), review under this section is limited to the issue of whether the waiver or withdrawal of an appeal was invalid under the law. If the Judge Advocate General determines that the waiver or withdrawal of an appeal was invalid, the Judge Advocate General shall ~~order appropriate corrective action under rules prescribed by the President~~ send the case to the Court of Criminal Appeals.

~~(d) COURT OF CRIMINAL APPEALS.—(1) A Court of Criminal Appeals may review the action taken by the Judge Advocate General under subsection (c)—~~

~~(A) in a case sent to the Court of Criminal Appeals by order of the Judge Advocate General; or~~

~~(B) in a case submitted to the Court of Criminal Appeals by the accused in an application for review.~~

~~(2) The Court of Criminal Appeals may grant an application under paragraph (1)(B) only if—~~

~~(A) the application demonstrates a substantial basis for concluding that the action on review under subsection (c) constituted prejudicial error; and~~

~~(B) the application is filed not later than the earlier of—~~

~~(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or~~

~~(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.~~

~~(3) The submission of an application for review under this subsection does not constitute a proceeding before the Court of Criminal Appeals for purposes of section 870(e)(1) of this title (article 70(e)(1)).~~

~~(e) ACTION ONLY ON MATTERS OF LAW.—Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under subsection (d), the Court may take action only with respect to matters of law.~~

Subtitle F—[RESERVED]

Subtitle G—Other Matters

Section 561 would greatly enhance the accessibility of notarial services to members of the Armed Forces and other eligible legal assistance customers by amending section 1044a of title 10, United States Code (U.S.C.), to permit remote online notarization. Currently, many Service members, especially those stationed overseas, must travel anywhere from 30 to 300 miles to their nearest legal assistance office in order to have a document notarized. Deployed Service members face even greater difficulty accessing legal services. During the COVID-19 emergency, many Service members, their dependents, and other persons eligible for legal assistance under 10 U.S.C. 1044 were unable to receive needed notary services due to the limited number of available staff and safety precautions militating against in-person notary services. Without an available notary, critical documents for legal readiness, such as powers of attorney, cannot be executed. Troops who are stressed or distracted by personal legal matters are less able to focus on the mission. Authorizing remote online notarization will have a tremendous impact on the ability of Service members to access notarial services and will provide DoD with greater manning flexibility.

Remote online notarizations should still adhere to the Services' rules governing paper-based notarial acts, or notarial acts utilizing electronic signatures, except for the requirement that the signer be physically present. Instead, the signer will be permitted to appear through a real-time audio and video conference or other Service-approved technological means.

Without this proposed legislation, states would not be required to accept remote online notarizations performed by persons authorized to serve as notaries under 10 U.S.C. 1044a. While some states have adopted legislation permitting remote online notarization, and permitting the use of electronic signatures, there is no uniformly accepted remote online notarization process across these States. Although the Electronic Signatures in the Global and National Commerce Act does authorize electronic signatures and records, it explicitly does not require States to accept those electronic records or signatures. The Uniform Electronic Transactions Act, moreover, only allows for electronic signatures when the notary is physically in the same room when the document is electronically signed. As such, the new subsection (e) proposed to be added to 10 U.S.C. 1044a ensures that documents notarized via remote online notary services will not be rejected in any state solely because it was performed remotely and/or did not follow that State's unique procedural requirements.

The military services would also establish guidelines for use of remote online notary logs. Notaries would maintain an electronic log which will enable access only by a password or other secure means of authentication, be tamper-evident, provide for a duplicate record as backup, and/or be capable of capturing electronic signatures or biometric identifiers. For purposes of this Amendment, “electronic signature” should be defined in accordance with Section 2-9 of the Model Electronic Notary Act, “An electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.”

The proposed legislation would not mandate the purchase of specific technology or require additional manning.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request.

Changes to Existing Law: This proposal would make the following changes to sections 1044a of title 10, United States Code:

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

- (1) Members of any of the armed forces.
- (2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.
- (3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

- (1) All judge advocates, including reserve judge advocates when not in a duty status.
- (2) All civilian attorneys serving as legal assistance attorneys.
- (3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.
- (4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.
- (5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

(6) All civilian paralegals serving at military legal assistance offices, supervised by a military legal assistance counsel (as defined in section 1044d(g) of this title).

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(e)(1) A person named in subsection (b) may exercise the powers described in subsection (a) through remote online means, including under circumstances where the individual with respect to whom such person is performing the notarial act is not physically present in the same location as such person.

(2) A determination of the authenticity of a notarial act authorized in this section shall be made without regard to whether the notarial act was performed through remote online means.

(3) A log or journal of a notarial act authorized in this section shall be considered for evidentiary purposes without regard to whether the log or journal is in electronic form.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Section 601 would make technical and conforming changes to titles 5, 10, 14, 32, 36, and 37, United States Code (U.S.C.), and other laws, as part of the transition of the Department of Defense from the legacy travel and transportation authorities in subchapter III of chapter 8 of title 37, U.S.C., to the new travel and transportation authorities in subchapter I of such chapter.

Section 471 of title 37, U.S.C., establishes the “travel authorities transition expiration date”, which terminates the legacy travel and transportation authorities in subchapter III on December 31, 2021.

Numerous statutes throughout the U.S.C. are conditioned upon events identified in the expiring subchapter III authorities. This proposal updates references to the subchapter III expiring authorities to the corresponding locations in the new subchapter I travel and transportation authorities.

Resource Information: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would amend existing laws as follows:

Balanced Budget and Emergency Deficit Control Act of 1985

SEC. 256. [2 U.S.C. 906] GENERAL AND SPECIAL SEQUESTRATION RULES.

* * * * *

(g) FEDERAL PAY.—

(1) ***

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term "statutory pay system" shall have the meaning given that term in section 5302(1) of title 5.

(B) The term "elements of military pay" means—

(i) the elements of compensation of members of the uniformed services specified in section 1009 of title 37,

(ii) allowances provided members of the uniformed services under ~~sections 403a and 475~~ sections 403b and 405 of such title, and

(iii) cadet pay and midshipman pay under section 203(c) of such title.

(C) ***

* * * * *

* * * * *

Title 5, United States Code

§ 4109. Expenses of training

(a) ***

(1) ***

(2) pay, or reimburse the employee for, all or a part of the necessary expenses of the training, without regard to section 3324(a) and (b) of title 31, including among the expenses the necessary costs of—

(A) travel and per diem instead of subsistence under subchapter I of chapter 57 of this title or, in the case of commissioned officers of the National Oceanic and Atmospheric Administration, ~~sections 474 and 475~~ sections 405 and 452 of title 37, and the Joint Travel Regulations for the Uniformed Services;

(B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under section 5724 of this title or, in the case of commissioned officers of the National Oceanic and Atmospheric Administration, ~~sections 476 and 479~~ sections 452 and 453(c) of title 37, and the Joint Travel Regulations for the Uniformed Services, when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training;

(C) tuition and matriculation fees;

(D) library and laboratory services;

(E) purchase or rental of books, materials, and supplies; and

(F) other services or facilities directly related to the training of the employee.

* * * * *

§ 5725. Transportation expenses; employees assigned to danger areas

* * * * *

(c)(1) The expenses authorized under subsection (a) shall, with respect to the transport of family household pets, include the expenses for the shipment of and the payment of any quarantine costs for such pets.

(2) Any payment or reimbursement under this section in connection with the transport of family household pets shall be subject to terms and conditions which—

(A) the head of the agency shall by regulation prescribe; and

(B) shall, to the extent practicable, be the same as would apply under regulations prescribed under ~~section 476(b)(1)(H)(iii)~~ sections 453(c)(1)-(4) and 453(d) of title 37 in connection with the transport of family household pets of members of the uniformed services, including regulations relating to the types, size, and number of pets for which such payment or reimbursement may be provided.

* * * * *

§ 5760. Travel and transportation allowances: transportation of family members incident to the repatriation of employees held captive

* * * * *

(d) TRAVEL AND TRANSPORTATION ALLOWANCES.—(1) ***

(2) In addition to the transportation authorized by subsection (a), the head of an agency may provide a per diem allowance or reimbursement for the actual and necessary expenses of the travel, or a combination thereof, but not to exceed the rates established for such allowances and expenses under ~~section 474(d)~~ section 464 of title 37.

(3) The transportation authorized by subsection (a) may be provided by any of the means described in ~~section 481h(d)(1)~~ section 452(d) of title 37.

(4) ***

(5) ***

* * * * *

Title 10, United States Code

§ 710. Career flexibility to enhance retention of members

* * * * *

(f) PAY AND ALLOWANCES.—(1) ***

* * * * *

(4)(A) Subject to subparagraph (B), a member who participates in a program is entitled, while participating in the program, to the travel and transportation allowances authorized by ~~section 474~~ section 452 of title 37 for—

(i) ***

* * * * *

(h) CONTINUED ENTITLEMENTS.—A member participating in a program under this section shall, while participating in the program, be treated as a member of the armed forces on active duty for a period of more than 30 days for purposes of—

(1) ***

* * * * *

(4) the provision of all travel and transportation allowances for the survivors of deceased members to attend burial ceremonies under ~~section 481f~~ section 453(f) of title 37; and

(5) ***

* * * * *

§ 1174a. Special separation benefits programs

(a) ***

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) ***

(2) be entitled to—

(A) ***

(B) the same benefits and services as are provided under chapter 58 of this title, ~~sections 474 and 476~~ sections 452 and 453(c) of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

* * * * *

§ 1175. Voluntary separation incentive

* * * * *

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, ~~sections 474 and 476~~ sections 452 and 453(c) of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

* * * * *

§ 1175a. Voluntary separation pay and benefits

* * * * *

(e) SEPARATION PAY AND BENEFITS.—(1) A member of the armed forces who is separated from active duty under subsection (c) shall be paid voluntary separation pay in accordance with subsection (g) in an amount determined by the Secretary concerned pursuant to subsection (f).

(2) A member who is not entitled to retired or retainer pay upon separation shall be entitled to the benefits and services provided under—

(A) chapter 58 of this title during the 180-day period beginning on the date the member is separated(notwithstanding any termination date for such benefits and services otherwise applicable under the provisions of such chapter); and

(B) ~~sections 474 and 476~~ sections 452 and 453(c) of title 37.

* * * * *

§ 1491. Funeral honors functions at funerals for veterans

* * * * *

(d) SUPPORT.—(1) ***

(2) ***

(3) A stipend paid under this subsection to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under ~~section 495(a)(2)~~ section 435(a)(2) of title 37 and any other compensation to which the member may be entitled.

* * * * *

§ 2013. Training at non-Government facilities

(a) ***

(b) EXPENSES.—The Secretary concerned, from appropriations or other funds available to the Secretary, may—

(1) pay all or a part of the pay of a member of a uniformed service who is selected and assigned for training under this section, for the period of training; and

(2) pay, or reimburse the member of a uniformed service for, all or a part of the necessary expenses of the training (without regard to subsections (a) and (b) of section 3324 of title 31), including among those expenses the necessary costs of the following:

(A) Travel and per diem instead of subsistence under ~~sections 474 and 475~~ sections 405 and 452 of title 37 and the Joint Travel Regulations for the Uniformed Services.

(B) Transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under ~~sections 476 and 479~~ sections 452 and 453(c) of title 37 and the Joint Travel Regulations for the Uniformed Services when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training.

(C) ***

* * * * *

§ 2493. Fisher Houses: administration as nonappropriated fund instrumentality

(a) FISHER HOUSES AND SUITES DEFINED.—In this section:

* * * * *

(4) The term "authorized Fisher House residents" means the following:

(A) ***

(B) With respect to the Fisher House described in paragraph (2), the following persons:

(i) The primary next of kin of a member of the armed forces who dies while located or serving overseas.

(ii) Other family members of the deceased member who are eligible for transportation under ~~section 481(f)(d)~~ section 453(f) of title 37.

(iii) An escort of a family member described in clause (i) or (ii).

* * * * *

§ 2613. Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families

(a) ***

* * * * *

(g) FAMILY MEMBER DEFINED.—In this section, the term "family member" has the meaning given that term in ~~section 481h(b)~~ section 451(a)(3) of title 37.

* * * * *

§ 12503. Ready Reserve: funeral honors duty

(a) ORDER TO DUTY.—A member of the Ready Reserve may be ordered to funeral honors duty, with the consent of the member, in preparation for or to perform funeral honors functions at the funeral of a veteran as defined in Section 1491 of this title. Performance of funeral honors duty by a Reserve not on active duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than ~~sections 206 and 495~~ sections 206 and 435 of title 37.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

- (1) service credit under section 12732(a)(2)(E) of this title; and
- (2) as directed by the Secretary concerned, either—
 - (A) the allowance under ~~section 495~~ section 435 of title 37; or
 - (B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under ~~chapter 7~~ section 452 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) ***

(e) ***

* * * * *

Title 14, United States Code

§ 2764. Monetary allowance for transportation of household effects

The transportation and reimbursement authorized by ~~subsection (b) of section 476~~ section 453(c) of title 37 shall be available hereafter to pay a monetary allowance in place of such transportation to a member who, under regulations prescribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by a privately owned or rental vehicle. This allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of the baggage and household effects. The allowance shall, however, be in an amount that will result in savings to the

Government when the total cost of the movement of baggage and household effects is compared with the cost that otherwise would have been incurred under ~~subsection (b) of section 476~~ section 453(c) of title 37.

* * * * *

Title 32, United States Code

§ 115. Funeral honors duty performed as a Federal function

(a) ORDER TO DUTY.—A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to funeral honors duty, with the consent of the member, to prepare for or perform funeral honors functions at the funeral of a veteran under section 1491 of title 10. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to perform funeral honors Functions under this section without the consent of the Governor or other appropriate authority of the State concerned. Performance of funeral honors duty by such a member not on active duty or full-time National Guard duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than ~~sections 206 and 495~~ sections 206 and 435 of title 37.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

(1) service credit under section 12732(a)(2)(E) of title 10; and

(2) as directed by the Secretary concerned, either—

(A) the allowance under ~~section 495~~ section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under ~~chapter 7~~ section 452 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) ***

* * * * *

National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002

SEC. 236. [33 U.S.C. 3036] CAREER FLEXIBILITY TO ENHANCE RETENTION OF OFFICERS.

* * * * *

(f) PAY AND ALLOWANCES.—

(1) ***

* * * * *

(4) TRAVEL AND TRANSPORTATION ALLOWANCE.—

(A) In general Subject to subparagraph (B), an officer who participates in a program under this section is entitled, while participating in the program, to the travel and transportation allowances authorized by ~~section 474~~ section 452 of title 37 for—

(i) travel performed from the residence of the officer, at the time of release from active duty to participate in the program, to the location in the United States designated by the officer as the officer's residence during the period of participation in the program; and

(ii) ***

* * * * *

* * * * *

Title 36, United States Code

§ 2101. Membership

(a) ***

(b) PAY AND EXPENSES.—The members of the Commission serve without compensation. However, the members of the Commission may receive, from an amount appropriated to carry out this chapter or acquired by another authorized way—

(1) their actual expenses related to the work of the Commission;

(2) when in a travel status outside the continental United States, a per diem at the rate authorized to be paid for members of the uniformed services under ~~section 475~~ section 405 of title 37 instead of subsistence; and

(3) when in a travel status in the continental United States, a per diem at the rate authorized to be paid under sections 5702 and 5703 of title 5 instead of subsistence.

(c) ***

* * * * *

Title 37, United States Code

§ 403. Basic allowance for housing

* * * * *

(d) BASIC ALLOWANCE FOR HOUSING WHEN DEPENDENTS DO NOT ACCOMPANY MEMBER.—(1) ***

(2) A permanent duty location referred to in paragraph (1) is a location—

(A) to which the movement of the member's dependents is not authorized at the expense of the United States under ~~section 476~~ section 452 of this title, and the member's dependents do not reside at or near the location; and

(B) ***

* * * * *

(g) RESERVE MEMBERS.—(1) ***

(2) The Secretary concerned may provide a basic allowance for housing to a member

described in paragraph (1) at a monthly rate equal to the rate of the basic allowance for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to the location at which the member is serving, for members in the same grade at that location without dependents. The member may receive both a basic allowance for housing under paragraph (1) and under this paragraph for the same month, but may not receive the portion of the allowance authorized under ~~section 474~~ section 452 of this title, if any, for lodging expenses if a basic allowance for housing is provided under this paragraph.

(3) Paragraphs (1) and (2) shall not apply if the member is authorized transportation of household goods under ~~section 476~~ section 453(c) of this title as part of the call or order to active duty described in such paragraph.

(4) ***

* * * * *

§ 420. Allowances while participating in international sports

(a) Section 717 of title 10 does not authorize the payment of allowances at higher rates than those provided for participation in military activities not covered by that section.

(b) Notwithstanding any other law, a member of a uniformed service is not entitled to travel and transportation allowances under ~~sections 474–481~~ section 452 of this title for any period during which his expenses for travel or transportation are being paid by the agency sponsoring his participation in a competition covered by section 717 of title 10.

* * * * *

§ 422. Cadets and midshipmen

(a) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to the allowances provided by law for a midshipman in the Navy, and to travel and transportation allowances prescribed under ~~section 480~~ section 452 of this title while traveling under orders as a cadet or midshipman.

* * * * *

§ 427. Family separation allowance

(a) ENTITLEMENT TO ALLOWANCE.—(1) In addition to any allowance or per diem to which he otherwise may be entitled under this title a member of a uniformed service with dependents is entitled to a monthly allowance equal to \$250 if—

(A) the movement of his dependents to his permanent station or a place near that station is not authorized at the expense of the United States under ~~section 476~~ section 452 of this title and his dependents do not reside at or near that station;

(B) ***

(C) ***

(2) ***

(b) ***

(c) EFFECT OF ELECTION TO SERVE UNACCOMPANIED TOUR OF DUTY.—(1) Except as provided in paragraph (2) or (3), a member who elects to serve a tour of duty unaccompanied by his dependents at a permanent station to which the movement of his dependents is authorized at the expense of the United States under ~~section 476~~ section 452 of this title is not entitled to an allowance under subsection (a)(1)(A).

(2) ***

* * * * *

§ 433. Allowance for muster duty

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of the Ready Reserve who is not a member of the National Guard or of the Selected Reserve is entitled to an allowance for muster duty performed pursuant to section 12319 of title 10 if the member is engaged in that duty for at least two hours.

(b) The amount of the allowance under this section shall be 125 percent of the amount of the average per diem rate for the United States (other than Alaska and Hawaii) under ~~section 474(d)(2)(A)~~ section 452 of this title as in effect on September 30 of the year preceding the year in which the muster duty is performed.

* * * * *

§ 451. Definitions

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

(1) ***

(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:

(A) ***

* * * * *

(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:

(i) Transportation of survivors to attend burial services or transfer of deceased members after death overseas as provided in ~~section 481f~~ section 453(f) of this title.

(ii) Transportation of designated individuals incident to the hospitalization of members as provided in ~~section 481h~~ section 452(b)(12) of this title.

(iii) Transportation of designated individuals incident to the repatriation of members as provided in ~~section 481j~~ section 452(b)(13) of this title.

(iv) Transportation of non-medical attendants as provided in ~~section 481k~~ section 452(b)(14) of this title.

(v) Transportation of designated individuals to attend Yellow Ribbon Reintegration Program events as provided in ~~section 481l~~ section 452(b)(15) of this title.

(vi) ***
(3) ***

* * * * *

§ 1002. Additional training or duty without pay: Reserves and members of National Guard

(a) A member of the National Guard, or of a reserve component of a uniformed service, may, with his consent, be given additional training or other duty as provided by law, without pay, as may be authorized by the Secretary concerned.

(b)(1) A member who performs training or other duty without pay under subsection (a) may, in the discretion of the Secretary concerned, be authorized the travel and transportation allowances prescribed by ~~section 474(a) (d), and (f)~~ section 452, of this title for travel performed to and from that training or duty, and, during the performance of that training or duty, be furnished with subsistence and quarters in kind or commutation thereof at a rate to be fixed by the Secretary concerned.

(2) ***

* * * * *

§ 1003. Assimilation of pay and allowances

Chapters 3 and 5 and ~~sections 402–403b, 474–477, 479–481, and 414~~ sections 402-403b, 405, 414, 452, and 453 of this title apply equally to persons who are not serving as members of a uniformed service but whose pay or allowances, or both, are assimilated under law or a regulation prescribed under law, to the pay or allowances, or both, of commissioned officers, warrant officers, or enlisted members of any grade, rank, or rating in any uniformed service.

* * * * *

§ 1006. Advance payments

* * * * *

(g) Under regulations prescribed by the Secretary concerned, the dislocation allowance authorized by ~~section 477~~ section 452(c)(2) of this title for a member of a uniformed service whose dependents are covered by ~~section 475a(a)~~ section 452(b)(11) of this title may be paid in advance of the evacuation of the dependents and to the dependents designated by the member.

* * * * *

* * * * *

Child Nutrition Act of 1966

SEC. 17. [42 U.S.C. 1786] SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

* * * * *

(d) ELIGIBLE PARTICIPANTS.—

(1) ***

(2)(A) ***

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income—

(i) ***

(ii) any cost-of-living allowance provided under ~~section 475~~ section 405 of title 37 to a Member of a uniformed service who is on duty outside the contiguous States of the United States.

* * * * *

Section 602. The Survivor Benefit Plan (SBP) is an income protection plan (similar to life insurance) that, in exchange for premium costs paid while a military retiree is living, pays the surviving spouses of military retirees, and their families, a monthly payment (annuity) to help make up for the loss of income following the death of a military retiree. This proposal would deduct SBP premiums from Veterans' Affairs (VA) Disability Compensation when the veteran's retired pay or combat-related special compensation is not sufficient to pay the full amount of such premiums.

Automating this currently voluntary payment pathway would simplify premium payments for 65,000 service members who are required to pay SBP premiums through mailed paper checks, and nearly eliminate the growth of the SBP premium backlog of more than \$224,000,000. This immense backlog prevents surviving spouses and their families from receiving annuity payments in cases where their annuity premium has not been fully paid.

SBP protects survivors against the risks of a retiree's early death and inflation. If enrolled in the plan upon retirement, a service member will have his or her retired pay reduced by 6.5% if the member elected full coverage and has an eligible beneficiary. (Members may also elect a lesser coverage amount, which would result in lower premiums.) In return for this reduction in retired pay, a survivor annuity is payable at 55% of the elected coverage amount. Premium deductions are governed by 10 U.S.C. 1452.

SBP premiums have long been payable via VA Disability Compensation by submitting a DD Form 2891 (Authorization For Retired Serviceman's Family Protection Plan (RSFPP) And/Or Survivor Benefit Plan (SBP) Costs Deduction) or sending payment through DoD. However, even though these options were available, many retirees did not elect to have their premiums deducted from their VA Compensation, nor did they make the required deposit to the Treasury, perhaps due to the relative difficulty in these transactions. Accumulated balances of outstanding premiums accrue interest and are passed on as a debt to their surviving beneficiaries before the SBP annuity can be paid to the member's survivor(s). This amounts to \$7,500,000 in debts impacting 7,000 annuitants annually.

The FY 2016 National Defense Authorization Act (NDAA) (Public Law 114-328) amended section 1452(d) of title 10, United States Code, to expand the authority to allow deductions of SBP premiums to be made from any combat-related special compensation (CRSC) that was awarded to the member under 10 U.S.C. 1413a. While this allowed DFAS to ensure the collection of premiums on a significant number of accounts, those who were not awarded CRSC

were still required to either voluntarily elect to have those premiums deducted from their VA Disability Compensation or make a deposit themselves into the Treasury.

This amendment to section 1452 of title 10 is being proposed to help ensure that retired members who elect to participate in SBP actually pay the SBP premium costs while they are still alive. This is required to ensure that the surviving beneficiaries are protected and entitled to an annuity commencing immediately after the retired member's death, fulfilling the purpose of the SBP program to be an on-going income stream for survivors. The proposal will require the collection of these required SBP premiums from the member's VA Disability Compensation in cases where there is insufficient retired pay and/or combat-related special compensation to ensure that the costs of the SBP premium deductions are paid.

This proposal will have three key benefits if enacted into law:

- Immediate annuity available for military survivors and their families
- Smooth pathway for new SBP applicants
- Further protect the soundness of the Military Retirement Fund

First, and most important, upon the death of a member who participated in the SBP, the designated survivor will always be entitled to receive an annuity immediately. Currently, the survivors of members who have accumulated unpaid SBP premium debt must wait for the debt to be repaid (through monthly recoupment of the amount of the annuity that otherwise would have been paid). This often results in survivors having to wait several months or even years to receive their annuities. Moreover, as a result of recent legislation, there will be a substantial increase in "new" survivors who are entitled to SBP. And therefore, there will be a substantial increase in the number of survivors who will have to wait several months or even years to receive their annuities. This proposal would relieve current annuitants of the burden they presently have to postpone their receipt of their annuities until the member's SBP premium debt is fully recouped.

In the Fiscal Year 2020 NDAA, Congress' expanded VA Dependent Indemnity Compensation (DIC) and Department of Defense SBP authorities, which now allows surviving spouses to receive both benefits. This change will likely result in a substantial increase in "new" survivors who are entitled to SBP who were not previously entitled to receive SBP because of the DIC offset. In those cases where there is unpaid SBP premium debt, survivors will have to wait until the debt is fully recouped to receive their annuities. This proposal would relieve those "new" SBP annuitants of the burden to postpone their receipt of their annuities until such time as the member's SBP premium debt is fully recouped.

Next, this proposal will enhance the protection of the Military Retirement Fund. Of the (approximately) 35,000 members who have accumulated unpaid SBP premium debt, a large percentage of them (perhaps 30-50%) will survive their designated SBP beneficiary. In those cases, when the member subsequently dies (with unpaid SBP premium debt), there is no surviving annuitant, and there is no annuity from which the unpaid premiums may be recouped. While that debt can be charged to the member's estate, the collection rate is very low. This proposal will help ensure that members who elect to participate in SBP actually do pay the SBP

premium costs while they are still alive to ensure surviving family members begin receiving SBP income immediately rather than waiting for years.

Finally, this proposal updates section 1452 of title 10 to bring it into alignment with Chapter 74 (Department Of Defense Military Retirement Fund) by requiring that SBP premium deductions be deposited in the Military Retirement Fund rather than into Treasury (Miscellaneous Receipts). SBP annuities are paid from the Military Retirement Fund.

Resource Information: This proposal has no increase on the use of resources. Resources affected by this proposal are incidental in nature and are included within the Fiscal Year (FY) 2023 President's Budget request. The reductions of administrative and material costs to DFAS are estimated to be \$433,500 per year by eliminating manual processing of paper checks to pay SBP premiums, auditing accounts' imbalances, and maintaining the lockboxes.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/ SAG	Program Element
Survivor Benefit Plan	(\$0.43)	(\$0.43)	(\$0.43)	(\$0.43)	(\$0.43)	DFAS Working Capital Fund	04	N/A	N/A
Total	(\$0.43)	(\$0.43)	(\$0.43)	(\$0.43)	(\$0.43)	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 1452 of title 10, United States Code, and section 5301 of title 38, United States Code:

§1452. Reduction in retired pay

(a) Spouse and Former Spouse Annuities.-

(1) Required reduction in retired pay.-Except as provided in subsection (b), the retired pay, other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title, of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) Standard annuity.-If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) Disability and nonregular service retirees.-In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) Members as of enactment of flat-rate reduction.-In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) New entrants after enactment of flat-rate reduction.-In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law

other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) Alternative reduction amounts.-For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) Flat-rate reduction.-An amount equal to 6½ percent of the base amount.

(II) Amount under pre-flat-rate reduction.-An amount equal to 2½ percent of the first \$337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) Reserve-component annuity.-If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) Flat-rate reduction.-An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) Amount under pre-flat-rate reduction.-An amount equal to 2½ percent of the first \$337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) Additional reduction for child coverage.-If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) No reduction when no beneficiary.-The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) Periodic adjustments.-

(A) Adjustments for increases in rates of basic pay.-Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) Adjustments for retired pay colas.-In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the

Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) Spouse coverage described.-For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who-

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) Child-Only Annuities.-

(1) Required reduction in retired pay.-The retired pay, other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title, of a participant in the Plan who is providing child-only coverage (as described in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) No reduction when no child.-There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) Special rule for certain rcsbp participants.-In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) Child-only coverage defined.-For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who-

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) Reduction for Insurable Interest Coverage.-

(1) Required reduction in retired pay.-The retired pay, other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title, of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(5) of this title shall be reduced as follows:

(A) Standard annuity.-In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) Reserve component annuity.-In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) Limitation on total reduction.-The total reduction under paragraph (1) may not exceed 40 percent.

(3) Duration of reduction.-The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(5) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) Rule for computation.-Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) or 1415(b)(1)(B) of this title.

(5) Rule for designation of new insurable interest beneficiary following death of original beneficiary.-The Secretary of Defense shall prescribe in regulations premiums which a participant making an election under section 1448(b)(1)(G) of this title shall be required to pay for participating in the Plan pursuant to that election. The total amount of the premiums to be paid by a participant under the regulations shall be equal to the sum of the following:

(A) The total additional amount by which the retired pay of the participant would have been reduced before the effective date of the election if the original beneficiary (i) had not died and had been covered under the Plan through the date of the election, and (ii) had been the same number of years younger than the participant (if any) as the new beneficiary designated under the election.

(B) Interest on the amounts by which the retired pay of the participant would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable.

(C) Any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(d) Deposits To Cover Periods When Retired Pay Not Paid or Not Sufficient.-

(1) ~~Required deposits.~~ Authorized deductions.-If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, ~~that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except to the extent that the required deduction is made pursuant to paragraph (2)~~ under this section shall be deducted pursuant to subparagraph (A) or (B) of paragraph (2).

(2) Deductions described.—

(A) Deduction from combat-related special compensation when retired pay not adequate.-In the case of a person who has elected to participate in the Plan and who has been awarded both retired pay and combat-related special compensation under section 1413a of this title, if a deduction from the person's retired pay for any period cannot be made in the full amount required, there shall be deducted from the person's combat-related special compensation in lieu of deduction from the person's retired pay the amount that would otherwise have been deducted from the person's retired pay for that period.

(B) Deduction from compensation.-In the case of a person who has elected to participate in the Plan who is entitled to compensation under title 38, and

deductions required under this section exceed the person's retired pay or combat-related special compensation, if applicable, then the Secretary of Veterans Affairs, pursuant to section 5301 of title 38, shall deduct from the person's compensation the amount that would otherwise have been deducted from the person's retired pay or combat-related special compensation for that period.

(3) COLLECTION OF PAYMENTS.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for that period and if the full deductions required by this section are not made under paragraph 2, the person shall remit payment to the Secretary concerned in the amount that would otherwise have been deducted from retired pay or combat-related special compensation for that period. If payment is not remitted, the Secretary shall collect payment pursuant to title 31 section 3711.

(4) DEPOSIT INTO MILITARY RETIREMENT FUND.—All amounts deducted under paragraph (2) or collected under paragraph (3) shall be deposited into the Department of Defense Military Retirement Fund.

~~(3)(5)~~ Deposits not required when participant on active duty. ~~Paragraphs (1) and (2)~~ ~~This section~~ does not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) Deposits Not Required for Certain Participants in CSRS and FERS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5 or chapter 84 of such title, that person shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(j) or 8416(a) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) or 8442(a) of title 5.

(f) Refunds of Deductions Not Allowed.—

(1) General rule.—A person is not entitled to refund of any amount deducted from retired pay or combat-related special compensation under this section.

(2) Exceptions.—Paragraph (1) does not apply—

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) Discontinuation of Participation by Participants Whose Surviving Spouses Will Be Entitled to DIC.—

(1) Discontinuation.—

(A) Conditions.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan

by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) Effective date.-Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) Form for request for discontinuation.-Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) Consent of beneficiaries required.-A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) Information on plan to be provided by secretary concerned.-

(A) Information to be provided promptly to participant.-The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) Right to withdraw discontinuation request.-A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) Refund of deductions from retired pay, ~~or CRSC, or compensation~~. -Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay, ~~or combat-related special compensation, or compensation under title 38~~ of that person under this section shall be refunded to the person's surviving spouse.

(5) Resumption of participation in plan.-

(A) Conditions for resumption.-A person described in paragraph (1) who discontinued participation in the Plan may elect to participate again in the Plan if-

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) Effective date of resumed coverage.-Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) Resumption of contributions.-When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) Increases in Reduction With Increases in Retired Pay.-

(1) General rule.-Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) Coordination when payment of increase in retired pay is delayed by law.-

(A) In general.-Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104-106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) Delay not to affect computation of annuity.-Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) Recomputation of Reduction Upon Recomputation of Retired Pay.-

Whenever the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) Coverage Paid Up at 30 Years and Age 70.-Effective October 1, 2008, no reduction may be made under this section in the retired pay of a participant in the Plan for any month after the later of-

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

§5301. Nonassignability and exempt status of benefits

(a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

(2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 or to the Retired Pay Account of the Coast Guard, as appropriate.

(d) Notwithstanding any other provision of this section, in the case of a veteran who has waived retired or retirement pay in order to receive compensation pursuant to section 5305 of this title who has elected to participate in an annuity plan prescribed in chapter 73 of title 10—

(1) if the deductions required by section 1452 of title 10 cannot be made in the full amount, the amount required by such chapter 73 shall be deducted from the veteran's compensation; and

(2) such funds shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10.

~~(d)~~ (e) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.).

~~(e)~~ (f) In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning

on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation, the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

TITLE VII—HEALTH CARE PROVISIONS

Section 701 would expand the population of individuals that may accept gifts directly from nonprofit organizations, private parties, and other sources outside the Department of Defense (DoD) or the Department of Homeland Security to include Service members whose injury or illness results in enrollment in a Warriors in Transition program. These warriors have serious shortcomings similar to those who are currently covered under legislation, but are prohibited from accepting resources that would optimize their recovery, rehabilitation, reintegration, and successful transition. Currently, 10 U.S.C. 2601a and subsequent policies limit direct gift acceptance to a member of the armed forces that meets the “covered member” criteria. A “covered member” includes a member of the armed forces who has incurred an injury or illness on or after September 11, 2001, in combat, in combat training, in a combat zone, in hazardous duty, or in other circumstances determined by the service Secretary to warrant treatment analogous to such members. These circumstances do not account for other Service members who have been injured or become ill in other ways and are enrolled in a Warriors in Transition program. Examples of such injuries and illnesses include: cancer and other serious diseases where the origin is undetermined; traumatic brain injuries diagnosed after deployments when the specific causation event cannot be determined; accumulated orthopedic injuries where specific causation events cannot be determined; and accidents causing severe injuries determined to be in line of duty.

Moreover, the kinds of non-government funded needs that can be filled with existing nonprofit grants are the same as those needed and currently utilized by “covered members.” Though not an all-inclusive list of the many identified needs that are not covered by DoD or other Federal sources, examples include: travel for family members not covered by Invitational Travel Orders while the Service member is hospitalized; other unfunded travel due to location or order status; assistance with funding for medical devices or services not funded through government means; and wellness, therapeutic, and adaptive events geared toward enhancing recovery, reintegration, and transition. As a specific example, TRICARE generally does not cover the costs associated with a dependent needing to travel up to five days per week for cancer treatment where the treatment location is within 100 miles of the Service Member’s duty location. In these cases, any travel and lodging is out of pocket regardless of how long the treatment lasts or how necessary lodging near the facility becomes. As a final example, new or off-label medical devices or treatments for TBIs that are not yet offered through the military treatment facility or TRICARE, but are recommended by the Service member’s Primary Care Physician, are currently out-of-pocket expenses covered solely by the Service member and their family.

There are non-Federal entity programs, including military and Veteran non-profit organizations, available to assist these Warriors in Transition enrolled Service members.

However, the direct acceptance provision of section 2601a of title 10 currently precludes direct acceptance of a gift by a Service member injured or ill in any way other than currently defined in this section.

Resource Information: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would make the following changes to section 2601a of title 10, United States Code:

§ 2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families

(a) REGULATIONS GOVERNING ACCEPTANCE OF GIFTS.—(1) The Secretary of Defense (and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy) shall prescribe regulations to provide that, subject to such limitations as may be specified in such regulations, the following individuals may accept gifts from nonprofit organizations, private parties, and other sources outside the Department of Defense or the Department of Homeland Security:

(A) A member of the armed forces described in subsection (b).

(B) A civilian employee of the Department of Defense or Coast Guard described in subsection (c).

(C) The family members of such a member or employee.

(D) Survivors of such a member or employee who is killed.

(2) The regulations required by this subsection shall—

(A) apply uniformly to all elements of the Department of Defense and, to the maximum extent feasible, to the Coast Guard; and

(B) require review and approval by a designated agency ethics official before acceptance of a gift to ensure that acceptance of the gift complies with the Joint Ethics Regulation.

(b) COVERED MEMBERS.—This section applies to a member of the armed forces who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness—

(1) as described in section 1413a(e)(2) of this title;

(2) in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subsection (a); ~~or~~

(3) that results in enrollment in a Warriors in Transition program, as defined in section 738(e) of the National Defense Authorization Act for Fiscal Year 2013 (10 U.S.C. 1071 note); or

~~(34)~~ under other circumstances determined by the Secretary concerned to warrant treatment analogous to members covered by paragraph (1).

(c) COVERED EMPLOYEES.—This section applies to a civilian employee of the Department of Defense or Coast Guard who, while an employee on or after September 11,

2001, incurred an injury or illness under a circumstance described in paragraph (1), (2), ~~or~~ (3), or (4) of subsection (b).

(d) GIFTS FROM CERTAIN SOURCES PROHIBITED.—The regulations prescribed under subsection (a) may not authorize the acceptance of a gift from a foreign government or international organization or their agents.

(e) APPLICATION OF CERTAIN REGULATIONS.—To the extent provided in the regulations issued under subsection (a) to implement subsection (b)(2), the regulations shall apply to the acceptance of gifts received after December 31, 2011, for injuries or illnesses incurred on or after September 11, 2001.

Section 702 would extend accrual financing to all retiree health care costs. Since 2002, accrual funding has been used for medicare-eligible retiree health care costs under chapter 56 of title 10, United States Code (U.S.C.). The Department of Defense Medicare-Eligible Retiree Health Care Fund (MERHCF) Board of Actuaries has recommended such an extension. In a recent Report to the White House and Congress on the Department of Defense Medicare-Eligible Retiree Health Care Fund (December 30, 2009), the Board said:

The MERHCF Board believes that consideration should be given to extending the Fund to cover all retiree health care costs, so that the budgetary treatment of pre-Medicare retiree health costs would be similar to the treatment of Medicare-eligible retiree costs, and all of the economic efficiencies and proper incentives promoted by the Fund would reflect the full cost to DoD of future retiree benefit entitlements being earned by military members' current service.

Consistent with the Board's recommendation, this section would strike the term "medicare eligible retiree" where it appears and substitute "retiree." It would also require a new valuation of future benefits payable from the Fund based on its expanded scope, which would result in a new amount as the unfunded liability of the Fund. This unfunded liability would be funded in the same way as it has been for medicare eligible retirees: an annual contribution by the Secretary of the Treasury of the amortized amount calculated by the Board of Actuaries. However, the amortization schedule could provide for separate components for unfunded liabilities prior to October 1, 2023, and those added on or after October 1, 2023.

The proposal would make a number of other changes to chapter 56 of title 10, U.S.C. It would establish the "Military Retiree Health Care Fund" as the successor to the MERHCF, including all of its assets and liabilities, and expand its scope to all DoD retiree health care. It would also designate the Fund as the funding source for all retiree health care. Moreover, it would allow amounts collected through TRICARE enrollment fees, refunds, or other transactions to be credited to the Fund. Finally, the proposal would also make a conforming change to a statutory provision applicable to retiree health care for the Coast Guard.

Resource Information: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget.

Resource Requirements (\$ Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FYDP	Appropriation
Direct Care		-2,313	-2,410	-2,506	-2,605	-9,834	0130
Private Sector Care		-9,143	-9,498	-9,828	-10,184	-38,653	0130
Milpers, Army		-245	-256	-267	-279	-1,047	2010
Milpers, Navy		-314	-329	-343	-358	-1,344	1453
Milpers, AF		-299	-312	-326	-340	-1,277	3500
MERHCF, MPA		3,762	3,943	4,132	4,330	16,168	1004
MERHCF, MPN		2,640	2,730	2,823	2,915	11,108	1000
MERHCF, MPMC		1,403	1,458	1,517	1,588	5,966	1001
MERHCF, MPAF		2,479	2,574	2,683	2,796	10,533	1007
MERHCF, SF		64	68	71	74	277	1010
MERHCF, RPA		319	334	350	367	1,369	1005
MERHCF, RPN		131	137	145	152	565	1002
MERHCF, RPMC		57	59	62	65	243	1003
MERHCF, RPAF		122	128	131	134	515	1008
MERHCF, NGPA		579	607	636	666	2,487	1006
MERHCF, NGPAF		293	305	314	327	1,239	1009
Total		-464	-463	-407	-351	-1,684	

Changes to Existing Law: This proposal would make the following changes to titles 10 and 14, United States Code:

TITLE 10, UNITED STATES CODE

CHAPTER 56. DEPARTMENT OF DEFENSE ~~MEDICARE-ELIGIBLE~~ MILITARY RETIREE HEALTH CARE FUND

§ 1111. Establishment and purpose of Fund; definitions; authority to enter into agreements

(a)(1) There is established on the books of the Treasury a fund to be known as the Department of Defense ~~Medicare-Eligible~~ Military Retiree Health Care Fund (hereinafter in this chapter referred to as the "Fund"), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the uniformed services under uniformed services retiree health care programs for ~~medicare-eligible~~ beneficiaries.

(2)(A) The Fund referred to in paragraph (1) is the successor to the Medicare-Eligible Retiree Health Care Fund (hereinafter in this section referred to as the "MERHCF") as it existed immediately prior to October 1, 2023. The MERHCF is reestablished as the Department of Defense Military Retiree Health Care Fund without closure under chapter 15 of title 31.

(B) All assets and liabilities of the MERHCF are assets and liabilities of the Fund. All actions taken with respect to the administration of the MERHCF that would have remained in effect on or after October 1, 2023, are applicable to the Fund.

(C) Except as provided in this chapter or as the context requires otherwise, any reference to the MERHCF in a law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Fund.

(D) The Secretary of Defense and Secretary of the Treasury are authorized to take such actions as the Secretaries determine necessary to transition operations of the MERHCF to the Fund.

(b) In this chapter:

(1) The term "uniformed services retiree health care programs" means the provisions of this title or any other provision of law creating an entitlement to or eligibility for health care for a member or former member of a participating uniformed service who is entitled to retired or retainer pay, and an eligible dependent under such program.

(2) The term "eligible dependent" means a dependent described in section 1076(a)(2) (other than a dependent of a member on active duty), 1076(b), 1086(c)(2), or 1086(c)(3) of this title.

~~(3) The term "medicare-eligible", with respect to any person, means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).~~

(4) ~~(3)~~ The term "participating uniformed service" means the Army, Navy, Air Force, Marine Corps, and Space Force and any other uniformed service that is covered by an agreement entered into under subsection (c).

~~(5) (4)~~ The term "members of the uniformed services on active duty" does not include a cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy or a midshipman at the United States Naval Academy.

(c) The Secretary of Defense shall enter into an agreement with each other administering Secretary (as defined in section 1072(3) of this title) for participation in the Fund by a uniformed service under the jurisdiction of that Secretary. The agreement shall require that Secretary to determine contributions to the Fund on behalf of the members of the uniformed service under the jurisdiction of that Secretary in a manner comparable to the determination with respect to contributions to the Fund made by the Secretary of Defense under section 1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a).

§ 1112. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1116 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(4) Amounts paid into the Fund pursuant to section 1111(c) of this title.

(5) Amounts collected by the Department of Defense, including through enrollment fees, refunds, collections, or other transactions, incident to the operation of uniformed services retiree health care programs for which the Fund is responsible.

§ 1113. Payments from the Fund

(a) There shall be paid from the Fund amounts payable for the costs of all uniformed service retiree health care programs for the benefit of members or former members of a participating uniformed service who are entitled to retired or retainer pay ~~and are medicare eligible~~, and eligible dependents ~~who are medicare eligible~~.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(c)(1) In carrying out subsection (a), the Secretary of Defense may transfer periodically from the Fund to applicable appropriations of the Department of Defense, or to applicable appropriations of other departments or agencies, such amounts as the Secretary determines necessary to cover the costs chargeable to those appropriations for uniformed service retiree health care programs for beneficiaries under those programs ~~who are medicare eligible~~. Such transfers may include amounts necessary for the administration of such programs and the Fund. Amounts so transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation to which transferred. Upon a determination that all or part of the funds transferred from the Fund are not necessary for the purposes for which transferred, such amounts may be transferred back to the Fund. This transfer authority is in addition to any other transfer authority that may be available to the Secretary.

(2) A transfer from the Fund under paragraph (1) may not be made to an appropriation after the end of the second fiscal year after the fiscal year that the appropriation is available for obligation. A transfer back to the Fund under paragraph (1) may not be made after the end of the second fiscal year after the fiscal year for which the appropriation to which the funds were originally transferred is available for obligation.

(d) The Secretary of Defense shall by regulation establish the method or methods for calculating amounts to be transferred under subsection (c). Such method or methods may be based (in whole or in part) on a proportionate share of the volume (measured as the Secretary determines appropriate) of health care services provided or paid for under uniformed service retiree health care programs for beneficiaries under those programs ~~who are medicare eligible~~ in relation to the total volume of health care services provided or paid for under Department of Defense health care programs.

(e) The regulations prescribed by the Secretary under subsection (d) shall be provided to the Comptroller General not less than 60 days before such regulations become effective. The Comptroller General shall, not later than 30 days after receiving such regulations, report to the Secretary of Defense and Congress on the adequacy and appropriateness of the regulations.

(f) If the Secretary of Defense enters into an agreement with another administering Secretary pursuant to section 1111(c), the Secretary of Defense may take the actions described in subsections (c), (d), and (e) on behalf of the beneficiaries and programs of the other participating uniformed service.

§ 1114. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense ~~Medicare-Eligible~~ Military Retiree Health Care Board of Actuaries (hereinafter in this chapter referred to as the "Board"). The Board shall consist of three members who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board and for no other reason.

(B) Of the members of the Board who are first appointed under this paragraph, the first such member one each shall be appointed for terms ending five, ten, and 15 years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1115(c) of this title and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

§ 1115. Determination of contributions to the Fund

(a) The Board shall determine the amount that is the present value (as of October 1, 2002 2023) of future benefits payable from the Fund that are attributable to service in the participating uniformed services performed before October 1, ~~2002~~ 2023. That amount, less the assets in the Fund as of October 1, 2023, is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1116 of this title. The Board may, if it determines it to be in the best interest of administration of the Fund, maintain in the amortization schedule a separate component for unfunded liabilities related to retiree health program beneficiaries who are "medicare-eligible" persons entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

(b) The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2). That amount shall be the sum of the following:

(1) The product of--

(A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(B) the expected average force strength during that fiscal year for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title.

(2) The product of--

(A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(B) the expected average force strength during that fiscal year for members of the Selected Reserve of the uniformed services under the jurisdiction of the Secretary of Defense who are not otherwise described in paragraph (1)(B).

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include--

(A) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the participating uniformed services on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title; and

(B) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the Selected Reserve of the participating uniformed services who are not otherwise described by subparagraph (A).

Such single level dollar amounts shall be used for the purposes of subsection (b). The Secretary of Defense may determine a separate single level dollar amount under subparagraph (A) or (B) for any participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.

(2) If at the time of any such valuation there has been a change in benefits under the uniformed services retiree health care programs ~~for medicare-eligible beneficiaries~~ that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions

and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon the Fund's actuarial experience (other than resulting from changes in benefits or actuarial assumptions) since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such actuarial experience and any previous actuarial experience through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2), (3), and (4) shall be made as provided in section 1116 of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and medical inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

TITLE 14, UNITED STATES CODE

§ 506. Prospective payment of funds necessary to provide medical care

(a) PROSPECTIVE PAYMENT REQUIRED.—In lieu of the reimbursement required under section 1085 of title 10, the Secretary of Homeland Security shall make a prospective payment to the Secretary of Defense of an amount that represents the actuarial valuation of treatment or care--

(1) that the Department of Defense shall provide to members of the Coast Guard, former members of the Coast Guard, and dependents of such members and former members (other than former members and dependents of former members who are a ~~Medicare-eligible~~ beneficiary or for whom the payment for treatment or care is made from the ~~Medicare-Eligible~~ Military Retiree Health Care Fund as established under chapter 56 of title 10) at facilities under the jurisdiction of the Department of Defense or a military department; and

(2) for which a reimbursement would otherwise be made under section 1085.

(b) AMOUNT.—The amount of the prospective payment under subsection (a) shall be--

(1) in the case of treatment or care to be provided to members of the Coast Guard and their dependents, derived from amounts appropriated for the operations and support of the Coast Guard;

(2) in the case of treatment or care to be provided former members of the Coast Guard and their dependents, derived from amounts appropriated for retired pay;

(3) determined under procedures established by the Secretary of Defense;

(4) paid during the fiscal year in which treatment or care is provided; and

(5) subject to adjustment or reconciliation as the Secretaries determine appropriate during or promptly after such fiscal year in cases in which the prospective payment is determined excessive or insufficient based on the services actually provided.

(c) **NO PROSPECTIVE PAYMENT WHEN SERVICE IN NAVY.**—No prospective payment shall be made under this section for any period during which the Coast Guard operates as a service in the Navy.

(d) **RELATIONSHIP TO TRICARE.**—This section shall not be construed to require a payment for, or the prospective payment of an amount that represents the value of, treatment or care provided under any TRICARE program.

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

Subtitle A—[RESERVED]

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Section 811 would expand the “Never Contract with the Enemy” program and the applicability of the statutory authorities initially authorized under sections 841, 842, and 843 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Public Law 113-291). The changes will enable the Department to exercise the full intent of the legislation across all combatant commands (CCMDs), types of operations, and the spectrum of vendor threats faced, and to integrate with the whole of Government in support of the Interim National Security Strategy Guidance, the National Defense Strategy (NDS), the National Military Strategy (NMS), and President of the United States (POTUS) and Secretary of Defense (SECDEF) anti-corruption objectives. Without this expansion, the Department’s ability to address the March 2019 Government Accountability Office’s High-Risk Series (GAO-19-157), Contract Management “Challenges Related to Operational Contract Support,” is limited. The proposal specifically addresses the shortcomings of sections 841 and 842, which plays a critical role in the reduction of the operational risk from contracting with the enemy. Of note, the Joint Staff and U.S. Africa Command (USAFRICOM) submitted similar proposals; however, they rescinded their proposals in favor of supporting this proposal submitted by the Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)). U.S. Central Command (USCENTCOM), U.S. Transportation Command (USTRANSCOM), and U.S. Special Operations Command (USSOCOM) have also expressed support for this proposal.

This proposal complements other legislation addressing competition below armed conflict and adversarial aggression by enabling the protection of globally positioned U.S. Forces and interagency partners and strengthening combatant command authorities to effectively

respond to competition and contracting authorities to prohibit U.S. taxpayer funds received under a contract, grant, or cooperative agreement from contributing to persons or entities who support those threatening our national security. These authorities would arm contracting personnel in all CCMDs with the tools necessary to act on the spectrum of vendor threats, to secure operational information from disclosure to the adversary, and to access contractor and subcontractor records when needed to support enemy identification by combatant commands. The provisions of this section are not intended to circumvent the rights of U.S. persons. Nothing in this section should be construed to contradict applicable intelligence oversight statutes, regulations, or policies. Any U.S. persons information discovered incident to vetting foreign entities will be handled strictly in accordance with applicable intelligence oversight statutes, regulations, or policies.

Specifically, this proposal improves the program requirement in section 841 to identify and mitigate vendor threats, expands the authorities outlined in sections 841 and 842 to all CCMDs, and expands these authorities applicability to all contracts, grants, and cooperative agreements, regardless of type of operation or the dollar value of the contract, grant, or cooperative agreement. These proposed amendments cannot be accomplished in regulation or policy without a statutory change due to the requirement in the Competition in Contracting Act of 1984 (CICA) that contracting agencies obtain full and open competition using competitive procedures when conducting a procurement for property or services.

The 2021 Interim National Security Strategic Guidance envisions strengthened alliances, expanded partnerships, and mitigated threats in all domains, including the commercial space. One of the SECDEF's priorities is to defend the nation against advanced and persistent threats from nation-states, transnational, and non-state actors including violent extremist organizations. Strategic guidance and joint doctrine increasingly recognize that contemporary military actions occur in a world of enduring competition conducted through a mixture of cooperation, competition below armed conflict, and armed conflict. Adversaries such as China and Russia operate tirelessly across this competition continuum. In addition, the 2016 "Worldwide Threat Assessment of the U.S. Intelligence Community" stated that terrorist and insurgent groups are increasingly capable of conducting effective insurgent campaigns, given their membership growth and accumulation of large financial and materiel caches. The enemy continues to expand areas of influence and find safe havens outside of contingency environments. CCMDs increasingly rely on gray zone actions to counter and deter the efforts of both types of adversaries. These actions often rely heavily on commercial support within the local economy, and CCMDs and contracting officers must be given the flexibility and authority to procure goods and services safely. In order to "never contract with the enemy," it is imperative to have a whole-of-Government vendor threat mitigation program equipped with the requisite statutory authorities, regardless of the type of operation. These statutory authorities must enable CCMDs and Federal agencies to take immediate action to terminate, void, or restrict contract(s), grant(s) and cooperative agreement(s) with individuals or entities identified as a threat. The ability to address threats posed by gray zone actions and strategic competition is essential to provide CDDRs with the flexibility they need to protect the joint force and national security interests.

The U.S. Africa Command (USAFRICOM) is a CCMD that has identified "the enemy" operating throughout its area of responsibility (AOR), but lacks the requisite authorities to take appropriate action. The USAFRICOM Theater Posture Plan highlights the perpetual risk of

instability and conflict due to economic challenges, further complicated by the threat of violent extremist organizations. The USAFRICOM Theater Posture Plan focuses on strengthening enduring strategic partnerships with multiple African partner nations that serve as critical enduring hubs in support of U.S. operations to achieve both short- and long-term counter-terrorism objectives. In recent years, al-Qa'ida and Daesh activities in northern and western Africa, compounded by other extremist groups such as Boko Haram in Nigeria and al-Shabaab in Somalia, have gained traction and collaboration in these African regions. These activities make countering violent extremist groups a growing challenge for USAFRICOM on the continent.

USAFRICOM relies heavily on foreign vendors to meet its operational requirements. In August 2015, USAFRICOM established their Foreign Vendor Vetting Program and identified U.S. Army Africa as its Lead Service for Intelligence Support. The 207th Military Intelligence Brigade began conducting assessments in November 2015. From January 1, 2017, to June 9, 2021, 9,312 contract actions with 328 foreign contractors valued at over \$545M were executed in support of USAFRICOM's operations, exercises, security cooperation activities, and engagements. More than 560 vendor screenings were completed, yielding 22 vendors assessed as a high or critical threat. In four instances, high or critical threat vendors were the successful offeror. The contracts, however, did not meet the definition of a covered contract" pursuant to section 843, paragraph (4), of the NDAA for FY 2015, as they were not in support of a "contingency operation in which members of the Armed Forces are actively engaged in hostilities." As a result, the contract actions were ineligible for section 841(a) authority to restrict award to those vendors; therefore, the command created risk mitigation plans to alleviate the threats.

The U.S. Transportation Command (USTRANSCOM), with its global mission, lacks the requisite authorities to take contract action against "the enemy" under current law. Within the last three years, USTRANSCOM's Foreign Entity Vetting capability vetted 534 foreign vendors primarily operating as first-tier subcontractors. The USTRANSCOM Commander has deemed 51 foreign vendors unsuitable for use on USTRANSCOM contracts since 2010, when USTRANSCOM first established its vetting program. Nearly all cases were presented to the Departments of Treasury and Commerce to pursue through their debarment authorities, but only six of these entities were ultimately excluded. Only one case met the definition of a "covered person or contract" pursuant to section 843, paragraph (6), of the NDAA for FY 2015. Without access to expanded authority and the ability to propagate determinations in accordance with section 841, subsection (h), USTRANSCOM has been unable to prevent other DoD Components and Government agencies from using of foreign entities found to support transnational organized crime, sanctions violations, and foreign intelligence collection.

Given the current global threat environment, the United States must have the requisite authorities to meet its National Security Strategies, act in the gray zone, and compete below armed conflict. The expansion and extension of the authorities in sections 841 and 842 are critical to the achievement of the specified military strategies, joint force security operations (e.g., force protection on forward operating bases), and prohibiting funds from reaching the enemy.

Resource Information: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President's Budget Request.

Changes to Existing Law: This proposal would amend subtitle E of title VIII of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 2302 note) as follows:

SEC 841. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY THREAT MITIGATION IN COMMERCIAL SUPPORT TO OPERATIONS.

(a) ~~IDENTIFICATION OF PERSONS AND ENTITIES PROGRAM.~~—The Secretary of Defense shall, in conjunction with the Director of National Intelligence and ~~in consultation with the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that~~ establish a program to mitigate threats posed by vendors supporting operations outside the United States. The program shall use available intelligence, security, and law enforcement information to identify persons and entities that—

(1) provide funds, including goods and services, received under a ~~covered~~ contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; ~~or~~

(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a ~~covered~~ contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity; ~~;~~

(3) directly or indirectly support a covered person or entity or otherwise pose a force protection risk to personnel of the United States or coalition forces; or

(4) pose an unacceptable national security risk.

(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or the ~~specified deputies~~ designee of the commander) shall be notified, in writing, of such identification of the person or entity.

(2) RESPONSIVE ACTIONS.—Upon receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or the ~~specified deputies~~ designee of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition

Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a ~~covered~~ combatant command (or the ~~specified deputies designee~~ of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned to a person or entity upon a written determination by the head of contracting activity or other appropriate official that ~~the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.~~ the person or entity has been identified under the program established under subsection (a).

(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, ~~has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.~~ has been identified under the program established under subsection (a).

(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that ~~the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.~~ the contractor, or the recipient of the grant or cooperative agreement, has been identified under the program established under subsection (a).

(d) CLAUSE.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to require that—

(A) the clause described in paragraph (2) shall be included in each ~~covered~~ contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

(B) to the maximum extent practicable, each ~~covered~~ contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative

agreement, in whole or in part, as provided in subsection (c) and restrict future award to any contractor, or recipient of a grant or cooperative agreement, that has been identified under the program established under subsection (a).

(3) TREATMENT AS VOID.—For purposes of this section:

(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

(3) To provide that full disclosure of information to the contractor or recipient of a grant or cooperative agreement justifying an action taken under subsection (c) need not be provided when such disclosure would compromise national security or would pose an unacceptable threat to personnel of the United States or coalition forces.

(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the Director of National Intelligence and ~~in consultation with~~ the Secretary of State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the commander of the ~~covered~~ combatant command concerned (or the ~~specified deputies~~ designee of the commander) in writing of such determination.

(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to

a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

~~(g)~~ DELEGATION OF CERTAIN RESPONSIBILITIES.—

~~(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander designee specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.~~

~~(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.~~

~~(hg)~~ ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

~~(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the covered combatant commands (or the specified deputies designee of the commanders) relating to persons or entities who may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity have been identified under the program established under subsection (a). The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the covered combatant commands.~~

~~(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.~~

~~(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specified deputies designee) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or cooperative agreement as otherwise authorized by subsection (c).~~

~~(ih) REPORTS.—~~

~~(1) IN GENERAL.— Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:~~

~~(A) For each instance in which an executive agency exercised the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:~~

~~(i) The executive agency taking such action.~~

~~(ii) An explanation of the basis for the action taken.~~

~~(iii) The value of the contract, grant, or cooperative agreement voided or terminated.~~

~~(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.~~

~~(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:~~

~~(i) The executive agency concerned.~~

~~(ii) An explanation of the basis for not taking the action.~~

~~(2) FORM.— Any report under this subsection may, at the election of the Director—~~

~~(A) be submitted in unclassified form, but with a classified annex; or~~

~~(B) be submitted in classified form.~~

(ih) WAIVER.—The Secretary of Defense or the Secretary of State, with the concurrence of the other Secretary, in consultation with the Director of National Intelligence, may waive any requirement of this section upon determining that to do so is in the national interest of the United States.

(ji) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.— The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States. a contract, grant, or cooperative agreement that is performed entirely inside the United States unless the recipient of such contract, grant, or cooperative agreement is a foreign entity.

(ki) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

(lj) CONSTRUCTION WITH OTHER AUTHORITIES.—Except as provided in subsection (m), the The authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

~~(m) COORDINATION WITH CURRENT AUTHORITIES.—~~

~~(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—Effective 270 days after the date of the enactment of this Act, section 841 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1510; 10 U.S.C. 2302 note) is repealed.~~

~~(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—Effective 270 days after the date of the enactment of this Act, section 831 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 810; 10 U.S.C. 2302 note) is repealed.~~

~~(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 and section 831 of the National Defense Authorization Act for Fiscal Year 2014.~~

~~(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2023.~~

SEC. 842. ADDITIONAL ACCESS TO RECORDS

~~(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—~~

~~(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, applicable regulations shall be revised to provide that, except as provided under subsection (c)(1), the clause described in paragraph (2) may, as appropriate, be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.~~

~~(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity. support the program established under section 841(a).~~

~~(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or cooperative agreement, upon a finding by the commander of a covered combatant command (or the specified deputies designee of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity. that the examination of such records will support the program established under section 841(a).~~

(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of \$50,000.

~~(b) REPORTS.—~~

~~(1) IN GENERAL.— Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this section in the preceding calendar year.~~

~~(2) ELEMENTS.— Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.~~

~~(3) FORM.— Any report under this subsection may be submitted in classified form.~~

~~(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—~~

~~(1) APPLICABILITY.— This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C. 2313 note).~~

~~(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.— Section 842(d)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1514; 10 U.S.C. 2313 note) is amended by striking “date of the enactment of this Act” and inserting “date of the enactment of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015”.~~

SEC. 843. DEFINITIONS.

In this subtitle:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, ~~and~~ the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, ~~and~~ the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) CONTINGENCY OPERATION.—The term “contingency operation” has the meaning given that term in section 101(a)(13) of title 10, United States Code.

~~(23)~~ (23) CONTRACT.—The term “contract” includes a contract for commercial items but is not limited to a contract for commercial items.

~~(4) COVERED COMBATANT COMMAND.—The term “covered combatant command” means the following:~~

~~(A) The United States Africa Command.~~

~~(B) The United States Central Command.~~

~~(C) The United States European Command.~~

~~(D) The United States Indo-Pacific Command.~~

~~(E) The United States Southern Command.~~

~~(F) The United States Transportation Command.~~

~~(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT DEFINED.—The term “covered contract, grant, or cooperative agreement” means a contract, grant, or cooperative agreement with an estimated value in excess of \$50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.~~

~~(6) COVERED PERSON OR ENTITY.—The term “covered person or entity” means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.~~

(63) COVERED PERSON OR ENTITY.—The term ‘covered person or entity’ means a person that is—

(A) engaging in acts of violence against personnel of the United States or coalition forces;

(B) providing financing, logistics, training, or intelligence to a person described in subparagraph (A);

(C) engaging in foreign intelligence activities against the United States or against coalition forces;

(D) engaging in transnational organized crime or criminal activities; or

(E) engaging in other activities that present a direct or indirect risk to the national security of the United States or coalition forces.

~~(74) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 133 of title 41, United States Code.~~

~~(85) HEAD OF CONTRACTING ACTIVITY.—The term “head of contracting activity” has the meaning described in section 1.601 of the Federal Acquisition Regulation.~~

~~(96) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.~~

Subtitle C—Defense Industrial Base Matters

Section 821 authorizes a pilot program to reduce the time and effort required to calculate the annual budgetary assessments for the SBIR and STTR programs. Currently, an accurate budget assessment cannot be performed until the final appropriation is received and the determination of extramural portions of each program, project, and activity within the final

appropriation are estimated. This process delays release of funding for program efforts by months (section (9)(i) currently provides agencies 4 months to provide a report of their budget calculation after enactment of the Appropriation) and requires extensive resources to complete and document. These delays are detrimental to the SBIR and STTR programs' execution and the development and transition of program technology, and has been cited by technical personnel as a reason for reluctance to participate in the programs. Congress has also made clear through subsections (9)(hh) and (9)(ii) that it expects the Department to improve timelines for release of funds, funding decisions, and award times. This pilot will enable calculation of extramural percentages during the previous fiscal year. This percentage can be applied to the budget request to estimate SBIR and STTR budgets and can quickly be applied to final appropriations to provide funds to the programs. This will enable faster funding decisions and award times for both new and on-going work.

This proposal amends sections (9)(f) and (9)(n) by adding new paragraphs requiring the pilot program. No deletions to existing statutory provisions are required. Under new sections 9(f)(4) and 9(n)(4), DoD will be excluded from the standard budget expenditure requirements beginning in FY23 for the SBIR and STTR programs. Each new paragraph (4) provides the period the pilot will be active and the alternative method the DoD will use in determining the SBIR and STTR program expenditure requirements.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President's Budget request.

Cost Methodology: This proposal does not seek to change the SBIR/STTR set-aside amount. The resource impact of this proposal is a savings to the Department for the man hours the current computation methodology requires. There are over 1,500 RDTE budget lines across 16 components/organizations that must be assessed, taking approximately four months of effort to complete, or 25% of an FTE. Taken individually, those savings are insignificant. However, some components may have multiple persons working the computations. In the aggregate, if enacted, this proposal would allow a low estimate of \$400K Department-wide to be reallocated to other priority requirements. (25% of an FTE x ~\$100K/FTE x 16 components = \$400K)

Changes to Existing Law: This proposal would amend sections (9)(f) and (9)(n) of the Small Business Act (15 U.S.C. 638) as follows:

Sec. 9. Research and Development

(f) Federal agency expenditures for SBIR program

(1) Required expenditure amounts

Except as provided in paragraphs (2)(B) and (4), each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns-

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996;

(C) not less than 2.5 percent of such budget in each of fiscal years 1997 through 2011;
(D) not less than 2.6 percent of such budget in fiscal year 2012;
(E) not less than 2.7 percent of such budget in fiscal year 2013;
(F) not less than 2.8 percent of such budget in fiscal year 2014;
(G) not less than 2.9 percent of such budget in fiscal year 2015;
(H) not less than 3.0 percent of such budget in fiscal year 2016; and
(I) not less than 3.2 percent of such budget in fiscal year 2017 and each fiscal year thereafter.

(2) Limitations

A Federal agency shall not-

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) SBIR budget calculation pilot program in Department of Defense.—

(A) The Secretary of Defense shall establish and conduct a budget calculation pilot program that requires total expenditures for the SBIR program in the Department of Defense to be calculated as described in subparagraph (B), specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(B) Beginning in fiscal year 2023, the Department of Defense shall calculate required budget expenditures for its SBIR program as not less than 3.25 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

(C) The pilot program under this paragraph shall terminate on September 30, 2026.

(4-5) Rule of construction

Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1).

(n) Required expenditures for STTR by Federal agencies

(1) Required expenditure amounts

(A) In general

With respect to each fiscal year through fiscal year 2022, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

(B) Expenditure amounts

Except as provided in paragraph (4), the ~~The~~ percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be-

- (i) 0.15 percent for each fiscal year through fiscal year 2003;
- (ii) 0.3 percent for each of fiscal years 2004 through 2011;
- (iii) 0.35 percent for each of fiscal years 2012 and 2013;
- (iv) 0.40 percent for each of fiscal years 2014 and 2015; and
- (v) 0.45 percent for fiscal year 2016 and each fiscal year thereafter.

(2) Limitations

A Federal agency shall not-

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) STTR budget calculation pilot program in Department of Defense.—

(A) The Secretary of Defense shall conduct a budget expenditure pilot program that requires total expenditures for STTR to be calculated as described in subparagraph (B).

(B) Beginning in fiscal year 2023, the Department of Defense shall calculate required budget expenditures for its STTR program as not less than 0.46 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

(C) The pilot program under this paragraph shall terminate on September 30, 2026.

Section 822 would authorize a pilot program under which the Secretary of Defense and the Secretaries of the military departments may make Phase II awards under the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) program in amounts that exceed the maximum award amount described in section 9(aa)(1) of the Small Business Act (15 U.S.C. 638(aa)(1)), without seeking a waiver from the Small Business Administration (SBA). The authority to make awards under the pilot program would be limited

to awards that are not more than \$5,000,000 and that are for technologies that align with DoD modernization priorities and have a high potential for transition to programs of record or fielded systems. This pilot program would be limited to 10 percent of each of the SBIR program and STTR program budgets of the Department of Defense, including the military departments and the defense agencies.

Subsection (aa) of section 9 of the Small Business Act (15 U.S.C. 638(aa)) establishes a cap on amounts for SBIR and STTR awards, prohibiting such awards from exceeding award guidelines by more than 50 percent unless a waiver is issued by the SBA. The award cap is adjusted annually for inflation by the Administrator of the SBA in accordance with subsections (j)(2)(D) and (p)(2)(B)(ix) of such section. The current award cap, released by the SBA in November 2020, is \$1,730,751 for a Phase II award (including modifications). This award cap is restrictive to the Department of Defense (DoD) as it limits the ability of the Department to make awards on a timely basis due to the need to obtain the SBA's approval of a waiver prior to making an award that exceeds the award cap.

The creation of the pilot program would improve the Department's time-to-award for continuing technological research and development, as well as reduce the risk of the "valley of death" between phases of awards. The increased \$5,000,000 award threshold would allow DoD SBIR/STTR's innovative technologies to mature to higher transition readiness levels, through programs such as the Office of the Secretary of Defense Transitions SBIR/STTR Technology program, and transition faster to members of the Armed Forces. If approved, the Department will be required to include a list of all awards made as part of this pilot program, as well as information on these awards as instructed in paragraphs (2) of section 9(aa) of the Small Business Act (15 U.S.C. 638(aa)) in DoD's annual report to the SBA Administrator.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President's Budget request.

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

Section 823 would clarify and expand the current authority for subsequent Phase II awards that Federal agencies may award to small business concerns (SBCs). The current authority in the Small Business Act (15 U.S.C. 638(j)(1)) limits an SBC to one additional "sequential" award. This language limits agencies in the number of total Phase II awards allowed as not-to-exceed two Phase II awards in total to the same SBC for the same topic. This has proven to limit the utility of section (9)(ff) of the Small Business Act (15 U.S.C. 638(ff)), as the original sponsoring agency of the Phase I award is usually the awardee of the original (first) Phase II award and has declined requests from other agencies to make a subsequent Phase II award in order to further develop the technology for the agency's own transition efforts. Expanding this authority to allow for an additional, subsequent Phase II award regardless of the number of Phase II awards made by the original Phase I agency, but not to exceed three awards in total, to the same SBC for the same topic, would afford the Federal Agencies greater flexibility in awarding a subsequent Phase II award within the Federal agencies in order to further mature SBIR and STTR technology to a transition readiness level that would enable

insertion into a program of record and/or fielded system. Ultimately, augmenting the number of phase II awards to a total of three will help bridge the “valley of death” for small business concerns and will significantly benefit transition rates.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request.

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

(ff) Additional SBIR and STTR awards

(1) Express authority for awarding a sequential Phase II award

A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) Preventing duplicative awards

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

(3) Department of defense pilot authority for awarding an additional sequential Phase II award

(A) During fiscal years 2023 through 2026, the Secretary of Defense may award one additional Phase II SBIR award or one additional Phase II STTR award to a small business concern that received a Phase II award under paragraph (1) for continued work on that project.

(B) The Secretary of Defense may use not more than 3 percent of the funds allocated to the SBIR and STTR programs in carrying out this paragraph and shall submit an application to the Administrator for approval prior to any award under subparagraph (A). The application shall include an explanation for why the requirement could not be funded as a Phase III award and a description of how the Department of Defense will minimize, to the maximum extent possible, the number of awards under this paragraph.

Subtitle D—Other Matters

Section 831 would modify section 4701¹ of title 10, United States Code, “Contractor employees: protection from reprisal for disclosure of certain information.” Although Congress previously amended the statute to extend whistleblower protections to employees of grantees and subgrantees (2014) and personal services contractors (2016), the proposed changes would enhance whistleblower protections by expressly including qualified personnel of grantees, subgrantees, and personal services contractors among the qualified recipients of protected disclosures under subparagraph (a)(2)(G). In addition, the proposed changes would prohibit a Department or Administration official from requesting an action in reprisal, when the request takes the form of a discretionary directive or is outside the authority of the Department or

¹ Section 4701 was formerly section 2409 of title 10, United States Code. Former section 2409 was transferred and redesignated, effective as of January 1, 2022, by section 1863(b) of the FY21 NDAA (Public Law 116–283).

Administration official. Lastly, the proposed changes would increase Government official accountability for reprisal by requiring agency heads to consider disciplinary or corrective action against a Department or Administration official when appropriate.

The proposed changes are necessary to clarify that employees of grantees, subgrantees, and personal services contractors are protected from reprisal for making otherwise qualifying protected disclosures directly to the organizations that employ them. Furthermore, experience has shown that increased accountability for Government officials who direct retaliatory actions is necessary to ensure meaningful whistleblower protections.

Resource Information: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would amend section 4701 of title 10, United States Code, as follows:

SEC. 4701. CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION

(a) Prohibition of Reprisals.—

(1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

(A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.

(B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.

(C) A substantial and specific danger to public health or safety.

(2) The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor, ~~or~~ subcontractor, grantee, subgrantee, or personal services contractor who has the responsibility to investigate, discover, or address misconduct.

(3) For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor, ~~or subcontractor, grantee, subgrantee, or personal services contractor~~ misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; ~~and~~

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request; ~~and~~

(C) a Department or Administration official is prohibited from requesting an action in reprisal, as described in paragraph (1), if the request takes the form of a discretionary directive or is outside the authority of the Department or Administration official.

(b) Investigation of Complaints.—

(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor, ~~subcontractor, grantee, subgrantee, or personal services contractor~~ concerned, and the head of the agency.

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) Remedy and Enforcement Authority.—

(1) Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor, subcontractor, grantee, subgrantee, or personal services contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to take affirmative action to abate the reprisal.

(B) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(D) Consider disciplinary or corrective action against any Department or Administration official, when appropriate.

(2) If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor, subcontractor, grantee, subgrantee, or personal services contractor to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant

appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

(6) The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

(7) The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) Notification of Employees.—

The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall ensure that contractors, ~~and subcontractors, grantees, subgrantees, and personal services contractors~~ of the Department of Defense and the National Aeronautics and Space Administration, as applicable, inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

(e) Exceptions.—

(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, ~~or grantee, subgrantee, or personal services contractor~~ of an element of the intelligence community if such disclosure-

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

(f) Construction.-Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(g) Definitions. In this section:

(1) The term "agency" means an agency named in section 3063 of this title.

[(2) Repealed. [Pub. L. 116-283, div. A, title XVIII, §1863\(c\)\(2\), Jan. 1, 2021, 134 Stat. 4278.](#)]

(3) The term "contract" means a contract awarded by the head of an agency.

(4) The term "contractor" means a person awarded a contract with an agency.

(5) The term “Inspector General” means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense.

(6) The term “abuse of authority” means the following:

(A) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the Department of Defense or the successful performance of a Department contract or grant.

(B) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the National Aeronautics and Space Administration or the successful performance of an Administration contract or grant.

(7) The term “grantee” means a person awarded a grant with an agency.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Office of the Secretary of Defense and Related Matters

Section 901 would create three new Assistant Secretaries of Defense (ASDs) at Level IV of the Executive Schedule with the intent of aligning congressionally confirmed direct report positions to the Under Secretary of Defense for Research and Engineering (USD(R&E)). The intent is for the three new ASD positions to fall under the authority, direction, and control of the Under Secretary of Defense for Research and Engineering. Further, this proposal would increase the cap on Deputy Assistant Secretary of Defense (DASD) positions by 9 with the intent of having them report to the three newly established OUSD(R&E) ASDs. The USD(R&E) intends for these DASD positions to be filled by non-political SES officials. This proposal does not eliminate the cap on DASD positions. The cap is relocated to Section 138 of title 10, which is reflected in subsection (b)(1) above.

The Congress established the USD(R&E) with precedence after the Secretary and the Deputy Secretary of Defense, and is a Principal Staff Assistant at the EX-III level. In the Department’s administration of the division of the previous Under Secretariat for Acquisition, Technology, and Logistics (USD(AT&L)), the USD(R&E) was allotted zero of the five ASD positions under AT&L. It has become clear to the Department that the existing organizational model is not as effective as it could be and believes that the intent of Congress in establishing a Research and Engineering under secretariat would be best achieved by allotting ASD positions commensurate to the seniority of the USD as described in Title 10.

Without ASD status, the current Directors lack the authority and influence of other ASDs, which are appointed by the President with the advice and consent of the Senate, and which execute authorities under an approved ASD charter. The Directors’ ability to assist the USD(R&E)’s efforts to take risks, press the technology envelope, and drive test and experimentation is mitigated without a parallel mandate. The USD(R&E) is charged with advancing the Department’s research and technology that delivers superior capabilities to our

warfighters, and with the added support of ASDs with a chartered mandate and Senate confirmation, the USD(R&E) will be better positioned to drive towards the Department's modernization goals and successfully implement the National Defense Strategy.

The current OUSD(R&E) Director counterparts in other Under Secretariats are typically ASDs, and across the Joint Staff and Services their counterparts are typically four-star military officers. There is an obvious disconnect between the seniority of the OUSD(R&E) positions with the expected strength of input and direction each official is expected to leverage for research and engineering decisions. This presents obstacles to addressing technical risk in acquisition programs, and presents challenges to driving investment decisions for modernization priorities when the voice of the advocate is administratively weaker and lacks the charter and authority of competing voices. Good senior leaders can help to mitigate some of these challenges, but the Department should ensure that those representing the R&E Directors' equities speak with the same amount of authority that their counterparts do.

Establishing these ASD and DASD positions within OUSD(R&E) will foster increased efficiency in activities, operations, and functions across the Department. Additionally, these positions would signal the importance of the Research and Engineering mission and the Government's commitment to science and technology and technical modernization. The DASD positions created within OUSD(R&E) are not intended to replace the technical expertise or minimize the congressional intent of section 217 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116–283), *Designation of senior officials for critical technology areas supportive of the National Defense Strategy*. The DASD positions created within OUSD(R&E) will be career positions and will not replace the current model of technical experts being the senior officials for critical technology, known as the Principal Deputies (PDs). The DASDs will help the PDs focus on their areas of technology expertise by reducing bureaucratic barriers.

The legislative proposal would also make several technical amendments to 10 U.S.C. 138 to make the language more consistent internally. The legislative proposal also revises gendered language throughout and removes a reference to a non-existent office.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element
ASD Civilian Labor	\$ 0.699	\$ 0.718	\$ 0.733	\$ 0.749	\$ 0.764	Operation and Maintenance, Defense-wide	04	4GTN	0904499D8Z
DASD Civilian Labor	\$ 2.424	\$ 2.490	\$ 2.542	\$ 2.595	\$ 2.650	Operation and Maintenance, Defense-wide	04	4GTN	0904499D8Z
Total	\$ 3.122	\$ 3.208	\$ 3.275	\$ 3.344	\$ 3.414				

PERSONNEL IMPACT (END STRENGTH/FTE)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element
DDRE to ASD Conversion	3	3	3	3	3	Operation and Maintenance, Defense-wide	04	4GTN	0904499D8Z
SES to DASD Conversion	9	9	9	9	9	Operation and Maintenance, Defense-wide	04	4GTN	0904499D8Z
Total Slots Converted	12	12	12	12	12				
Total New End Strength/FTEs	0	0	0	0	0				

Changes to Existing Law: This proposal would amend section 138 of title 10, United States Code, section 5315 of title 5 of such Code, and section 908 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 138 note) as follows:

§138. Assistant Secretaries of Defense

(a)(1) There are ~~15~~ 18 Assistant Secretaries of Defense.

(2) The Assistant Secretaries of Defense shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

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

(2)(A) One of the Assistant Secretaries is the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. ~~He shall have as his principal duty~~ The principal duty of the Assistant Secretary shall be the overall supervision (including oversight of policy and resources) of special operations activities (as defined in section 167(k) of this title) and low intensity conflict activities of the Department of Defense. The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense. Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary shall do the following:

(i) Exercise authority, direction, and control of all special-operations peculiar administrative matters relating to the organization, training, and equipping of special operations forces through the administrative chain of command specified in section 167(f) of this title;

(ii) Assist the Secretary and the Under Secretary of Defense for Policy in the development and supervision of policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for the following:

(I) Irregular warfare, combating terrorism, and the special operations activities specified by section 167(k) of this title.

(II) Integrating the functional activities of the headquarters of the Department to most efficiently and effectively provide for required special operations forces and capabilities.

~~(III) Such other matters as may be specified by the Secretary and the Under Secretary.~~

(B) In the discharge of the responsibilities specified in subparagraph (A)(i), the Assistant Secretary is immediately subordinate to the Secretary of Defense. Unless otherwise directed by the President, no officer below the Secretary may intervene to exercise authority, direction, or control over the Assistant Secretary in the discharge of such responsibilities.

(3) One of the Assistant Secretaries is the Assistant Secretary of Defense for Legislative Affairs. ~~He shall have as his principal duty~~ The principal duty of the Assistant Secretary shall be the overall supervision of legislative affairs of the Department of Defense.

(4) One of the Assistant Secretaries is the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs. The Assistant Secretary may communicate views on issues within the responsibility of the Assistant Secretary directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense. The Assistant Secretary shall-

(A) advise the Secretary of Defense on nuclear energy, nuclear weapons, and chemical and biological defense; and

(B) serve as the Staff Director of the Nuclear Weapons Council established by section 179 of this title; ~~and~~

~~(C) perform such additional duties as the Secretary may prescribe.~~

(5) One of the Assistant Secretaries is the Assistant Secretary of Defense for Space Policy. The principal duty of the Assistant Secretary shall be the overall supervision of policy of the Department of Defense for space warfighting.

(6) One of the Assistant Secretaries is the Assistant Secretary of Defense for Industrial Base Policy. The Assistant Secretary shall-

~~(A) advise the Under Secretary of Defense for Acquisition and Sustainment on industrial base policies; and~~

~~(B) perform other duties as directed by the Under Secretary.~~

(7) One of the Assistant Secretaries is the Assistant Secretary of Defense for Energy, Installations, and Environment. The principal duty of the Assistant Secretary shall be the overall supervision of matters relating to energy, installations, and the environment for the Department of Defense.

(c) Except as otherwise specifically provided by law, an Assistant Secretary may not issue an order to a military department unless-

(1) the Secretary of Defense has specifically delegated that authority to the Assistant Secretary in writing; and

(2) the order is issued through the Secretary of the military department concerned.

(d) The Assistant Secretaries take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, ~~the Chief Management Officer of the Department of Defense,~~ the Secretaries of the military departments, the Under Secretaries of Defense, the officials serving in positions specified in section 131(b)(4) of this title, and the

Deputy Under Secretaries of Defense. The Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense.

(e) The maximum number of Deputy Assistant Secretaries of Defense is 57.

§5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.
Associate Administrator of the National Aeronautics and Space Administration.
Assistant Administrators, Agency for International Development (6).
Regional Assistant Administrators, Agency for International Development (4).
Assistant Secretaries of Agriculture (3).
Assistant Secretaries of Commerce (11).
Assistant Secretaries of Defense (418).
Assistant Secretaries of the Air Force (5).
Assistant Secretaries of the Army (5).
Assistant Secretaries of the Navy (4).
Assistant Secretaries of Health and Human Services (6).
Assistant Secretaries of the Interior (6).
Assistant Attorneys General (11).
Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.
Administrator, Wage and Hour Division, Department of Labor.
Assistant Secretaries of State (24) and 4 other State Department officials to be appointed by the President, by and with the advice and consent of the Senate.
Assistant Secretaries of the Treasury (10).
Members, United States International Trade Commission (5).
Assistant Secretaries of Education (10).
General Counsel, Department of Education.

* * * * *

~~SEC. 908. LIMITATION ON MAXIMUM NUMBER OF DEPUTY ASSISTANT SECRETARIES OF DEFENSE.~~

~~—The maximum number of Deputy Assistant Secretaries of Defense after the date of the enactment of this Act [Dec. 12, 2017] may not exceed 48.~~

Subtitle B—Other Matters

Section 911 repeals the requirements for four administratively inactive Department of Defense (DoD) Federal advisory committees that have completed their statutorily prescribed purposes. This is in alignment with the congressional intent, expressed in the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), that “advisory committees should be terminated when they are no longer carrying out the purposes for which they are established.” These committees

operated under the management and control of the Secretary of the Army, who is the DoD senior official with oversight of the U.S. Army Corps of Engineers (USACE) and select infrastructure efforts within the United States.

Terminating these administratively inactive DoD Federal advisory committees removes the administrative burden to DoD and the General Services Administration (GSA). Terminating these committees does not eliminate government work on protecting these geographically focused waterways and supporting areas, as the USACE and Department of Interior continue to hold these vital conversations in an agency-to-agency working group and work directly with State, local, tribal, and territorial members to enable engagement. The USACE completed all consultations with tribal and territorial partners before July 2021.

Missouri River (North Dakota) Task Force (North Dakota Task Force). The North Dakota Task Force was to develop and recommend, to the Secretary of the Army, critical restoration projects that promoted conservation practices in the Missouri River watershed, the general control and removal of sediment from the Missouri River, the protection of recreation on the Missouri River from sedimentation, the protection of Native American and non-Native American historical and cultural sites along the Missouri River from erosion, erosion control along the Missouri River, or any combination of these activities. Since establishment, the North Dakota Task Force has not had a sufficient number of members to reach quorum and, thus, has not held a single meeting. It has submitted zero recommendations to the DoD, including the required report and plan. The lack of work by the North Dakota Task Force has made its objectives obsolete by the passage of time. Therefore, the DoD, in consultation with the GSA, administratively suspended the North Dakota Task Force on October 7, 2016 due to inactivity. Congress was also notified of this status change via letter on October 7, 2016.

Missouri River (South Dakota) Task Force (South Dakota Task Force). The South Dakota Task Force was to develop and recommend, to the Secretary of the Army, critical restoration projects that promoted conservation practices in the Missouri River watershed, the general control and removal of sediment from the Missouri River, the protection of recreation on the Missouri River from sedimentation, the protection of Native American and non-Native American historical and cultural sites along the Missouri River from erosion, erosion control along the Missouri River, or any combination of these activities. Since establishment, the South Dakota Task Force has not had a sufficient number of members to reach quorum and, thus, has not held a single meeting. It has submitted zero recommendations to the DoD, including the required report and plan. The lack of work by the South Dakota Task Force has made its objectives obsolete by the passage of time. Therefore, the DoD, in consultation with the GSA, administratively suspended the South Dakota Task Force on October 7, 2016, due to inactivity. Congress was also notified of this status change via letter on October 7, 2016.

Lake Eufaula Advisory Committee (LEAC). The LEAC's objective was to maximize the use of available Lake Eufaula storage in a balanced approach that incorporates advice from representatives from all the project purposes to ensure that the full value of the reservoir is realized by the United States. The LEAC held its last meeting on January 29, 2018, and presented three recommendations to the Tulsa District Commander of the USACE on April 13, 2018. The USACE has implemented two of those recommendations. Therefore, the DoD, in

consultation with the GSA, administratively suspended the LEAC on November 8, 2018, because it completed its statutory purpose. Congress was also notified of this status change via letter on November 8, 2018.

Table Rock Lake Oversight Committee (TRLOC). The TRLOC's objective was to provide recommendations regarding all permits issued for Table Rock Lake under the existing Table Rock Lake Master Plan and advise on revisions to the new Table Rock Lake Master Plan and the Table Rock Lake Shoreline Management Plan. In a memo dated November 8, 2018, the Secretary of the Army and the then-Chief Management Officer of the Department of Defense initially agreed the TRLOC would terminate on July 10, 2020. Due to COVID-19 safety, the TRLOC was unable to complete its statutory work until September 23, 2020. Since TRLOC has concluded its statutory work, DoD is in the process of administratively suspending it in accordance with GSA guidance. DoD will notify Congress once it completes all required consultations.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President's Budget request.

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

Water Resources Development Act of 2000 (Public Law 106-541, December 11, 2000)

TITLE VII—MISSOURI RIVER RESTORATION, NORTH DAKOTA

~~SEC. 705. MISSOURI RIVER TASK FORCE.~~

~~(a) ESTABLISHMENT.— There is established the Missouri River Task Force.~~

~~(b) MEMBERSHIP.— The Task Force shall be composed of—~~

- ~~(1) the Secretary (or a designee), who shall serve as Chairperson;~~
- ~~(2) the Secretary of Agriculture (or a designee);~~
- ~~(3) the Secretary of Energy (or a designee);~~
- ~~(4) the Secretary of the Interior (or a designee); and~~
- ~~(5) the Trust.~~

~~(c) DUTIES.— The Task Force shall—~~

- ~~(1) meet at least twice each year;~~
- ~~(2) vote on approval of the plan, with approval requiring votes in favor of the plan by a majority of the members;~~
- ~~(3) review projects to meet the goals of the plan; and~~
- ~~(4) recommend to the Secretary critical projects for implementation.~~

~~(d) ASSESSMENT.—~~

~~(1) IN GENERAL.— Not later than 18 months after the date on which funding authorized under this title becomes available, the Secretary shall transmit to the other members of the Task Force a report on—~~

~~(A) the impact of the siltation of the Missouri River in the State, including the impact on—~~

- ~~(i) the Federal, State, and regional economies;~~
- ~~(ii) recreation;~~
- ~~(iii) hydropower generation;~~
- ~~(iv) fish and wildlife; and~~
- ~~(v) flood control;~~

~~(B) the status of Indian and non-Indian historical and cultural sites along the Missouri River;~~

~~(C) the extent of erosion along the Missouri River (including tributaries of the Missouri River) in the State; and~~

~~(D) other issues, as requested by the Task Force.~~

~~(2) CONSULTATION.— In preparing the report under paragraph (1), the Secretary shall consult with—~~

- ~~(A) the Secretary of Energy;~~
- ~~(B) the Secretary of the Interior;~~
- ~~(C) the Secretary of Agriculture;~~
- ~~(D) the State; and~~
- ~~(E) Indian tribes in the State.~~

~~(e) PLAN FOR USE OF FUNDS MADE AVAILABLE BY THIS TITLE.—~~

~~(1) IN GENERAL.— Not later than 3 years after the date on which funding authorized under this title becomes available, the Task Force shall prepare a plan for the use of funds made available under this title.~~

~~(2) CONTENTS OF PLAN.— The plan shall provide for the manner in which the Task Force shall develop and recommend critical restoration projects to promote—~~

- ~~(A) conservation practices in the Missouri River watershed;~~
- ~~(B) the general control and removal of sediment from the Missouri River;~~
- ~~(C) the protection of recreation on the Missouri River from sedimentation;~~
- ~~(D) the protection of Indian and non-Indian historical and cultural sites along the Missouri River from erosion;~~
- ~~(E) erosion control along the Missouri River; or~~
- ~~(F) any combination of the activities described in subparagraphs (A) through (E).~~

~~(3) PLAN REVIEW AND REVISION.—~~

~~(A) IN GENERAL.— The Task Force shall make a copy of the plan available for public review and comment before the plan becomes final in accordance with procedures established by the Task Force.~~

~~(B) REVISION OF PLAN.—~~

~~(i) IN GENERAL.— The Task Force may, on an annual basis, revise the plan.~~

(ii) ~~PUBLIC REVIEW AND COMMENT.~~—In revising the plan, the Task Force shall provide the public the opportunity to review and comment on any proposed revision to the plan.

~~(f) CRITICAL RESTORATION PROJECTS.~~—

(1) ~~IN GENERAL.~~—After the plan is approved by the Task Force under subsection (e)(2), the Secretary, in coordination with the Task Force, shall identify critical restoration projects to carry out the plan.

(2) ~~AGREEMENT.~~—The Secretary may carry out a critical restoration project after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) and this section.

(3) ~~INDIAN PROJECTS.~~—To the maximum extent practicable, the Secretary shall ensure that not less than 30 percent of the funds made available for critical restoration projects under this title shall be used exclusively for projects that are—

(A) within the boundary of an Indian reservation; or

(B) administered by an Indian tribe.

~~(g) COST SHARING.~~—

(1) ~~ASSESSMENT.~~—

(A) ~~FEDERAL SHARE.~~—The Federal share of the cost of carrying out the assessment under subsection (d) shall be 75 percent.

(B) ~~NON-FEDERAL SHARE.~~—The non-Federal share of the cost of carrying out the assessment may be provided in the form of services, materials, or other in-kind contributions.

(2) ~~PLAN.~~—

(A) ~~FEDERAL SHARE.~~—The Federal share of the cost of preparing the plan shall be 75 percent.

(B) ~~NON-FEDERAL SHARE.~~—Not more than 50 percent of the non-Federal share of the cost of preparing the plan may be provided in the form of services, materials, or other in-kind contributions.

(3) ~~CRITICAL RESTORATION PROJECTS.~~—

(A) ~~IN GENERAL.~~—A non-Federal cost share shall be required to carry out any project under subsection (f) that does not primarily benefit the Federal Government, as determined by the Task Force.

(B) ~~FEDERAL SHARE.~~—The Federal share of the cost of carrying out a project under subsection (f) for which the Task Force requires a non-Federal cost share under subparagraph (A) shall be 65 percent, not to exceed \$5,000,000 for any project.

(C) ~~NON-FEDERAL SHARE.~~—

(i) ~~IN GENERAL.~~—Not more than 50 percent of the non-Federal share of the cost of carrying out a project described in subparagraph (B) may be provided in the form of services, materials, or other in-kind contributions.

(ii) ~~REQUIRED NON-FEDERAL CONTRIBUTIONS.~~—For any project described in subparagraph (B), the nonfederal interest shall—

- (I) provide all land, easements, rights of way, dredged material disposal areas, and relocations;
 - (II) pay all operation, maintenance, replacement, repair, and rehabilitation costs; and
 - (III) hold the United States harmless from all claims arising from the construction, operation, and maintenance of the project.
- (iii) CREDIT.—The Secretary shall credit the non-Federal interest for all contributions provided under clause (ii)(I).

TITLE IX—MISSOURI RIVER RESTORATION, SOUTH DAKOTA

SEC. 905. MISSOURI RIVER TASK FORCE.

- (a) ESTABLISHMENT.—There is established the Missouri River Task Force.
- (b) MEMBERSHIP.—The Task Force shall be composed of—
- (1) the Secretary (or a designee), who shall serve as Chairperson;
 - (2) the Secretary of Agriculture (or a designee);
 - (3) the Secretary of Energy (or a designee);
 - (4) the Secretary of the Interior (or a designee); and
 - (5) the Trust.
- (c) DUTIES.—The Task Force shall—
- (1) meet at least twice each year;
 - (2) vote on approval of the plan, with approval requiring votes in favor of the plan by a majority of the members;
 - (3) review projects to meet the goals of the plan; and
 - (4) recommend to the Secretary critical projects for implementation.
- (d) ASSESSMENT.—
- (1) IN GENERAL.—Not later than 18 months after the date on which funding authorized under this title becomes available, the Secretary shall submit to the other members of the Task Force a report on—
- (A) the impact of the siltation of the Missouri River in the State, including the impact on—
 - (i) the Federal, State, and regional economies;
 - (ii) recreation;
 - (iii) hydropower generation;
 - (iv) fish and wildlife; and
 - (v) flood control;
 - (B) the status of Indian and non-Indian historical and cultural sites along the Missouri River;

~~(C) the extent of erosion along the Missouri River (including tributaries of the Missouri River) in the State; and~~

~~(D) other issues, as requested by the Task Force.~~

~~(2) CONSULTATION.— In preparing the report under paragraph (1), the Secretary shall consult with—~~

~~(A) the Secretary of Energy;~~

~~(B) the Secretary of the Interior;~~

~~(C) the Secretary of Agriculture;~~

~~(D) the State; and~~

~~(E) Indian tribes in the State.~~

~~(e) PLAN FOR USE OF FUNDS MADE AVAILABLE BY THIS TITLE.—~~

~~(1) IN GENERAL.— Not later than 3 years after the date on which funding authorized under this title becomes available, the Task Force shall prepare a plan for the use of funds made available under this title.~~

~~(2) CONTENTS OF PLAN.— The plan shall provide for the manner in which the Task Force shall develop and recommend critical restoration projects to promote—~~

~~(A) conservation practices in the Missouri River watershed;~~

~~(B) the general control and removal of sediment from the Missouri River;~~

~~(C) the protection of recreation on the Missouri River from sedimentation;~~

~~(D) the protection of Indian and non-Indian historical and cultural sites along the Missouri River from erosion;~~

~~(E) erosion control along the Missouri River; or~~

~~(F) any combination of the activities described in subparagraphs (A) through (E).~~

~~(3) PLAN REVIEW AND REVISION.—~~

~~(A) IN GENERAL.— The Task Force shall make a copy of the plan available for public review and comment before the plan becomes final, in accordance with procedures established by the Task Force.~~

~~(B) REVISION OF PLAN.—~~

~~(i) IN GENERAL.— The Task Force may, on an annual basis, revise the plan.~~

~~(ii) PUBLIC REVIEW AND COMMENT.— In revising the plan, the Task Force shall provide the public the opportunity to review and comment on any proposed revision to the plan.~~

~~(f) CRITICAL RESTORATION PROJECTS.—~~

~~(1) IN GENERAL.— After the plan is approved by the Task Force under subsection (e)(2), the Secretary, in coordination with the Task Force, shall identify critical restoration projects to carry out the plan.~~

~~(2) AGREEMENT.— The Secretary may carry out a critical restoration project after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) and this section.~~

~~(3) INDIAN PROJECTS.— To the maximum extent practicable, the Secretary shall ensure that not less than 30 percent of the funds made available for critical restoration projects under this title shall be used exclusively for projects that are—~~

- ~~(A) within the boundary of an Indian reservation; or~~
- ~~(B) administered by an Indian tribe.~~

~~(g) COST SHARING.—~~

~~(1) ASSESSMENT.—~~

~~(A) FEDERAL SHARE.— The Federal share of the cost of carrying out the assessment under subsection (d) shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.— The non-Federal share of the cost of carrying out the assessment may be provided in the form of services, materials, or other in-kind contributions.~~

~~(2) PLAN.—~~

~~(A) FEDERAL SHARE.— The Federal share of the cost of preparing the plan under subsection (e) shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.— Not more than 50 percent of the non-Federal share of the cost of preparing the plan may be provided in the form of services, materials, or other in-kind contributions.~~

~~(3) CRITICAL RESTORATION PROJECTS.—~~

~~(A) IN GENERAL.— A non-Federal cost share shall be required to carry out any critical restoration project under subsection (f) that does not primarily benefit the Federal Government, as determined by the Task Force.~~

~~(B) FEDERAL SHARE.— The Federal share of the cost of carrying out a project under subsection (f) for which the Task Force requires a non-Federal cost share under subparagraph (A) shall be 65 percent, not to exceed \$5,000,000 for any critical restoration project.~~

~~(C) NON-FEDERAL SHARE.—~~

~~(i) IN GENERAL.— Not more than 50 percent of the non-Federal share of the cost of carrying out a project described in subparagraph (B) may be provided in the form of services, materials, or other in-kind contributions.~~

~~(ii) REQUIRED NON-FEDERAL CONTRIBUTIONS.— For any project described in subparagraph (B), the non-Federal interest shall—~~

~~(I) provide all land, easements, rights-of-way, dredged material disposal areas, and relocations;~~

~~(II) pay all operation, maintenance, replacement, repair, and rehabilitation costs; and~~

~~(III) hold the United States harmless from all claims arising from the construction, operation, and maintenance of the project.~~

~~(iii) CREDIT.— The Secretary shall credit the non-Federal interest for all contributions provided under clause (ii)(I).~~

Water Resources Development Act of 2007 (Public Law 110-114, November 8, 2007)

SEC. 3133. LAKE EUFAULA, OKLAHOMA.

(a) ***

~~(b) LAKE EUFAULA ADVISORY COMMITTEE.—~~

~~(1) IN GENERAL.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Secretary shall establish an advisory committee for the Lake Eufaula, Canadian River, Oklahoma project authorized by the first section of the River and Harbor Act of July 24, 1946 (60 Stat. 635).~~

~~(2) PURPOSE.—The purpose of the committee shall be advisory only.~~

~~(3) DUTIES.—The committee shall provide information and recommendations to the Corps of Engineers regarding the operations of Lake Eufaula for the project purposes for Lake Eufaula.~~

~~(4) COMPOSITION.—The Committee shall be composed of members that equally represent the project purposes for Lake Eufaula.~~

(c) ***

Water Infrastructure Improvements for the Nation Act (Public Law 114-322, December 16, 2016)

SEC. 1185. TABLE ROCK LAKE, ARKANSAS AND MISSOURI.

(a) ***

(b) ***

~~(c) OVERSIGHT COMMITTEE.—~~

~~(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Secretary shall establish an oversight committee (referred to in this subsection as the “Committee”).~~

~~(2) PURPOSES.—The purposes of the Committee shall be—~~

~~(A) to review any permit to be issued under the existing Table Rock Lake Master Plan at the recommendation of the District Engineer; and~~

~~(B) to advise the District Engineer on revisions to the new Table Rock Lake Master Plan and Table Rock Lake Shoreline Management Plan.~~

~~(3) MEMBERSHIP.—The membership of the Committee shall not exceed 6 members and shall include—~~

~~(A) not more than 1 representative each from the State of Missouri and the State of Arkansas;~~

~~(B) not more than 1 representative each from local economic development organizations with jurisdiction over Table Rock Lake; and~~

~~(C) not more than 1 representative each representing the boating and conservation interests of Table Rock Lake.~~

~~(4) STUDY.— The Secretary shall—~~

~~(A) carry out a study on the need to revise permit fees relating to Table Rock Lake to better reflect the cost of issuing those permits and achieve cost savings;~~

~~(B) submit to Congress a report on the results of the study described in subparagraph (A); and~~

~~(C) begin implementation of a new permit fee structure based on the findings of the study described in subparagraph (A).~~

TITLE X—GENERAL PROVISIONS

Subtitle A—[Reserved]

Subtitle B—[Reserved]

Subtitle C—[Reserved]

Subtitle D—Other Matters

Section 1031 would limit the inappropriate use of the official insignia, seals, and emblems of the Department of Defense, the Armed Forces, and the Joint Staff (collectively referred to as “symbols”). There are no existing statutes that protect Army, Navy, Air Force, or Space Force symbols.² This proposal will require the enactment of a new section within title 10, United States Code that protects each of the covered symbols.

Military symbols are frequently used, both commercially and non-commercially, by unauthorized persons and non-Federal entities to advertise and promote their businesses and sell unapproved merchandise. This inappropriate use deprives the military branches the ability to control their reputations as well as protect the quality and safety of the products and services on which the marks are displayed. This unauthorized use harms the historic integrity of the military brand, its legitimate licensees and the Morale, Welfare and Recreation (MWR) programs.

Greater legal protections will enhance the ability of the U.S. military branches to protect their official symbols, by reducing the number of unlicensed products and services. Licenses are regularly utilized by the military branches to authorize and grant permission to individuals and organizations for their appropriate use on merchandise offered in the worldwide public marketplace. Licenses issued for the authorized use of a military branch symbols provide the military branches the ability to control their reputations as well as more effectively monitor the

² 10 U.S.C. § 8921 offers only limited protections to the Marine Corps name, initials, seal, and emblem and, for that reason, it is included in this legislative proposal.

quality of the products which carry their symbols. For example, in certain limited instances, particular military units wish to remove their name from the spotlight and unauthorized use of their unit insignia on products raises their public profile rather than lowering it.

The public oftentimes mistakenly believes that a U.S. military branch's official insignia, seals, and emblems are of the public domain as opposed to property belonging to the respective military branch. In fact, these symbols are trademarks and each branch has a trademark licensing program, established pursuant to 10 U.S.C. 2260. For instance, the Army grants permission for the use of its symbols through the Army Trademark Licensing Office (ATLP). Similarly, the Air Force and Space Force grant permission for the use of their symbols through the Air and Space Forces Intellectual Property Management Office (ASFIPMO). Proceeds received by ATLP and ASFIPMO through their licensing agreements help to support the military's Morale, Welfare and Recreation (MWR) programs.

While there are no other specific statutes that protect symbols of the U.S. military, there are general provisions that protect intellectual property and may incidentally, or in limited circumstances, protect military symbols. For example, the Lanham Act (15 U.S.C. 1051) will protect names and insignia if they qualify as trademarks. Section 771 of title 10, United States Code, limits the unauthorized wearing of military awards on service uniforms and some penal statutes prevent the inappropriate use of certain official badges, identification cards, and other insignia (18 U.S.C. 701) as well as prevention of the misuse of names, words, emblems or insignia (18 U.S.C. 712). Other regulations prevent the manufacture and sale of decorations, medals, and insignia, which limits the commercial use of heraldic designed and heraldic quality control programs (Title 32, Code of Federal Regulations (C.F.R.) Part 507).

Statutes also authorize the military branches to license their intellectual property and provide for the retention of fees generated from the legitimate and approved use of this property. Pursuant to 10 U.S.C. 2260, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary concerned and may also retain and expend fees received from licensing. The Secretary concerned also has the ability to designate trademarks, service marks, certification marks and collective marks as well as enter into licensing agreements while maintaining the fees generated therefrom, but does not have the authority to prosecute violators who use the U.S. military insignia or names without authorization. *See generally*, 10 U.S.C. 2260 and Department of Defense Instruction 5535.12, "DoD Branding and Trademark Licensing Program Implementation," September 13, 2013, incorporating Change 1, April 29, 2020. Also, existing statutes do not specifically prevent the use of U.S. military symbols elsewhere; for example, in advertising or on other goods and services marketed by non-federal entities or contractors without permission.

Further, enforcement under trademark law entails significant litigation burden. Meanwhile, the proof necessary to establish a violation of a strict liability type statute, as is currently proposed by this statute, is straightforward and, generally, easier to prove requiring less expenditure of resources.

Nor is the protection being requested unique. Congress has previously provided a remedy for certain organizations by enacting laws designed to protect their particular trademarks. Special

statutes afford broad protection to marks owned and used by private organization such as the: Boy Scouts of America (36 U.S.C. 30905; exclusive right to emblems, badges, marks and words); Girl Scouts of America (36 U.S.C. 80305; exclusive right to emblems, badges, marks and words); United States Olympic Committee (36 U.S.C. 220506; exclusive right to name, seals, emblems and badges), and others.

In addition to protection afforded private organizations, Congress has taken action to protect other federal government entities such as the U.S. Forest Service (16 U.S.C. 580; protecting property of the United States with an injunction against unauthorized manufacture, use or reproduction) and the U.S. Coast Guard (14 U.S.C. 934; penalty for unauthorized use of words, “Coast Guard”).³

This proposal provides in kind protections to U.S. military insignia, seals, and emblems through the addition of a section to title 10, United States Code.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request.

Changes to Existing Law: This proposal would add a new section to chapter 49 of title 10, United States Code, the full text of which is shown in the legislative language above.

Section 1032 would clarify the authority of the Department of Defense to provide support for the funerals or related memorial events of members and former members of Congress, including transportation of members of Congress, staff, and families to and from the funerals or other memorial events. The Department currently provides support for congressional funerals under section 127 of title 10, United States Code, which has limited funds available, is intended for emergencies and exigencies, and requires a notification and delay in the expenditure of funds under certain circumstances that make providing support for some funerals difficult or impossible under existing law.

By adding a new section to title 10 that specifically authorizes the Secretary to provide the support to the funerals and related memorial events and for the Department to use operations and maintenance funds to do so, the Department will have clear authority and a more appropriate funding mechanism to ensure appropriate support is available for congressional funerals and other memorial events.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget request. Amounts indicate an estimate of the FY23 resources that would be used to support this authority if enacted and do not represent additional funds specifically set aside for Congressional funeral support.

RESOURCE IMPACT (\$MILLIONS)

³ Statutory protection similar to those described was also extended to use of the “seal, emblem, name, and initials of the United States Marine Corps (10 U.S.C. § 8921; unauthorized use of Marine Corps insignia). However, the legislative change proposed will provide additional and necessary protection to the Marine Corps.

Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Contractor Logistic Support	.46	.48	.47	.48	.49	Operation and Maintenance, Air Force	01	11W	N/A
Flying Hour Program	.4	.4	.41	.42	.43	Operation and Maintenance, Air Force	01	11Y	N/A
Total	.86	.88	.88	.9	.92				

Cost Methodology: Estimates based on four Member of Congress funerals supported per year by Military Air, with an average of twelve flight hours per funeral. The flying rate hours are published each year for each aircraft platform. The above is based on the rates for the C-32 and the C-17A.

Changes to Existing Law: This proposal would add a new section 130a to chapter 3 of title 10, United States Code, the full text of which is shown in the legislative language above.

Section 1033 would amend section 44310 of title 49, United States Code (U.S.C.), to make permanent the authority of the Secretary of Transportation to provide aviation insurance and reinsurance upon the request of another United States Government agency. This authority has been extended by Congress, usually in four- or five-year increments, on multiple occasions since the current aviation insurance program's inception in 1958 and is currently due to expire on September 30, 2023. However, on several occasions, this authority has lapsed or come very close to lapsing, placing at risk the ability of the Department of Defense (DoD) to obtain contract air services in time of war or other contingency. Insurance issued under the authority of chapter 443 of title 49, U.S.C., is essential during activation of the Civil Reserve Air Fleet, as well as other contingencies in which commercial insurance is either unavailable or unavailable at reasonable prices, in order to meet national defense needs. The lack of insurance in such circumstances would cripple DoD's ability to transport personnel and materiel in a timely manner, substantially impeding the effectiveness of the response to a contingency or natural disaster.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request.

Within DoD, this program is used primarily by the Air Force and has resulted in average outlays of \$2.9 million annually since 2008.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all

									RDT&E programs)
Aviation Insurance	\$2.9	\$2.9	\$2.9	\$2.9	\$2.9	Operation and Maintenance, Air Force	04	959/42G	N/A

Cost Methodology: Pursuant to a 2013 agreement between the Secretary of Defense and the Secretary of Transportation, countersigned by the President, and as required by section 44305(b) of title 49, U.S.C., DoD must indemnify the Federal Aviation Administration (FAA) for all claims paid under insurance policies issued by the FAA at DoD’s request. The source of funds to pay such claims is specified in section 9514(b) of title 10, U.S.C., as “any funds available to the Department of Defense for operation and maintenance...”. It is impossible to predict when such claims may arise, as well as the amount of such claims. From FY 2008 through FY 2021, DoD has reimbursed the FAA for adjudicated claims in excess of \$37 million, an average of \$2.9 million per year. However, between the program’s inception in FY 1958 and FY 2008, there were no major claims. In addition, the cost avoidance to DoD by providing insurance under this authority rather than reimbursing air carriers for unreasonably priced commercial insurance is similarly difficult to quantify, but may in some instances more than offset the amount paid in claims. Due to the nature of this program, outlays are only made as a result of a claim, so a historical average is used in the budget estimation.

Changes to Existing Law: This proposal would make the following changes to section 44310 of title 49, United States Code, as set forth in the legislative text above:

§44310. Ending effective date

~~(a) IN GENERAL.—~~The authority of the Secretary of Transportation to provide insurance and reinsurance under any provision of this chapter other than section 44305 is not effective after December 11, 2014.

~~(b) INSURANCE OF UNITED STATES GOVERNMENT PROPERTY.—~~The authority of the Secretary of Transportation to provide insurance and reinsurance for a department, agency, or instrumentality of the United States Government under section 44305 is not effective after September 30, 2023.

Section 1034 would amend section 44301(2) of title 49, United States Code (U.S.C.), which defines “American aircraft” for purposes of chapter 443 of title 49, U.S.C. (relating to insurance), to include state as well as civil aircraft of the United States.

At present, the issuance of non-premium aviation insurance coverage for aircraft operating under contract to a U.S. Government agency is limited to operations involving an “American aircraft” or a “foreign flag” aircraft. “American aircraft” is defined, in part, as a “civil aircraft of the United States.” As a result, a civil aircraft of the United States that has been temporarily designated as a “state aircraft” by the U.S. Government while operating in

international or foreign airspace, or foreign territory, may not be eligible for non-premium insurance coverage. This proposal would revise the definition of “American aircraft” to make clear that “state aircraft” are eligible for coverage.

The Federal Aviation Administration (FAA) administers the non-premium aviation insurance program under chapter 443 of title 49, U.S.C., on behalf of the Department of Transportation. Insurance is issued at the request of another U.S. Government agency to cover the operation of aircraft under contract to that agency, when commercial insurance is not available, or not available on reasonable terms. Although the FAA pays any claims or judgments arising from such insurance coverage, the agency requesting the coverage is required by law to reimburse the FAA for the cost. In the Department of Defense’s (DoD’s) case, reimbursement is made from DoD operation and maintenance funds available to DoD.

The DoD has been the exclusive user of non-premium insurance coverage under chapter 443 since 1991, and such coverage currently is in effect in several regions of the world where commercial insurance coverage is either not available or not available on reasonable terms. Aircraft under contract to the U.S. Government operating throughout the world are civil aircraft unless designated as state aircraft by the U.S. Government, and it is the normal practice of the United States to not make such designations unless required to do so for operational reasons. When such designations are made, any non-premium insurance coverage in effect for that aircraft may cease for the duration of the aircraft’s operation as a state aircraft. This may leave the operator without insurance. As a result, operators are often reluctant to agree to perform operations as state aircraft, which may, in turn, have a significant, adverse impact on DOD’s ability to provide the Armed Forces with critical support when and where needed. This proposal is designed to remove an air carrier’s disincentive to operate as state aircraft. This proposal was recommended by the congressionally created interagency Special Federal Aviation Regulation Working Group in its report submitted to Congress pursuant to section 1748 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 and section 154 of the NDAA for FY 2021.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request.

Changes to Existing Law: This proposal amends section 44301 of title 49, United States Code, as follows:

§44301. Definitions

In this chapter—

(2) “American aircraft” means—

(A) a civil aircraft of the United States; ~~and~~

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or
(ii) a State, the District of Columbia, a territory, or possession of the United States, or a political subdivision of the State, territory, or possession; or
(C) an aircraft temporarily designated as a state aircraft of the United States by a department, agency, or instrumentality of the United States Government.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would amend section 9902(f)(5)(A)(ii) of title 5, United States Code, to increase from \$25,000 to \$40,000 the maximum amount of voluntary separation incentive pay (VSIP) that the Department of Defense (DoD) is authorized to provide to an individual. The temporary authority for the Department to provide this increased maximum amount for VSIP expired on September 30, 2021. The increased maximum amount for VSIP that would be authorized by this proposal is less than the amount originally authorized for VSIP in 1993, as adjusted for inflation.

The Department of Defense has traditionally offered incentives, such as VSIP, to encourage voluntary separations as a way to minimize the impact of workforce restructuring and avoid involuntary reductions in force (RIFs). RIFs are costly and disruptive to DoD's missions and create negative morale in the workforce. VSIP authority is also an important workforce shaping and restructuring tool that assists the Department in recalibrating the workforce to ensure the Department has the right skills for emerging missions and mission growth. Indeed, VSIP authority can be exercised independent of RIF planning and in the past has been effective in enabling DoD components to shape their workforce. Any future reductions to the DoD budget will require management tools to efficiently reduce the workforce without adversely affecting DoD's missions or its commitment to the Nation's warfighters. Buyouts provide a less expensive, more humane, and more manageable way to efficiently reduce as well as restructure the DoD workforce.

In general, downsizing and realignment within DoD have significantly decreased since completion of actions resulting from Fiscal Year (FY) 2005 base realignment and closure (BRAC) decisions, reducing the use of VSIP. In FY 2019, DoD received full-year appropriations, which stabilized DoD resources and reduced the need for use of the incentive. As a result, the Department averaged almost 1,600 VSIP payments over the past 3 years. The Department anticipates continued relative stability over the next FY. While VSIP may be used for downsizing as needed, DoD anticipates additional VSIP usage for organizational restructuring, position restructuring, and buyout offers as DoD reskills the workforce.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request. Adoption of the proposal would make permanent the temporary increase in the maximum VSIP amount for the DoD from \$25,000 to \$40,000 that was scheduled to end in FY 2022. VSIP is authorized at levels not to exceed DoD's appropriated budget authority in any given fiscal year. As such, the

Department will use funding that has already been allocated to the costs of civilian pay as the offset in the given fiscal year. DoD's intent is to offer VSIP at a steady rate to continue to reshape our workforce, as needed, and avoid costly reductions-in-force. The increased incentive may influence the number of civilians offered the opportunity to participate in VSIP and/or the timeframe in which participants must accept VSIP in order to maximize the use of funds in the given fiscal year. The authority will not change the severance pay formulas used to calculate the actual VSIP amount. We anticipate a continued steady use of VSIP.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	\$12.88	\$13.14	\$13.40	\$13.67	\$13.94	Operation and Maintenance, Army	Multiple	Multiple	
Navy	\$0.47	\$0.48	\$0.49	\$0.50	\$0.51	Operation and Maintenance, Navy	Multiple	Multiple	
Navy	\$3.00	\$3.06	\$3.12	\$3.18	\$3.25	Navy Working Capital Fund	Multiple	Multiple	
Navy	\$0.15	\$0.16	\$0.16	\$0.16	\$0.17	Research, Development, Test & Evaluation, Navy	Multiple	Multiple	
Air Force	\$0.87	\$0.87	\$0.89	\$0.91	\$0.93	Operation and Maintenance, Air Force	Multiple	Multiple	
USMC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, Marine Corps	Multiple	Multiple	
DLA	\$0.78	\$0.80	\$0.82	\$0.83	\$0.84	Operation and Maintenance, DLA	Multiple	Multiple	
DCMA	\$1.96	\$2.00	\$2.04	\$2.08	\$2.12	Operation and Maintenance, DCMA	Multiple	Multiple	
DISA	0.78	\$0.80	\$0.81	\$0.83	\$0.84	Operation and Maintenance, DISA	Multiple	Multiple	
DCAA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DCAA	Multiple	Multiple	
OSD	\$0.60	\$0.60	\$0.60	\$0.60	\$0.60	Operation and Maintenance, OSD	Multiple	Multiple	
DFAS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DFAS	Multiple	Multiple	
WHS	\$0.24	\$0.24	\$0.24	\$0.24	\$0.24	Operation and Maintenance, WHS	Multiple	Multiple	
Joint Staff	\$0.09	\$0.09	\$0.10	\$0.10	\$0.10	Operation and Maintenance, Joint Staff	Multiple	Multiple	
National Guard	\$0.24	\$0.25	\$0.25	\$0.26	\$0.26	Operation and Maintenance, National Guard	Multiple	Multiple	
DoDEA	\$0.81	\$0.83	\$0.84	\$0.86	\$0.88	Operation and Maintenance, DoDEA	Multiple	Multiple	
DECA	\$0.69	\$0.70	\$0.72	\$0.73	\$0.75	Operation and Maintenance, DECA	Multiple	Multiple	

DHA	\$0.35	\$0.36	\$0.37	\$0.37	\$0.38	Operation and Maintenance, DHA	Multiple	Multiple	
MDA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, MDA	Multiple	Multiple	
DHRA	\$0.20	\$0.20	\$0.21	\$0.21	\$0.22	Operation and Maintenance, DHRA	Multiple	Multiple	
DoDIG	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DoDIG	Multiple	Multiple	
PFPA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, PFPA	Multiple	Multiple	
DTRA	\$0.15	\$0.16	\$0.16	\$0.16	\$0.17	Operation and Maintenance, DTRA	Multiple	Multiple	
DSS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DSS	Multiple	Multiple	
USUHS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, USUHS	Multiple	Multiple	
DAU	\$0.05	\$0.05	\$0.05	\$0.05	\$0.05	Operation and Maintenance, DAU	Multiple	Multiple	
DSCA	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	Operation and Maintenance, DSCA	Multiple	Multiple	
DMA	\$0.21	\$0.22	\$0.22	\$0.23	\$0.23	Operation and Maintenance, DMA	Multiple	Multiple	
NDU	\$0.03	\$0.03	\$0.03	\$0.03	\$0.03	Operation and Maintenance, NDU	Multiple	Multiple	
NRO	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, NRO	Multiple	Multiple	
POW/MIA Ofc	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, POW/MIA Ofc	Multiple	Multiple	
Def Legal Svcs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, Def Legal Svcs	Multiple	Multiple	
DTIC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DTIC	Multiple	Multiple	
DMeA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DMeA	Multiple	Multiple	
DARPA	\$0.05	\$0.05	\$0.05	\$0.05	\$0.05	Operation and Maintenance, DARPA	Multiple	Multiple	
DTSA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, DTSA	Multiple	Multiple	
Crt Appls Armd Frs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, Crt Appls Armd Frs	Multiple	Multiple	
OEA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, OEA	Multiple	Multiple	

Test Resource Mgmt Ctr	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Maintenance, Test Resource Mgmt Ctr	Multiple	Multiple	
Total	\$24.48	\$25.00	\$25.49	\$25.98	\$26.50				

PERSONNEL AFFECTED (END STRENGTH)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	842	842	842	842	842	Operation and Maintenance, Army	Multiple	Multiple	
Navy	31	31	31	31	31	Operation and Maintenance, Navy	Multiple	Multiple	
Navy	196	196	196	196	196	Navy Working Capital Fund	Multiple	Multiple	
Navy	10	10	10	10	10	Research, Development, Test & Evaluation, Navy	Multiple	Multiple	
Air Force	56	56	56	56	56	Operation and Maintenance, Air Force	Multiple	Multiple	
USMC	0	0	0	0	0	Operation and Maintenance, Marine Corps	Multiple	Multiple	
DLA	51	51	51	51	51	Operation and Maintenance, DLA	Multiple	Multiple	
DCMA	128	128	128	128	128	Operation and Maintenance, DCMA	Multiple	Multiple	
DISA	51	51	51	51	51	Operation and Maintenance, DISA	Multiple	Multiple	
DCAA	0	0	0	0	0	Operation and Maintenance, DCAA	Multiple	Multiple	
OSD	40	40	40	40	40	Operation and Maintenance, OSD	Multiple	Multiple	
DFAS	0	0	0	0	0	Operation and Maintenance, DFAS	Multiple	Multiple	
WHS	16	16	16	16	16	Operation and Maintenance, WHS	Multiple	Multiple	
Joint Staff	6	6	6	6	6	Operation and Maintenance, Joint Staff	Multiple	Multiple	

National Guard	16	16	16	16	16	Operation and Maintenance, National Guard	Multiple	Multiple	
DoDEA	53	53	53	53	53	Operation and Maintenance, DoDEA	Multiple	Multiple	
DECA	45	45	45	45	45	Operation and Maintenance, DECA	Multiple	Multiple	
DHA	23	23	23	23	23	Operation and Maintenance, DHA	Multiple	Multiple	
MDA	0	0	0	0	0	Operation and Maintenance, MDA	Multiple	Multiple	
DHRA	13	13	13	13	13	Operation and Maintenance, DHRA	Multiple	Multiple	
DoDIG	0	0	0	0	0	Operation and Maintenance, DoDIG	Multiple	Multiple	
PFPA	0	0	0	0	0	Operation and Maintenance, PFPA	Multiple	Multiple	
DTRA	10	10	10	10	10	Operation and Maintenance, DTRA	Multiple	Multiple	
DSS	0	0	0	0	0	Operation and Maintenance, DSS	Multiple	Multiple	
USUHS	0	0	0	0	0	Operation and Maintenance, USUHS	Multiple	Multiple	
DAU	3	3	3	3	3	Operation and Maintenance, DAU	Multiple	Multiple	
DSCA	1	1	1	1	1	Operation and Maintenance, DSCA	Multiple	Multiple	
DMA	14	14	14	14	14	Operation and Maintenance, DMA	Multiple	Multiple	
NDU	2	2	2	2	2	Operation and Maintenance, NDU	Multiple	Multiple	
NRO	0	0	0	0	0	Operation and Maintenance, NRO	Multiple	Multiple	
POW/MIA Ofc	0	0	0	0	0	Operation and Maintenance, POW/MIA Ofc	Multiple	Multiple	
Def Legal Svcs	0	0	0	0	0	Operation and Maintenance, Def Legal Svcs	Multiple	Multiple	
DTIC	0	0	0	0	0	Operation and Maintenance, DTIC	Multiple	Multiple	
DMeA	0	0	0	0	0	Operation and Maintenance, DMeA	Multiple	Multiple	
DARPA	3	3	3	3	3	Operation and Maintenance, DARPA	Multiple	Multiple	
DTSA	0	0	0	0	0	Operation and Maintenance, DTSA	Multiple	Multiple	

Crt Appls Armd Frcs	0	0	0	0	0	Operation and Maintenance, Crt Appls Armd Frcs	Multiple	Multiple	
OEA	0	0	0	0	0	Operation and Maintenance, OEA	Multiple	Multiple	
Test Resource Mgmt Ctr	0	0	0	0	0	Operation and Maintenance, Test Resource Mgmt Ctr	Multiple	Multiple	
Total	1,600	1,600	1,600	1,600	1,600				

Cost Methodology: DoD anticipates significant use of VSIP in the foreseeable future as the need for reshaping the workforce continues. VSIP is used to encourage voluntary reductions that mitigate adverse effects on civilian employees and are less costly to the Department than involuntary reductions via RIF. The resource requirements listed reflect the total cost of buyouts over the fiscal year development plan, taking into account the number of employees who have historically participated in VSIP, as well as the projections of DoD components on how many additional employees are expected to take VSIP at the increased amount. It assumes nearly a straight-line increase of \$15,000 per buyout, since historically 99 percent of the buyouts approved are at the maximum amount of \$25,000. This extra expenditure will be absorbed by reducing the costs associated with RIFs, including severance pay, unemployment compensation, continuation of benefits, transition assistance, permanent change of station costs, and various administrative costs. An annual 2 percent inflation adjustment was used to determine estimated annual resource requirements for Fiscal Years 2023 through 2027.

Changes to Existing Law: This proposal would amend section 9902(f)(5)(A)(ii) of title 5, United States Code as follows:

§ 9902. Department of Defense personnel authorities

(f) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) shall not be included in that number.

(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

(3) For purposes of this section, the term “employee” means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

(5)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c), if the employee were entitled to payment under such section; or

(ii) ~~\$25,000~~ an amount determined by the Secretary, not to exceed \$40,000.

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–226; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

Section 1102 would authorize the Department of Defense (DoD) to provide support to the Inter-American Defense College (IADC) through the hiring of professors, instructors, and lecturers so IADC may achieve parity with other senior service colleges. This would allow IADC to deliver a quality program that meets evolving accreditation standards. When laws were enacted providing U.S. war colleges authority to hire professors, instructors, and lecturers, it was determined that IADC did not need to be included because, at the time, IADC was under the administrative support of the Joint Staff, which had sufficient hiring authority. From 1962 to 2016, Joint Staff provided personnel support to IADC. Now that IADC is no longer supported by the Joint Staff and DoD support is provided in accordance with section 351 of title 10, United States Code, IADC needs the same hiring authority granted to the other stand-alone senior service colleges. IADC needs this authority so that the U.S. flag officer responsible for the U.S. Element of IADC and serving as the Director of IADC can rapidly fill projected vacancies in order to accomplish IADC's organizational mission, comply with the international agreement as IADC's host nation, comply with U.S. law, and contribute to the international professional military education objectives of the Secretary of Defense and the National Security Strategy.

The IADC is the Department's most cost-effective security cooperation engagement platform that may be leveraged to strengthen partnerships for great power competition. With over 3,000 graduates from 27 countries, approximately 27 percent of graduates achieve the rank of general officer/flag officer or civilian equivalent. Eight of the current ministers of defense or security in the Western Hemisphere are IADC alumni. IADC represents a low political risk and barrier to entry for countries to engage the United States and IADC is not seen as a direct instrument of U.S. policy, enabling countries to ease into the Inter-American System. IADC offers a unique capability to engage multilaterally, through a truly international institution with tangible commitments from partner nations: 62 percent of staff personnel are provided by partner nations and 90 percent of students are fully funded by the sponsoring nation without U.S. assistance. The District of Columbia Higher Education Learning Commission issued IADC a permanent license in 2019 to operate as an academic institution in recognition of the College's exemplary operating standards. On June 24, 2021, the Middle States Commission on Higher Education granted IADC full accredited status with a retroactive effective accreditation date of March 15, 2018, making it the second accreditor (the Accrediting Council for Independent Colleges and Schools accredited IADC in 2014).

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all

									RDT&E programs)
InterAmerican Defense College	0.63	0.64	0.64	0.66	0.67	Operation & Maintenance, Army	BA01	143	N/A
Total	0.63	0.64	0.64	0.66	0.67				

PERSONNEL IMPACT (END STRENGTH/FTEs)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
InterAmerican Defense College	4 FTEs	4 FTEs	4 FTEs	4 FTEs	4 FTEs	Operation & Maintenance, Army	BA01	143	N/A
Total	4	4	4	4	4				

Changes to Existing Law: This proposal amends section 1595 of title 10, United States Code, as follows:

§1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) **AUTHORITY OF SECRETARY.**—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the ~~institutions~~ organizations specified in subsection (c) 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) **COVERED ~~INSTITUTIONS~~ ORGANIZATIONS.**—This section applies with respect to the following ~~institutions~~ organizations of the Department of Defense:

- (1) The National Defense University.
- (2) The Foreign Language Center of the Defense Language Institute.
- (3) The English Language Center of the Defense Language Institute.
- (4) The Western Hemisphere Institute for Security Cooperation.
- (5) The Joint Special Operations University.
- (6) The Defense Security Cooperation University.
- (7) The Defense Institute for Security Governance.
- (8) The Defense Institute of International Legal Studies.
- (9) The United States Element of the Inter-American Defense College.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Subtitle A—Assistance and Training

Section 1201 would amend section 344 of title 10, United States Code (section 344), to include the International Special Training Centre (ISTC) in Pfullendorf, Germany, in the definition of the term “Multinational Center of Excellence” such that the Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of U.S. service members and Department of Defense (DoD) civilians at the ISTC for particular purposes.

Need for Legislation

The authority for DoD to join the ISTC’s predecessor (described further below) in 1987 is unclear. DoD subsequently relied on section 21(g) of the Arms Export Control Act (AECA) (22 U.S.C. 2761(g)), which authorizes the President to enter into agreements with NATO and major non-NATO allies for the cooperative furnishing of training on a bilateral or multilateral basis. However, we have not been able to locate documentation showing that the required congressional notification under such section 21(g) was made, nor do we believe that the current construct of the ISTC or the interpretations and applications of section 21(g) clearly authorize participation in the ISTC moving forward. If enacted, this legislative change would provide clear, independent authority for DoD to participate in the ISTC without reliance upon section 21(g).

Further complicating our current reliance on section 21(g) of the AECA, the ISTC has, since at least 2014, considered expanding membership to non-NATO signatories to the Partnership for Peace (PfP) Framework Documents, e.g., Finland and Ukraine. However, section 21(g) is limited to agreements with NATO and major non-NATO allies. Therefore, if DoD continues to rely upon section 21(g) as authority to participate in the ISTC, the United States could not support adding non-NATO members who are not major non-NATO allies because doing so would put ISTC participation on even shakier legal footing and would likely necessitate a U.S. withdrawal from the ISTC. Withdrawing from the ISTC is unacceptable to both U.S. European Command (USEUCOM) and U.S. Special Operations Command (USSOCOM) because withdrawal would negatively affect special operations forces (SOF) capabilities and readiness in Europe at a time when deterring Russia and countering its malign influence, especially in non-NATO partner nations like Finland and Ukraine, requires a strong U.S. and partner SOF enterprise. This underscores further the need for this legislative proposal to provide independent authority in section 344 to authorize participation in the ISTC now and in the future.

Background

The ISTC is a multinational training center located in Pfullendorf, Germany, that conducts training for special operations forces and similar personnel. It traces its origins to the International Long Range Reconnaissance Patrol School (ILRRPS), established in Germany in 1979 through a memorandum of understanding between the member nations. The United States joined the ILRRPS in 1987. In 2001, the school was re-designated as the ISTC to more accurately reflect its focus on special operations training. Since that time, the U.S. Army has provided two Department of Army civilian employees providing administrative services, a Special Forces Command Sergeant Major, and a Command Select Special Forces O-5 (Lieutenant Colonel) to command the Centre.

The ISTC has an operational and tactical training focus with two main features:

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

The ISTC serves as a hallmark of cooperation between the United States, NATO, and our European partners and Allies. Strategically, the ISTC serves as an institution that builds the capability and capacity of other SOF training centers, thereby increasing their ability to train their own forces and those of other NATO nations. Under this line of effort, ISTC has and continues to assist other SOF training centers to build their own training courses to address identified shortfalls that will significantly increase their training capabilities and improve the overall SOF enterprise in Europe.

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

NATO Allied Command Transformation provides two types of NATO accreditation to training centers on behalf of the NATO Military Committee: (1) institutional accreditation; and (2) accreditation as a NATO Center of Excellence. The ISTC received unconditional institutional accreditation in 2017 and will be reaccredited by NATO every six years. However, the ISTC is not accredited as a NATO Center of Excellence, nor does it desire such accreditation. Although the ISTC's objective and interests are nested within those of NATO, the ISTC must maintain the flexibility necessary to focus on the agreed objectives and interests of its member nations. That requires that it not be subject to the requirements for a NATO Center of Excellence. Since its founding in 1987, the ISTC's flexibility has allowed it to meet, in real time, the evolving needs and demands for European SOF interoperability, which could be limited if it became a NATO Center of Excellence. Despite not being accredited as a NATO Center of Excellence, the ISTC provides the opportunities for participants that are enumerated in section 344(f)(1), similar to the European Centre of Excellence for Countering Hybrid Threats, which was added to section 344(f) in the NDAA for FY 2021 despite not being accredited as a NATO

Center of Excellence. The ISTC's rich history, the benefits and opportunities that it provides, its NATO institutional accreditation, and the long-time participation of DoD in the ISTC all buttress the justification for adding the ISTC to the definition of Multinational Center of Excellence in section 344(f).

Need to Include Non-NATO Members

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

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

Such accession by a non-NATO signatory to the PfP framework would require the unanimous consent of ISTC member nations. The United States cannot consent to such an accession without enactment of this legislative proposal into law. Under current law, should a non-NATO nation be admitted, it is possible that the United States would have to withdraw as a member of the ISTC. Our inability to consent under our current reliance upon section 21(g) of the AECA for authority would likely result in Finland being unable to join the ISTC and the SOF enterprise, thereby losing a talented and valuable partner and diminishing the overall effectiveness of ISTC. This would deprive the United States of a proven world class opportunity to strengthen interoperability in Europe and our bonds with partners essential for the achievement of USEUCOM theatre objectives.

Benefits to the United States

The ISTC provides significant benefits to the United States and already contributes to the ability of the United States to conduct special operations training, institution building, and interoperability activities with NATO Allies. The ISTC maintains cooperative training efforts with a number of NATO entities, including the NATO Special Operations Headquarters in Chièvres, Belgium, the NATO School at Oberammergau, Germany, and the NATO Maritime Interdiction Operations Training Centre at Souda Bay in Greece. Making full membership available to non-NATO partners would contribute to the collaborative security approach against irregular, asymmetric, and hybrid warfare in Eastern Europe as well as other locations that impact Europe.

Costs

Germany, where the ISTC is located, is responsible for basing, operation, maintenance, and repair of all ISTC infrastructure, facilities, and equipment. Costs are shared among the

member countries. The annual U.S. contribution is currently approximately \$760,000. As more member nations join, the cost share may be marginally reduced.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget request.

RESOURCE REQUIREMENTS (\$MILLIONS)								
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG
ISTC	\$0.76	\$0.76	\$0.76	\$0.76	\$0.76	Operation and Maintenance, Army	04	441
Total	\$0.76	\$0.76	\$0.76	\$0.76	\$0.76			

Changes to Existing Law: This proposal would amend section 344 of title 10, United States Code, as follows:

§ 344. Participation in multinational centers of excellence

(a) PARTICIPATION AUTHORIZED.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the armed forces and Department of Defense civilian personnel in any multinational center of excellence for purposes of—

(1) enhancing the ability of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international military operations; or

(2) improving interoperability between the armed forces and the military forces of friendly foreign nations.

(b) MEMORANDUM OF UNDERSTANDING.—(1) The participation of members of the armed forces or Department of Defense civilian personnel in a multinational center of excellence under subsection (a) shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, or entered into by the Secretary of State, and the foreign nation or nations concerned.

(2) If Department of Defense facilities, equipment, or funds are used to support a multinational center of excellence under subsection (a), the memoranda of understanding under paragraph (1) with respect to that center shall provide details of any cost-sharing arrangement or other funding arrangement.

(c) AVAILABILITY OF APPROPRIATED FUNDS.—(1) Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

(A) To pay the United States share of the operating expenses of any multinational center of excellence in which the United States participates under this section.

(B) To pay the costs of the participation of members of the armed forces and Department of Defense civilian personnel in multinational centers of excellence under this section, including the costs of expenses of such participants.

(2) No funds may be used under this section to fund the pay or salaries of members of the armed forces and Department of Defense civilian personnel who participate in multinational centers of excellence under this section.

(d) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.—Facilities and equipment of the Department of Defense may be used for purposes of the support of multinational centers of excellence under this section that are hosted by the Department.

(e) NOTIFICATION.—Not later than 30 days before the date on which the Secretary of Defense authorizes participation under subsection (a) in a new multinational center of excellence, the Secretary shall notify the congressional defense committees of such participation.

(f) MULTINATIONAL CENTER OF EXCELLENCE DEFINED.—In this section, the term "multinational center of excellence" means—

(1) an entity sponsored by one or more nations that is accredited and approved by the Military Committee of the North Atlantic Treaty Organization (NATO) as offering recognized expertise and experience to personnel participating in the activities of such entity for the benefit of NATO by providing such personnel opportunities to—

- (A) enhance education and training;
- (B) improve interoperability and capabilities;
- (C) assist in the development of doctrine;
- (D) validate concepts through experimentation; ~~and~~

(2) the European Centre of Excellence for Countering Hybrid Threats, established in 2017 and located in Helsinki, Finland; ~~and~~

(3) the International Special Training Centre, established in 1979 and located in Pfullendorf, Germany.

Section 1202 would amend section 346 of title 10, United States Code (title 10) to authorize the Secretary of Defense to utilize mission training through distributed simulation (MTDS) activities in military training with friendly foreign forces. MTDS seeks to incorporate live friendly foreign forces into a virtual training environment in lieu of simulated or contractor representation of those forces to enhance interoperability and encourage further strategic partnerships with key allies and partners.

The modification to this authority is consistent with the consolidation of security cooperation authorities into chapter 16 of title 10. These modifications also are consistent with updates to existing authorities accounting for emergent technological capabilities and requirements for high-end systems training activities with partners and allies seeking to increase interoperability and to familiarize themselves with systems procured from the United States. These changes modernize section 346 of title 10 to account for emergent requirements not captured by the original authority.

This authority is necessary because training is recognized as a defense service, and direct or incidental training will be provided by U.S. forces to military forces of friendly foreign countries during this type of activity. These training and exercise events will normally be executed during U.S. forces' combat readiness training events. MTDS, in effect, broadens the training audience available through networked activities, thus increasing the fidelity and depth of training for U.S. and friendly foreign forces. Allowing for this type of virtual integration may

also reduce the cost of training and exercises by bringing dissimilar forces together in distributed events, requiring fewer travel expenses and reducing the wear and tear on actual weapon systems. Conducting this type of training through MTDS would be even more critical for training and exercise support as we, and our allies and partners, increasingly rely on advanced weapons systems like the F-35 fighter. At least 50 percent of the training for the F-35 can only be conducted in advanced networked environments.

History: U.S. Air Forces in Europe (USAFE) has temporarily executed MTDS activities under authority granted in section 350 of title 10 (Inter-European Air Forces Academy – IEAFA), as part of a “Simulation and Exercise Management Training Activity.” The primary purpose of section 350 is for training of foreign nations’ forces in professional military education and technical skills training activities, not persistent advanced networked training and exercises focused mainly on U.S. forces.

Section 321 of title 10 allows for training with allies and partners, but it only allows for the payment of incremental expenses for “developing” countries in most circumstances. Section 333 of title 10 also has a broad training authority, but it is tied to institutional capacity-building requirements, which are unnecessary for many of our partners that would be involved in MTDS. Section 346 of title 10 closely mirrors the intent of MTDS, both for facilitating high-end partners and allowing the payment of incremental expenses; however, to be used effectively, section 346 must be modified to account for the emergent requirements for “live” training in complex environments, increasingly utilized with the F-35.

Discussion: As MTDS activities and emerging technologies supporting synthetic and blended live, virtual, and constructive (LVC) environments continue to expand rapidly, more training and exercises will be conducted in these environments. For many weapon systems, outside of actual combat, MTDS provides the only environment to conduct training in anti-access/area-denial (A2/AD) operations. By supporting the inclusion of friendly foreign forces into the virtual training, we will be providing U.S. forces more realistic training on interoperability and will be doing it in a cost-effective manner—obviating the need either to: 1) program simulated allied or partnered forces into the scenario; or 2) conduct the training in the real-world environment, when possible. The scale, rapidity, and importance of this type of training activity with friendly foreign forces necessitate a flexible global authority, as well as specified authorization to allow for the inclusion of the types of partner activities that MTDS requires.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)								
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG
MTDS	15.0	15.0	15.0	15.0	15.0	Operation and Maintenance, Air Force	01	11D (Air Operations Training)
Total	15.0	15.0	15.0	15.0	15.0			

Changes to Existing Law: This proposal would amend section 346 of title 10, United States Code, as follows:

~~§346. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces~~

§346. Mission training of United States and foreign forces through distributed simulation and networked technology

(a) Training and Distribution Authorized.-To enhance ~~interoperability~~ interoperability and integration between the armed forces and military forces of friendly foreign countries, the Secretary of Defense, with the concurrence of the Secretary of State, may-

(1) provide to personnel referred to in subsection (b) persistent advanced networked training and exercise activities, also referred to as mission training through distributed simulation, and other electronically distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including ~~computer software hardware and software~~ developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) Authorized Recipients.-The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) Education and Training.-Any education and training provided under subsection (a) ~~shall include~~ may include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(3) Advanced distributed network training events and computer-assisted exercises.

(d) Applicability of Export Control Regimes.-The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the transfer of military technology to foreign countries.

(e) Guidance on Utilization of Authority.-

(1) Guidance required.-The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) Modification.-If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

Subtitle B—[Reserved]

Subtitle C—Matters Relating to Syria, Iraq, and Iran

Section 1221 would extend through fiscal year 2023 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), 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 of 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. DoD will begin the transition of OSCI to a steady-state mission resembling other security cooperation organizations worldwide in fiscal year 2023. Continuing this authority provides DoD the ability to finalize the transition of OSCI responsibly and demonstrates our reliable partnership with unique Iraqi security organizations and forces performing a national security mission.

In the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021, Congress reduced the total 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 to the inability to conduct some functions during the COVID-19 global pandemic and State Department Ordered Departures. DoD requested \$30,000,000 in fiscal year 2022 with the anticipated return to full OSCI operations in fiscal year 2022. Based on estimated costs, primarily to reimburse the State Department through the International Cooperative Administrative Support Services program, DoD is requesting \$30,000,000 for fiscal year 2023.

Resource Information: The resources impacted by this proposal are reflected in the table below and are included within the FY 2023 President’s Budget request.

	RESOURCE IMPACT (\$MILLIONS)								
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
Office of Security Cooperation – Iraq	\$30.0					3400 (Operations and Maintenance, Department of the Air Force)	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 ~~2022~~ 2023 may not exceed ~~\$25,000,000~~ \$30,000,000.

(d) **SOURCE OF FUNDS.**—Funds for purposes of subsection (a) for fiscal year ~~2022~~ 2023 shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

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Subtitle D—Other Matters

Section 1231 would provide the Department of Defense (DoD) with cross-fiscal year (CFY) authority, allowing the execution of Ukraine Security Assistance Initiative (USAI) programs to continue for up to two years after initiated. Specifically, CFY authority would enable the DoD to conduct severable, contractor-provided services across fiscal years and provide services associated with some equipment deliveries, such as operations and maintenance training, under the same program that DoD is providing the equipment. Without CFY authority, the provision of equipment and associated defense services/training must be planned and notified across multiple fiscal years, which introduces programmatic risk, as future funding is not guaranteed.

This proposal also extends the authorization period of USAI, which would reduce programmatic risk for programs with longer delivery timelines. More advanced systems often require longer acquisition and delivery timelines, which may result in delivery timeframes outside the authorization period. Extending the authorization period further reduces program risk and supports procurement of more complex, advanced equipment with longer delivery timelines.

Although DoD continues to be limited in appropriations Acts by the partial appropriation of two-year USAI funds to procure advanced capabilities requiring longer-lead

times for contracting, these proposed legislative changes enable DoD to meet more of Ukraine’s capability needs and improve program planning and execution.

History: Through USAI, DoD has provided Ukraine with high technology systems previously unavailable to the Armed Forces of Ukraine (AFU). The DoD continues to consider other complex capabilities for future provision to AFU, including air defense, armaments for naval vessels, coastal defense, and counter-unmanned aerial systems. Although these more advanced systems will likely require additional multi-year funding, CFY authority, and a longer authorization period will enhance DoD’s ability to meet Ukraine’s capability needs, while also reducing programmatic risk.

Resource Information: The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
USAI	300					Operation and Maintenance, Defense-wide	04	4GTD	
Total	300								

Changes to Existing Law: This proposal would amend section 1250 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1068) as follows:

SEC. 1250. UKRAINE SECURITY ASSISTANCE INITIATIVE.

(a) **AUTHORITY TO PROVIDE ASSISTANCE.**—Amounts available for a fiscal year under subsection (f) shall be available to the Secretary of Defense, with the concurrence of the Secretary of State, to provide appropriate security assistance and intelligence support, including training, equipment, and logistics support, supplies and services, to military and other security forces of the Government of Ukraine for the purposes as follows:

(1) To enhance the capabilities of the military and other security forces of the Government of Ukraine to defend against further aggression.

(2) To assist Ukraine in developing the combat capability to defend its sovereignty and territorial integrity.

(3) To support the Government of Ukraine in defending itself against actions by Russia and Russian-backed separatists that violate the ceasefire agreements of September 4, 2014, and February 11, 2015.

(b) **APPROPRIATE SECURITY ASSISTANCE AND INTELLIGENCE SUPPORT.**—For purposes of subsection (a), appropriate security assistance and intelligence support includes the following:

(1) Real time or near real time actionable intelligence, including by lease of such capabilities from United States commercial entities.

(2) Lethal assistance such as anti-armor weapon systems, mortars, crew-served weapons and ammunition, grenade launchers and ammunition, and small arms and ammunition.

(3) Counter-artillery radars, including medium-range and long-range counter-artillery radars that can detect and locate long-range artillery.

(4) Unmanned aerial tactical surveillance systems.

(5) Cyber capabilities.

(6) Counter-electronic warfare capabilities such as secure communications equipment and other electronic protection systems.

(7) Other electronic warfare capabilities.

(8) Training for critical combat operations such as planning, command and control, small unit tactics, counter-artillery tactics, logistics, countering improvised explosive devices, battle-field first aid, post-combat treatment, and medical evacuation.

(9) Equipment and technical assistance to the State Border Guard Service of Ukraine for the purpose of developing a comprehensive border surveillance network for Ukraine.

(10) Training for staff officers and senior leadership of the military.

(11) Air defense and coastal defense radars, and systems to support effective command and control and integration of air defense and coastal defense capabilities.

(12) Naval mine and counter-mine capabilities.

(13) Littoral-zone and coastal defense vessels.

(14) Coastal defense and anti-ship missile systems.

(15) Training required to maintain and employ systems and capabilities described in paragraphs (1) through (14).

(16) Treatment of wounded Ukrainian soldiers in the United States in medical treatment facilities through the Secretarial Designee Program, including transportation, lodging, meals, and other appropriate non-medical support in connection with such treatment, and education and training for Ukrainian healthcare specialists such that they can provide continuing care and rehabilitation services for wounded Ukrainian soldiers.

(c) AVAILABILITY OF FUNDS.—

(1) ASSISTANCE FOR UKRAINE.—Not more than 50 percent of the funds available for fiscal year 2022 pursuant to subsection (f)(7) may be used for purposes of subsection (a) until the certification described in paragraph (2) is made.

(2) CERTIFICATION.—

(A) IN GENERAL.—The certification described in this paragraph is a certification by the Secretary of Defense, in coordination with the Secretary of State, that the Government of Ukraine has taken substantial actions to make defense institutional reforms, in such areas as described in subparagraph (B), for purposes of decreasing corruption, increasing accountability, and sustaining improvements of combat capability enabled by assistance under subsection (a).

(B) AREAS DESCRIBED.—The areas described in this subparagraph are—

(i) strengthening civilian control of the military;

(ii) enhanced cooperation and coordination with Verkhovna Rada efforts to exercise oversight of the Ministry of Defense and military forces;

(iii) increased transparency and accountability in defense procurement;

(iv) improvement in transparency, accountability, sustainment, and inventory management in the defense industrial sector;

(v) protection of proprietary or sensitive technologies as such technologies relate to foreign military sales or transfers;

(vi) transformation of command and control structures and roles in line with North Atlantic Treaty Organization principles; and

(vii) improvement of human resources management, including to support career management reforms, enhanced social support to military personnel and their families, and professional military education systems.

(C) ASSESSMENT.—The certification shall include an assessment of the substantial actions taken to make such defense institutional reforms and the areas in which additional action is needed and a description of the methodology used to evaluate whether Ukraine has made progress in defense institutional reforms relative to previously established goals and objectives.

(3) OTHER PURPOSES.—If in fiscal year 2022 funds are not available for purposes of subsection (a) by reason of the lack of a certification described in paragraph (2), such funds may be used in that fiscal year for the purposes as follows:

(A) Assistance or support to national-level security forces of other Partnership for Peace nations that the Secretary of Defense determines to be appropriate to assist in preserving their sovereignty and territorial integrity against Russian aggression.

(B) Exercises and training support of national-level security forces of Partnership for Peace nations or the Government of Ukraine that the Secretary of Defense determines to be appropriate to assist in preserving their sovereignty and territorial integrity against Russian aggression.

(4) NOTICE TO CONGRESS.—Not later than 15 days before providing assistance or support under paragraph (3), the Secretary of Defense shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification containing the following:

(A) The recipient foreign country.

(B) A detailed description of the assistance or support to be provided, including—

(i) the objectives of such assistance or support;

(ii) the budget for such assistance or support; and

(iii) the expected or estimated timeline for delivery of such assistance or support.

(C) Such other matters as the Secretary considers appropriate.

(5) LETHAL ASSISTANCE.—Of the funds available for fiscal year 2022 pursuant to subsection (f)(7), \$75,000,000 shall be available only for lethal assistance described in paragraphs (2), (3), (11), (12), (13), and (14) of subsection (b).

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

(d) UNITED STATES INVENTORY AND OTHER SOURCES.—

(1) IN GENERAL.—In addition to any assistance provided pursuant to subsection (a), the Secretary of Defense is authorized, with the concurrence of the Secretary of State, to make available to the Government of Ukraine weapons and other defense articles, from the United States inventory and other sources, and defense services, in such quantity as the Secretary of Defense determines to be appropriate to achieve the purposes specified in subsection (a).

(2) REPLACEMENT.—Amounts for the replacement of any items provided to the Government of Ukraine pursuant to paragraph (1) shall be derived from the amount available pursuant to subsection (a) or amounts authorized to be appropriated for the Department of Defense for overseas contingency operations for weapons procurement.

(e) 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.

(f) FUNDING.—From amounts authorized to be appropriated for the fiscal year concerned for the Department of Defense ~~for overseas contingency operations~~, up to the following shall be available for purposes of subsection (a):

- (1) For fiscal year 2016, \$300,000,000.
- (2) For fiscal year 2017, \$350,000,000.
- (3) For fiscal year 2018, \$350,000,000.
- (4) For fiscal year 2019, \$250,000,000.
- (5) For fiscal year 2020, \$300,000,000.
- (6) For fiscal year 2021, \$250,000,000.
- (7) For fiscal year 2022, \$300,000,000.
- (8) For fiscal year 2023, \$275,000,000.

(g) CONSTRUCTION WITH OTHER AUTHORITY.—The authority to provide assistance and support pursuant to subsection (a), and the authority to provide assistance and support under subsection (c), is in addition to authority to provide assistance and support under title 10, United States Code, the Foreign Assistance Act of 1961, the Arms Export Control Act, or any other provision of law.

(h) TERMINATION OF AUTHORITY.—Assistance may not be provided under the authority in this section after December 31, ~~2024~~ 2026.

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 2023.

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 2023.

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 2023.

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 2023.

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 2023.

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 2023 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2023.

TITLE XV—[RESERVED]

TITLE XVI—[RESERVED]

TITLE XVII—SPACE COMPONENT

Sections 1701 through 1717. Congress enacted the United States Space Force Act on 20 December 2019 (Public Law 116-92, §§ 951-61). In relevant part, the joint explanatory statement for the Conference Report accompanying S.1790 required:

A report setting forth a comprehensive legislative proposal for amendments to the laws under the jurisdiction of the congressional defense committees to fully integrate the Space Force as an Armed Force, and the regular and reserve military and the civilian personnel of the Space Force, into current law

This legislative proposal, if enacted into law as part of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023, would establish the Space Component within the U.S. Space Force. The Space Component will consist of all members, units, and other organizations currently in the Regular Space Force and space-related members, units, and other organizations currently in the Air Force Reserve. After full transfer of all members of the Regular Space Force to the Space Component, the Space Force will consist entirely of members of the Space Component. At that point, further statutory amendments may be warranted to eliminate references to the Space Component.

The objective of this legislative proposal is to enhance the utilization of total force Space Force assets by removing traditional boundaries between regular and reserve forces. In conventional total force arrangements, reserve forces provide capacity to fill temporary and/or unanticipated gaps in both qualitative and quantitative capabilities within the regular forces. However, the effectiveness of mobilized assets can be enhanced if mobilized individuals and teams are continuously integrated with the forces they augment. Reducing the impediments to transitions between full-time and part-time participation also makes total assets more readily available, providing leaders with enhanced options for meeting mission requirements.

The increased permeability between full-time and part-time participation enabled by this proposal is critical to the ability of the Space Force to attract and retain the highly skilled and technical workforce it requires for mission accomplishment. Previous attempts to address this issue through legislation that would permit officers to receive a single appointment in both the regular and reserve component of an armed force were determined to violate the appointments clause of the constitution which prevents a person from being appointed to two distinct “offices” at one time. The proposed changes overcome this constitutional concern by establishing the new and distinct office of space component officer and authorizing space component members to serve on active duty either full-time or on a more intermittent basis.

The proposed changes will achieve the goal of better utilization of total assets in part by establishing common organizational, force management, and administrative frameworks for members on both continuous and intermittent active duty. Differing appointment, promotion, compensation, benefits, incentive, and other personnel management frameworks tend to inhibit transitions that would optimize total force utilization and overall mission effectiveness. Additionally, organization of intermittently employed assets into separate units makes their capabilities less visible to the leadership of the forces they would augment, reducing the likelihood of optimal utilization.

An important ingredient in achieving better total force utilization is reducing cultural impediments to integration. To that end, the proposed legislative changes emphasize continuity of service in a single enterprise but with varying and fluidly adjusted levels of participation.

The Department of the Air Force is designing and building the Space Force to meet three cornerstone responsibilities: preserve freedom of action, enable joint lethality and effectiveness, and provide independent options—in, from, and to space. Due to its small size, the USSF needs to

adopt talent management practices designed to individually develop, retain, manage, and cultivate high impact military professionals. It requires a twenty first century human capital management approach capable of scaling on demand (scalable); doing so quickly and effectively (agile); adapting to changing circumstances (flexible); and allowing its members to move easily between full- and part-time duty (permeable).

If Congress does not enact this proposal or establishes a separate Space Force Reserve, the Space Force would face several immediate challenges. Leaving the reserve component forces with a space operations mission in the Air Force would create unnecessary difficulties and added bureaucracy to access by requiring the Space Force to request the use of those forces from the Air Force. It would also leave those units susceptible to competing priorities in a military service no longer tasked to organize, train, and equip forces for space missions. However, establishing a separate Space Force Reserve, and the necessary command structure for it, would create redundant processes, increase headquarters personnel and costs, and would be inconsistent with the intent of creating a lean Space Force service headquarters. Creating a separate Space Force Reserve would also have a negative impact on the professional development of reserve Guardians due to the small size of the force.

In any event, if Congress does not enact this legislative proposal, the Space Force will continue to provide trained and ready personnel to meet combatant command requirements, however, over time the existing total force construct would put at risk the ability of the Space Force to perform the functions Congress has tasked it with in §9081 of Title 10, because it would make it more difficult for the Space Force to recruit, retain, and access the highly skilled and technical talent that is necessary for the successful conduct of space operations and to achieve the President's call to sustain America's innovation edge and "ensure the safety, stability, and security of outer space activities."

The conventional total force construct and corresponding personnel management system were designed to quickly provide trained manpower from the reserve components to meet requirements that could not be immediately filled by the regular components alone. The Space Force is mission-focused and has a lean structure, but the inflexibility built into the conventional construct means that it is not well-suited to meet the requirements of competition in the space domain. The space domain is rapidly becoming the focus of great power competition and expanded commercialization and the Space Force must have a total force construct and personnel management system that enables it to recruit, retain, and access members with highly technical and specialized skills.

The Space Force is significantly smaller than the other services and has unique manpower challenges. All of the armed forces seek to attract individuals with technical knowledge and experience, but the Space Force is the only service in which every single position, both officer and enlisted, requires significant science, math, cyber, and technical knowledge and skills. Compounding this problem is the fact that the services must compete with civilian industry to attract and recruit these individuals. The Space Force may not be able to compete with industry in terms of overall compensation, but there are still many individuals who would like to serve their country and share their skills and experience but are reluctant to do so because of the inflexibility of the existing regular and reserve component system. This legislative

proposal would allow the Space Force to attract those skilled individuals and provide a flexible mechanism for them to serve at varying levels of participation based on mission requirements. It will make the Space Force attractive to individuals who would otherwise not consider serving in an armed force. In the alternative, imposing the existing regular and reserve system on the Space Force would create further unnecessary challenges for the Space Force in recruiting and retaining qualified personnel.

Additionally, the authorities established by this legislative proposal, may prove to be desirable for the other services as well once they are able to see how they are used within the Space Force. Personnel management reform within the Department has been attempted before, but major substantive change has not been successfully implemented. The establishment of the Space Force, as the first new armed force in over 70 years, provides an unprecedented opportunity to develop and test a new personnel management system that could potentially serve as a model for other services. Doing nothing, or simply imposing the existing system on the Space Force, wastes an opportunity to make real, substantive changes that is unlikely to occur again.

The legislative proposal creates the essential framework for a more fluid component, where talented, highly skilled Guardians are promoted based on their competency, and can easily move between varying levels of participation to accommodate both mission requirements and personal considerations, thereby gaining critical experience both in and outside of the U.S. Space Force.

The legislative proposal is intended to be included in the NDAA for FY 2023 under “Title XVII – Space Force.” Subtitle A (§1701 – §17xx) of the legislative proposal, Title XVII, would consist of several new substantive provisions of law to be added to Title 10, United States Code (U.S.C.), while subtitle B (§17xx – §17xx) would make various technical and conforming changes to sections of existing law in Title 10 and other relevant titles of the U.S.C. that are simply a necessary consequence of establishing two new components for the newest Armed Force.

Subtitle A—SPACE COMPONENT

DEFINITIONS.

The shift from a regular and reserve component into an integrated Space Component requires definitions for new terms that are specific to the new component. These new terms appear in several locations within the legislative proposal, but are described here in order to provide a foundation for the following discussions of the proposed Subtitle F—Space Component.

The legislative proposal establishes and defines four new terms that are specific to the Space Component by adding a new subsection (e) to §101, Subtitle A of Title 10. The proposed subsection (e) would define three categories into which all members of the Space Component would be placed: space component active status, space component inactive status, and space component retired status.

The space component active status is defined as the status of a member of the space component who is not in the space component inactive status or retired status. It includes all personnel who would be considered a part of the regular component and ready reserve component of another service. The space component inactive status pertains to a member who is not on active duty, not in a space component active status, and not retired. The space component retired status includes those members receiving regular or non-regular retirement pay and those who meet service requirements for non-regular retirement but have not yet reached the age of entitlement.

In addition to these three categories, the proposal also establishes and defines the term “protracted active duty” as the particular authority available to the Secretary of the Air Force to order enlisted members and officers to full-time duty, with their consent, to satisfy the terms of an enlistment or reenlistment agreement, or an active duty service commitment. This authority is unique to the Space Component and is necessary to establish a mechanism for members to perform full-time service that is equivalent to a regular component.

SEC. __. ESTABLISHMENT OF THE SPACE COMPONENT

This section of the legislative proposal would add the table of contents for Subtitle F—Space Component to Title 10. Subtitle F provides the framework for removing conventional boundaries between regular and reserve components and upon which the Space Force will build to achieve its vision for a modern talent management system. It would also authorize a more integrated officer force management structure. While some provisions of Subtitles A, D, and E of Title 10 could be adapted to the Space Component concept through technical and conforming amendments in those subtitles, other changes require the more comprehensive revisions found in Subtitle F.

This section also provides for the transfer of Regular Space Force and Air Force Reserve members into the Space Component. It would authorize the Secretary of the Air Force to voluntarily transfer officers and enlisted members into the Space Component and would provide the Secretary options in the event a member does not consent to the transfer. This section would also disestablish the Regular Space Force as a component upon certification to the congressional defense committees, once all personnel have been transferred or discharged. All actions are to be completed no later than October 1, 2027.

The section would also provide additional end strength accountability and grade strength flexibilities for both the Space Force and the Air Force Reserve until October 1, 2027.

SEC. __. GENERAL PROVISIONS

The legislative proposal would add a Chapter 2001 – General Provisions.

Many provisions of Title 10 are written to pertain specifically to members of the regular or reserve components. In the Space Component, statutory distinctions based on membership in a regular or reserve component will no longer apply. However, immediately replacing the full body of law that differentiates provisions on the basis of component membership is not

practicable. Instead, this legislative proposal deems many provisions applicable to members of regular or reserve components to be also applicable to Space Component members on the basis of a set of defined statuses within the Space Component. §20101 establishes the Space Component. While technical and conforming amendments will also serve to make specific regular- or reserve-component provisions applicable to the Space Component, §20102 provides the language that in general makes other provisions of law in Title 10 applicable to Space Component members.

Other sections in this chapter provide for the general availability of Space Component forces, comparable to the provisions of §10103 and §651 of Title 10 but worded so as to conform to the single-component construct of the Space Component.

The conforming amendments to Chapter 2001 make several changes to sections in Subtitle D related to the Space Force. It amends §9081 to include the Space Component as a part of the Space Force. And it amends §9085 to establish that the Regular Space Force will be disestablished upon the completion of the transfer of personnel into the Space Component.

Substantively, the proposal then directs the Secretary of the Air Force to transfer officers and enlisted members from the Regular Space Force and the Air Force Reserve into the Space Component. It provides that such transfers must be voluntary, and it establishes procedures for handling members who do not consent to the transfer. Finally, it directs that the transfer of personnel be completed no later than October 1, 2027 and that the Secretary of the Air Force then take the necessary steps to disestablish the Regular Space Force as a component of the Space Force.

SEC. __. STATUS AND PARTICIPATION

The legislative proposal would add a Chapter 2002 – Status and Participation in the Space Component.

This chapter in the legislative proposal would specify the use of the three Space Component statuses defined in §20101. It sets minimum participation levels needed to remain in active status. It also establishes the category of Individual Ready Guardian for members of the Space Component provides the authorities for the Secretary of the Air Force to order members to active duty, variously with and without the consent of the member, depending on which of the three statuses a member is placed in when being ordered to active duty.

Status and Orders to Active Duty

Space Component Active status, as the name implies, pertains to members who actively participate in missions assigned to the Space Force. It includes members who are on protracted active duty (comparable to members of a regular component) and members who participate at the level generally comparable to that of traditional drilling reservists. A member in a *space component inactive status* does not participate in supporting Space Force missions but may volunteer to serve on active duty and remains subject to an involuntary call up under the applicable authorities specified in chapter 1209 of Title 10. A member is in a *space component*

retired status if qualified for a regular retirement with an immediate annuity having completed 20 years of active duty or a non-regular retirement having completed 20 qualifying years of service.

Chapter 1005 in Title 10 specifies the Individual Ready Reserve as a category within the Ready Reserve. To provide a comparable level of readiness in the Space Component, §20205 of this legislative proposal defines a category of Individual Ready Guardians. Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may designate members of the Space Component serving in a space component active status as Individual Ready Guardians. This will provide flexibility to the Space Force so that they can maintain a connection to these individuals with necessary skills and experience while also providing these members a more flexible way to continue their participation in the Space Component. In §20205, authorities pertaining to the continuous screening of Individual Ready Reservists are deemed to apply to Individual Ready Guardians.

Current provisions of Chapter 31 (enlistments in regular components) and Chapter 33 (original appointments of officers in regular components) do not contain authorities for ordering enlisted members or appointed officers to active duty because service on active duty is presumed for an enlistment or appointment in a regular component. This assumption no longer holds in the Space Component. Accordingly, §20208 in the legislative proposal provide new authorities for the Secretary of the Air Force to order enlisted and appointment members to protracted active duty, with their consent and consistent with service obligations specified in enlistment, pre-commissioning, or other such agreements.

Current provisions of Chapter 1209 pertaining to ordering members of the Ready Reserve to active duty are deemed to apply to Space Component members who are in active status but not on protracted active duty. Similarly, current provisions pertaining to ordering the Standby and Retired Reserves to active duty are deemed to apply to Space Component members in inactive and retired statuses, respectively. These provisions are contained in §20209 of the legislative proposal for ordering members to active duty without their consent while a provision authorizing the Secretary of the Air Force to enter into agreements with Space component members to participate, performing duty periodically or in a protracted period of active duty, with the member's consent is provided in §20206. Section 20209 also deems other force management provisions contained in Chapter 1209 of Title 10 to apply to members of the Space Component. In addition, provisions of Chapter 39 regarding activation of officers with regular retirements and of Chapter 1209 regarding officers in the Retired Reserve are deemed to apply to retired members of the Space Component.

Training and Participation Requirements

Section 20204 of this legislative proposal prescribes the minimum annual training required for a member of the Space Component in a space component active status who is not on protracted active duty. Those training requirements are the same as those applicable to a member of the Ready Reserve of a Reserve Component: 48 scheduled drill periods and 14 days of active duty, or 30 days of active duty each year.

Sections 20202 and 20203 of the legislative proposal establish the standards and qualifications for enlisted members and officers in the Space Component, respectively. These sections are similar to provisions in Subtitle E for members of a reserve component. Section 20202 requires the Secretary of the Air Force to prescribe, in regulations, the standards and qualifications for retention of an enlisted member of the Space Component, and the consequences if the member serving in a space component active status fails to meet those standards. Similar to the reserve components of other services, the specific standards and qualifications for enlisted members are not set out in statute but, through regulations, will be made consistent with the standards established in section 20203 for space component officers.

Section 20203 of the legislative proposal establishes the standards and qualifications for an officer of the Space Component in a space component active status. Under this section, each officer is required to attain at least 50 points in an annual period and meet other standards and qualification prescribed by the Secretary of the Air Force. It incorporates an additional flexibility sought by the Space Force to better accommodate expected variation in the tempo of space operations and training from year to year. This flexibility would allow officers to apply points earned above the 50-point minimum in a given year to either the previous or subsequent year. An officer who fails to meet the performance standards may be referred to a board to consider whether the officer should be retained in a space component active status.

Other Provisions

Section 20210 would require the transfer of a member terminating active duty or service in a space component active status, who has not completed the required minimum service obligation, to a space component inactive status. A member in a space component inactive status may be transferred to active duty, without the consent of the member, as provided in the preceding section (§10209).

Section 20206 would authorize the Secretary of the Air Force to enter into written agreements with members of the Space Component for the purpose of specifying conditions of service and mobilization. These agreements would be available to members serving in any status, except those on protracted active duty, and could specify conditions for service on active duty for a definite period of time, similar to Active Guard Reserve service, or, for members in a space component inactive status, could specify conditions under which such members could participate in training and would consent to involuntary mobilization. The section would require the Secretary of the Air Force to prescribe how such agreements may be utilized in regulations.

Section 20211 would ensure members of the Space Component and their dependents and beneficiaries receive the same benefits as a member of the Air Force serving in a similar status: Regular Air Force member if serving on active duty, or as a Reserve of the Air Force if performing military training, duty, other service, and when performing inactive-duty training.

SEC. __. ENLISTED MEMBERS

The legislative proposal would add a Chapter 2003 – Space Component Enlisted Members.

This chapter would specify the qualifications for enlistment in the Space Component. These qualifications are the same as those for enlistment in a regular component as specified in Chapter 31 of Title 10. The proposed language also makes other provisions of Chapter 31 of Title 10 applicable to enlisted members in the Space Component.

SEC. __. OFFICERS

The legislative proposal would add a Chapter 2004 – Space Component Officers, focusing predominantly on appointment and promotion issues.

Appointments

Regarding qualifications for original appointment of officers, this chapter draws from the provisions of §532 (regular officers) and §12201 (reserve officers) of Title 10. Where the regular and reserve qualification requirements differ, the legislative proposal adopts the language pertinent to reserve officers, providing additional discretion to the Secretary of the Air Force. For example, 10 U.S.C. §12201 allows a person to be appointed an officer in a reserve component if they are either a citizen or a lawful permanent resident of the United States. Because of the specialized and sensitive nature of space operations, all Space Force officer career fields require a security clearance. Therefore, the proposal establishes that in order to be appointed as an officer in the Space Component, regardless of the level of participation, a person must be a citizen of the United States.

With respect to service credit, the legislative proposal draws from the provisions of §533 and §12207 of Title 10. It eliminates provisions related to medical officers, dental officers, and judge advocates—officer career fields that are not represented in the Space Force. It adds provisions for service credit based on civilian experience in a federal agency in occupations related to Space Component requirements. And, notably, the proposal would authorize the Secretary of the Air Force to award constructive service credit for any and all advanced education, training, and specialized experience even if such education, training, and experience occurs over the same time period.

Promotions

The legislative proposal establishes a promotion framework that will allow the Space Force to develop a common, competency-based promotion system. It provides Space Component officers greater flexibility to determine when they are ready to be considered for promotion and limits this flexibility by requiring the Secretary of the Air Force to determine how many opportunities an officer will have to be considered for promotion. Notably, it also severs the link between promotion and retention. No longer will officers who fail of selection twice be automatically designated for discharge. The proposal incorporates aspects of the current promotion systems used for both regular and reserve officers but modifies them to address the unique aspects of the Space Component.

The proposal provides that all officers of the Space Component in a space component active status will be considered by common selection boards, in a common promotion system, regardless of their level of active duty participation. To provide for this common framework, it borrows more from the current processes for regular officers than those for reserve officers and it also provides some features not found in either of the conventional processes.

To provide flexibility during a period of transition to the Space Component, the legislative proposal would allow the Secretary of the Air Force to use the existing promotion procedures under the provisions of Chapters 36 and 1405 of Title 10 until the Space Force has finalized regulations and put in place any necessary systems to fully implement the new promotion procedures authorized in Chapter 2004.

In place of separate active duty and reserve-active status lists, the legislative proposal would require all officers in active status in the Space Component to be carried on a common space component officer list. It would require the composition of boards to reflect, to the extent possible, the active duty participation mix of officers being considered by a board.

The legislative proposal's provisions regarding convening of selection boards, recommendations for promotion, and reports of selection boards adopt most of the considerations in Chapter 36 of Title 10. The position vacancy requirement found in Chapter 1401 of Title 10 is not included in the legislative proposal.

The legislative proposal establishes minimum time-in-grade requirements that are the same as those for regular officers in Chapter 36 of Title 10 and reserve officers in Chapter 1405 of Title 10. A key feature of the system established in the proposal is an expanded opportunity for officers to opt out of promotion consideration if the Secretary determines it is in the "best interest of the Space Force." Additionally, a unique provision is provided to allow consideration of officers with less than the minimum time in grade or who have been considered the maximum number of times determined by the Secretary, if nominated for such consideration by the commanding general of a Space Force field command or other senior official. The Secretary of the Air Force will prescribe in regulations very specific guidance and objective standards for such nominations in order to reduce the potential for actual or perceived bias in the nomination process.

Due to the small number of general officer positions within the Space Force, promotions to brigadier general and major general must be carefully monitored to ensure the appropriate mix of qualified officers willing to serve in different levels of active duty participation among the selected officers. To address this concern, §20408 of the proposal includes a requirement for candidates for promotion to brigadier general and major general to inform the Secretary of their intended level of active duty participation and for the Secretary to establish a maximum number of officers participating on a limited basis who may be recommended for promotion in those grades. A related provision in §20410 of the proposal allows the Secretary of the Air Force to vary from the sequence recommended by a promotion board in promoting officers in these grades. These provisions are necessary to allow the Secretary to optimize the mix of competencies and participation levels among the serving general officers.

Section 20414 of the proposal, extends to the Space Component, the existing requirement for designation as a joint qualified officer (JQO) before promotion to brigadier general. Joint qualified general officers are critical to the ability of the Space Force to support combatant commander requirements and therefore this existing requirement will apply equally to the Space Force. However, because a significant percentage of the officers in the Space Component will transfer from reserve components where there is no similar requirement for joint qualification prior to promotion to brigadier general, the legislative proposal incorporates several provisions to address this apparent inequity. The text of § 20414 is based on §619a of Title 10, but the proposal adds two provisions to address the Space Component's unique situation. First, due to the lack of a requirement to be joint qualified and the limited opportunity for joint duty among officers who previously served in a reserve component, the legislative proposal contains an exemption from the JQO requirement for field-grade officers who transfer from a reserve component to the Space Component before October 1, 2028. The proposal also adds a new basis for granting an individual waiver to the joint qualification requirement. This new waiver authority is specific to the Space Component and is available to officers who have completed the requirements of § 661(c)(A) with respect to education but have not had the opportunity to successfully complete the experience requirements for joint qualification established in § 661(c)(B). The legislative proposal would allow the Secretary of Defense the discretion to delegate approval authority for this exception to the Secretary of the Air Force.

Appointment authorities and senate confirmation requirements in the proposed Chapter 2004 for officers selected for promotion parallel those for regular officers as specified in §624(c) of Title 10, Chapter 36 rather than the lesser requirements for reserve officers specified in §12203 of Title 10, Chapter 1205.

Selective Continuation

Notably, the legislative proposal omits a requirement to consider officers for selective continuation after having failed of selection the maximum number of times specified for promotion consideration. The Space Force seeks to implement a human capital management system with greater integration of promotion, development, and retention considerations. Proposed alternatives to an up-or-out promotion framework are provided in Chapter 2005 of the legislative proposal.

SEC. __. SEPARATION AND RETIREMENT

The legislative proposal would add a Chapter 2005 – Separations and Retirement.

Separations Generally

This chapter draws from several provisions of Chapter 59 of Title 10. Notably, it draws from and applies to members of the Space Component the provisions of §1172 (discharge of enlisted members during war or emergency), §1174 (separation pay for both enlisted members and officers upon involuntary discharge or release from active duty), §1175 (voluntary

separation incentive), and §1176 (retention of enlisted members who have completed at least 18 but less than 20 years of service) of Title 10.

Force Shaping

The force shaping authorities in §647 of Title 10 refer to transferring members to a reserve component when members have not completed a minimum service obligation. In §647, an officer with a remaining minimum service obligation would be transferred “to the reserve active-status list of a reserve component of that armed force.” However, because the Space Component does not have a reserve component, force shaping authorities for the Space Component were added in §20502 of the legislative proposal rather than relying on §647 of Title 10. Instead §20502 releases a “covered officer” from active duty (i.e., an officer with less than 6 years of service or one with more than 6 years of service but with a remaining military service obligation). Such an officer would remain in a space component active status within the Space Component and would be required to complete the minimum service and training requirements established in § 20204.

Separation of Officers for Substandard Performance and Certain Other Reasons

Section 1181 of Title 10 provides authority to establish procedures for separating regular officers from active duty for substandard performance and other certain reasons. §20503 of this legislative proposal establishes this authority for the Space Component. §1181 refers to retaining an officer on active duty whereas §20503 refers to retaining a Space Component officer in a space component active status. But the primary difference between §1181 and §20503 in this legislative proposal is the incorporation of an additional reason for which a Space Component officer may be referred to a board. § 20503(a) allows a Space Component officer to be referred to a board if the officer fails to meet the minimum standards and qualifications established by the Secretary of the Air Force under § 20203. In so doing, the proposal provides greater due process protections for Space Component officers who are in a space component active status but not serving on active duty under § 20208(b) than currently exist for officers in a Reserve component.

Section 1181 of Title 10 is applicable only to commissioned officers in any of the “Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.” The Space Component has no “Regular” and no “Reserve” components, but only one Space Component. The purpose of §20503 is to treat all officers in the Space Component who are in a space component active status the same. For example, a Space Component officer in a space component active status who is called to active duty for required training under §10147 would be subject to separation for substandard performance or for certain other reasons.

Retention Boards Within the Space Component

Section 20504 provides authorities for the Space Component to establish retention boards to consider the retention of officers in a space component active status in the Space Component whose “performance of duty has fallen below standards prescribed by the Secretary of Defense, or (2) because the officer has failed to satisfy the standards and qualifications established under §20203 of this title by the Secretary of the Air Force.”

Section 20505 of the legislative proposal allows for the removal of an officer from the space component active status if so recommended by a board of inquiry, similar to the provisions of §1184 of Title 10 for removal from active duty. §20506 of this legislative proposal would provide officers facing a retention board the rights and procedures paralleling those in §1185, with a minor amendment to allow for electronic appearances at hearings. §20507 would allow for voluntary retirement or discharge in lieu of board of inquiry proceedings, parallel to §1186. §20508 parallels the provisions of §1187 regarding composition of the board, with minor amendments to conform to the Space Force context.

Selective Early Discharge or Retirement

The legislative proposal omits a requirement to consider officers for selective continuation after having failed of selection the maximum number of times specified for promotion consideration. The Space Force seeks to implement a human capital management process with greater integration of promotion, development, and retention considerations. However, in order to provide the Secretary of the Air Force with sufficient authority to address situations in which there are too many officers in a specific grade and competitive category, the legislative proposal provides additional force management authority that is not directly linked to promotions.

Section 20509 of the legislative proposal provides the Secretary the authority to convene selection boards to consider Space Component officers for selective early discharge or retirement if they meet specific conditions similar to the enhanced force shaping authorities found in §638a of Title 10.

Voluntary Retirement

Unlike most force management provisions in Title 10, provisions for regular retirement based on years of service are not contained in Subtitle A or E. Rather, they are contained in Subtitles B, C, and D pertaining to the various military departments. The legislative proposal would extend these provisions to the Space Component while also adapting them to a combined-component structure. §20511 through §20513 closely parallel the provisions of Chapter 941 in Subtitle D. §20514 deems other provisions of Title 10 pertaining to retirements to be applicable to the Space Component and to its members in various statuses.

Subtitle B – CONFORMING AMENDMENTS

SEC. ____ THROUGH SEC. ____ TECHNICAL AND CONFORMING AMENDMENTS

These sections of the legislative proposal would provide technical and conforming amendments throughout Title 10 regarding the Space Component. They also contain conforming amendments to provisions of law relating to federal employees (Title 5), veterans' benefits (Title 38), and servicemembers' civil relief (Title 50).

Resource Information:

This proposal is budget neutral. If the proposal is enacted, the Space Force will use existing resources to transfer personnel from the Regular Space Force and the Air Force Reserve into the Space Component.

Resources affected by this proposal are reflected in the table below and included within the Fiscal Year (FY) 2023 President's Budget request.

RESOURCE IMPACT (\$MILLIONS)										
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Total (FY23-FY27)	Appropriation ¹	Budget Activity	BLI/SAG	PE (for all RDT&E programs)
Space Component	\$102.2	\$167.6	\$192	\$197.5	\$204.8		MILPERS 3510		Multiple	N/A
	\$.02	\$3.5	\$4.6	\$4.8	\$5.1		MERHC 1007		Multiple	N/A
Total	\$102.2	\$171.1	\$196.6	\$202.3	\$209.9	\$882				N/A
Regular Air Force	-\$102	-\$105	-\$109	-\$112	-\$117	-\$545	MILPERS 3500		Multiple	N/A
Air Force Reserve	-\$2	-\$62.6	-\$83	-\$85.5	-\$87.8		MILPERS 3700		Multiple	N/A
	-\$0.2	-\$3.5	-\$4.6	-\$4.8	-\$5.1		MERHC 1008		Multiple	N/A
AFR Total	-\$22	-\$66.1	-\$87.6	-\$90.3	-\$92.9	-\$337				N/A
										N/A
										N/A
										N/A
										N/A
										N/A
										N/A
Total	0	0	0	0	0					

Notes:

** The above numbers do not reflect the transfer of Regular Space Force personnel into the Space Component. They reflect current estimates for the resource impact of the establishment of the Space Component, and are subject to change through the FY23 budget process.*

Changes to Existing Law: This proposal follows:

This proposal adds a new Subtitle to Title 10, United States Code, makes other changes to Subtitles A, D, and E of Title 10, and would amend Titles 5, 14, 28, 29, 32, 37, 38, 49 and 50 as set forth in the legislative text above.

TITLE 10, UNITED STATES CODE

§101. Definitions

....
(b) Personnel Generally. -The following definitions relating to military personnel apply in this title:

....

(10) The term "original", with respect to the appointment of a member of the armed forces in a regular or reserve component or the space component, refers to that member's most recent appointment in that component that is neither a promotion nor a demotion.

....

(77) The term "reserve active-status list" means a single list for the Army, Navy, Air Force, ~~or~~ Marine Corps, or Space Force (required to be maintained under section 14002 of this title) that contains the names of all officers of that armed force except warrant officers (including commissioned warrant officers) who are in an active status in a reserve component of the Army, Navy, Air Force, ~~or~~ ~~or~~ Marine Corps, or in a space component active status and are not on an active-duty list.

....

(d) Duty Status.-The following definitions relating to duty status apply in this title:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, protracted active duty in the space component, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term "active service" means service on active duty or full-time National Guard duty.

(4) The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve-

....

(7) The term "inactive-duty training" means-

(A) duty prescribed for Reserves or a member of the space component by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

....

(f) SPACE COMPONENT—the following definitions relating to the Space Component apply to this title:

(1) The term “space component active status” means the status of a member of the Space Component who is not in a space component inactive status, and not retired.

(2) The term “space component inactive status” means the status of a member of the Space Component, not in a space component active status, and not retired.

(3) The term “space component retired status” means the status of a member of the Space Component who is receiving retired pay for regular service as prescribed in sections 20510 or 20512 of this subtitle or who has qualified for and is either receiving retired pay or has not yet reached the age of eligibility to receive pay for non-regular service as prescribed in sections 20510(e) and 20512(d) of this title.

(4) The term “protracted active duty” means full-time duty by a member of the Space Component ordered to such duty by an authority designated by the Secretary of the Air Force and (A) in the case of an enlisted member, with the consent of that member as documented in the terms of the member’s enlistment or reenlistment agreement, or (B) in the case of an officer, to fulfill the terms of an active duty service commitment incurred by the officer under any provision of this title or, with the consent of the officer.

(fg) Rules of Construction.-In this title-

(1) "shall" is used in an imperative sense;

(2) "may" is used in a permissive sense;

(3) "no person may * * *" means that no person is required, authorized, or permitted to do the act prescribed;

(4) "includes" means "includes but is not limited to"; and

(5) "spouse" means husband or wife, as the case may be.

(gh) Reference to Title 1 Definitions.-For other definitions applicable to this title, see sections 1 through 5 of title 1.

* * * * *

§115a. Annual defense manpower profile report and related reports

(a) Not later than April 1 each year, the Secretary of Defense shall submit to Congress a defense manpower profile report. The report shall contain the Secretary's recommendations for-

(1) the annual active-duty end-strength level for each component of the armed forces for the next fiscal year; and

(2) the annual civilian personnel requirements level for each component of the Department of Defense for the next fiscal year and the civilian end-strength level for the prior fiscal year.

(b) The Secretary shall include in each report under subsection (a) justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year and the national security policies of the United States in effect at the time.

(c) The Secretary shall include in each report under subsection (a) a detailed discussion of the manpower required for support and overhead functions within the armed forces and the Department of Defense.

(d) Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth, with respect to each armed force under the jurisdiction of the Secretary of a military department, the following:

(1) The number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years.

(2) The estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years.

(3) An estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of-

(A) retirements displayed by year of active commissioned service;

(B) discharges;

(C) other separations;

(D) deaths;

(E) promotions; ~~and~~

(F) reserve and regular officers ordered to active duty; and

(G) officers on the space component officer list ordered to active duty not under section 20208(b) of this title.

§123a. Suspension of end-strength and other strength limitations in time of war or national emergency

(a) During War or National Emergency.-(1) If at the end of any fiscal year there is in effect a war or national emergency, the President may waive any statutory end strength with respect to that fiscal year. Any such waiver may be issued only for a statutory end strength that is prescribed by law before the waiver is issued.

(2) When a designation of a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) is in effect, the President may waive any statutory limit that would otherwise apply during the period of the designation on the number of members of a reserve component or the space component who are authorized to be on active duty under subparagraph (A) or (B) of section 115(b)(1) of this title, if the President determines the waiver is necessary to provide assistance in responding to the major disaster or emergency.

(b) Termination of Waiver.-(1) Upon the termination of a war or national emergency with respect to which the President has exercised the authority provided by subsection (a)(1), the President may defer the effectiveness of any statutory end strength with respect to the fiscal year during which the termination occurs. Any such deferral may not extend beyond the last day of the sixth month beginning after the date of such termination.

(2) A waiver granted under subsection (a)(2) shall terminate not later than 90 days after the date on which the designation of the major disaster or emergency that was the basis for the waiver expires.

(c) Statutory End Strength.-In this section, the term "statutory end strength" means any end-strength limitation with respect to a fiscal year that is prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

§164. Commanders of combatant commands: assignment; powers and duties

....

(e) Selection of Subordinate Commanders.-(1) An officer may be assigned to a position as the commander of a command directly subordinate to the commander of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only-

(A) with the concurrence of the commander of the combatant command; and

(B) in accordance with procedures established by the Secretary of Defense.

(2) The Secretary of Defense may waive the requirement under paragraph (1) for the concurrence of the commander of a combatant command with regard to the assignment (or

recommendation for assignment) of a particular officer if the Secretary of Defense determines that such action is in the national interest.

(3) The commander of a combatant command shall-

(A) evaluate the duty performance of each commander of a command directly subordinate to the commander of such combatant command; and

(B) submit the evaluation to the Secretary of the military department concerned and the Chairman of the Joint Chiefs of Staff.

(4) At least one deputy commander of the combatant command the geographic area of responsibility of which includes the United States shall be a qualified officer of a reserve component of the armed forces or an officer of the Space Component whose prior service includes service in a space component active status other than protracted active duty, and who is eligible for promotion to the grade of O-9, unless a reserve component officer or an officer of the Space Component whose prior service includes service in a space component active status other than protracted active duty is serving as commander of that combatant command.

* * * * *

§482. Readiness reports

(a) Reports and Briefings.-(1) Not later than 30 days after the end of the second and fourth quarter of each calendar year, the Secretary of Defense shall submit to Congress a report regarding the military readiness of the active, ~~and~~ reserve, and the space components. The Secretary of Defense shall submit each such report in writing and shall also submit a copy of each such report to the Chairman of the Joint Chiefs of Staff.

(2) Not later than 30 days after the end of the first and third quarter of each calendar year, the Secretary of Defense shall provide to Congress a briefing regarding the military readiness of the active, ~~and~~ reserve, and the space components.

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

(a) Recruiting Campaigns.-(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, the Space Component, and Regular Coast Guard.

§505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than forty-two years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than eight years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard, as the case may be.

(d)(1) The Secretary concerned may accept a reenlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard, as the case may be, for a period determined under this subsection.

(2) In the case of a member who has less than 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the period for which the member reenlists shall be at least two years but not more than eight years.

(3) In the case of a member who has at least 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the Secretary concerned may accept a reenlistment for either-

(A) a specified period of at least two years but not more than eight years; or

(B) an unspecified period.

(4) No enlisted member is entitled to be reenlisted for a period that would expire before the end of the member's current enlistment.

§506. Regular components: extension of enlistments during war

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

§508. Reenlistment: qualifications

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, the Space Component, or Regular Coast Guard under any other provision of law.

§510. Enlistment incentives for pursuit of skills to facilitate national service

(a) Enlistment Incentive Program.-The Secretary of Defense shall carry out an enlistment incentive program in accordance with this section under which a person who is a National Call to Service participant shall be entitled to one of the incentives specified in subsection (e). The program shall be carried out during the period ending on December 31, 2007, and may be carried out after that date.

(b) National Call to Service Participant.-In this section, the term "National Call to Service participant" means a person who has not previously served in the armed forces who enters into an original enlistment pursuant to a written agreement with the Secretary of a military department (in such form and manner as may be prescribed by that Secretary) under which the person agrees to perform a period of national service as specified in subsection (c).

(c) National Service.-The total period of national service to which a National Call to Service participant is obligated under the agreement under this section shall be specified in the agreement. Under the agreement, the participant shall-

(1) upon completion of initial entry training (as prescribed by the Secretary of Defense), serve on active duty in a military occupational specialty designated by the Secretary of Defense under subsection (d) for a period of 15 months;

(2) upon completion of the period of active duty specified in paragraph (1) and without a break in service, serve either (A) an additional period of active duty as determined by the Secretary of Defense, or (B) a period of 24 months in an active status in the Selected Reserve or the Space Component; and

(3) upon completion of the period of service specified in paragraph (2), and without a break in service, serve the remaining period of obligated service specified in the agreement-

(A) on active duty in the armed forces;

(B) in the Selected Reserve;

(C) in the Individual Ready Reserve;

(D) in Americorps or another domestic national service program jointly designated by the Secretary of Defense and the head of such program for purposes of this section; ~~or~~

(E) the Space Component; or

~~(E)~~ (E) in any combination of service referred to in subparagraphs (A) through ~~(D)~~ (E) that is approved by the Secretary of the military department concerned pursuant to regulations prescribed by the Secretary of Defense and specified in the agreement.

....

§ 511 - College First Program

....

(b)(1) exercise the authority under section 513 of this title—

(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, or as a member of the Space Component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

....

§513. Enlistments: Delayed Entry Program

(a) A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a regular component of an armed force, or who is qualified under section 20201 of this title and applicable regulations for enlistment in the Space Component, may (except as provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, or be enlisted as a member of the space component, for a term of not less than six years nor more than eight years.

....

* * * * *

§516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman

(a) The enlistment or period of obligated service of an enlisted member of the armed forces or in the space component, who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Navy Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Navy Reserve, to the compensation and emoluments of a midshipman in the Navy Reserve.

....

§531. Original appointments of commissioned officers

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

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

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

by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

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

§532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force may be given only to a person who-

- (1) is a citizen of the United States;
- (2) is of good moral character;
- (3) is physically qualified for active service; and
- (4) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

....

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

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

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, ~~and Space Force~~, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

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

....

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force shall-

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

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

....

(e) Prior to making a recommendation to the Secretary of Defense for the nomination of an officer for appointment to a position of importance and responsibility under this section, which appointment would result in the initial appointment of the officer concerned in the grade of lieutenant general or general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, vice admiral or admiral in the Navy, ~~or the commensurate grades in the Space Force~~, the Secretary concerned shall consider all officers determined to be among the best qualified for such position.

§605. Promotion to certain grades for officers with critical skills: colonel, lieutenant colonel, major, captain; captain, commander, lieutenant commander, lieutenant

(a) IN GENERAL.—An officer in the grade of first lieutenant, captain, major, or lieutenant colonel in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or lieutenant (junior grade), lieutenant, lieutenant commander, or commander in the Navy, who is described in subsection (b) may be temporarily promoted to the grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or lieutenant, lieutenant commander, commander, or

captain in the Navy, as applicable, under regulations prescribed by the Secretary of the military department concerned. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) COVERED OFFICERS.—An officer described in this subsection is any officer in a grade specified in subsection (a) who—

(1) has a skill in which the armed force concerned has a critical shortage of personnel (as determined by the Secretary of the military department concerned); and

(2) is serving in a position (as determined by the Secretary of the military department concerned) that—

(A) is designated to be held by a captain, major, lieutenant colonel, or colonel in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or lieutenant, lieutenant commander, commander, or captain in the Navy, as applicable; and

(B) requires that an officer serving in such position have the skill possessed by such officer.

(c) PRESERVATION OF POSITION AND STATUS OF OFFICERS APPOINTED.—An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(d) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the military department concerned for the purpose of recommending officers for such promotions.

(e) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of the temporary promotion under this section from the date the appointment is made.

(f) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or lieutenant, lieutenant commander, commander, or captain in the Navy; or

(2) on the date the officer is detached from a position described in subsection (b)(2), unless the officer is on a promotion list to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or lieutenant, lieutenant commander, commander, or captain in the Navy, in which case the appointment terminates on the date the officer is promoted to that grade.

(g) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—An appointment under this section may only be made for service in a position designated by the Secretary of the military department concerned for the purposes of this section. The number of positions so designated may not exceed the following:

(1) In the case of the Army—

(A) as captain, 120;

(B) as major, 350;

- (C) as lieutenant colonel, 200; and
- (D) as colonel, 100.

~~(2) In the case of the Air Force—~~

- ~~(A) as captain, 100;~~
- ~~(B) as major, 325;~~
- ~~(C) as lieutenant colonel, 175; and~~
- ~~(D) as colonel, 80.~~

(2) In the case of the Air Force—

- (A) as captain, 95;
- (B) as major, 305;
- (C) as lieutenant colonel, 165; and
- (D) as colonel, 75.

(3) In the case of the Marine Corps—

- (A) as captain, 50;
- (B) as major, 175;
- (C) as lieutenant colonel, 100; and
- (D) as colonel, 50.

(4) In the case of the Navy—

- (A) as lieutenant, 100;
- (B) as lieutenant commander, 325;
- (C) as commander, 175; and
- (D) as captain, 80.

(5) In the case of the Space Force—

- (A) as captain, 5;
- (B) as major, 20;
- (C) as lieutenant colonel, 10; and
- (D) as colonel, 5.

§613a. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.-The proceedings of a selection board convened under section ~~573, 611, or 628~~ 573, 611, 628, or 20406 of this title may not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.

(b) PROHIBITED USES OF BOARD DISCUSSIONS, DELIBERATIONS, NOTES, AND RECORDS.-The discussions and deliberations of a selection board described in subsection (a) and any written or documentary record of such discussions and deliberations-

- (1) are immune from legal process;
- (2) may not be admitted as evidence; and

(3) may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

(c) APPLICABILITY.-This section applies to all selection boards convened under section ~~573, 611, or 628~~ 573, 611, 628, or 20406 of this title, regardless of the date on which the board was convened.

§615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) or 20406 of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

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

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

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

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

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

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

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

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

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

(C) The standards and procedures referred to in subparagraph (A) shall require the furnishing to the selection board, and to each individual member of the board, the information described in that subparagraph with regard to an officer in a grade specified in subparagraph (B) at each stage

or phase of the selection board, concurrent with the screening, rating, assessment, evaluation, discussion, or other consideration by the board or member of the official military personnel file of the officer, or of the officer.

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

....

§619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a) Time-in-Grade Requirements.—(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps, ~~or Space Force~~ and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade), except that the minimum period of service in effect under this subparagraph before October 1, 2008, shall be eighteen months.

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps, ~~or Space Force~~ and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps, ~~or Space Force~~ holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps, ~~or Space Force~~ holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

....

§625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, Marine Corps, ~~or Space Force~~ whose promotion is vacated under this section holds the regular grade of colonel, if ~~he~~ the officer is a regular officer, or the reserve grade of colonel, if ~~he~~ the officer is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if ~~he~~ the officer is a regular officer, or the reserve grade of captain, if ~~he~~ the officer is a reserve officer. An officer of the Space Force whose promotion is vacated under this section holds the common grade of colonel, if the officer is a space component officer, or the reserve grade of colonel, if the officer is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position ~~he~~ the officer would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

§626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under ~~section 624 of this title~~ section 624 or 20420 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under ~~section 624 of this title~~ section 624 or 20420 of this title.

§628a. Special Selection Review Boards

(a) In General.-

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

....

(e) Reports.-(1) Each special selection review board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person whose recommendation for promotion it recommends for sustainment and certifying that the board has carefully considered the record and information of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection review board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 611(a) of this title. However, in the case of an officer on the space component officer list, the provisions of sections 618, 20410 and 20411 of this title apply to the report and proceedings of a special selection review board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 20406 of this title.

(f) Appointment of Persons.-(1) If the report of a special selection review board convened under this section recommends the sustainment of the recommendation for promotion to the next higher grade of a person whose name was referred to it for review under this section, and the President approves the report, the person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b) and (c) of section 624 of this title. However, if the report of a special selection review board convened under this section recommends the sustainment of the recommendation for promotion to the next higher grade of an officer on the space component officer list who was referred to it for review under this section, and the President approves the report, the officer shall, as soon as practicable, be appointed to that grade in accordance with subsections (b) and (c) of section 20420 of this title.

....

§629. Removal from a list of officers recommended for promotion

(a) Removal by President.-The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) Removal Due to Senate Not Giving Advice and Consent. If, after consideration of a list of officers approved for promotion by the President to a grade for which appointment is required by section 624(c) or section 20420(c) of this title to be made by and with the advice and consent of the Senate, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c) Removal After 18 Months.

(1) If an officer whose name is on a list of officers approved for promotion under section 624(a) or section 20420(a) of this title to a grade for which appointment is required by section 624(c) or section 20420(c) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) Paragraph (1) does not apply when the military department concerned is not able to obtain and provide to the Senate the information the Senate requires to give its advice and consent to the appointment concerned because that information is under the control of a department or agency of the Federal Government other than the Department of Defense.

(4) In this subsection, the term "promotion eligibility period" means, with respect to an officer whose name is on a list of officers approved for promotion under section 624(a) or

section 20420(a) of this title to a grade for which appointment is required by section 624(c) or section 20420(c) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

....

§631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 8146(e) or 8372 of this title applies), each officer of the Army, Air Force, Marine Corps, or Space Force on the active-duty list or the space component officer list who holds the grade of first lieutenant and has failed of selection for promotion to the grade of captain for the second time, and each officer of the Navy on the active-duty list who holds the grade of lieutenant (junior grade) and has failed of selection for promotion to the grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher grade shall-

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 7311, 8323, ~~or 9311~~ 9311, or 20510 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(d) For the purposes of this chapter, an officer of the Army, Air Force, Marine Corps, or Space Force who holds the grade of first lieutenant, and an officer of the Navy who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) or section 20406 of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 624(a)(3) or 20420(a)(4) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

§633. Retirement for years of service: regular lieutenant colonels and commanders

(a) 28 Years of Active Commissioned Service.-Except as provided in subsection (b) and as provided under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of lieutenant colonel, each officer of the Space Component who holds the grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

(b) Exceptions.-Subsection (a) does not apply to the following:

(1) An officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 8146(e) or 8372 of this title applies.

(2) An officer of the Navy or Marine Corps who is a permanent professor at the United States Naval Academy.

§634. Retirement for years of service: regular colonels and Navy captains

(a) 30 Years of Active Commissioned Service.-Except as provided in subsection (b) and as provided under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of colonel, each officer of the Space Component who holds the grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 30 years of active commissioned service.

(b) Exceptions.-Subsection (a) does not apply to the following:

(1) An officer of the Navy who is designated for limited duty to whom section 8372(a)(4) of this title applies.

(2) An officer of the Navy or Marine Corps who is a permanent professor at the United States Naval Academy.

§635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of brigadier general, each officer of the Space Component who holds the grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on

the first day of the month after the month in which he completes 30 years of active commissioned service, whichever is later

§636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half)

(a) Major Generals and Rear Admirals Serving in Grade.-Except as provided in subsection (b) or (c) and under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force-who holds the regular grade of major general, each officer of the Space Component who holds the grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(b) Lieutenant Generals and Vice Admirals.-In the administration of subsection (a) in the case of an officer who is serving in the grade of lieutenant general or vice admiral, the number of years of active commissioned service applicable to the officer is 38 years.

(c) Generals and Admirals.-In the administration of subsection (a) in the case of an officer who is serving in the grade of general or admiral, the number of years of active commissioned service applicable to the officer is 40 years.

§651. Members: required service

(a) ~~Each~~ Except as specified in section 20104 of this title, each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. 3806(d)(1)) shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Homeland Security for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

....

§661. Management policies for joint qualified officers

(a) Establishment.-The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of the Army, Navy, Air Force, and Marine Corps, ~~and Space Force~~ on the active-duty list, and officers of the Space Force on the space component officer list who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their

principal military occupational specialty) as a joint qualified officer or in such other manner as the Secretary of Defense directs.

....

§688. Retired members: authority to order to active duty; duties

(a) **AUTHORITY.**-Under regulations prescribed by the Secretary of Defense, a member described in subsection (b) may be ordered to active duty by the Secretary of the military department concerned at any time.

(b) **COVERED MEMBERS.**-Except as provided in subsection (d), subsection (a) applies to the following members of the armed forces:

(1) A retired member of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force.

(2) A member of the Retired Reserve who was retired under section 1293, 7311, 7314, 8323, 9311, or 9314 of this title.

(3) A member of the Fleet Reserve or Fleet Marine Corps Reserve.

(4) A retired member of the Space Component.

....

§690. Retired members ordered to active duty: limitation on number

(a) **GENERAL AND FLAG OFFICERS.**-Not more than 15 retired general officers of the Army, Air Force, ~~or~~ Marine Corps, or the Space Force, and not more than 15 retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of 60 days or less is not counted.

....

§ 701 - Entitlement and accumulation

(i)(1)(A) Under regulations prescribed by the Secretary of Defense, a member of the armed forces described in paragraph (2) who is the primary caregiver in the case of the birth of a child is allowed up to twelve weeks of total leave, including up to six weeks of medical convalescent leave, to be used in connection with such birth.

(B) Under the regulations prescribed for purposes of this subsection, a member of the armed forces described in paragraph (2) who is the primary caregiver in the case of the adoption of a child is allowed up to six weeks of total leave to be used in connection with such adoption.

(2) Paragraph (1) applies to the following members:

(A) A member on active duty.

(B) A member of a reserve component performing active Guard and Reserve duty.

(C) A member of a reserve component subject to an active duty recall or mobilization order in excess of 12 months.

(D) A member of the Space Component in a space component active status, not on protracted active duty.

(3) The Secretary shall prescribe in the regulations referred to in paragraph (1) a definition of the term "primary caregiver" for purposes of this subsection.

(4) Notwithstanding paragraph (1)(A), a member may receive more than six weeks of medical convalescent leave in connection with the birth of a child, but only if the additional medical convalescent leave-

(A) is specifically recommended, in writing, by the medical provider of the member to address a diagnosed medical condition; and

(B) is approved by the commander of the member.

(5) Any leave taken by a member under this subsection, including leave under paragraphs (1) and (4), may be taken in more than one increment in connection with such birth or adoption in accordance with regulations prescribed by the Secretary concerned.

(6)(A) Any leave authorized by this subsection that is not taken within one year of such birth or adoption shall be forfeited.

(B) Any leave authorized by this subsection for a member of a reserve component, or of the space component, on active duty that is not taken by the time the member is separated from active duty shall be forfeited at that time.

(7) The period of active duty of a member of a reserve component, or of the space component, may not be extended in order to permit the member to take leave authorized by this subsection.

(8) Under the regulations prescribed for purposes of this subsection, a member taking leave under paragraph (1) may, as a condition for taking such leave, be required-

(A) to accept an extension of the member's current service obligation, if any, by one week for every week of leave taken under paragraph (1); or

(B) to incur a reduction in the member's leave account by one week for every week of leave taken under paragraph (1).

(9)(A) Leave authorized by this subsection is in addition to any other leave provided under other provisions of this section.

(B) Medical convalescent leave under paragraph (4) is in addition to any other leave provided under other provisions of this subsection.

(10)(A) Subject to subparagraph (B), a member taking leave under paragraph (1) during a period of obligated service shall not be eligible for terminal leave, or to sell back leave, at the end such period of obligated service.

(B) Under the regulations for purposes of this subsection, the Secretary concerned may waive, whether in whole or in part, the applicability of subparagraph (A) to a member who reenlists at the end of the member's period of obligated service described in that subparagraph if the Secretary determines that the waiver is in the interests of the armed force concerned.

(j)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces described in subsection (i)(2) who is the secondary caregiver in the case of the birth of a child or the adoption of a child is allowed up to 21 days of leave to be used in connection with such birth or adoption.

(2) The Secretary shall prescribe in the regulations referred to in paragraph (1) a definition of the term "secondary caregiver" for purposes of this subsection.

(3) Any leave taken by a member under this subsection may be taken only in one increment in connection with such birth or adoption.

(4) Under the regulations prescribed for purposes of this subsection, paragraphs (6) through (10) of subsection (i)(other than paragraph (9)(B) of such subsection) shall apply to leave, and the taking of leave, authorized by this subsection.

(k) A member of a reserve component, or of the space component, who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.

(l) A member of the armed forces who gives birth while on active duty may be deployed during the period of 12 months beginning on the date of such birth only with the approval of a health care provider employed at a military medical treatment facility and-

(1) at the election of such member; or

(2) in the interest of national security, as determined by the Secretary of Defense

* * * * *

§707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken

(a) An officer-

(1) who is required to take leave under ~~section 1182(e)(2) of this title~~, section 1182(c)(2) or section 20503 of this title, any period of which is charged as excess leave under section 706(a) of this title, and

(2) whose recommendation for removal from active duty in a report of a board of inquiry is not approved by the Secretary concerned under section 1184 of this title, shall be paid, as provided in subsection (b), for the period of leave charged as excess leave.

....

§710. Career flexibility to enhance retention of members

(a) Programs Authorized.-Each Secretary of a military department may carry out programs under which members of the regular components or of the Space Component and members on Active Guard and Reserve duty of the armed forces under the jurisdiction of such Secretary may be inactivated from active service in order to meet personal or professional needs and returned to active service at the end of such period of inactivation from active service.

(b) Period of Inactivation From Active Service; Effect of Inactivation.-(1) The period of inactivation from active service under a program under this section of a member participating in the program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (c), except that such period may not exceed three years.

(2) Any service by a Reserve officer or a Space Component officer in a space component active status not on active duty under section 20208(b) of this title while participating in a program under this section shall be excluded from computation of the total years of service of that officer pursuant to section 14706(a) of this title.

(3) Any period of participation of a member in a program under this section shall not count toward-

(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of this title; or

(B) computation of retired or retainer pay under chapter 71 or 1223 of this title.

(c) Agreement.-Each member of the armed forces who participates in a program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of an armed force during the period of the inactivation of the member from active service under the program. In the case of a member of the Space Component on protracted active duty, to accept release from protracted active duty orders and to serve in a space component active status.

(2) To undergo during the period of the inactivation of the member from active service under the program such inactive service training as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the military skills, professional qualifications, and physical readiness of the member during the inactivation of the member from active service.

(3) Following completion of the period of the inactivation of the member from active service under the program, to serve two months as a member of the armed forces on active service for each month of the period of the inactivation of the member from active service under the program.

....

(g) Promotion.-(1)(A) An officer participating in a program under this section shall not, while participating in the program, be eligible for consideration for promotion under ~~chapter 36 or 1405 of this title~~ chapter 36, 1405, or 2004 of this title.

(B) Upon the return of an officer to active service after completion by the officer of participation in a program-

(i) the Secretary of the military department concerned shall adjust the date of rank of the officer in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(2) An enlisted member participating in a program shall not be eligible for consideration for promotion during the period that-

(A) begins on the date of the inactivation of the member from active service under the program; and

(B) ends at such time after the return of the member to active service under the program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the program.

....

§741. Rank: commissioned officers of the armed forces

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

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

....

* * * * *

§ 772 - When wearing by persons not on active duty authorized

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force or Space Force school may wear the appropriate aviation or space badges of the Air Force or Space Force.

* * * * *

§777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions

....

(d) Limitation on Number of Officers Frocked to Specified Grades.-(1) The total number of colonels, Navy captains, brigadier generals, and rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the next higher grade may not exceed 85.

(2) The number of officers of an armed force on the active-duty list “or for the Space Force, the space component officer list,” who are authorized as described in subsection (a) to wear the insignia for a grade to which a limitation on total number applies under section 523(a) of this title for a fiscal year may not exceed 1 percent, or, for the grades of colonel and Navy captain, 2 percent, of the total number provided for the officers in that grade in that armed force in the administration of the limitation under that section for that fiscal year.

§ 802 - Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces; and members the space component on active duty under section 20208 of this title, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)

(A) While on inactive-duty training and during any of the periods specified in subparagraph

(B)—

(i) members of a reserve component or the space component; and

(ii) members of the Army National Guard of the United States ~~or~~ the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component, or retired members the space component who qualified for a non-regular retirement and are receiving pay, and who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

- (9) Prisoners of war in custody of the armed forces.
- (10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.
- (11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.
- (14) Retired members of the Space Component who qualified for a regular retirement under section 20512 of this title and are receiving pay.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

- (1) submitted voluntarily to [military](#) authority;
- (2) met the mental competency and minimum age qualifications of sections [504](#) and [505](#) of this title at the time of voluntary submission to [military](#) authority;
- (3) received [military](#) pay or allowances; and
- (4) performed [military](#) duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)

(1) A member of a reserve component or the space component who is not on active duty and who is made the subject of proceedings under [section 815](#) (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

- (A) a preliminary hearing under [section 832 of this title](#) (article 32);
- (B) trial by court-martial; or
- (C) nonjudicial punishment under [section 815 of this title](#) (article 15).

(2) A member of a reserve component or the space component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

- (A) on active duty; or
- (B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

- (3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.
- (4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces or the space force component.
- (5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—
- (A) be sentenced to confinement; or
 - (B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).
- (e) The provisions of this section are subject to [section 876b\(d\)\(2\) of this title](#) (article 76b(d)(2)).

§803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component or the space component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

§937. Art. 137. Articles to be explained

(a) Enlisted Members.—(1) The sections (articles) of this chapter specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

- (A) the member's initial entrance on active duty; ~~or~~
- (B) the member's initial entrance into a duty status with a reserve component; or
- (C) the member's initial entrance on active duty or into active status with the space component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; ~~and~~

(B) after a member of the space component has completed six months of active duty or in the case of a member not on active duty, after the member has completed basic or recruit training; and

~~(B)-(C)~~ at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) Officers.-

(1) The sections (articles) of this chapter specified in paragraph (2) shall be carefully explained to each officer at the time of (or within six months after)-

(A) the initial entrance of the officer on active duty as an officer; or

(B) the initial commissioning of the officer in a reserve component or the space component.

(2) This subsection applies with respect to the sections (articles) specified in subsection (a)(3) and such other sections (articles) as the Secretary concerned may prescribe by regulation.

(c) Training for Certain Officers.-Under regulations prescribed by the Secretary concerned, officers with the authority to convene courts-martial or to impose non-judicial punishment shall receive periodic training regarding the purposes and administration of this chapter. Under regulations prescribed by the Secretary of Defense, officers assigned to duty in a joint command or a combatant command, who have such authority, shall receive additional specialized training regarding the purposes and administration of this chapter with respect to joint commands and the combatant commands.

(d) Availability and Maintenance of Text.-The text of this chapter and the text of the regulations prescribed by the President under this chapter shall be-

(1) made available to a member of a regular component on active duty, ~~or to a member of a reserve component, or to a member of the space component~~, upon request by the member, for the member's personal examination; and

(2) maintained by the Secretary of Defense in electronic formats that are updated periodically and made available on the Internet.

§973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies-

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; ~~and~~

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days- “; and”

“(D) to an officer on the space component officer list serving on active duty for an indefinite period, or under a call or order to active duty for a period in excess of 270 days.”

....

§976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term "member of the armed forces" means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, ~~or~~ (C) a member of a Reserve component while performing inactive-duty training- “, or (D) a member of the Space Component on active duty not under section 20208 or while performing inactive-duty training.”

....

§981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, ~~and Marine Corps~~ “Marine Corps, and Space Force.”

(c) Not later than March 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report-

(1) specifying the number of enlisted aides authorized and allocated for general officers and flag officers of the Army, Navy, Air Force, Marine Corps, Space Force and joint pool as of September 30 of the previous year; and

(2) justifying, on a billet-by-billet basis, the authorization and assignment of each enlisted aide to each general officer and flag officer position.

§1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60

(a) Members of the Selected Reserve.-A member of the Selected Reserve in good standing (as determined by the Secretary concerned) shall be permitted to use commissary stores and MWR retail facilities on the same basis as members on active duty.

(b) Members of Ready Reserve Not in Selected Reserve.-Subject to such regulations as the Secretary of Defense may prescribe, a member of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use commissary stores and MWR retail facilities on the same basis as members serving on active duty.

(c) Reserve or Space Component Retirees Under Age 60.-A member or former member of a reserve component or the space component under 60 years of age who, but for age, would be eligible for retired pay under chapter 1223 of this title shall be permitted to use commissary stores and MWR retail facilities on the same basis as members of the armed forces entitled to retired pay under any other provision of law.

(d) A member of the space component in a space component active status who is not on protracted active duty under the same conditions as specified for a member of the Selected Reserve in subsection (a).

~~(d)~~ (e) Dependents.-(1) Dependents of a member who is permitted under subsection (a) or (b) to use commissary stores and MWR retail facilities shall be permitted to use stores and such facilities on the same basis as dependents of members on active duty.

(2) Dependents of a member who is permitted under subsection (c) to use commissary stores and MWR retail facilities shall be permitted to use stores and such facilities on the same basis as dependents of members of the armed forces entitled to retired pay under any other provision of law.

~~(e)~~ (f) MWR Retail Facility Defined.-In this section, the term "MWR retail facilities" means exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

§1141 Involuntary separation defined

....

(3) in the case of a regular enlisted member servicing on active duty, the member is (A) denied reenlistment, or (B) involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned; ~~and~~

(4) in the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the member (A) is denied reenlistment, or (B) is involuntarily discharged or released from active duty (or full-time National Guard) under other than adverse conditions, as characterized by the Secretary concerned; ~~;~~ and

(5) in the case of a space component officer (other than a retired officer), the officer is involuntarily discharged or released from active-duty under other than adverse conditions, as characterized by the Secretary of the Air Force; ~~and~~"

(6) in the case of an enlisted member of the space component, the member is (A) denied reenlistment, or (B) involuntarily discharged or released from active duty under other than adverse conditions, as characterized by the Secretary of the Air Force.

§1174. Separation pay upon involuntary discharge or release from active duty

(a) Regular Officers.-(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 8372 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1)

(2) A regular commissioned officer of the Army, Navy, Air Force, Marine Corps, ~~or Space Force~~ who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, Marine Corps, ~~or Space Force~~ who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of

active service immediately before the discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

....

§1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

* * * * *

§ 1211 - Members on temporary disability retired list: return to active duty; promotion

....

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

....

§1370. Regular commissioned officers

(a) Retirement in Highest Grade in Which Served Satisfactorily.-

(1) In general.-Unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air

Force, Marine Corps, or Space Force who retires under any provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily.

(2) Determination of satisfactory service.-The determination of satisfactory service of an officer in a grade under paragraph (1) shall be made as follows:

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

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

(3) Effect of misconduct in lower grade in determination.-If the Secretary of a military department or the Secretary of Defense, as applicable, determines that an officer committed misconduct in a lower grade than the retirement grade otherwise provided for the officer by this section-

(A) such Secretary may deem the officer to have not served satisfactorily in any grade equal to or higher than such lower grade for purposes of determining the retirement grade of the officer under this section; and

(B) the grade next lower to such lower grade shall be the retired grade of the officer under this section.

(4) Nature of retirement of certain reserve officers and officers in temporary grades.-A reserve officer, or an officer appointed to a position under section 601 of this title, who is notified that the officer will be released from active duty without the officer's consent and thereafter requests retirement under section 7311, 8323, or 9311 of this title and is retired pursuant to that request is considered for purposes of this section to have been retired involuntarily.

(5) Nature of retirement of certain removed officers.-An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) Retirement of Officers Retiring Voluntarily.-

(1) Service-in-grade requirement.-In order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the Army, ~~Air Force, or Marine Corps~~ Air Force, Marine Corps or Space Force, lieutenant in the Navy, ~~or the equivalent grade in the Space Force~~, a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force must have served on active duty in that grade for a period of not less than three years, except that-

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

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

(2) Limitation on delegation.-The authority of the Secretary of Defense in subparagraph (A) of paragraph (1) may not be delegated. The authority of the Secretary of a military department

in subparagraph (B) of paragraph (1), as delegated to such Secretary pursuant to such subparagraph, may not be further delegated.

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

(4) Limitation on reduction or waiver of requirement for officers under investigation or pending misconduct.-In the case of an officer to be retired in a grade above the grade of colonel in the Army, ~~Air Force, or Marine Corps~~ Air Force, Marine Corps, or Space Force, captain in the Navy, ~~or the equivalent grade in the Space Force~~, the service-in-grade requirement in paragraph (1) may not be reduced pursuant to that paragraph, or waived pursuant to paragraph (3), while the officer is under investigation for alleged misconduct or while there is pending the disposition of an adverse personnel action against the officer.

(5) Grade and fiscal year limitations on reduction or waiver of requirements.-The aggregate number of members of an armed force in a grade for whom reductions are made under paragraph (1), and waivers are made under paragraph (3), in a fiscal year may not exceed-

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

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

(C) in the case of officers to be retired in the grade of brigadier general or major general in the Army, ~~Air Force, or Marine Corps~~ Air Force, Marine Corps, or Space Force, rear admiral (lower half) or rear admiral in the Navy, ~~or an equivalent grade in the Space Force~~, the number equal to 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade.

(6) Notice to congress on reduction or waiver of requirements for general, flag, and equivalent officer grades.-In the case of an officer to be retired in a grade that is a general or flag officer grade, ~~or an equivalent grade in the Space Force~~, who is eligible to retire in that grade only by reason of an exercise of the authority in paragraph (1) to reduce the service-in-grade requirement in that paragraph, or the authority in paragraph (3) to waive that requirement, the Secretary of Defense or the President, as applicable, shall, not later than 60 days prior to the date on which the officer will be retired in that grade, notify the Committees on Armed Services of the Senate and the House of Representatives of the exercise of the applicable authority with respect to that officer.

(7) Retirement in next lowest grade for officers not meeting requirement.-An officer described in paragraph (1) whose length of service in the highest grade held by the officer while on active duty does not meet the period of the service-in-grade requirement applicable to the officer under this subsection shall, subject to subsection (c), be retired in the next lower

grade in which the officer served on active duty satisfactorily, as determined by the Secretary of the military department concerned or the Secretary of Defense, as applicable.

(c) Officers in O-9 and O-10 Grades.-

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

(2) Prohibition on delegation.-The authority of the Secretary of Defense to make a certification with respect to an officer under paragraph (1) may not be delegated.

(3) Requirements in connection with certification.-A certification with respect to an officer under paragraph (1) shall-

(A) be submitted by the Secretary of Defense such that it is received by the President and the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days prior to the date on which the officer will be retired in the grade concerned;

(B) include an up-to-date copy of the military biography of the officer; and

(C) include the statement of the Secretary as to whether or not potentially adverse, adverse, or reportable information regarding the officer was considered by the Secretary in making the certification.

(4) Construction with other notice.-In the case of an officer under paragraph (1) to whom a reduction in the service-in-grade requirement under subsection (b)(1) or waiver under subsection (b)(3) applies, the requirement for notification under subsection (b)(6) is satisfied if the notification is included in the certification submitted by the Secretary of Defense under paragraph (1).

(d) Conditional Retirement Grade and Retirement for Officers Pending Investigation or Adverse Action.-

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

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

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

(2) Officers in o-9 and o-10 grades.-When an officer described by subsection (c)(1) is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement, the Secretary of Defense may-

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

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

(3) Reduction or waiver of service-in-grade requirement prohibited for general, flag, and equivalent officer grades.-In conditionally determining the retirement grade of an officer under paragraph (1)(A) or (2)(A) of this subsection to be a grade above the grade of colonel in the Army, ~~Air Force, or Marine Corps~~ Air Force, Marine Corps, or Space Force, captain in the Navy, ~~or the equivalent grade in the Space Force~~, the service-in-grade requirement in subsection (b)(1) may not be reduced pursuant to subsection (b)(1) or waived pursuant to subsection (b)(3).

(4) Prohibition on delegation.-The authority of the Secretary of a military department under paragraph (1) may not be delegated. The authority of the Secretary of Defense under paragraph (2) may not be delegated.

(e) Final Retirement Grade Following Resolution of Pending Investigation or Adverse Action.-

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

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

(3) Recalculation of retired pay.-

(A) In general.-If the final retired grade of an officer is as a result of a change under paragraph (2), the retired pay of the officer under chapter 71 of this title shall be recalculated accordingly, with any modification of the retired pay of the officer to go into effect as of the date of the retirement of the officer.

(B) Payment of higher amount for period of conditional retirement grade.-If the recalculation of the retired pay of an officer results in an increase in retired pay, the officer shall be paid the amount by which such increased retired pay exceeded the amount of retired pay paid the officer for retirement in the officer's conditional grade during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade. For an officer whose retired grade is determined pursuant to subsection (c), the effective date of the change of the officer's retired grade for purposes of this subparagraph shall be the date that is 60 days after the date on which the Secretary of Defense submits to the Committees on Armed Services of the Senate and the House of Representatives the certification required by subsection (c) in connection with the retired grade of the officer.

(C) Recoupment of overage during period of conditional retirement grade.-If the recalculation of the retired pay of an officer results in a decrease in retired pay, there shall be recouped from the officer the amount by which the amount of retired pay paid the officer

for retirement in the officer's conditional grade exceeded such decreased retired pay during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade.

(f) Finality of Retired Grade Determinations.-

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

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

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

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

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

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

(3) Applicable secretary.-For purposes of this subsection, the applicable Secretary for purposes of a determination or action specified in this subsection is-

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

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

(4) Notice and limitation.-If a final determination of the retired grade of an officer is reopened in accordance with paragraph (2), the applicable Secretary-

(A) shall notify the officer of the reopening; and

(B) may not make an adverse determination on the retired grade of the officer until the officer has had a reasonable opportunity to respond regarding the basis for the reopening of the officer's retired grade.

(5) Additional notice on reopening for officers retired in o-9 and o-10 grades.-If the determination of the retired grade of an officer whose retired grade was provided for pursuant to subsection (c) is reopened, the Secretary of Defense shall also notify the President and the Committees on Armed Services of the Senate and the House of Representatives.

(6) Manner of making of change.-If the retired grade of an officer is proposed to be changed through the reopening of the final determination of an officer's retired grade under this subsection, the change in grade shall be made-

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

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

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

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

(7) Recalculation of retired pay.-If the final retired grade of an officer is changed through the reopening of the officer's retired grade under this subsection, the retired pay of the officer under chapter 71 of this title shall be recalculated. Any modification of the retired pay of the officer as a result of the change shall go into effect on the effective date of the change of the officer's retired grade, and the officer shall not be entitled or subject to any changed amount of retired pay for any period before such effective date. An officer whose retired grade is changed as provided in paragraph (6)(B) shall not be entitled or subject to a change in retired pay for any period before the date on which the Senate provides advice and consent for the retirement of the officer in such grade.

(g) Highest Permanent Grade Defined.-In this section, the term "highest permanent grade" means a grade at or below the grade of major general in the Army, ~~Air Force, or Marine Corps~~ Air Force, Marine Corps, or Space Force, rear admiral in the Navy, ~~or an equivalent grade in the Space Force~~.

* * * * *

§1491. Funeral honors functions at funerals for veterans

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(h) Veteran Defined.-In this section, the term "veteran" means a decedent who-

(1) served in the active military, naval, ~~or air service~~ air or space service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or

(2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.

§1555. Professional staff

(a) The Secretary of each military department shall assign to the staff of the service review agency of that military department at least one attorney and at least one physician. Such assignments shall be made on a permanent, full-time basis and may be made from members of the armed forces or civilian employees.

(b) Personnel assigned pursuant to subsection (a)-

(1) shall work under the supervision of the director or executive director (as the case may be) of the service review agency; and

(2) shall be assigned duties as advisers to the director or executive director or other staff members on legal and medical matters, respectively, that are being considered by the agency.

(c) In this section, the term "service review agency" means-

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Navy Council of Personnel Boards and the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Department of the Air Force Review Boards Agency.

§1556. Ex parte communications prohibited

(a) IN GENERAL.-The Secretary of each military department shall ensure that an applicant seeking corrective action by the Army Review Boards Agency, the Department of the Air Force Review Boards Agency, or the Board for Correction of Naval Records, as the case may be, is provided a copy of all correspondence and communications (including summaries of verbal communications) to or from the agency or board, or a member of the staff of the agency or board, with an entity or person outside the agency or board that pertain directly to the applicant's case or have a material effect on the applicant's case.

(b) EXCEPTIONS.-Subsection (a) does not apply to the following:

- (1) Classified information.
- (2) Information the release of which is otherwise prohibited by law or regulation.
- (3) Any record previously provided to the applicant or known to be possessed by the applicant.
- (4) Any correspondence that is purely administrative in nature.
- (5) Any military record that is (or may be) provided to the applicant by the Secretary of the military department or other source.

§1557. Timeliness standards for disposition of applications before Corrections Boards

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(f) CORRECTIONS BOARD DEFINED.-In this section, the term "Corrections Board" means-

- (1) with respect to the Department of the Army, the Army Board for Correction of Military Records;
- (2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and
- (3) with respect to the Department of the Air Force, the Department of the Air Force Board for Correction of Military Records.

§1558. Review of actions of selection boards: correction of military records by special boards; judicial review

(a) Correction of Military Records.-The Secretary of a military department may correct a person's military records in accordance with a recommendation made by a special board. Any such correction may be made effective as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person's military records.

(b) Definitions.-In this section:

- (1) Special board.-(A) The term "special board" means a board that the Secretary of a military department convenes under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component, or the space component, instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person.

(B) Such term includes a board for the correction of military records convened under section 1552 of this title, if designated as a special board by the Secretary concerned.

(C) Such term does not include a promotion special selection board convened under ~~section 628 or 14502 of this title~~ section 628, 14502, or 20421 of this title.

(2) Selection board.-(A) The term "selection board" means a selection board convened under section 573(c), 580, 580a, 581, 611(b), 637, 638, 638a, 14101(b), 14701, 14704, ~~or 14705 of this title~~ 14507, or 20509 of this title, and any other board convened by the Secretary of a military department under any authority to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or for separation, retirement, or transfer to inactive status in a reserve component, or the space component, for the purpose of reducing the number of persons serving in the armed forces.

(B) Such term does not include any of the following:

(i) A promotion board convened under section 573(a), 611(a), ~~or 14101(a) of this title~~ 14101(a), or 20406 of this title.

(ii) A special board.

(iii) A special selection board convened under section 628 of this title.

(iv) A board for the correction of military records convened under section 1552 of this title.

(3) Involuntarily board-separated.-The term "involuntarily board-separated" means separated or retired from an armed force, or transferred to the Retired Reserve or to inactive status in a reserve component, or the space component, as a result of a recommendation of a selection board.

(c) Relief Associated With Correction of Certain Actions.-(1) The Secretary of the military department concerned shall ensure that an involuntarily board-separated person receives relief under paragraph (2) or under paragraph (3) if the person, as a result of a correction of the person's military records under subsection (a), becomes entitled to retention on or restoration to active duty or to active status in a reserve component, or the space component.

(2)(A) A person referred to in paragraph (1) shall, with that person's consent, be restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in that person's armed force as the person would have had if the person had not been selected to be involuntarily board-separated as a result of an action the record of which is corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

(B) Nothing in subparagraph (A) may be construed to permit a person to be on active duty or in a space component active status in a reserve component, or the space component, after the

date on which the person would have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component, or the space component, if the person had not been selected to be involuntarily board-separated in an action of a selection board the record of which is corrected under subsection (a).

(3) If an involuntarily board-separated person referred to in paragraph (1) does not consent to a restoration of status, rights, and entitlements under paragraph (2), the Secretary concerned shall pay that person back pay and allowances (less appropriate offsets), and shall provide that person service credit, for the period-

(A) beginning on the date of the person's separation, retirement, or transfer to the Retired Reserve or to inactive status in a reserve component, or the space component, as the case may be; and

(B) ending on the earlier of-

(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

(ii) the date on which the person would otherwise have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component, or the space component, as the case may be.

....

§1559. Personnel limitation

(a) Limitation.-Before December 31, 2025, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency.

(b) Baseline Number.-The baseline number for a service review agency under this section is-

(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of January 1, 2002; and

(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

(c) Service Review Agency Defined.-In this section, the term "service review agency" means-

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Department of the Air Force Review Boards Agency.

§1563. Consideration of proposals from Members of Congress for honorary promotions: procedures for review and promotion

(a) Review by Secretary Concerned.-Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination as to the merits of approving the promotion.

(b) Notice of Results of Review.-Upon making a determination under subsection (a) as to the merits of approving the honorary promotion, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.

(c) Authority To Make.-(1) Under regulations prescribed by the Secretary of Defense, the Secretary of Defense may make an honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces to any grade not exceeding the grade of major general, rear admiral (upper half), ~~or an equivalent grade in the Space Force~~ following the submittal of the determination of the Secretary concerned under subsection (b) in connection with the proposal for the promotion if the determination is to approve the making of the promotion.

(2) The Secretary of Defense may not make an honorary promotion under this subsection until 60 days after the date on which the Secretary concerned submits the determination in connection with the proposal for the promotion under subsection (b), and the detailed rationale supporting the determination as described in that subsection, to the Committees on Armed Services of the Senate and the House of Representatives and the requesting Member in accordance with that subsection.

(3) The authority to make an honorary promotion under this subsection shall apply notwithstanding that the promotion is not otherwise authorized by law.

(4) Any promotion pursuant to this subsection is honorary, and shall not affect the pay, retired pay, or other benefits from the United States to which the former member or retired member concerned is or would have been entitled based upon the military service of such former member or retired member, nor affect any benefits to which any other person may become entitled based on the military service of such former member or retired member.

(d) Definition.-In this section, the term "Member of Congress" means-

(1) a Senator; or

(2) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(§1563a. Honorary promotions on the initiative of the Department of Defense

(a) IN GENERAL.-(1) Under regulations prescribed by the Secretary of Defense, the Secretary may make an honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces to any grade not exceeding the grade of major general, rear admiral (upper half), ~~or an equivalent grade in the Space Force~~ if the Secretary determines that the promotion is merited.

....

§ 1781a - Department of Defense Military Family Readiness Council

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(b)(B)The following persons, who shall be appointed or designated by the Secretary of Defense:

(i)One representative of each of the Army, Navy, Marine Corps, and Air Force, each of whom shall be a member or civilian employee of the armed force to be represented.

(ii)One representative, who shall be a member or civilian employee of the National Guard Bureau, to represent both the Army National Guard and, the Air National Guard.

(iii) One spouse or parent of a member of each of the Army, Navy, Air Force, Marine Corps, and Space Force, two of whom shall be the spouse or parent of an active component member and two of whom shall be the spouse or parent of a reserve component member: , or in the case of the Space Force, the parent of a member of the Space Component.

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* * * * *

§1781b. Department of Defense policy and plans for military family readiness

(a) Policy and Plans Required.-The Secretary of Defense shall develop a policy and plans for the Department of Defense for the support of military family readiness.

(b) Purposes.-The purposes of the policy and plans required under subsection (a) are as follows:

(1) To ensure that the military family readiness programs and activities of the Department of Defense are comprehensive, effective, and properly supported.

(2) To ensure that support is continuously available to military families in peacetime and in war, as well as during periods of force structure change and relocation of military units.

(3) To ensure that the military family readiness programs and activities of the Department of Defense are available to all military families, including ~~military families of members of the~~

~~regular components and military families of members of the reserve components.~~ military families of members of a regular component, a reserve component, or the space component.”

(4) To make military family readiness an explicit element of applicable Department of Defense plans, programs, and budgeting activities, and that achievement of military family readiness is expressed through Department-wide goals that are identifiable and measurable.

(5) To ensure that the military family readiness programs and activities of the Department of Defense undergo continuous evaluation in order to ensure that resources are allocated and expended for such programs and activities to achieve Department-wide family readiness goals.

(c) Elements of Policy.-The policy required under subsection (a) shall include the following elements:

(1) A list of military family readiness programs and activities.

(2) Department of Defense-wide goals for military family support, including joint programs, both for ~~military families of members of the regular components and military families of members of the reserve components~~ military families of members of a regular component, a reserve component, or the space component.”

(3) Policies on access to military family support programs and activities based on military family populations served and geographical location.

(4) Metrics to measure the performance and effectiveness of the military family readiness programs and activities of the Department of Defense.

(5) A summary, by fiscal year, of the allocation of funds (including appropriated funds and nonappropriated funds) for major categories of military family readiness programs and activities of the Department of Defense, set forth for each of the military departments and for the Office of the Secretary of Defense.

§2007. The payment of tuition for off-duty training or education

....

(f) This section shall be administered under regulations prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security.

(g) The provisions of this section pertaining to members of the Ready Reserve, the Selected Reserve, or the Individual Ready Reserve shall be deemed to apply to members of the Space Component in a space component active status not on active duty.

§2107. Financial assistance program for specially selected members

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

....

(j)(1) Payment of financial assistance under this section for, and payment of a monthly subsistence allowance under section 209 of title 37 to, a cadet or midshipman appointed under this section may be suspended on the basis of health-related incapacity of the cadet or midshipman only in accordance with regulations prescribed under paragraph (2).

(2) The Secretary of Defense shall prescribe in regulations the policies and procedures for suspending payments under paragraph (1). The regulations shall apply uniformly to all of the military departments. The regulations shall include the following matters:

(A) The standards of health-related fitness that are to be applied.

(B) Requirements for-

(i) the health-related condition and prognosis of a cadet or midshipman to be determined, in relation to the applicable standards prescribed under subparagraph (A), by a health care professional on the basis of a medical examination of the cadet or midshipman; and

(ii) the Secretary concerned to take into consideration the determinations made under clause (i) with respect to such condition in deciding whether to suspend payment in the case of such cadet or midshipman on the basis of that condition.

(C) A requirement for the Secretary concerned to transmit to a cadet or midshipman proposed for suspension under this subsection a notification of the proposed suspension together with the determinations made under subparagraph (B)(i) in the case of the proposed suspension.

(D) A procedure for a cadet or midshipman proposed for suspension under this subsection to submit a written response to the proposal for suspension, including any supporting information.

(E) Requirements for-

(i) one or more health-care professionals to review, in the case of such a response of a cadet or midshipman, each health-related condition and prognosis addressed in the response, taking into consideration the matters submitted in such response; and

(ii) the Secretary concerned to take into consideration the determinations made under clause (i) with respect to such condition in making a final decision regarding whether to suspend payment in the case of such cadet or midshipman on the basis of that condition, and the conditions under which such suspension may be lifted.

(k) Provisions of this section referring to a regular commission, regular officer, or a commission in a regular component shall be deemed to also refer to the commission of an officer, or the officer, who is a commissioned officer in the Space Component serving on active duty pursuant to section 20208(b) of this title and provisions of this section referring to a reserve commission, reserve officer, or a commission in a reserve component shall be deemed to also refer to the commission of an officer, or the officer, who is a commissioned officer in the Space Component not serving on active duty pursuant to section 20208(b) of this title.

§2111. Personnel: administrators and instructors

The Secretary of the military department concerned may detail regular or reserve members of an armed force under his jurisdiction ~~(including retired members and members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent)~~ (including retired members, members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent, and members of the Space Component) for instructional and administrative duties at educational institutions where units of the program are maintained.

§9020. Inspector General

(a) There is an Inspector General of the Department of the Air Force who shall be detailed to such position by the Secretary of the Air Force from the ~~general officers of the Air Force or general, flag, or equivalent officers of the Space Force~~ general officers of the Air Force or Space Force. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

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§9081. The United States Space Force

(a) Establishment.-There is established a United States Space Force as an armed force within the Department of the Air Force.

(b) Composition.-The Space Force consists of-

(1) the Regular Space Force, the Space Component;

(2) all persons appointed or enlisted in, or conscripted into, the Space Force, including those not assigned to units, necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency; and

(3) all Space Force units and other Space Force organizations, including installations and supporting and auxiliary combat, training, administrative, and logistic elements.

(c) Functions.-The Space Force shall be organized, trained, and equipped to-

(1) provide freedom of operation for the United States in, from, and to space;

(2) conduct space operations; and

(3) protect the interests of the United States in space.

§9085. Regular Space Force: composition

(a) In General.-The Regular Space Force is the component of the Space Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Space Force.

(b) Composition.-The Regular Space Force includes-

(1) the officers and enlisted members of the Regular Space Force; and

(2) the retired officers and enlisted members of the Regular Space Force.

(c) Disestablishment.-The Regular Space Force will be disestablished upon the completion of the transfer of personnel to the Space Component and certification by the Secretary of the

Air Force to the congressional defense committees that there are no longer any personnel who are members of the Regular Space Force.

§9132¹. Regular Air Force, ~~and~~ Regular Space Force, and Space Component: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Air Force, ~~or the~~ Regular Space Force, or the Space Component who has served on active duty as an officer of the Air Force or the Space Force, or who was discharged as an enlisted member to accept an appointment as an officer of the Air Force or the Space Force, is entitled to be reenlisted in the Regular Air Force, the Regular Space Force, or the Space Component in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Air Force prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if-

(1) the person was discharged or released from active duty as an officer on the basis of a determination of-

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the commission held by that person during the active duty from which the person was released or discharged.

§9132. Regular Air Force, ~~and~~ Regular Space Force, and the Space Component: gender-free basis for acceptance of original enlistments

In accepting persons for original enlistment in the Regular Air Force, ~~or the~~ Regular Space Force, ~~or the~~ Space Component, the Secretary of the Air Force may not-

(1) set a minimum or maximum percentage of persons who may be accepted for such an enlistment according to gender for skill categories or jobs; or

(2) in any other way base the acceptance of a person for such an enlistment on gender.

§9160. Warrant Officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Air Force ~~or the Regular Space Force~~ shall be made from persons who have served on active duty at least one year in the Air Force or the Space Force.

**CHAPTER 915 – APPOINTMENTS IN THE REGULAR AIR FORCE, ~~AND THE~~
REGULAR SPACE FORCE, AND THE SPACE COMPONENT**

PART I—ORGANIZATION

Chap.

901. Definitions. [No present sections.]

Sec.

903.

Department of the Air Force

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905. The Air Staff

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907. The Air Force

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PART II—PERSONNEL

911. Strength

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913. Enlistments

9131

**915. Appointments in the Regular Air Force, ~~and the Regular Space Force, and the Space~~
Component** 9151

....

§9252. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Air Force, ~~or the Regular Space Force, or the Space Component~~ is entitled to count active service as an officer in the Air Force, in the Space Force, and in the Army, as enlisted service for all purposes.

§9344. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Air Force or the Space Force covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to-

(1) warrant officers of the Air Force ~~or the Space Force~~;

(2) enlisted members of the Regular Air Force, ~~or the Regular Space Force~~ or the Space Component; and

(3) reserve enlisted members of the Air Force or the Space Force who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time duty).

§9346. Retired lists

(a) The Secretary of the Air Force shall maintain a retired list containing the name of each retired commissioned officer of the Regular Air Force, ~~or the Regular Space Force~~, or the Space Component.

(b) The Secretary shall maintain a retired list containing the name of-

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Air Force, other than of the Regular Air Force, or for commissioned officers of the Space Force other than of the Regular Space Force or of the Space Component who qualified for retirement under section 20510; and

(2) each retired warrant officer or enlisted member of the Air Force or the Space Force who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Air Force or the Space Force.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Air Force, ~~or the Regular Space Force~~, or the Space Component.

§ 9401 - Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Air Force may detail members of the Air Force and members of the Space Force as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force, ~~or the Regular Space Force~~ on the active-duty list, including a Space Component officer in a space component active status, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Air Force, ~~or Reserve of the Space Force, Reserve of the Space Force, or member of the Space Component in a space component active status~~ may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without the ~~Reserve's consent~~ Reserve member's consent and, if a member of the Air National Guard of the United States, without the approval of the governor or other appropriate authority of the State,

the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands of whose Air National Guard he or she is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Air Force or the Space Force under subsection (a) during one enlistment period may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Air Force, ~~or the Regular Space Force, or the Space Component,~~ or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Air Force or the ~~Space Force Reserve~~ Space Component, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Air Force.

§ 9419: Recruit basic training: separate housing for male and female recruits

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(d) Basic Training Defined.-In this section, the term "basic training" means the initial entry training program of the Air Force or the Space Component that constitutes the basic training of new recruits

§9436. Permanent professors; director of admissions

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

(a) A permanent professor of the Academy who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel in the Air

Force or the Space Force. However, a permanent professor appointed from the Regular Air Force, Regular Space Force or the Space Component has the grade of colonel after the date when such person completes six years of service as a professor, or after the date on which such person would have been promoted had such person been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel in the Air Force or the Space Force.

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

§9442. Cadets: appointments; numbers, territorial distribution

....

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who-

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components, or the Space Component, and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under paragraph (1) of subsection (a) may not be selected under this paragraph.

(2) 85 nominated by the Secretary of the Air Force from enlisted members of the Regular Air Force, ~~or the Regular Space Force~~, or the Space Component.

(3) 85 nominated by the Secretary of the Air Force from enlisted members of reserve components of the Air Force.

(4) 20 nominated by the Secretary of the Air Force, under regulations prescribed by the Secretary, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Air Force Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Air Force in order of merit (prescribed pursuant to section 9443 of this title) from qualified alternates nominated by persons named in paragraphs (3) and (4) of subsection (a).

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§9448. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet-

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Air Force, ~~or the Regular Space Force, or the Space Component~~; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer, or leave active duty in the Space Component, before completion of the commissioned service obligation of the cadet, the cadet-

(A) will accept an appointment as a commissioned officer as a Reserve in the Air Force for service in the Air Force Reserve ~~or as a Reserve in the Space Force for service in the Space Force Reserve~~ or will accept a transfer to a space component active status in the Space Component; and

(B) will remain in that reserve component, or the Space Component, until completion of the commissioned service obligation of the cadet.

....

9452. Cadets: hazing

(a) Subject to the approval of the Secretary of the Air Force, the Superintendent of the Academy shall issue regulations-

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed as a cadet, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, ~~Marine Corps, or Space Force~~ Marine Corps, or the Space Component until two years after the graduation of his class.

§9481. Establishment: purpose

The Secretary of the Air Force may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Air Force, the Space Force, and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Air Force Reserve, ~~or the Space Force Reserve~~ or as officers, or enlistment as noncommissioned officers, for service in the Space Component.

§9482. Operation

In maintaining camps established under section 9481 of this title, the Secretary of the Air Force may-

- (1) prescribe the periods during which they will be operated;
- (2) prescribe regulations for their administration;
- (3) prescribe the courses to be taught;
- (4) detail members of the Regular Air Force, ~~or the Regular Space Force~~ , or members of the Space Component on active duty, to designated duties relating to the camps;
- (5) use necessary supplies and transportation;
- (6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camp; and
- (7) authorize necessary expenditures from proper Air Force or Space Force funds for-
 - (A) water;
 - (B) fuel;
 - (C) light;
 - (D) temporary structures, except barracks and officers' quarters;
 - (E) screening;
 - (F) damages resulting from field exercises;
 - (G) expenses incident to theoretical winter instruction of trainees; and
 - (H) other expenses incident to maintaining the camps.

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TITLE 28, UNITED STATES CODE

§ 631 - Appointment and tenure

....

(c)A magistrate judge may hold no other civil or military office or employment under the United States: Provided, however, That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate judge, but the conference shall fix the aggregate amount

of compensation to be received for performing the duties of part-time magistrate judge and part-time referee in bankruptcy, clerk or deputy clerk: members of the Space Component of the Space Force and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrate judges.

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TITLE 38, UNITED STATES CODE

§ 101 – Definitions

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(22) The term “active duty for training” means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps 1 of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to “full military benefits”, or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers’ Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term “inactive duty training” means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps 1 of the Public Health Service) or a member of the Space Component in a space component active status by the Secretary concerned under section 206 of title 37 or any other provision of law;

- (B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) or a member of the Space Component in a space component active status by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and
- (C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

....

(28) The term "Space Component" means the component of the Space Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, persons whose continuous voluntary or involuntary availability for active duty in both peace and war is contemplated by law, and of retired members of the Space Component.

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, or members of the Space Component in a space component active status, or members of the Space Component in a space component active status Army, , or members of the Space Component in a space component active status Army

§ 2402 - Persons eligible for interment in national cemeteries

- (a) Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery under the control of the National Cemetery Administration:
- (1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).
 - (2) Any member of a Reserve component of the Armed Forces or the space component, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Department of the Air Force whose death occurs under honorable conditions while such member is-

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is-

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

* * * * *

§ 3002 – Definitions

....

(4) The term “Selected Reserve” means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 10143(a) of title 10.

(5) The term “Secretary of Defense” means the Secretary of Defense, except that it means the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(6) The term “active duty” does not include any period during which an individual (A) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard ~~or~~ the Air National Guard, or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(7) The term “active duty” includes full-time National Guard duty first performed after June 30, 1985, by a member of the Army National Guard of the United States ~~or~~ the Air National Guard of the United States in the member’s status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(8) The term “educational institution” has the meaning given such term in section 3452(c) of this title.

* * * * *

§3011. Basic educational assistance entitlement for service on active duty

(a) Except as provided in subsection (c) of this section, each individual-

(1) who-

(A) during the period beginning July 1, 1985, and ending September 30, 2030, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and-

(i) who (I) in the case of an individual whose obligated period of active duty is three years or more, serves at least three years of continuous active duty in the Armed Forces, or (II) in the case of an individual whose obligated period of active duty is less than three years, serves at least two years of continuous active duty in the Armed Forces; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; (II) for the convenience of the Government, if, in the case of an individual with an obligated period of service of two years, the individual completes not less than 20 months of continuous active duty under that period of obligated service, or, in the case of an individual with an obligated period of service of at least three years, the individual completes not less than 30 months of continuous active duty under that period of obligated service; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(B) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and-

(i) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces; or

(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph; (II) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; or

(C) as of December 31, 1989, was eligible for educational assistance benefits under chapter 34 of this title and-

- (i) was not on active duty on October 19, 1984;
- (ii) reenlists or reenters on a period of active duty after October 19, 1984; and
- (iii) on or after July 1, 1985, either-
 - (I) serves at least three years of continuous active duty in the Armed Forces; or
 - (II) is discharged or released from active duty (aa) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph, (bb) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date, or (cc) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(2) who completes the requirements of a secondary school diploma (or equivalency certificate), or successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree, before applying for benefits under this section; and

(3) who, after completion of the service described in clause (1) of this subsection-

- (A) continues on active duty;
- (B) is discharged from active duty with an honorable discharge;
- (C) is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or
- (D) is released from active duty for further service in a reserve component of the Armed Forces or in the Space Component in space component active status not on protracted active duty under section 20208 of title 10 after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

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§ 3202 – Definitions

For the purposes of this chapter—

- (1)
 - (A) The term “eligible veteran” means any veteran who is not eligible for educational assistance under chapter 34 of this title and who (i) entered military service on or after January 1, 1977, and before July 1, 1985, served on active duty for a period of more than 180 days

commencing on or after January 1, 1977, and was discharged or released therefrom under conditions other than dishonorable, or (ii) entered military service on or after January 1, 1977, and before July 1, 1985, and was discharged or released from active duty after January 1, 1977, for a service-connected disability.

(B) The requirement of discharge or release, prescribed in subparagraph (A), shall be waived in the case of any participant who has completed his or her first obligated period of active duty (which began after December 31, 1976) or 6 years of active duty (which began after December 31, 1976), whichever period is less.

(C) For the purposes of subparagraphs (A) and (B), the term “active duty” does not include any period during which an individual (i) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (ii) served as a cadet or midshipman at one of the service academies, or (iii) served under the provisions of section 511(d) [1] of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, or as a member of the Space Component in an active status not on active duty under sections 20208 of this title.

* * * * *

§ 3301 – Definitions

In this chapter:

(27)

(1) The term “active duty” has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21) (A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12301(h), 12302, 12304, 12304a, or 12304b of title 10 or section 712 [1] of title 14.

(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States in addition to service described in subparagraph (B), full-time service—

(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) in the National Guard under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

“(28) The term “Space Component” means the component of the Space Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, persons whose continuous voluntary or involuntary availability for active duty in both peace and war is contemplated by law, and of retired members of the Space Component”

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§ 3452 – Definitions

....

- (3) For purposes of paragraph (1)(A) and section 3461(a), the term “active duty” does not include any period during which an individual (A) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve unless at some time subsequent to the completion of such period of active duty for training such individual served on active duty for a consecutive period of one year or more (not including any service as a cadet or midshipman at one of the service academies).

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§ 3701 – Definitions

....

- (B) The term “Selected Reserve” means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 10143(a) of title 10.

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§ 4303 - Definitions

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(16)

¹ The term “[uniformed services](#)” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the [Robert T. Stafford Disaster Relief and Emergency](#)

[Assistance Act](#), and any other category of persons designated by the President in time of war or national emergency.

* * * * *

TITLE 50, UNITED STATES CODE

§3911: Definitions

(2) Military Service

The term "military service" means-

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard-

(i) active duty, as defined in section 101(d)(1) of title 10, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

§3917. Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction

(a) Reserves ordered to report for military service

A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this subchapter and subchapters II and III during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) Persons ordered to report for induction

A person who has been ordered to report for induction under the Military Selective Service Act [50 U.S.C. 3801 et seq.] is entitled to the rights and protections provided a servicemember under this subchapter and subchapters II and III during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

(c) For all purposes of this chapter a member of the Space Component who is ordered to report for military service shall be considered a member of a reserve component.

§3919. Exercise of rights under chapter not to affect certain future

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this chapter in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

- (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and the servicemember-
 - (A) a denial or revocation of credit by the creditor;
 - (B) a change by the creditor in the terms of an existing credit arrangement; or
 - (C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure the servicemember.
- (5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard ~~or a reserve component~~, a reserve component, or the space component.
- (6) A change in the terms offered or conditions required for the issuance of insurance.

DIVISION B—[RESERVED]